

## **Joint Legislative Public Hearing on 2025 Executive Budget Proposal**

### **Public Protection Hearing**

**February 13, 2025**

#### **TESTIMONY OF DERRICK HAMILTON**

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My name is Derrick Hamilton, and I am the Deputy Director of the Perlmutter Center for Legal Justice at Cardozo Law and the co-founder of Families and Friends of the Wrongfully Convicted. I am here today to help us refocus this debate on the very human costs of getting discovery reform wrong. The Governor has proposed sweeping changes to the existing discovery law, a law that was the product of years of debate among a range of stakeholders, including the prosecution and the defense. The current proposal's sweeping changes resulted from speaking with one side of an adversarial system, namely prosecutors, which is not how just and fair public policy should be developed. These changes will not "reduce delays," "streamline case processing," or "close the loopholes," as the Governor claims. They *will*, however, promise to enable wrongful convictions.

And I should know what that actually means. I spent more than two decades behind bars for a crime I did not commit, and I can tell you that this is a unique horror that no one should ever experience. Let us not lose sight of why this law was enacted in the first place. Nearly a decade ago, a broad range of stakeholders examined this issue. One of the key issues debated when the reforms were written was whether prosecutors should have discretion in what evidence to turn over. This concept was outright rejected. Even the New York State Bar Association affirmed that allowing prosecutors to pick and choose what evidence they turn over results in an "antiquated" and unjust system, yet this is exactly what the Governor is proposing by offering language that allows prosecutors to decide what evidence is "relevant" to a case.

Innocent defendants are put in an impossible position when they are starved of the evidence they need to defend themselves. How was I supposed to defend myself when I did not commit the crime I was accused of? Imagine how it felt to learn on the day of trial what the real name of the testifying witness was and to finally see the police reports about the crime scene, ballistics reports, and medical examiner reports and not have had the opportunity to review them in advance or hire experts to explain this evidence to me and to the court. Every accused person deserves to

make intelligent and informed decisions about the course of their case and the ability to fully investigate the accusation against me was stolen from me. Only after I was declared guilty did I learn that the testifying witness was coerced by police to lie and that another eyewitness told police I was not the perpetrator. There is a reason we called the previous discovery statute in New York State the “blindfold law.”

My experience was not unique.

Arvell Marshall was exonerated this past summer after spending 16 years in prison for a murder he did not commit. Prosecutors in Brooklyn failed to turn over the surveillance footage of the crime which clearly depicted the actual perpetrators because they claimed they couldn't open the file. Arvell was astonished that there seemed to be no curiosity in exploring this critical piece of evidence. He vociferously begged the court to watch the video and was thrown out of the courtroom for not remaining silent.

Wayne Martin was exonerated in 2016 after being sentenced to life in prison for a shooting at a New York City tire store that resulted in the deaths of two people. In the postconviction reinvestigation, Brooklyn prosecutors uncovered a number of police reports that would have supported his innocence. The evidence included an interview with a witness who saw the actual shooter who committed the crime and went on to kill a police officer just hours after fleeing the tire store.

Anyone who values due process and the Constitution should be frightened by the Governor's proposal which allows one side to determine which evidence is relevant to a criminal case, thereby manipulating case outcomes.

The National Registry of Exonerations indicates that withheld evidence is a leading factor of wrongful convictions. In fact, evidence was withheld in 57% of the 359 wrongful convictions revealed in New York State. This is not only a tragedy for the wrongfully convicted person—when an innocent person is behind bars, the person who actually committed the crime remains undetected and in a position to commit additional crimes. Indeed, we are already aware of murders and rapes that were committed in the Empire State because they eluded detection while an innocent person sat behind bars. Poor discovery practices have enabled massive miscarriages of justice and, if the current law were to be amended as proposed by the Governor, would produce countless more.

Innocent people had been kept in the dark before the law changed in 2020. This was the single most important reform to prevent wrongful convictions. How can anyone responsibly argue we can go back to the days of innocent defendants in blindfolds?

New York's current discovery laws remove any confusion about which evidence must be turned over and when, preventing huge miscarriages of justice where the innocent are convicted and the people who committed serious, violent crimes remain undetected.

To be clear, the law isn't poorly written; it isn't being complied with by the police, principally the NYPD. The solution is clear—address the lack of police compliance with evidence disclosure and pass [S613 / A825](#) which addresses that problem. We shouldn't change a law that clearly increases fairness across the state only to reward NYPD's resistance to evidence-sharing.

This is not only dangerous; it is an insult to those of us who lost years of our lives after being kidnapped from our communities.

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