MODERATOR’S INTRODUCTION

Jonathan Lippman*

Thank you, Professor Bonventre, for that lovely introduction. It has been a delight to work with you on this symposium. I want to recognize and applaud all the great work you have done over the years to shine a scholarly spotlight on the Court of Appeals. As a recent *New York Times* cover article made so clear, the Court occupies a very influential place in our state, deciding legal questions that shape the law and affect the lives of millions of New Yorkers.

Dean Guernsey, I want to thank you and the members of the law review for having us all here today at this fabulous law school and for hosting the fourth annual Chief Judge Lawrence H. Cooke State Constitutional Symposium, which is named after one of the great chief judges in Court of Appeals history.

* Jonathan Lippman is the Chief Judge of the State of New York and Chief Judge of the New York Court of Appeals. He was appointed Chief Judge in January 2009. In May 2007, he was appointed to serve as the Presiding Justice of the Appellate Division of the Supreme Court, First Department. In that capacity, he served on the Administrative Board of the Courts, the policy and rule-making body of the New York State Court System. From January 1996 to May 2007, he served as the Chief Administrative Judge of all New York State Courts and is the longest tenured person to have served in that capacity. He also has served as an elected Justice of the Supreme Court for the Ninth Judicial District (2005-2007), and as an appointed member of the New York Court of Claims (1995-2005). Chief Judge Lippman’s career in the court system spans four decades.

Chief Judge Lippman received his B.A. in 1965 from New York University, from which he graduated Phi Beta Kappa and cum laude. He received his J.D. from New York University School of Law in 1968.
Chief Judge Cooke believed very strongly that the justice system should work to ensure fairness and justice for all persons regardless of their background or status. As a jurist he was an early and vigorous proponent of the state constitution as providing greater protection to the rights and liberties of New Yorkers, particularly in areas such as the right to counsel. And as a leader and overseer of the court system, he was a strong chief judge who introduced modern management principles to a tradition-bound judicial system that was facing dramatic increases and changes in its dockets. He was a champion for equal justice and treatment for women and for opening the courtroom to the press. These and many other accomplishments only begin to sum up the legacy of a chief judge who was truly ahead of his day.

I was so pleased to receive Professor Bonventre’s invitation to participate in this symposium because it not only honors someone for whom I have such great admiration but also focuses on an issue of special interest to me.

At last year’s Court of Appeals Law Day celebration I announced the formation of the Justice Task Force, co-chaired by my Court of Appeals colleague, Theodore Jones, Jr., and Westchester County District Attorney, Janet DiFiore. The Justice Task Force is a permanent, independent group of prosecutors, defense attorneys, judges, legislators, police officials, scientists, and others who are working to review documented exonerations in order to isolate the systemic factors that lead to wrongful convictions and recommend specific reforms to strengthen the accuracy and reliability of our state’s criminal justice system.

There are many public and private entities focused on this problem around the country, most notably the Innocence Project at Cardozo Law School, which has done extraordinary work to help overturn wrongful convictions and sensitize the public. There are also executive branch task forces and bar association committees working on this issue, including the New York State Bar Association, which issued a terrific, comprehensive report last year.

But in no other state has the judiciary itself, as an institution, established a permanent, multi-disciplinary entity to address the systemic causes of wrongful convictions on an ongoing basis, studying what went wrong in each documented exoneration by looking at court records, evaluating investigatory practices, consulting with experts, reviewing scientific research, holding hearings, issuing reports, making specific reform recommendations, and then closely tracking the progress of any changes to ensure that
they are working as intended.

What were our reasons for putting the judiciary out front and assuming a leadership role in this area?

First, as long as human beings make up our justice system it will never be perfect. Since DNA was first used over twenty years ago to exonerate an innocent person, there have been 251 documented DNA exonerations in the United States, twenty-five of them in New York alone—only Texas and Illinois have more—not to mention scores of other exonerations based on traditional non-DNA evidence.

Every one of these cases is a terrible tragedy, but also a valuable opportunity to learn what went wrong. What mislead police and prosecutors? What caused juries and courts to find an innocent person guilty beyond a reasonable doubt? If we care about justice we are absolutely duty-bound to search out the answers to these questions.

The other reason the Justice Task Force was created is because the courts are the focal point of our justice system. When an innocent person is convicted, the public naturally looks to the courts—whether we like it or not, whether it is fair or not. We in the judiciary bear the ultimate responsibility, both in public perception and reality, because it is within the framework of the judicial process, including our rulings and decisions, that questions of guilt and innocence are determined. It happens on our watch.

Every wrongful conviction is an ugly stain on the reputation of our courts, and we take it personally in a very proprietary way. Each one chips away at public trust in our legitimacy. Each one threatens public safety because the true offender remains free to commit additional crimes.

It is in everyone’s interest for the courts to take an active role in making sure that our entire justice system is as accurate in its judgments as humanly possible.

