



Benjamin N. Cardozo School of Law, Yeshiva University

MEMORANDUM OF SUPPORT

The 2019 Discovery for Justice Reform Act (A.1431 (Lentol)/S.1716 (Bailey))

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each DNA exoneration as an opportunity to review what causes wrongful convictions and identify factually-supported methods to minimize the possibility that such errors will continue to create wrongful convictions. The recommendations that we make are grounded in robust findings and practitioner experience, all aimed at improving the reliability of the criminal justice system.

Since its U.S. introduction, post-conviction DNA testing has proven the innocence of 362 people who had been wrongly convicted of serious crimes. In fact, more than 10% of the nation's exonerated men and women proven innocent through DNA actually pled guilty to crimes they did not commit, succumbing to the pressures placed upon them by an unrelenting system and in many instances because they were starved of the very information that would have allowed them to successfully fight their cases.

A key step in preventing wrongful convictions is ensuring that defendants have early and broad access to favorable evidence in possession of the State so they can adequately prepare for criminal proceedings. In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court of the United States held that it is a violation of the Due Process clause of the Fourteenth Amendment of the Constitution for prosecutors to withhold exculpatory evidence from criminal defendants, where the evidence is material to guilt or to punishment.¹ However, studies over the past several years have shown that in courtrooms across the country, prosecutors are failing to disclose information, and innocent people are being convicted without access to a full defense.² The wrongful convictions that have been exposed nationwide demonstrate the devastating consequences that can result from a prosecutor's failure to disclose exculpatory evidence. Indeed, one of those wrongful convictions led to the passage of a robust discovery law in 2014 in the state of Texas.

It is extremely difficult for experts to quantify how often *Brady* violations occur, as it is often impossible to know the existence of something that has never been disclosed. It is also very

¹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

² See American Civil Liberties Union of New Jersey, Trial and Error: A Comprehensive Study of Prosecutorial Conduct in New Jersey (September 2012), available at http://pdfserver.amlaw.com/nj/aclu_report09-12.pdf; Kathleen M. Ridolfi & Maurice Possley, Northern California Innocence Project, Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009 (2010), available at <http://digitalcommons.law.scu.edu/ncippubs/2/>; Emily M. West, Innocence Project, Court Findings of Prosecutorial Misconduct Claims in Post-Conviction Appeals and Civil Suits Among the First 255 DNA Exoneration Cases (2010), available at http://www.innocenceproject.org/docs/Innocence_Project_Prosecutorial_Misconduct.pdf; see generally The Center for Public Integrity, Harmful Error: Investigating America's Local Prosecutors, <http://www.publicintegrity.org/accountability/harmful-error>; Investigative Series, Misconduct at the Justice Department, USA TODAY, http://usatoday30.usatoday.com/news/washington/judicial/2010-12-08-prosecutor_N.htm#; Ken Armstrong & Maurice Possley, Trial & Error: How Prosecutors Sacrifice Justice to Win (Parts 1-5), CHL.TRI., Jan. 11-14, 1999, at A1.

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difficult to uncover *Brady* violations in individual cases, as it is a process that usually can only be done through through post-conviction discovery of FOIA requests, both of which are costly and time-consuming, and thus extremely rare. Therefore, available statistics are likely only the tip of the iceberg, which is why a pretrial discovery scheme is crucial – it allows us to avoid discovery violations and injects transparency and accuracy in the criminal system. Without proactive policies and legislation codifying pretrial disclosure, the criminal justice system will continue to risk convicting the innocent.

Against this national backdrop, it is all the more concerning that New York State lags behind the rest of the nation with respect to discovery requirements, ranking among the bottom four states in this area. New York is on the precipice of long-needed reform in this area, given the attention and leadership of the Governor and champions in both chambers of the legislature, and we strongly urge the passage of A.1431/S.1716 so that open discovery rules are enacted at long last in the Empire State. This reform promises a more fundamentally fair system and the prevention of wrongful convictions. New York can wait no longer.