

Prosecutors rule criminal justice system

By **BOB HERBERT**

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NEW YORK — Over the past 15 to 20 years there has been a tremendous shift in power in the criminal justice system from judges to prosecutors.

Prison sentences for violent crimes and drug offenses have been substantially (sometimes drastically) lengthened, and many have been made mandatory. Judges have little or no discretion in handing down these sentences. More than ever before, prosecutors are able to use the threat of these long prison terms as a club to bludgeon criminals, liars, drug addicts and other lowlifes into providing testimony against alleged criminals. The lowlifes cooperate in return for leniency in their own cases. Sometimes they cooperate truthfully and help send criminals to prison. And sometimes they lie, telling prosecutors anything they want to hear. In many of those cases — some of which I've covered — the innocent are wrongfully convicted and imprisoned with the guilty.

Prosecutors do much of their work in secret and there are few restraints on their awesome power. By law, they are supposed to provide defendants with any exculpatory evidence they uncover in the course of their investigations. But that obligation is frequently ignored. And prosecutors are almost never disciplined for hiding such evidence, not even when the conviction of an innocent person is the result.

This is a system that needs to be changed.

I've written several columns about the unconscionable prosecution of an honest New York City detective named Zaher Zahrey. Zahrey was not convicted. In fact, he was exonerated by a jury at a federal trial, and again by the presiding commissioner at a Police Department trial. But both the Brooklyn district

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attorney and federal prosecutors tried desperately to convict him and send him away for many years despite the fact that the evidence in the case clearly showed that he was innocent.

It would be a mistake to think this near-misconduct of justice was a fluke, a rare breakdown in a system dedicated to truth and justice. The prosecution of Zahrey originated in the office of Brooklyn District Attorney Charles Hynes. Two years ago I wrote a series of columns about a man named Jeffrey Blake who was serving a term of 36 years to life in prison for the murder of two men in Brooklyn in 1990. He was convicted on the word of an alleged eyewitness, a compulsive liar who has been used repeatedly as an informant by Hynes' office.

Jeffrey Blake was innocent. It turned out that Dana Garner, the "eyewitness," had not even been in New York when the murders occurred.

After the columns ran, Hynes joined in a motion by Blake's lawyer, a diligent and remarkably persistent attorney named Michelle Fox, to have the conviction overturned. Blake was freed. The real killers have never been

caught.

Most people interested in the truth would be repelled by the likes of Dana Garner. But Hynes' office had him testify as an eyewitness to a murder that occurred just a week after the killings that landed Jeffrey Blake in prison. Again Garner lied, his own mother refuting much of his account in that case.

Last February I interviewed a man named Timothy Crosby, who also was sent to prison following a prosecution based on a Dana Garner fantasy. His conviction, like Jeffrey Blake's, eventually was overturned, but only after he had spent nearly 12 years in prison. Twelve years.

This is madness. Hynes should come clean on all the cases in which Garner's testimony sent — or helped send — people to prison. But that would be a search for the real truth, and too often that's the last thing prosecutors are interested in.

"All the pressure is to win, to get the so-called bad guy," said Joel Rudin, Zahrey's lawyer. "But what if the so-called bad guy turns out to be innocent? Prosecutors are very seldom disciplined or held accountable in any way. So there is very little real incentive to disclose exculpatory evidence, aside from any individual or personal sense of ethics they may have. Many have that sense of ethics. But, unfortunately, many do not."

From all over the country we are hearing about cases of prosecutorial abuse and outright misconduct that have resulted in innocent people being condemned to long jail sentences, or worse. It is time to take a closer look at the officials responsible for such outrages and begin the task of holding them accountable.