But we do not look at the issue of wrongful convictions merely from a parochial perspective. Every part of the justice system—police, prosecutors, defense counsel, judges, and the people we deal with on an everyday basis, forensic scientists who provide evidence, legislators who make the laws, social scientists who evaluate behavior, and academics who study the law—all have a major stake in preventing wrongful convictions.

And we all benefit when we work together in a way that does not point fingers, but rather seeks solutions that are in every sense systemic in nature. That’s what the judiciary and all of our partners want to achieve through the Justice Task Force.
No one part of the justice system can afford the luxury of a mistake, not when it means convicting a person for a crime he or she did not commit. It is wrong and cannot be tolerated in a society that prides itself on preserving human rights and liberties and protecting public safety.

The Justice Task Force, which encompasses all of the relevant disciplines I just mentioned, has begun its work in earnest and recently submitted a six-month progress report. A screening committee was formed to review new exonerations as they arise to determine whether they should be studied by the full Task Force.

In terms of its agenda, the Task Force is focusing on six key issues: forensic evidence, identification procedures, reliability of admissions by the accused, government practices, reliability of biased or interested witnesses, and defense practices. But these are just the starting point. The Task Force will go wherever the issue of wrongful convictions leads them.

A forensic subcommittee had been meeting on a bi-weekly basis to study forensic practices across the state, including accreditation of laboratories, certification of expert witnesses, and evidence collection and preservation. The subcommittee has been touring forensic and research laboratories and medical examiners’ offices and meeting with forensic scientists, including the American Society of Criminal Laboratory Directors. All of this work will inform the Task Force’s reform recommendations on forensics. An identification subcommittee has also been meeting since December, and other subcommittees have begun their work.

New York should be at the very forefront of national efforts to prevent wrongful convictions. I have every confidence that the Justice Task Force will help us get there soon. Its members certainly rank among the most influential in the state’s criminal justice system. One of these is our distinguished panelist Cyrus Vance, Jr., the District Attorney of New York County, and another is New York City Police Commissioner Ray Kelly, who—and I don’t think this is mere coincidence—announced only days ago that the NYPD will for the first time ever videotape interrogations on a pilot basis in two precincts in Brooklyn and the Bronx.

Of course, the Justice Task Force is building on a strong foundation. Many others have done pioneering work to prepare the way and we are fortunate to have some of them with us here today.

It will take a constant commitment on the part of all of us in this room, the entire legal community, to bring us to the ideal of eliminating the scourge of wrongful convictions, of preventing even
Joining us tonight are five supremely accomplished and knowledgeable panelists who will help us explore the origins, and hopefully the solutions, to wrongful convictions. After briefly introducing all five of them to you, I'm going to ask each of them to discuss their own perspectives on this issue. I won't hesitate to ask them follow-up questions immediately after their presentations where appropriate. When they have finished their presentations, we will engage in a lively discussion among the panelists.

Now I'd like to introduce our distinguished panelists in the order in which they will make their presentations.

The first presenter is Dr. James R. Acker, distinguished teaching professor at the School of Criminal Justice, University at Albany. Dr. Acker is an expert on the death penalty, the history of capital punishment in the United States and New York, and judicial uses of social science research. He has written a series of articles examining capital punishment legislation, co-authored a book, America’s Experiment with Capital Punishment, and devoted much scholarly attention to the issues of innocence and executive branch clemency. He is also co-director of the Capital Punishment Research Initiative and helped establish the National Death Penalty Archives, a national repository of archival material that is devoted solely to the death penalty. Dr. Acker graduated with honors from Duke Law School.

The second presenter is Cyrus Vance, Jr., who was elected in 2009 as the District Attorney of New York County, replacing the legendary Robert Morgenthau. He returns to head the office where he once served as an A.D.A. upon graduating from Georgetown Law School in 1982, and where he prosecuted murder, organized crime, political corruption, and white collar crime cases. Mr. Vance left New York to found one of the top litigation firms in the northwest before returning to New York City to join the law firm of Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer. It is no coincidence that D.A. Vance, who has long been prominent in criminal justice reform efforts, is a member of the Justice Task Force. He recently announced that his office will implement a number of internal procedures to minimize the risk of convicting innocent defendants, and we look forward to hearing from him in that regard.

The third presenter is Amy Bach, an award winning writer and journalist. She is the author of Ordinary Injustice: How America Holds Court, widely praised as one of the best books published on
the law in 2009. Ms. Bach wrote *Ordinary Injustice*, her first book, after visiting different courts around the country and examining the criminal justice system up close in places ranging from rural Mississippi, to urban Chicago, to Troy, New York. A member of the New York State Bar, Ms. Bach has written on the law for *The Nation, The American Lawyer*, and *New York Magazine*. She has taught legal studies at the University of Rochester and is a graduate of Stanford Law School.

Dr. Saul Kassin, our next panelist, is a distinguished professor of psychology at John Jay College of Criminal Justice in Manhattan, as well a professor of psychology at Williams College. