

INEVITABLE ERROR: WRONGFUL NEW YORK STATE HOMICIDE CONVICTIONS, 1965-1988

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INTRODUCTION

This Article reports the preliminary results of a continuing study by the New York State Defenders Association's Wrongful Conviction Study Project.¹ The purpose of the study is to catalogue wrongful homicide convictions in New York State during the period from 1965 to 1988. The Project has found a significant number of wrongful convictions, as defined and reported below. The data presented in this Article support the position that the State of New York should not reenact the death penalty. If New York does so, the Association's study suggests, there will almost certainly be a significant number of persons wrongfully convicted of capital murder in New York, and many of these persons will very possibly be executed before the errors are discovered, if they are discovered at all. Stated simply, the study indicates the fallibility of the New York criminal justice system, which militates against the use of capital punishment.

The Association has defined the subject of its study as follows: a "wrongful homicide conviction" is a conviction for any degree of homicide — including murder, manslaughter, or criminally negligent homicide² — which is overturned and never reinstated. This includes basically three categories of cases: those where the conviction was overturned and either (a) the defendant was subsequently acquitted on retrial (seventeen of the cases catalogued below), (b) the charges were dismissed (thirty-five cases), or (c) the charges were resolved by conviction of a non-homicide crime (seven cases, of which three also included acquittals on the homicide charges). There is no subjective

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1. The New York State Defenders Association is a not-for-profit membership association of more than 1400 public defenders, legal aid attorneys, assigned counsel, and other persons throughout New York. With funds provided by the State of New York, the Association operates the Public Defense Backup Center, which offers consultation services, legal research, and training to the more than 5000 New York lawyers who serve as appointed defense counsel in criminal cases. In addition, the Center provides technical assistance to counties that are considering improvements to their public defense systems.

2. See N.Y. PENAL LAW § 125.25 (McKinney 1991) (murder in the second degree); *id.* §§ 125.12 - .20 (manslaughter); *id.* § 125.10 (criminally negligent homicide).

element whatsoever to the study: it merely catalogues the cases which fit the above definition.³

The study has thus far found fifty-nine such cases during the twenty-three-year period reviewed, each of which is separately noted below. These findings in no way purport to be exhaustive, and the author is reviewing additional cases which may eventually supplement those listed here.⁴

The death penalty has a long history in New York State. New York was the first state to employ the electric chair as a method of execution, a practice which led to one of the United States Supreme Court's earliest decisions on capital punishment.⁵ Although death penalty legislation has remained on the books in New York throughout the twentieth century,⁶ the last person to be executed in the state was Eddie Lee Mays, in 1963.⁷ Following the United States Supreme Court's decision in *Woodson v. North Carolina*,⁸ the New York Court of Appeals has held that the mandatory nature of the New York death penalty statute violates the United States Constitution.⁹ The decisions of the Court of Appeals have left in place only a very limited provision in the statute for those who murder a police officer, but this mandatory death penalty provision is clearly unconstitutional in view of these Court of Appeals decisions and the United States Supreme Court's decision in *Sumner v. Schuman*.¹⁰ Although there have been repeated attempts to enact a new and expanded death penalty statute in New York, those attempts have failed due to

3. It should be noted that the study does not include the numerous New York homicide cases in which a person was wrongly *accused* but never actually convicted. See, e.g., Fried, *Man Freed in Queens Triple Slaying*, N.Y. Times, Feb. 8, 1989, at B3, col. 1 (describing the case of William Gergel, who spent 17 months in jail awaiting trial for a triple homicide which it was finally acknowledged he did not commit).

4. The task of identifying wrongful homicide convictions in New York is rendered more difficult by an otherwise beneficial law which provides for the sealing of court records in cases that are resolved "in favor of" the accused. N.Y. CRIM. PROC. LAW § 160.50 (McKinney 1991). See generally Kamins, *Sealing Provisions Under the Criminal Procedure Law*, 35 BROOKLYN BARRISTER 36 (1984). Because court records of acquittals and dismissals are sealed, this Article occasionally cites secondary sources, such as newspaper articles, Department of Correctional Services records and interviews with attorneys.

5. See *In re Kemmler*, 136 U.S. 436 (1890); see also Denno, *In re Kemmler: Credibility and Consequences in New York's Origin of Cruel and Unusual Punishment*, ALBANY L. REV. (1991) (forthcoming); Giordano, *Showdown on the Chair*, N.Y. Newsday, June 19, 1989, at 33, col. 2.

6. N.Y. PENAL LAW § 125.27(1)(a)(i)-(iii) (McKinney 1991) (murder in the first degree); *id.* § 60.06 (mandatory death sentence for murder in the first degree).

7. W.J. BOWERS, LEGAL HOMICIDE 471 (1984); see also Giordano, *supra* note 5.

8. 428 U.S. 280 (1976) (mandatory death sentence violates eighth amendment).

9. *People v. Davis*, 43 N.Y.2d 17, 371 N.E.2d 455, 400 N.Y.S.2d 735 (1977), *cert. denied*, 435 U.S. 998 (1978), and *cert. denied*, *New York v. James*, 438 U.S. 914 (1978) (mandatory death sentence for the murder of a corrections officer held unconstitutional); *People v. Smith*, 63 N.Y.2d 41, 468 N.E.2d 879, 479 N.Y.S.2d 706 (1984), *cert. denied*, 469 U.S. 1227, *reh'g denied*, 471 U.S. 1049 (1985) (mandatory death sentence for murder by a prisoner serving a life sentence held unconstitutional).

10. 483 U.S. 66 (1987) (mandatory death sentence for murder by a prisoner serving a life sentence held unconstitutional).

executive vetoes.¹¹

During the period from 1900 to 1985, New York is estimated to have sentenced more innocent persons to death than any other state in the country except Florida.¹² New York has the dubious distinction of leading all states in executing the innocent; eight New Yorkers have been executed in error.¹³ During recent years, this issue has continued to haunt the state, as the question of erroneous convictions has been central to the debate over whether to reenact the death penalty in New York. Governor Mario M. Cuomo, members of the State Senate and Assembly, the news media and others have stressed the imperfection of the criminal justice system and the potential for a miscarriage of justice as one of the most important reasons not to enact death penalty legislation.¹⁴ The results of the Association's study support this position.

Several important points regarding erroneous convictions should be made before presenting the raw data. First, a substantial number of the wrongful convictions we have found in New York resulted from prosecutorial misconduct. Such misconduct has included, among other things, the suppression of exculpatory evidence and the conscious use of perjured testimony. There is no reason to believe that prosecutorial misconduct would be any less prevalent in capital cases. Indeed, given the generally high public profile of capital cases, which often involve brutal deaths that have inflamed the community, the like-

11. See, e.g., Kolbert, *Cuomo Vetoes Death Penalty Seventh Time*, N.Y. Times, Mar. 21, 1989, at B1, col. 5; Williams, *Carey Again Vetoes a Bill to Restore Death Penalty*, N.Y. Times, Jan. 27, 1982, at B3, col. 4.

12. See Bedau & Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21, 37 (1987) (table). Bedau and Radelet's seminal work catalogues the cases of 350 persons nationwide who since 1900 were convicted of "potentially capital" offenses but later found to be innocent. This Article includes the five New York convictions cited by Bedau and Radelet that occurred since 1965 (Arroyo, Barber, Jackson, Maynard and McLaughlin), but also includes many others.

There are two reasons for this distinction. First, unlike Bedau and Radelet, we have had the convenience of concentrating our research efforts on one state — New York — rather than the entire nation. Second, and of particular significance, our study differs from Bedau and Radelet's work in the definition of its subject. Our study defines "wrongful convictions" as those New York cases which resulted in "official" legal exoneration — by acquittal or dismissal of the homicide charge — following an initial conviction. By contrast, Bedau and Radelet catalogue "miscarriages of justice," which include a few instances in which error is indicated by "unofficial actions," such as opinions of state officials (six cases) and subsequent scholarly research (fifteen cases). *Id.* at 49 (table and accompanying text). Additionally, notwithstanding acquittal or dismissal of homicide charges, Bedau and Radelet include only cases in which either (a) no crime occurred; or (b) the defendant was legally and physically uninvolved in the crime. *Id.* at 45.

13. *Id.* at 73 (table); see also Remarks by Governor Mario M. Cuomo, College of St. Rose, St. Joseph's Hall (Mar. 20, 1989) (on file with author).

14. See Remarks by Governor Mario M. Cuomo, *supra* note 13; see also NEW YORK STATE ASSEMBLY, RECORD OF PROCEEDINGS, 212th Session (Mar. 6, 1989), at 29-35; *id.*, 213th Session (Mar. 5, 1990), at 91-92 (remarks of Assemblyman Hevesi); NEW YORK STATE SENATE, RECORD OF PROCEEDINGS, 213th Session (Feb. 5, 1990), at 498-99 (remarks of Senator Gold), 503-06 (remarks of Senator Connor); Hentoff, *Playing Russian Roulette with the Death Penalty*, Village Voice, May 30, 1989, at 26.

likelihood of prosecutorial overzealousness and misconduct is arguably enhanced in cases where the death penalty is sought. This suggestion is supported by the fact that prosecutorial misconduct has been shown to have resulted in wrongful convictions in death penalty cases in a number of other states in recent years.¹⁵

Besides prosecutorial misconduct, police misconduct can also contribute to an erroneous conviction. Police may suppress evidence, coerce false confessions, or simply conduct negligent investigations. Like prosecutorial misconduct, there is no reason to believe that this type of misconduct occurs to any lesser degree in capital cases, and some reason to believe that it may occur to an even greater degree.

Wrongful convictions also result from other factors. For example, witness error is a significant factor in erroneous judgments, and may arise from mistaken eyewitness identification, perjury by a witness, or simply unreliable prosecution testimony. In addition, misleading circumstantial evidence, incompetence of defense counsel, erroneous judgment as to a cause of death, and a variety of other factors can lead to a conviction that is rendered in error.

Finally, it should be noted that in many of the cases we have studied, the defendant was exonerated only after having spent many years in prison. Often the direct appeals process had been exhausted and only the persistence of a family member, a friend, the defendant pro se, or a volunteer led to the discovery of exculpatory evidence and the defendant's release. This illustrates not only the fundamental unfairness that results from any miscarriage of justice, but also that if capital punishment is reinstated in New York, there is a substantial likelihood that death sentences will be carried out before errors are revealed.¹⁶

CATALOGUE OF CASES

◦ Miguel Arroyo was convicted of manslaughter in Kings County on May 12, 1965, for killing a boy involved in a street fight outside Arroyo's store. The trial judge set aside the verdict when Arroyo's defense counsel produced a series of eyewitnesses who testified that they had seen another man, José Velasquez, kill the boy. Key witnesses who had testified against Arroyo then recanted their testimony. Velasquez was arrested and indicted for murder, and in 1966 the indictment against Arroyo was dismissed.¹⁷

◦ Arthur Barber was convicted of first-degree murder in Bronx County on December 2, 1969, for a 1965 killing, and was sentenced to life in prison.

15. See Tabak & Lane, *The Execution of Injustice*, 23 LOY. L.A.L. REV. 59, 98-107 (1989) (discussing cases); see also Bedau & Radelet, *supra* note 12, at 59-60.

16. This is especially likely given recent decisions by the United States Supreme Court, and current efforts of some in Congress, which may substantially speed the carrying out of death sentences by seriously limiting (if not eliminating) federal judicial review of state capital cases. See generally Berger, *Justice Delayed or Justice Denied*, 90 COLUM. L. REV. 1665 (1990); Bruck & Harris, *Habeas Corpse*, NEW REPUBLIC, July 15 & 22, 1991, at 10.

17. N.Y. Times, July 22, 1966, at 32, col. 1.

Although all state appellate courts affirmed the conviction,¹⁸ the federal district court reversed it in 1975 because Barber had been arrested without probable cause, beaten by the police, and subjected to numerous other illegal police tactics in violation of his constitutional rights. The court concluded that Barber's confession had been obtained by the police through "brutal treatment" that was "so offensive as to constitute violations of Barber's constitutional right of due process."¹⁹ All charges were dismissed²⁰ and Barber was released from prison.²¹

◦ Bryan Blake was convicted of second-degree murder in New York County on December 5, 1985. The conviction was reversed on July 14, 1988, on the grounds that both defendant's videotaped statement, containing improper remarks by the prosecutor, and photographs of the victim's body, which were shown to the jury during trial, were unduly prejudicial.²² Blake had been sentenced to twenty-five years to life in prison.²³ The jury which heard the case on retrial acquitted him after ninety minutes of deliberation. "It wasn't even close," said one juror.²⁴ Said another: "We felt they had no case . . . [W]e were surprised it got to the grand jury. It's incredible what can happen to people, to be dragged into court with such a little bit of evidence."²⁵ Blake had served over three years on the wrongful conviction.²⁶

◦ Larry Boone was convicted of murder in Bronx County on December 6, 1973. The conviction was reversed on July 15, 1975, because the prosecutor had failed to disclose crucial exculpatory evidence.²⁷ On remand, the trial court dismissed all charges because the detective's notes had been lost and because witnesses favorable to the defense (whose identities were not revealed by the government at the time of trial) were no longer available, and because there was no proof of Boone's criminal intent other than his mere presence at the scene. The Court of Claims granted Boone summary judgment on his wrongful imprisonment compensation claim.²⁸ He had been sentenced to twenty-five years to life in prison, and had served nearly two years before being released.²⁹

◦ Georgino Borrero, a store security guard, was convicted of criminally negligent homicide in Bronx County on July 6, 1983, in the shooting death of

18. *People v. Barber*, 33 A.D.2d 892, 306 N.Y.S.2d 878 (1st Dep't 1969), *aff'd*, 30 N.Y.2d 626, 282 N.E.2d 329, 331 N.Y.S.2d 440 (1972) (mem.), *remitur amended* 30 N.Y.2d 834, 286 N.E.2d 464, 335 N.Y.S.2d 79 (1972) (mem.).

19. *N.Y. Times*, Sept. 11, 1975, at 47, col. 3.

20. Certificate No. 13162, *People v. Barber*, No. 1151-67 (N.Y. Sup. Ct., Bronx County, Jan. 9, 1976).

21. *Bedau & Radelet*, *supra* note 12, at 95.

22. *People v. Blake*, 139 A.D.2d 110, 530 N.Y.S.2d 578 (1st Dep't 1988).

23. Correctional Services Supplement, *infra* note 47.

24. *Manhattan Lawyer*, Mar. 7-13, 1989, at 1, col. 2.

25. *Id.* at 36.

26. *Id.* at 1; *see also* Correctional Services Supplement, *infra* note 47.

27. *People v. Boone*, 49 A.D.2d 559, 370 N.Y.S.2d 613 (1st Dep't 1975) (mem.).

28. *Boone v. State*, No. 74203 (N.Y. Ct. Cl. Jan. 7, 1988).

29. *Id.*; *see also* Correctional Services Supplement, *infra* note 47.

John Johnson. On appeal in 1986, the Appellate Division found that, after Johnson pulled a gun on him, Borrero had left the store to find a police officer and fired only when Johnson advanced toward him with a gun and assumed a "combat stance."³⁰ The court found that Borrero had "acted entirely reasonably [His] conduct was that of a responsible citizen."³¹ His conviction was reversed and the indictment dismissed.³²

- Daniel P. Boutin was convicted of two counts of criminally negligent homicide in Saratoga County on February 5, 1987. While driving his truck on the Adirondack Northway in Saratoga County, Boutin collided with a police car that had stopped in the right hand roadway behind a disabled tractor trailer. The police car's lights were flashing, but visibility was low due to fog and rain. Both the state trooper and the driver of the disabled truck, who were seated inside the police vehicle, were killed. The Appellate Division affirmed the conviction,³³ but the Court of Appeals reversed, holding that

the evidence does not show that defendant was engaged in any criminally culpable risk-creating conduct Rather, it establishes only that defendant inexplicably failed to see the vehicle until he was so close that he could not prevent the collision [T]hat unexplained failure, without more, does not constitute criminally negligent homicide.³⁴

- José Carrasquillo was convicted of second-degree manslaughter in New York County on December 17, 1986. The prosecution charged that Carrasquillo had inflicted a fatal blow upon the victim, who was apparently shoplifting from the boutique where the defendant worked. The victim died two days after the attack. The Appellate Division reversed the conviction on April 21, 1988, and ordered the indictment dismissed. The court held that the evidence was insufficient to establish that Carrasquillo, rather than his accomplice, had struck the fatal blow.³⁵

- Nathaniel Carter was convicted of murder in the stabbing of his mother-in-law in Queens County on September 13, 1982, and was sentenced to twenty-five years to life in prison. The prosecution's star witness was the victim's daughter, Carter's estranged wife, Delissa, who testified that she had seen the defendant stab her mother. Carter continually protested his innocence. Peekskill police officer James Nelson, a childhood friend of Carter's, investigated the case and became convinced that Carter could not have been in Queens at the time of the murder. Lieutenant Nelson contacted Legal Aid

30. *People v. Borrero*, 118 A.D.2d 345, 347, 504 N.Y.S.2d 654, 657 (1st Dep't 1986).

31. *Id.* at 351, 504 N.Y.S.2d at 658.

32. *Id.* at 352, 504 N.Y.S.2d at 654.

33. *People v. Boutin*, 146 A.D.2d 872, 536 N.Y.S.2d 583 (3d Dep't 1989) (mem.), *rev'd*, 75 N.Y.2d 692, 555 N.E.2d 253, 556 N.Y.S.2d 1 (1990).

34. *People v. Boutin*, 75 N.Y.2d 692, 697-98, 555 N.E.2d 253, 255-56, 556 N.Y.S.2d 1, 3-4 (1990); *see also* Albany Times-Union, Apr. 6, 1990, at B1.

35. *People v. Carrasquillo*, 136 A.D.2d 297, 527 N.Y.S.2d 781 (1st Dep't), *appeal denied*, 72 N.Y.2d 1044, 531 N.E.2d 663 (1988).

lawyers, who convinced Queens District Attorney John Santucci that Carter had been wrongly convicted. Santucci then had Delissa Carter arrested as a material witness. Believing she was being arrested for the killing, Delissa Carter promptly confessed to the crime. Nathaniel Carter was released from prison on January 17, 1984 after nearly two and one-half years in prison. In 1986, Carter accepted an out-of-court settlement of \$450,000 to compensate for his wrongful conviction.³⁶

- Thomas A. Cenzi was convicted of second-degree murder in Monroe County on February 27, 1980, and was sentenced to twenty years to life in prison. The trial judge improperly permitted the jury to consider an uncounseled statement taken after Cenzi's retained counsel had instructed the police not to question him. Cenzi challenged the evidentiary ruling on appeal, and the Appellate Division ordered a new trial.³⁷ Cenzi was acquitted of all charges on April 11, 1983.³⁸

- Arthur Cleveland was convicted of murder in Bronx County on December 6, 1973, along with co-defendant Larry Boone,³⁹ and was sentenced to twenty years to life in prison. His conviction was reversed in 1975⁴⁰ on the authority of *People v. Boone*,⁴¹ on the grounds that the prosecutor had unconstitutionally failed to disclose crucial exculpatory evidence. The trial court on remand dismissed all charges.⁴² Cleveland had been imprisoned for four and one-half years.⁴³

- Patricia Cohen was convicted of second-degree murder in Westchester County on March 2, 1979, in the shooting death of her husband, and sentenced to twenty years to life in prison. Cohen steadfastly maintained her innocence, contending that her husband had committed suicide. After an unsuccessful appeal to the Appellate Division,⁴⁴ the Court of Appeals reversed and vacated the conviction on grounds that (1) the state's "survey" evidence concerning how far the "average" suicide victim holds the gun from his body was unreliable; and (2) results of test firings of the weapon were erroneously admitted because there was no proof the objects through which the test bullets passed possessed characteristics similar to human skin.⁴⁵ On remand, the trial court suppressed certain evidence. The prosecutor unsuccessfully appealed

36. N.Y. Times, Jan. 19, 1984, at B9, col. 1; N.Y. Times, Jan. 26, 1984, at B5, col. 1; N.Y. Times, June 22, 1986, at A26, col. 5.

