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'Serious' Effort Vowed On False Convictions

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ALBANY - As a lawyer representing criminal defendants, Theodore T. Jones Jr. said he was sure that people "occasionally" got convicted of crimes they did not commit.

Now, the Court of Appeals judge is co-chairing a new state task force on wrongful convictions. He is convinced all participants in the criminal justice system recognize the high price the system pays for mistakenly convicting and imprisoning defendants.

"There is absolutely no disagreement on the fact that one of the most horrendous results we can conjure up is to wrongfully convict a defendant," Judge Jones said in an interview yesterday. "Equally troubling is the fact that when that happens, the true perpetrator is still out there. ...If the public loses faith in the integrity of criminal convictions, then we have lost control of our entire system."

Chief Judge Jonathan Lippman announced the formation of the "Justice Task Force" during his Law Day address, when he designated Judge Jones and Westchester County District Attorney Janet DiFiore as co-chairs ([NYLJ, May 1](#)). Judge Jones and Ms. DiFiore last week completed the appointments of the other commission members and took other steps to meet initial goals established for the panel by Judge Lippman.

The chief judge, who was not available for comment yesterday, has said he wants the panel to be a permanent, independent entity that will review police, prosecution, defense and judicial practices in cases where wrongful convictions have been confirmed.

On the Commission

Co-Chairs

Theodore T. Jones Jr., Court of Appeals judge
Janet DiFiore, Westchester County district attorney

Members

Kathleen Corrado, director of laboratories, Onondaga Center for Forensic Sciences

Judith Harris-Kluger, head of the Office of Policy and Planning, Unified Court System

William E. Hellerstein, professor, Brooklyn Law School

Seymour W. James, attorney-in-charge of criminal defense practice at the Legal Aid Society

Barry Kamins, acting Supreme Court justice, New York City Criminal Court

Raymond Kelly, New York City police commissioner

Joseph Lentol, D-Brooklyn, chairman of Assembly Codes Committee

Richard B. Lowe III, Manhattan Supreme Court justice

Denise O'Donnell, state criminal justice services coordinator

Karen K. Peters, Appellate Division, Third Department, justice

Eric Schneiderman, D-Manhattan, chairman of Senate Codes Committee

Susan Xenarios, director of crime victims treatment center, St. Luke's Hospital

The goal is to determine why innocent people were convicted and to recommend ways to prevent future mistakes.

However, Judge Jones said the commission will focus on individual cases only after the courts and/or prosecutors have determined there has been a miscarriage of justice. It will not investigate pending appeals in which defendants are challenging their convictions.

Among those named to the task force are New York City Police Commissioner Raymond Kelly, judges Karen K. Peters, Barry Kamins and Richard Lowe, the lawmakers responsible for evaluating new criminal justice legislation—Assemblyman Joseph Lentol and Senator Eric Schneiderman, and Criminal Justice Services Coordinator Denise O'Donnell.

Judge Jones said the high profiles of task force members are "a sign of the commitment that we have to making this endeavor work. The fact that we are able to encourage these people to join us in this effort is a sign of how seriously we are taking it."

Ronnie Abrams, a former prosecutor who joined Davis Polk & Wardwell last year as special counsel for pro bono, will act as pro bono counsel to the commission.

From 1998 to 2008, Ms. Abrams was a Southern District assistant U.S. attorney, serving as the deputy chief of the criminal division from 2007 to 2008. She was honored by the U.S. Justice Department for her work on cases leading to the convictions of members of a Colombian gang wanted for the murder of an NYPD detective and approximately 100 armed robberies, and for the convictions of the leadership of the United Blood Nation, commonly known as the Bloods.

The task force will be staffed by aides to its members and by pro bono attorneys from Davis Polk. No paid staff will be hired, officials said.

Judge Lippman has said he wanted the task force to build on work done by the Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University and by a New York State Bar Association task force that studied 53 New York cases in which experts are in general agreement that defendants were wrongfully convicted. The cases dated back to 1964.

The state bar task force concluded that multiple mistakes had been made to contribute to wrongful convictions, such as inaccurate identifications by eyewitnesses and misrulings by courts on the admissibility of evidence ([NYLJ, Feb. 2](#)).

Read [The Task Force on Wrongful Conviction's Final Report](#).

Statewide, there were 48,154 felony guilty pleas in 2007 and 1,300 convictions, according to court system statistics.

Permanent Asset

The state bar commission was chaired by Judge Kamins, a New York City acting Supreme Court justice who is overseeing criminal cases in Brooklyn.

Judge Jones said the state bar panel was directed to complete a report, which he called "admirable," but his group will be a permanent asset to the Legislature, governor and legal and law enforcement communities on making improvements on procedures to avoid future false convictions.

He noted that the presence of Mr. Lentol, D-Brooklyn, and Mr. Schneiderman, D-Manhattan, the chairmen of the Codes Committees in their respective chambers, will give the commission direct influence with lawmakers should legislative changes be needed.

The task force also would seek procedural changes in the courts through rulemaking by the Appellate Divisions, Judge Jones said.

Judge Jones, a one-time criminal defense attorney with the Legal Aid Society and in private practice, said he "occasionally" encountered instances where defendants were wrongfully convicted.

"One of the points that probably bothers me the most is wrongful identifications," Judge Jones said. "That is the ultimate nightmare of the criminal justice system. For that reason, it shaped my philosophy in my life on the Court of Appeals."

Judge Jones noted that he wrote the Court of Appeals' unanimous ruling in [People v. LeGrand](#), 8 NY3d 449 (2007), in which the Court affirmed that judges should consider whether expert testimony should be allowed in some circumstances to help jurors consider the reliability of uncorroborated testimony of eyewitnesses.

He said it is in everyone's best interest to minimize the chances of wrongful convictions.

"This is a universal problem," Judge Jones said. "I don't think that any one sector of the justice system is any more concerned about this problem than any other sector. The police and the district attorneys are just as committed as the defense bar is at seeing this doesn't happen, maybe more."

Judge Lippman said he appointed Ms. DiFiore to co-chair the task force in part because of her county's experiences in the case of Jeffrey Deskovic, who was convicted of the 1989 rape and strangulation of a Peekskill high school classmate.

In 2006, with the help of the Innocence Project, DNA evidence exonerated Mr. Deskovic and implicated another man.

Ms. DiFiore subsequently commissioned a report detailing the errors leading to Mr. Deskovic's conviction and steps that could prevent future abuses, including the complete videotaping of interrogation sessions by police.

Members of the task force said yesterday they had agreed to defer to Judge Jones to speak publicly about the panel's work. Judge Jones said he wanted to have some kind of preliminary report to Judge Lippman by Dec. 1.

The commission also plans to call on as many as 30 or 40 others to lend expertise in specific areas, such as forensics, as the task force goes forward.

Stephen Saloom, policy director for the Innocence Project, said his group thinks the task force is a "great idea" that will identify the "training, education and police changes necessary at the legislative, executive and judicial levels" to minimize wrongful convictions.

While similar to a panel created in North Carolina in the early 2000s, Mr. Saloom said the New York task force is unique among state efforts because of its ongoing nature and because it brings together officials from all three branches of government to hasten needed changes in statute or court rules.

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