37. *People v. Cenzi*, 84 A.D.2d 674, 446 N.Y.S.2d 624 (4th Dep't. 1981) (mem.).

38. Rochester Democrat and Chronicle, Apr. 12, 1983, at B1, col. 5.

39. See *supra* text accompanying notes 27-29.

40. *People v. Cleveland*, 49 A.D.2d 718, 374 N.Y.S.2d 291 (1st Dep't 1975) (mem.).

41. 49 A.D.2d 559, 370 N.Y.S.2d 613 (1st Dep't 1975) (mem.).

42. Certificate No. 13466, *People v. Cleveland*, No. 1899 (N.Y. Sup. Ct., Bronx County, Nov. 24, 1986).

43. Transcript of Proceedings at 14-18, *People v. Boone*, No. 1899-71 (N.Y. Sup. Ct., Bronx County, Dec. 19, 1975).

44. *People v. Cohen*, 71 A.D.2d 687, 418 N.Y.S.2d 944 (2d Dep't 1979), *rev'd*, 50 N.Y.2d 908, 409 N.E.2d 921, 431 N.Y.S.2d 446 (1980).

45. *People v. Cohen*, 50 N.Y.2d 908, 909-10, 409 N.E.2d 921, 922-23, 431 N.Y.S.2d 446, 447-48 (1980).

the suppression ruling to the Appellate Division and Court of Appeals and unsuccessfully sought review in the United States Supreme Court.⁴⁶ Cohen was thereafter convicted only of criminal possession of a weapon in the third degree.⁴⁷

◦ Rafael Cruz was convicted of murder in Kings County on September 8, 1986. The Appellate Division ruled that Cruz had been improperly questioned in the absence of his attorney after the commencement of a formal judicial action. The court reversed his murder conviction, ordered the statement suppressed, and remanded for a new trial.⁴⁸ At the retrial, Cruz was acquitted of all charges.⁴⁹

◦ Melvin Dlugash was convicted of murder in Kings County in 1975 in the shooting death of Michael Geller.⁵⁰ Dlugash acknowledged that he fired at Geller, but asserted that Geller was already dead at the time, as co-defendant Joseph Bush had fatally shot Geller several minutes earlier. Dlugash maintained that he fired because he feared Bush would harm him if he did not do so.⁵¹ Dlugash's murder conviction was set aside in 1977 because the prosecutor failed to establish that Geller was alive at the time Dlugash fired.⁵² In 1977, the Appellate Division substituted a verdict of attempted murder and remanded the case for resentencing.⁵³

◦ Vernon Ellis was convicted of first degree manslaughter in New York County on October 1, 1976. His conviction was set aside by the Appellate Division in 1978.⁵⁴ The appellate court reasoned that the trial judge's "excessive questioning and examination of witnesses, including the defendant . . . [made] him appear to be an advocate rather than an impartial arbiter."⁵⁵ The prosecutor did not retry the case and Ellis was freed. He had been imprisoned for two years on the wrongful conviction.⁵⁶

46. *People v. Cohen*, 87 A.D.2d 77, 450 N.Y.S.2d 487 (2d Dep't 1982), *aff'd*, 58 N.Y.2d 844, 446 N.E.2d 774, 460 N.Y.S.2d 18, *cert. denied*, 461 U.S. 930 (1983).

47. N.Y. STATE DEP'T OF CORRECTIONAL SERVICES, MURDER CONVICTIONS WITH SUBSEQUENT SENTENCE VACATIONS, app. at 18, Case # 15 (1989) [hereinafter MURDER CONVICTIONS]. The official report omitted certain information regarding the cases, but the Department furnished the author with supplementary data which identified the thirty-three defendants in the study, provided updated information on ten of these cases, and added seventeen new cases to its study. Several citations are made in this Article to this supplementary data [hereinafter Correctional Services Supplement] (on file with author).

48. *People v. Cruz*, 72 A.D.2d 549, 420 N.Y.S.2d 721 (2d Dep't 1979).

49. *See Rosario v. Kuhlman*, 658 F. Supp. 1408, 1410 (S.D.N.Y. 1987), *aff'd*, 839 F.2d 918 (2d Cir. 1988) (Rosario had been tried separately for, and convicted of, the same murder as Cruz).

50. *People v. Dlugash*, 51 A.D.2d 974, 380 N.Y.S.2d 315 (2d Dep't 1976), *modified*, 41 N.Y.2d 725, 363 N.E.2d 1155, 395 N.Y.S.2d 419 (1977).

51. *Id.* at 975, 380 N.Y.S.2d at 316.

52. *People v. Dlugash*, 41 N.Y.2d 725, 737-38, 363 N.E.2d 1155, 1162-63, 395 N.Y.S.2d 419, 427-28 (1977).

53. *People v. Dlugash*, 59 A.D.2d 745, 398 N.Y.S.2d 560 (2d Dep't 1977).

54. *People v. Ellis*, 62 A.D.2d 469, 404 N.Y.S.2d 862 (1st Dep't 1988).

55. *Id.* at 470, 404 N.Y.S.2d at 863.

56. Telephone interview with Alan Murphy, N.Y. County Supreme Court Clerk's office

◦ Reinaldo Estrada was convicted of several counts of murder in Bronx County in 1986, and was sentenced to twenty-five years to life in prison in each count.⁵⁷ The appellate court found that the prosecutor, in an apparent effort to bolster his witness's credibility, improperly referred to the substance of testimony the witness had given earlier in grand jury proceedings.⁵⁸ The prosecutor had also improperly refused to disclose the full name of a potential witness, and to disclose certain other exculpatory evidence.⁵⁹ After reversal by the Appellate Division in June 1988,⁶⁰ Estrada was retried and acquitted of all charges.⁶¹

◦ Francis Featherstone was convicted of murder in New York County in 1986.⁶² Purportedly linked by prosecutors to organized crime activities, Featherstone was convicted of murdering Michael Holly, an associate in the so-called "Westies" gang in New York City. Prosecutors later conceded that Featherstone could not have pulled the trigger because he was not at the scene of the 1985 killing. They believed that William Bokun had committed the murder and that Bokun had disguised himself as Featherstone in an effort to frame him. Post-conviction investigation also revealed that Featherstone's trial lawyer knew that he was innocent because a second client of his had confessed to the killing. The defense attorney had not revealed this confession because the conversation was subject to the statutory privilege against disclosure of attorney-client confidences. On September 5, 1986, the trial court dismissed all charges based on newly discovered evidence. Featherstone had been wrongfully imprisoned for this crime for nearly one and one-half years.⁶³

◦ Terrence Ferrer was convicted of the murder of his uncle in Bronx County in 1974.⁶⁴ At the trial he and two co-defendants, his aunt and mother, were all represented by the same attorney. His co-defendants were convicted of manslaughter and sentenced to prison terms of up to seven years. Ferrer was sentenced to fifteen years to life in prison. Although the aunt confessed to her involvement in the murder of her common-law husband, Ferrer testified that he was home in bed when the killing occurred. The conviction was upheld without opinion on direct appeal.⁶⁵ In 1984, on a subsequent post-conviction application pursuant to C.P.L. 440,⁶⁶ Ferrer's conviction was vacated and the case was remanded for a new trial because Ferrer had never been

(May 21, 1990); Telephone interview with Bennett L. Gershman, Ellis's counsel (May 21, 1990).

57. *People v. Estrada*, 142 A.D.2d 512, 530 N.Y.S.2d 148 (1st Dep't 1988).

58. *Id.* at 513, 530 N.Y.S.2d at 149.

59. *Id.*

60. *Id.*

61. Telephone interview with Irving Cohen, Estrada's counsel (May 16, 1990).

62. *N.Y. Times*, Sept. 6, 1986, at B1, col. 1.

63. *Id.*

64. *People v. Ferrer*, 66 A.D.2d 1033, 411 N.Y.S.2d 478 (1st Dep't 1978) (affirming conviction on direct appeal); *see also* *People v. Ferrer*, 99 A.D.2d 459, 471 N.Y.S.2d 290 (1st Dep't 1984) (reversing denial of motion for new trial).

65. *People v. Ferrer*, 66 A.D.2d at 1033, 411 N.Y.S.2d at 478.

66. *See* N.Y. CRIM. PROC. LAW § 440.10(1), (g), (h) (McKinney 1991).

advised of the potential conflict of interest in being represented by the same lawyer as his co-defendants.⁶⁷ Represented by his own counsel at the second trial, Ferrer was acquitted of all charges in May 1986. During his twelve years of wrongful imprisonment, Ferrer had earned a bachelor's degree and master's degree. After his acquittal, he told reporters he would enter law school, and planned a career representing those who cannot afford counsel.⁶⁸

- Alfio Ferro was convicted of second-degree murder in Queens County on May 25, 1977.⁶⁹ His conviction was upheld by the Appellate Division, but the Court of Appeals reversed and ordered a new trial. The court held that the police had wrongfully induced Ferro to speak after he had invoked the right to remain silent. In an attempt to elicit a response, the police placed before his jail cell furs that were allegedly stolen from the home of the decedent.⁷⁰ After remand for a second trial based upon this improper conduct, Ferro agreed to plead guilty to robbery in exchange for what constituted, in effect, a sentence of time served.⁷¹

- Elverton Freeland was convicted of murder and attempted murder in Erie County in 1973, and was sentenced to twenty years to life in prison. In a one-witness case, Freeland and his co-defendant were convicted of the murder of a prostitute and the attempted murder of another. The trial judge repeatedly rebuffed efforts by the defense to produce hospital records concerning the witness's addiction to heroin.⁷² The Appellate Division affirmed the conviction, but the Court of Appeals reversed. "Since the prosecution case rested largely, almost entirely, on the credibility of the one eyewitness, with troublesome antecedent identification procedures, the exclusion of the earlier hospital records was reversible error."⁷³ In August, 1973, after the original conviction but prior to sentencing, the state's eyewitness signed an affidavit recanting her testimony and stating that she was not sure Freeland was the person she had seen at the crime scene.⁷⁴ Citing this recantation, District Attorney Edward C. Cosgrove moved on June 2, 1977 for the dismissal of charges against Freeland.⁷⁵

- Ruben Garson was convicted of murder in the second degree in Queens County on February 17, 1983,⁷⁶ and sentenced to twenty years to life in prison.⁷⁷ His conviction was overturned by the Appellate Division on grounds

67. *People v. Ferrer*, 99 A.D.2d 459, 460, 471 N.Y.S.2d 290, 291 (1st Dep't 1984).

68. *N.Y. Times*, May 17, 1986, at 35, col. 1.

69. *People v. Ferro*, 92 A.D.2d 298, 460 N.Y.S.2d 585 (2d Dep't 1983), *rev'd*, 63 N.Y.2d 316, 472 N.E.2d 13, 482 N.Y.S.2d 237 (1984).

70. *People v. Ferro*, 63 N.Y.2d 316, 319, 472 N.E.2d 13, 14, 482 N.Y.S.2d 237, 238 (1984).

71. Telephone interview with Anthony V. Lombardino, Ferro's counsel (May 9, 1990).

72. *People v. Freeland*, 36 N.Y.2d 518, 524-25, 330 N.E.2d 611, 614-15, 369 N.Y.S.2d 649, 653-54 (1975).

73. *Id.* at 526, 330 N.E.2d at 615, 369 N.Y.S.2d at 654.

74. *Id.* at 524, 330 N.E.2d at 614, 369 N.Y.S.2d at 652.

75. Order Dismissing Action, After Indictment (No. 37,480), *People v. Freeland*, 36 N.Y.2d 518, 330 N.E.2d 611, 369 N.Y.S.2d 649 (1975).

76. *See People v. Garson*, 97 A.D.2d 518, 468 N.Y.S.2d 29 (2d Dep't 1983).

77. MURDER CONVICTIONS, *supra* note 47, app. at 19, Case # 21.

that the trial judge improperly refused to instruct the jury on the possibility of convicting Garson for the lesser offense of manslaughter in the second degree.⁷⁸ The matter was remanded for a new trial, at which Garson was acquitted.⁷⁹

• Joseph Giuliano was convicted of first degree manslaughter in Bronx County on January 13, 1983, and was sentenced to six to eighteen years imprisonment.⁸⁰ His conviction was upheld by the Appellate Division, but the Court of Appeals overturned the conviction and ordered the indictment dismissed.⁸¹ The court held that the circumstantial evidence of guilt offered was insufficient as a matter of law to sustain the state's burden of proof beyond a reasonable doubt.⁸² Testimony regarding the events in the bar preceding the killing was equivocal at best; incriminating statements allegedly made by Giuliano were subject to a number of innocent interpretations, and it was unclear whether Giuliano was the one who actually uttered them.⁸³ Moreover, ballistics evidence was inconclusive, and no evidence of motive was offered.⁸⁴

• Robert Grimaldi was convicted of murder in Queens County on March 13, 1973.⁸⁵ The conviction was based on the testimony of Theresa Bell, an acquaintance and alleged eyewitness. Bell had testified, among other things, that Grimaldi was present when the victim was shot, had crouched behind a car while the killing occurred and had told her to forget what she had seen.⁸⁶ In 1974, the Appellate Division reversed the conviction and dismissed the indictment based on insufficient evidence, ruling that Grimaldi's conduct and his statements following the slaying were as consistent with a fear that he would be a suspect, or would be summoned as a witness, as they were with guilt.⁸⁷

• Roy Hale was convicted on April 19, 1984, of murder in the second degree in Queens County in a shooting death that occurred in a nightclub.⁸⁸ He was sentenced to twenty years to life in prison.⁸⁹ On appeal, the Appellate Division reversed and ordered the indictment dismissed. The evidence at trial established only that Hale and several others had argued with the victim inside the nightclub before the shooting, and that those same people were still present inside the club after the shooting. No witness or other evidence demonstrated who had fired the fatal shot, nor was there evidence that Hale

78. *Id.* at 518, 468 N.Y.S.2d at 30.

79. MURDER CONVICTIONS, *supra* note 47, app. at 19, Case # 21.

80. *People v. Giuliano*, 102 A.D.2d 559, 560, 477 N.Y.S.2d 358, 359 (1st Dep't 1984), *rev'd*, 65 N.Y.2d 766, 482 N.E.2d 557, 492 N.Y.S.2d 939 (1985).

81. *Id.*

82. 65 N.Y.2d at 767, 482 N.E.2d at 558, 492 N.Y.S.2d at 940.

83. *Id.* at 768, 482 N.E.2d at 558, 492 N.Y.S.2d at 940.

84. *Id.* at 771, 482 N.E.2d at 560, 492 N.Y.S.2d at 942.

85. *See People v. Grimaldi*, 44 A.D.2d 722, 355 N.Y.S.2d 16 (2d Dep't 1974).

86. *Id.* at 723, 355 N.Y.S.2d at 17.

87. *Id.* at 722-23, 355 N.Y.S.2d at 17-18.

88. *People v. Hale*, 133 A.D.2d 648, 519 N.Y.S.2d 757 (2d Dep't 1987).

89. Correctional Services Supplement, *supra* note 47; *see generally* MURDER CONVICTIONS, *supra* note 47, app. at 20, Case # 30.

was armed at any time. In October 1987, the indictment was dismissed after Hale had served three and one-half years in prison on the wrongful conviction.⁹⁰

◦ J.L. Ivey, Jr. was convicted of three counts of murder in Erie County on October 27, 1976, and was sentenced to twenty-five years to life in prison. The Appellate Division unanimously reversed the conviction,⁹¹ citing "numerous and repeated acts of improper and prejudicial conduct by the prosecution" including: (a) commenting to the jury about the "unfairness" of a court ruling excluding certain evidence; (b) inappropriately attempting to inject sympathy for the victim into the deliberations on guilt or innocence; (c) referring to defense witnesses' testimony as "lies" and "garbage"; (d) stating that the witness chair should be "washed" after a certain defense witness leaves; and (e) admonishing the jury to be careful lest a "murderer go free."⁹² Ivey was retried and, as in the first trial, presented a strong alibi defense. Additionally, Ivey was able to call a new witness who provided convincing testimony implicating her former boyfriend for the murder. Ivey was acquitted of all charges on May 20, 1982 and released after five and one-half years of wrongful imprisonment.⁹³ He was later granted summary judgment on his suit for unjust conviction and imprisonment in the Court of Claims.⁹⁴

◦ Edmond D. Jackson was convicted of murder and felony murder in Queens County on December 4, 1972, and was sentenced to two concurrent terms of twenty years to life in prison.⁹⁵ On appeal, the convictions were affirmed.⁹⁶ In 1978, on a petition for habeas corpus in federal court, the conviction was reversed on grounds of unreliable eyewitness testimony and the fact that "not a scintilla of [other] evidence was offered at the trial to connect petitioner with the crime."⁹⁷ In ordering Jackson freed after he had spent eight years in prison, the judge said, "I shudder to think what the situation would have been in this case if there had been a mandatory death penalty."⁹⁸ The United States court of appeals upheld that ruling, and further criticized the district attorney for proceeding with the trial "on such highly dubious evidence and in light of the incomplete and negligent investigation conducted by the detectives."⁹⁹ After the police had decided that Jackson was guilty,

90. *People v. Hale*, 133 A.D.2d at 648, 519 N.Y.S.2d at 757; *see also* Correctional Services Supplement, *supra* note 47.

91. *People v. Ivey*, 83 A.D.2d 788, 443 N.Y.S.2d 452 (4th Dep't 1981).

92. *Id.* at 789, 443 N.Y.S.2d at 453.

93. *See Ivey v. State*, No. 70708 (N.Y. Ct. Cl. Mar. 12, 1990), at 1-2, *aff'd*, 138 A.D.2d 963, 526 N.Y.S.2d 869 (4th Dep't 1988); *see also* Correctional Services Supplement, *supra* note 47.

94. *Ivey v. State*, No. 70708 at 9; *see also* N.Y.L.J., Apr. 19, 1990, at 2, col. 2.

95. *People v. Jackson*, 40 A.D.2d 1081, 337 N.Y.S.2d 1005 (2d Dep't 1972), *aff'd*, 35 N.Y.2d 856, 322 N.E.2d 272, 363 N.Y.S.2d 580 (1974).

96. *Id.*

97. *Jackson v. Fogg*, 465 F. Supp. 177, 187 (S.D.N.Y.), *aff'd*, 589 F.2d 108 (2d Cir. 1978).

98. N.Y. Times, Dec. 23, 1978, at A1, col. 2.

99. *Jackson v. Fogg*, 589 F.2d 108, 112 (2d Cir. 1978).

they ignored additional evidence which pointed to another suspect.¹⁰⁰

- Eric (Erick) Jackson was convicted of arson and six counts of murder in Kings County, for the 1978 deaths of six New York City firefighters who died while fighting a fire in a supermarket. He was sentenced to twenty-five years to life in prison.¹⁰¹ The firefighters' widows hired an attorney, Robert Sullivan, to bring a lawsuit for civil damages. In the course of preparing that lawsuit, Sullivan concluded that Jackson was innocent. Sullivan turned his efforts toward obtaining Jackson's release. Those efforts paid off in November, 1988, when Supreme Court Justice Joseph Slavin — who presided over Jackson's original trial — found that the Brooklyn district attorney had unlawfully withheld information from the defense.¹⁰² This information included a fire marshal's report that there had been "four separate and distinct fires" in the supermarket, of which only one caused the deaths of the firefighters. In addition, a New York City Police detective who had been involved in the investigation concluded that the fire was caused by an electrical short circuit, and said that he had repeatedly told this to the District Attorney's office.¹⁰³ Jackson's conviction was vacated and he was released November 3, 1988. Robert G. Sullivan, Jackson's attorney, was recognized by the New York State Bar Association for his efforts in the case.¹⁰⁴ Jackson served nearly ten years in prison for the wrongful conviction.¹⁰⁵

- Melvin Johnson was convicted of felony murder in 1982 in Bronx County in the shooting death of a Bronx store owner.¹⁰⁶ The Appellate Division affirmed without opinion, but the Court of Appeals reversed, ruling that certain statements obtained from Johnson were the unlawful product of an illegal, warrantless arrest and that, therefore, those statements should not have been admitted in evidence.¹⁰⁷ Remanded to the trial court, Johnson pled guilty to attempted robbery in the first degree in full satisfaction of all charges.¹⁰⁸

- Joseph Peter Kirchgessner was convicted of murder on November 3, 1982, in Orleans County, and was sentenced to twenty years to life in prison.¹⁰⁹ Kirchgessner was represented at his first trial by a public defender. After he was convicted, he retained a private attorney. The new lawyer asked

100. Jackson v. Fogg, 465 F. Supp. at 180.

101. N.Y. Times, Nov. 4, 1988, at B1, col. 2.

102. People v. Jackson, 142 Misc. 2d 853, 854, 538 N.Y.S.2d 677 (N.Y. Sup. Ct., Kings County 1988), *aff'd*, 162 A.D.2d 470, 556 N.Y.S.2d 115 (2d Dep't 1990), *appeal granted*, 76 N.Y.2d 894, 562 N.E.2d 881, 561 N.Y.S.2d 556 (1990) (appeal argued May 31, 1991).

103. N.Y. Times, *supra* note 101, at B6, col. 4.

104. State Bar News, March 1989, at 13, col. 2 (published by the N.Y. State Bar Association).

105. N.Y. Times, *supra* note 101, at B1, col. 2.

106. See People v. Johnson, 66 N.Y.2d 398, 488 N.E.2d 439, 497 N.Y.S.2d 618 (1985).

107. *Id.* at 400, 488 N.E.2d at 441, 497 N.Y.S.2d at 620.

108. Telephone interview with Gilbert Rodriguez, Clerk, Bronx County Sup. Ct. (Sept. 24, 1991).

109. See Claim for Unjust Conviction and Imprisonment, Kirchgessner v. State (N.Y. Ct. Cl. Apr. 15, 1986).

the trial judge to throw out the conviction on the grounds that the assigned public defender had presented an inadequate defense. The trial court granted the motion.¹¹⁰ Represented by new counsel at the April 1984 retrial, Kirchgessner was acquitted of all charges.¹¹¹

- Joseph A. Klemm was convicted of murder in Dutchess County on May 15, 1984,¹¹² and was sentenced to twenty-five years to life in prison.¹¹³ The conviction and sentence were overturned by the Appellate Division two and one-half years later on the grounds that the trial court had failed to properly instruct the jury on the law governing identification testimony and Klemm's alibi defense. Klemm was retried and acquitted of all charges in July 1987, after four years of imprisonment. Klemm was granted summary judgment in the Court of Claims on his claim for unjust conviction and imprisonment.¹¹⁴

- David Knatz was convicted of first degree manslaughter in Queens County in 1978¹¹⁵ and was sentenced to twelve and one-half to twenty-five years imprisonment. The conviction was based largely on his former girlfriend's testimony concerning admissions he had made while "talking in his sleep." The Appellate Division ruled that such evidence should not have been permitted. Because of this error and other erroneous evidentiary rulings made by the trial court, the Appellate Division reversed Knatz's conviction. On remand, the prosecutor agreed to accept a guilty plea to attempted assault in the first degree in satisfaction of all charges. Knatz was resentenced to three to six years imprisonment.¹¹⁶

- Lester Lee's first murder trial, in 1973, ended in a hung jury. After a second trial he was convicted of murder on May 31, 1973, in Kings County, and sentenced to twenty-five years to life in prison. In July, 1976, the conviction was reversed and the sentence vacated by the Appellate Division.¹¹⁷ Lee was retried twice, and each time the jury failed to agree on a verdict. Finally, in April 1977, the trial court dismissed the charge and Lee was released, after more than five years imprisonment.¹¹⁸

- Camilo Lopez was convicted of murder in New York County on June 18, 1985, and was sentenced to twenty years to life in prison. Lopez' motion

110. *People v. Kirchgessner*, No. 72790 (Orleans County Ct. Sept. 14, 1983), *appeal dismissed*, 101 A.D.2d 1008, 476 N.Y.S.2d 267 (4th Dep't 1984) (mem).

111. *See People v. Kirchgessner*, 101 A.D.2d 1008, 476 N.Y.S.2d 267 (4th Dep't 1984) (dismissing appeal as moot in view of defendant's recent retrial and acquittal).

112. *People v. Klemm*, 124 A.D.2d 826, 508 N.Y.S.2d 545 (2d Dep't 1986) (mem.).

113. *Correctional Services Supplement*, *supra* note 47.

114. *Klemm v. State*, No. 77365 (N.Y. Ct. Cl. Dec. 19, 1988).

115. *See People v. Knatz*, 76 A.D.2d 889, 428 N.Y.S.2d 709 (2d Dep't 1980) (reversing the conviction); *see also* N.Y. Times, June 17, 1980, at B20, col. 1.

116. *People v. Knatz*, 128 A.D.2d 896, 513 N.Y.S.2d 821 (2d Dep't 1987) (mem.) (affirming lesser conviction, on remand, of attempted assault in the first degree).

117. *People v. Davis*, 53 A.D.2d 870, 385 N.Y.S.2d 345 (2d Dep't 1976) (mem.) (Davis was Lee's co-defendant); *see also* *Correctional Services Supplement*, *supra* note 47.

118. *See Claim, Lee v. State*, No. 74239 (N.Y. Ct. Cl. Dec. 23, 1986).

for a separate trial had been denied, and he was tried jointly with a co-defendant. Following his conviction, the Appellate Division affirmed without opinion. On further review the Court of Appeals reversed and ordered a new trial because the trial judge improperly referred to evidence inadmissible against Lopez, and damaging to his defense, at the joint trial.¹¹⁹ Tried separately after the remand, Lopez was acquitted.¹²⁰

- Luis Marin was convicted in Westchester County of twenty-six counts of murder arising from a 1980 hotel fire.¹²¹ Marin successfully moved the trial court for a post-verdict order dismissing the indictments based on insufficiency of the trial evidence. The prosecution appealed. The Appellate Division and Court of Appeals upheld the trial court order of dismissal.¹²² It was held that having an empty gasoline container and siphon in his car were insufficient facts to support the inference that Marin had set the fire. In sum, the evidence presented at trial was simply insufficient to sustain the charges. "[T]he loss of life at the Stouffer's Inn fire was a tragedy of staggering proportion . . . However, the tragedy would be compounded by the conviction and imprisonment of a person whose criminal responsibility for that tragedy has not been proven."¹²³

- Lucius Mason was convicted of murder in the second degree in New York County on February 7, 1984, and was sentenced to twenty years to life in prison.¹²⁴ The conviction rested on evidence that, two days after Mason engaged in a fistfight, the brother of the other combatant was murdered. The surviving brother accused Mason of the crime, although witnesses were unable to identify the killer. In an unrelated federal case,¹²⁵ two government witnesses (who were granted immunity in exchange for their testimony) testified that they had ordered the murder for which Mason was convicted, and provided the weapon. Both testified that Mason was not the killer. Mason's attorney learned of the federal court testimony and moved to set aside his conviction.¹²⁶ The New York County district attorney joined in the defense motion.¹²⁷ Mason was released from custody, and all charges were dismissed July 19, 1988.¹²⁸ He had served five and one-half years in prison on the con-

119. *People v. Lopez*, 68 N.Y.2d 683, 506 N.Y.S.2d 299 (1986).

120. Telephone interview with Howard R. Meyer, Lopez's counsel (Sept. 25, 1991).

121. *See People v. Marin*, 102 A.D.2d 14, 15, 478 N.Y.S.2d 650, 651 (2d Dep't 1984), *aff'd*, 65 N.Y.2d 741, 481 N.E.2d 556, 492 N.Y.S.2d 16 (in which the trial order dismissing Marin's indictment was affirmed).

122. *Id.*

123. *Id.* at 33, 478 N.Y.S.2d at 662.

124. *See Claim*, *Mason v. State*, No. 78104 (N.Y. Ct. Cl. Jan. 5, 1989); *see also* *Correc-tional Services Supplement*, *supra* note 47.

125. *See Claim* at 2, ¶ 8 *Mason v. State*, No. 78104 (citing *United States v. Monsanto*, 587 Cr. 555 (BJW)).

126. *See id.* at 2, ¶ 9.

127. *See Recommendation for Dismissal*, *People v. Mason*, No. 7810-82 (filed by the prosecutor).

128. *Miscellaneous Certificate No. 4499*, *People v. Mason*, No. 7810-82 (certificate of dis-position of the criminal case, on file in *Mason v. State*, No. 78104 (N.Y. Ct. Cl. Jan. 5, 1989)).

viction and imprisonment.¹²⁹

• Kenneth Maula was convicted of manslaughter in the first degree in Bronx County on January 9, 1987, and was sentenced to six to eighteen years imprisonment.¹³⁰ The conviction arose from an altercation in which a prominent physician and former friend of Maula's was shot and killed. Maula contended that he lacked criminal responsibility for the killing due to mental disease or defect. On appeal, a retrial was ordered on the grounds that the trial court had failed to properly instruct the jury as to the limits to which it could utilize the testimony of the state psychiatrist who had examined Maula.¹³¹ On retrial, Maula was acquitted of all homicide charges, and was convicted only of a misdemeanor weapons charge.¹³²

• William A. Maynard was convicted of first degree manslaughter in New York County on February 4, 1971, following two previous trials which had resulted in a hung jury and a mistrial. He was sentenced to ten to twenty years imprisonment. The Appellate Division upheld the conviction.¹³³ In 1974, the State Supreme Court, acting at the request of the district attorney, dismissed all charges against Maynard and ordered him released because the prosecution had suppressed evidence pertaining to the unreliability of its chief witness. Specifically, this witness had a long history of psychiatric hospitalizations and a criminal record which the prosecutors unlawfully failed to reveal, despite "persistent demand[s]" from the defense for any such information.¹³⁴ His attorney described the wrongful imprisonment as a "great wrong done to an innocent man."¹³⁵

• Robert McLaughlin was convicted of murder in the second degree in Kings County in 1981,¹³⁶ and was sentenced to fifteen years to life in prison.¹³⁷ McLaughlin was released in 1986, after the district attorney admitted his conviction was erroneous and joined defense counsel in a post-conviction motion to dismiss the charges. McLaughlin had served six years under the wrongful conviction. His release followed a long campaign by his mother and foster father, and a post-trial motion brought by the New York Civil Liberties Union and by students in a clinical practice program at Cardozo Law School. When he was released, McLaughlin pointedly observed, "If there was a death pen-

129. Claim at 3, ¶¶ 12-15 *Mason v. State*, No. 78104; *see also* Correctional Services Supplement, *supra* note 47.

130. *See People v. Maula*, 138 A.D.2d 307, 526 N.Y.S.2d 441 (1st Dep't 1988) (reversing the conviction and ordering a new trial).

131. *Id.*

132. *See People v. Maula*, 163 A.D.2d 180, 558 N.Y.S.2d 42 (1st Dep't 1990) (noting manslaughter acquittal and ordering resentencing on the weapons charge); Telephone interview with Freda Nisnewitz, Maula's counsel in the earlier appeal (May 9, 1990).

133. *See People v. Maynard*, 40 A.D.2d 779, 337 N.Y.S.2d 644 (1st Dep't 1972) (mem.).

134. *People v. Maynard*, 80 Misc. 2d 279, 287, 363 N.Y.S.2d 384, 389 (N.Y. Sup. Ct., New York County 1974) (dismissing criminal charges).

135. *N.Y. Times*, Aug. 24, 1974, at 1, col. 6.

136. *See People v. McLaughlin*, 104 A.D.2d 829, 830, 480 N.Y.S.2d 151, 152 (2d Dep't 1984) (affirming lower court's denial of defendant's motion to vacate the conviction).

137. *N.Y. Times*, July 4, 1986, at B10, col. 4.

alty in this State I would now be ashes in an urn on my mom's mantle."¹³⁸ McLaughlin was subsequently awarded \$1.93 million for his wrongful conviction and imprisonment.¹³⁹

- John Murphy was convicted of first-degree manslaughter in New York County in 1982. This conviction followed a mistrial that was granted at the prosecutor's request.¹⁴⁰ The retrial contravened Murphy's right not to be tried twice (*i.e.*, twice "placed in jeopardy") for the same alleged offense, since there was no "manifest necessity" for granting the mistrial application.¹⁴¹ The New York Court of Appeals reversed the conviction and dismissed the indictment.¹⁴²

- Angel Nieves was convicted of second degree manslaughter in Bronx County in 1982, and was sentenced to four to eight years imprisonment.¹⁴³ The evidence "consisted almost entirely of statements made by the victim of a stabbing shortly before she died."¹⁴⁴ The Court of Appeals ruled that under the circumstances of this case such statements were not sufficiently reliable and thus inadmissible, thus mandating reversal of the conviction and dismissal of the indictment. While the prosecution was "free to seek a new indictment for manslaughter in the second degree,"¹⁴⁵ no such indictment was filed.¹⁴⁶ Angel Nieves had served four years on the wrongful conviction before being released.¹⁴⁷

- Antonio Nieves was convicted in Queens County on February 7, 1984 of murder in the second degree and other offenses, and was sentenced to twenty-five years to life in prison.¹⁴⁸ Nieves argued in the Appellate Division that the State's evidence was consistent with his argument that his co-defendant, and not he, fired the fatal shot. On December 7, 1987 the Appellate Division agreed.¹⁴⁹ The court held that the mere fact that the defendant was a passenger in the back seat was insufficient evidence to sustain the conviction.¹⁵⁰ All charges were dismissed and Nieves was released approximately six years after his arrest.¹⁵¹

138. Village Voice, July 15, 1986, at 13, col. 1.

139. McLaughlin v. State, N.Y.L.J. Oct. 27, 1989, at 25, col. 4; *see also* N.Y. Times, Oct. 19, 1989, at B28, col. 1.

140. *See* People v. Murphy, 123 A.D.2d 550, 506 N.Y.S.2d 658 (1st Dep't 1986) (affirming the conviction), *rev'd*, 69 N.Y.2d 547, 508 N.E.2d 920, 516 N.Y.S.2d 186 (1987).

141. People v. Murphy, 69 N.Y.2d 547, 558, 508 N.E.2d 920, 927, 516 N.Y.S.2d 186, 192 (1987).

142. *Id.*

143. People v. Nieves, 108 A.D.2d 165, 488 N.Y.S.2d 654 (1st Dep't 1985), *rev'd*, 67 N.Y.2d 125, 492 N.E.2d 109, 501 N.Y.S.2d 1 (1986).

144. People v. Nieves, 67 N.Y.2d at 128, 492 N.E.2d at 110, 501 N.Y.S.2d at 2.

145. *Id.* at 136, 492 N.E.2d at 115, 501 N.Y.S.2d at 8.

146. Telephone interview with Robert S. Dean, counsel for Nieves (May 29, 1990).

147. *Id.*

148. People v. Nieves, 135 A.D.2d 579, 522 N.Y.S.2d 166 (2d Dep't 1987); *see also* Correctional Services Supplement, *supra* note 47.

149. People v. Nieves, 135 A.D.2d at 579, 522 N.Y.S.2d at 166.

150. *Id.* at 581, 522 N.Y.S.2d at 167.

151. *Id.*; *see also* Correctional Services Supplement, *supra* note 47.

• Paul Palmer was convicted of murder in the second degree in Rensselaer County for the 1984 killing of Benjamin Friedman.¹⁵² After the conviction, Palmer's attorney learned of an audiotape of a conversation between two key trial witnesses, which contained admissions helpful to the defense. The tape was in the possession of the prosecutor, who unconstitutionally failed to either alert the defense to its existence or provide a copy to defense counsel.¹⁵³ The Appellate Division ruled that because of the prosecutor's failure to promptly turn over a copy of the tape, Palmer's motion to set aside the conviction should have been granted.¹⁵⁴ Palmer was granted a new trial, and in December 1988 he was convicted of robbery and burglary but acquitted of the homicide charge.¹⁵⁵

• Richard Paris was convicted in Kings County on July 1, 1986, of criminally negligent homicide based upon his involvement in an automobile accident.¹⁵⁶ He was sentenced to one to three years imprisonment.¹⁵⁷ On March 14, 1988, the Appellate Division reversed the conviction and dismissed the charge.¹⁵⁸ It was established that a likely cause of the collision was that Paris had fallen asleep at the wheel, causing his vehicle to veer off the road. No drugs or alcohol were found in his blood. The court ruled as a matter of law that such an event would be an accident, falling short of the degree of negligence necessary to constitute homicide.¹⁵⁹ As there was no evidence indicating that Paris was conscious before the accident, the court reversed the conviction and dismissed the homicide charge.¹⁶⁰

• Rene Piccarreto was convicted of murder in Monroe County in 1978, along with co-defendant Samuel Russotti. It was later discovered that the prosecution had used false evidence and perjured testimony to obtain the convictions, and Piccarreto and Russotti were released.¹⁶¹

• James Priester was charged with second degree murder in the 1979 shooting death of a sword-wielding man who confronted him outside his home. At trial in Rensselaer County, Priester testified that he had brandished the weapon to defend himself, and that the shooting was unintentional. He was convicted of manslaughter in the first degree and sentenced to eight and one-third to twenty-five years imprisonment.¹⁶² On appeal, the Appellate Division reversed, ruling: (a) the prosecutor abused his discretion in refusing to

152. See *People v. Palmer*, 137 A.D.2d 881, 524 N.Y.S.2d 564 (3d Dep't 1988) (mem.) (vacating the conviction and ordering a new trial).

153. *Id.* at 882, 524 N.Y.S.2d at 565.

154. *Id.* at 883, 524 N.Y.S.2d at 566.

155. Albany Times-Union, Nov. 24, 1988, at A1, col. 1.

156. See *People v. Paris*, 138 A.D.2d 534, 525 N.Y.S.2d 913 (2d Dep't 1988) (reversing the conviction of criminally negligent homicide, vacating the sentence thereon, and dismissing that count of the indictment, but affirming the lesser convictions).

157. See *Claim for Damages at 2, Paris v. State*, No. 77395 (N.Y. Ct. Cl. Aug. 15, 1988).

158. *People v. Paris*, 138 A.D.2d at 535, 525 N.Y.S.2d at 914.

159. *Id.* at 536-37, 525 N.Y.S.2d at 915.

160. *Id.* at 539-40, 525 N.Y.S.2d at 916-17.

161. For details and citations, see *infra* notes 188-91 and accompanying text.

162. Albany Times Union, Apr. 13, 1984, at B1, col. 1.

grant immunity to a state's witness who subsequently recanted her testimony and sought to testify on the defendant's behalf; and (b) the trial judge improperly injected his personal opinion by offering his interpretation of certain crucial trial evidence.¹⁶³ In April 1984, Priester was retried and acquitted of all charges.¹⁶⁴

- Peter Quartararo was convicted of two counts of murder in the second degree in Suffolk County in 1981, and was sentenced to two concurrent terms of nine years to life in prison.¹⁶⁵ Following Quartararo's unsuccessful state court appeals, the United States District Court granted a writ of habeas corpus and ordered that statements obtained from him be suppressed because police unlawfully failed to advise Quartararo of his rights.¹⁶⁶ The writ and suppression order were upheld by the Second Circuit Court of Appeals. The prosecution dismissed all charges against Quartararo on December 7, 1989.¹⁶⁷

- Angel Ramos was convicted of murder in the second degree in New York County in 1983, and was sentenced to twenty-five years to life in prison.¹⁶⁸ On appeal the prosecutor conceded that the trial judge's instructions to the jury misstated the law on causation. The jury was told that it could find Ramos guilty even if he only "set in motion a chain of circumstances and that chain of circumstances resulted in the death" of the victim, in effect without reaching the question of who actually fired the shot.¹⁶⁹ On remand, the defective instruction was omitted. Ramos was acquitted and released, after serving three years in prison.¹⁷⁰

- Wallace Redman was convicted of murder in the second degree in Oswego County in 1980, and was sentenced to fifteen years to life in prison.¹⁷¹ The Appellate Division reversed on the grounds that a statement taken in the absence of Redman's counsel should have been suppressed, and authorized a new trial.¹⁷² No further prosecution was brought and Redman was released in July 1985 after nearly six years in prison.¹⁷³

- Gregory Reed was convicted of murder in Kings County in October

163. *People v. Priester*, 98 A.D.2d 820, 820-21, 470 N.Y.S.2d 478, 478-79 (3d Dep't 1983) (mem.).

164. Albany Times Union, *supra* note 162.

165. *See Quartararo v. Mantello*, 715 F. Supp. 449, 452 (E.D.N.Y. 1989) (granting Quartararo's petition for a writ of habeas corpus), *aff'd*, 849 F.2d 1467 (2d Cir. 1989).

166. *Id.* at 466.

167. *Newsday*, Dec. 8, 1989, at 7, col. 1.

168. *See People v. Ramos*, 116 A.D.2d 462, 496 N.Y.S.2d 443 (1st Dep't 1986) (reversing murder conviction).

169. *Id.* at 462, 496 N.Y.S.2d at 444.

170. MURDER CONVICTIONS, *supra* note 47, app. at 20, Case # 28; *see also* Correctional Services Supplement, *supra* note 47.

171. *People v. Redman*, 107 A.D.2d 1008, 486 N.Y.S.2d 509 (4th Dep't 1985) (mem.); *see also* MURDER CONVICTIONS, *supra* note 47, app. at 20, Case # 31; Correctional Services Supplement, *supra* note 47.

172. *People v. Redman*, 107 A.D.2d at 1008, 486 N.Y.S.2d at 509 (4th Dep't 1985) (mem.).

173. Telephone interview with Jay Ledden, counsel for Redman (May 29, 1990).

1979, and sentenced to fifteen years to life in prison.¹⁷⁴ Reed served five and one-half years of the sentence before the Court of Appeals overturned the conviction in 1985.¹⁷⁵ The court held that the testimony of the State's sole witness against Reed contained "hopeless contradictions"¹⁷⁶ as to the time, location and circumstances of the victim's death. Reed was awarded \$495,000 in damages for his unjust conviction and imprisonment.¹⁷⁷

- Mary Reed was convicted of first degree manslaughter in Westchester County in May 1973.¹⁷⁸ The conviction rested on the testimony of a single eyewitness. The Appellate Division affirmed the conviction,¹⁷⁹ but the Court of Appeals reversed and dismissed all charges declaring that, as a matter of law, the testimony relied on by the jury lacked sufficient credibility to sustain a conviction.¹⁸⁰ The credibility of the state's sole "eyewitness" was called into question by the prosecution itself, which had her declared a hostile witness, and impeached every facet of her testimony except the statement that she saw Reed pull the trigger.¹⁸¹

- Vincent Rivers was convicted of murder in the second degree in a Kings County retrial in June 1983,¹⁸² following an Appellate Division reversal of his conviction in a previous trial.¹⁸³ He was sentenced to twenty-five years to life in prison.¹⁸⁴ A third trial ended in a mistrial. A fourth trial, at which Rivers was again convicted of murder, was reversed because of numerous prejudicial errors by the trial court.¹⁸⁵ On July 17, 1986, following a fifth trial, Rivers was acquitted on all counts.¹⁸⁶ Rivers' multi-million-dollar lawsuit against the state for unjust conviction and four and one-half years imprisonment is pending in the Court of Claims.¹⁸⁷

- Samuel Russotti was convicted of murder in Monroe County in 1978.¹⁸⁸ Russotti and co-defendant Rene Piccarreto¹⁸⁹ were alleged to be ma-

174. *See Reed v. State*, N.Y.L.J., Nov. 7, 1988, at 24 (N.Y. Ct. Cl.) (in which claimant was awarded damages for his wrongful imprisonment).

175. *People v. Foster*, 64 N.Y.2d 1144, 480 N.E.2d 340, 490 N.Y.S.2d 726 (1985), *modifying* 100 A.D.2d 200, 473 N.Y.S.2d 978 (2d Dep't 1984) (Foster was Reed's co-defendant).

176. *Id.* at 1147, 480 N.E.2d at 342, 490 N.Y.S.2d at 728 (quoting the decision in *People v. Ledwon*, 153 N.Y. 10, 46 N.E. 1046 (1897)).

177. *Reed v. State*, N.Y.L.J., Nov. 7, 1989, at 159.

178. *See Reed v. State*, 133 A.D.2d 107, 518 N.Y.S.2d 645 (2d Dep't 1987), *rev'd*, 78 N.Y.2d 1, 574 N.E.2d 433, 571 N.Y.S.2d 195 (1991) (relating to Reed's claim for compensation for unjust conviction).

179. *People v. Reed*, 45 A.D.2d 934, 358 N.Y.S.2d 960 (2d Dep't 1974) (affirming conviction without opinion), *rev'd*, 40 N.Y.2d 204, 352 N.E.2d 558, 386 N.Y.S.2d 371 (1976).

180. *People v. Reed*, 40 N.Y.2d 204, 210, 352 N.E.2d, 558, 562, 386 N.Y.S.2d 371, 375 (1976).

181. *Id.* at 206-07, 352 N.E.2d at 559-60, 356 N.Y.S.2d at 372-73.

182. *See Rivers v. State*, No. 77158, Motion No. M-39533, slip op. at 2 (N.Y. Ct. Cl. Jan. 12, 1989) (denying defendant's motion to dismiss).

183. *People v. Rivers*, 85 A.D.2d 674, 445 N.Y.S.2d 196 (2d Dep't 1981).

184. *See Rivers v. State*, No. 77158, slip op. at 2.

185. *People v. Rivers*, 109 A.D.2d 758, 486 N.Y.S.2d 73 (2d Dep't 1985).

186. *See Rivers v. State*, No. 77158, slip op. at 4.

187. *Rivers v. State*, No. 77158 (N.Y. Ct. Cl. Jan. 12, 1989).

188. *See United States v. Russotti*, 555 F. Supp. 1236 (W.D.N.Y. 1983) (denying motions

jur actors in organized crime activities in New York State. Subsequent to the conviction, it was revealed that prosecutors and sheriff's deputies had knowingly used false evidence and perjured testimony in their successful effort to obtain the convictions.¹⁹⁰ The Monroe County District Attorney Lawrence Kurlander subsequently consented to vacatur of the convictions and dismissal of the homicide charges against Russotti and Piccarreto.¹⁹¹

- Dwayne Sutton was convicted, along with a co-defendant, of two counts of murder in the second degree in Kings County in July 1984,¹⁹² and was sentenced to twenty years to life in prison.¹⁹³ The convictions were reversed and a new trial ordered by the Appellate Division on the basis that the court refused to instruct the jury on the issue of voluntariness of defendant's and co-defendant's statements to the police.¹⁹⁴ On October 20, 1987, following a retrial, Sutton was acquitted.¹⁹⁵ He had spent more than five and one-half years in prison.¹⁹⁶

- Sammy Thomas was convicted, along with his brother, Willie Gene Thomas, of the second-degree murder of a nightclub owner in Cayuga County in 1978.¹⁹⁷ Sammy Thomas was sentenced to fifteen years to life in prison; Willie Gene Thomas was sentenced to twenty-five years to life in prison.¹⁹⁸ During the appeal, the district attorney discovered that the original prosecutor had unconstitutionally withheld at least nineteen police reports and witness statements concerning the case.¹⁹⁹ Among these was a report that the State's principal eyewitness, in a statement to police made at the crime scene just minutes after the killings, had described the killers as being white males.²⁰⁰ Sammy and Willie Gene Thomas are black. The Appellate Division ordered that the withheld information be disclosed, and ordered a new trial.²⁰¹ Willie Gene Thomas was acquitted following a retrial, and he was released in June 1980 after having served four years in prison. Based on that acquittal, Sammy

to dismiss indictment), *aff'd*, 717 F.2d 27 (2d Cir. 1983), *cert. denied*, *Marino v. United States*, 465 U.S. 1022 (1984).

189. See *supra* text accompanying note 161.

190. See *United States v. Russotti*, 717 F.2d 27, 30 (2d Cir. 1983); see also *Piccarreto v. State*, 144 A.D.2d 920, 534 N.Y.S.2d 31, 32 (4th Dep't 1988) (dismissing civil cause of action for unjust conviction and imprisonment); *Russotti v. State*, 144 A.D.2d 921, 535 N.Y.S.2d 571 (4th Dep't 1988).

191. Telephone interview with Laurie Carra, of the office of Harold Boreanaz, counsel for defense (May 29, 1990).

192. See *People v. Sutton*, 122 A.D.2d 896, 505 N.Y.S.2d 937, 938 (2d Dep't 1986) (reversing the conviction).

193. Correctional Services Supplement, *supra* note 47.

194. *People v. Sutton*, 122 A.D.2d at 896, 505 N.Y.S.2d at 938.

195. MURDER CONVICTIONS, *supra* note 47, app. at 21, Case # 32.

196. Correctional Services Supplement, *supra* note 47.

197. Telephone interview with David Lee Foster, counsel for defense during original trial and appeal (May 15, 1990).

198. *Id.*

199. Telephone interview, *supra* note 197.

200. *People v. Thomas*, 71 A.D.2d 839, 840 (4th Dep't 1979).

201. *Id.*

Thomas's case was dismissed on motion six months later.²⁰²

- Willie Gene Thomas was convicted of murder in Cayuga County in 1978, along with his brother Sammy Thomas. Willie Gene Thomas's conviction was reversed,²⁰³ as was his brother's,²⁰⁴ on the grounds of inappropriately withheld evidence.²⁰⁵ Following a retrial, Willie Gene Thomas was acquitted.²⁰⁶

- Ricardo Torres was convicted of murder in Kings County in 1987.²⁰⁷ The Appellate Division reversed and dismissed the indictment, holding that the prosecution failed to prove that the defendant acted "in concert" with the person who shot the decedent, knew the shooter was armed, or shared his intent to kill.²⁰⁸

- Michael Washington was convicted of murder, following a mistrial, in Kings County on February 23, 1988.²⁰⁹ Washington argued on appeal that the prosecution's case, which rested solely on circumstantial evidence, was legally insufficient to support a guilty verdict.²¹⁰ The Appellate Division agreed, reversed the conviction and dismissed the indictment, on the grounds that the testimony "merely establishes that the defendant was in the apartment, along with at least four other individuals, shortly before Domar fell out the window. . . . [A]t no point did the witness observe the defendant, or any other individual, push or force Domar out the window."²¹¹

- Ernest Welcome was convicted on March 10, 1970, in Bronx County, of two counts of murder, for which he was sentenced to concurrent terms of twenty-five years to life in prison.²¹² After an unsuccessful appeal to the Appellate Division,²¹³ Welcome commenced a C.P.L. 440²¹⁴ application in the trial court, asking that the convictions be set aside on the ground that a key prosecution witness had recanted his testimony and admitted perjury. This

202. Telephone interview, *supra* note 197; Telephone interview with Linda Lavey, counsel for Willie Gene Thomas on retrial (May 18, 1990).

203. *People v. Thomas*, 71 A.D.2d 840 (4th Dep't 1979) (mem.), *rev'g*, 65 A.D.2d 934, 411 N.Y.S.2d 549 (4th Dep't 1978).

204. *People v. Thomas*, 71 A.D.2d 839 (4th Dep't 1979) (mem.), *rev'g*, 65 A.D.2d 933, 410 N.Y.S.2d 438 (4th Dep't 1978).

205. *Id.* at 839-40.

206. Correctional Services Supplement, *supra* note 47; *see supra* text accompanying note 202.

207. *See People v. Torres*, 153 A.D.2d 911, 545 N.Y.S.2d 398, 399 (2d Dep't 1989) (reversing the conviction).

208. *Id.*; *see also* N.Y. Daily News, Sept. 22, 1989, at C1, col. 5.

209. *See People v. Washington*, 151 A.D.2d 872, 550 N.Y.S.2d 436 (2d Dep't 1990) (reversing the conviction).

210. *Id.* at 872, 550 N.Y.S.2d at 437.

211. *Id.*

212. *See Welcome v. Vincent*, 418 F. Supp. 1088, 1089 (S.D.N.Y. 1976) (dismissing Welcome's petition for a writ of habeas corpus), *rev'd*, 549 F.2d 853 (2d Cir. 1977) (holding that Welcome was denied a fair trial, entitling him to habeas corpus relief).

213. *People v. Welcome*, 39 A.D.2d 841, 331 N.Y.S.2d 995 (1st Dep't 1972) (mem.), *aff'd*, 37 N.Y.2d 811, 338 N.E.2d 328, 375 N.Y.S.2d 573 (1975) (per curiam).

214. *See* N.Y. CRIM. PROC. LAW § 440.10(1), (g), (h) (McKinney 1991).

second round of applications were similarly rejected by the state trial and appellate courts.²¹⁵ Welcome then commenced a federal habeas corpus proceeding. Denied relief in the U.S. District Court,²¹⁶ his counsel persisted, appealing the denial of the writ to the Second Circuit Court of Appeals. In 1977, the Second Circuit directed that the writ be granted and defendant released unless retried within a reasonable time.²¹⁷ Welcome was retried and, after a four week trial, was acquitted and set free. He had been wrongfully imprisoned for seven years.²¹⁸

- Curtis Wilkins was convicted of manslaughter in the first degree, and was sentenced to five to fifteen years imprisonment.²¹⁹ He argued on appeal that the prosecutor had improperly withdrawn the matter from the grand jury after presentment had begun and that, to represent under such circumstances, court permission was required.²²⁰ The Appellate Division affirmed the conviction but the Court of Appeals reversed in 1986, holding that withdrawal of a case after presentation of evidence, followed by resubmission of the case to a second grand jury without leave of court, is unlawful.²²¹ The prosecutor was given the authority to seek permission to proceed anew, however, Wilkins was not again indicted on this charge.²²²

- Randolph (Ramsey) Woodhull was convicted of murder in the second degree in 1982, in Kings County,²²³ and was sentenced to twenty-five years to life in prison.²²⁴ At Woodhull's trial, the prosecutor made statements insinuating that Woodhull was also involved in an earlier murder. On the basis of these prejudicial remarks, the Appellate Division ordered the conviction reversed and ordered a new trial.²²⁵ Woodhull was retried and acquitted after having served three years on the wrongful conviction.²²⁶

CONCLUSION

The data presented above show that erroneous convictions occur with

215. *People v. Welcome*, 46 A.D.2d 860, 361 N.Y.S.2d 378 (1st Dep't 1974), *aff'd*, 37 N.Y.2d 811, 375 N.Y.S.2d 573 (1975) (per curiam) (consolidating direct appeal and appeal from denial of C.P.L. 440 motion).

216. *Welcome v. Vincent*, 418 F. Supp. at 1089.

217. *Welcome v. Vincent*, 549 F.2d 853, 859 (2d Cir. 1977).

218. Telephone interview with Julia P. Heit, Welcome's counsel (May 22, 1990).

219. See Brief and Appendix for Defendant-Appellant at 1, *People v. Wilkins*, 68 N.Y.2d 269, 501 N.E.2d 542, 508 N.Y.S.2d 893 (1986), *rev'g*, 110 A.D.2d 1093, 488 N.Y.S.2d 942 (1st Dep't 1985), *aff'g*, 95 Misc. 2d 737, 408 N.Y.S.2d 291 (N.Y. Sup. Ct., New York County 1982).

220. *Id.* at 2.

221. 68 N.Y.2d at 276-77, 501 N.E.2d at 546, 508 N.Y.S.2d at 897.

222. Telephone interview with Ann Lohwasser, Clerk's Office, New York County Supreme Court (Sept. 30, 1991); Telephone interview with the Hon. Michael A. Gross, formerly Wilkins's counsel (Sept. 30, 1991).

223. See *People v. Woodhull*, 105 A.D.2d 815, 481 N.Y.S.2d 749 (2d Dep't 1984).

224. Correctional Services Supplement, *supra* note 47; see generally MURDER CONVICTIONS, *supra* note 47, app. at 17, Case # 10.

225. *People v. Woodhull*, 105 A.D.2d at 815, 817, 481 N.Y.S.2d at 750-51.

226. Correctional Services Supplement, *supra* note 47.

regularity in homicide cases in New York. Wrongful convictions will undoubtedly also occur in capital cases if New York reinstates the death penalty.²²⁷ Once carried out, erroneous death sentences are irreversible. Since there is an ever present risk of wrongful convictions and executions, New York should avoid enacting capital punishment legislation.

227. New York is currently unable to assure an adequate defense even under its current *non-capital* sentencing structure, due to inadequate resourcing of the defense, the deprivation of needed expert and other services, shockingly low assigned counsel rates and compensation caps, and gross fiscal disparity between prosecution and defense. *See* Amicus Curiae Brief at 16-68, *People v. Smith*, 63 N.Y.2d 41, 468 N.E.2d 879, 479 N.Y.S.2d 706 (1984), *cert. denied*, 469 U.S. 1227, *reh'g denied*, 471 U.S. 1049 (1985) (filed by the New York State Defenders Association). Our Association's mission, carried out through our contractual obligation to "review, assess and analyze the public defense system," is to assure that New York meets its constitutional obligation to provide for an effective defense.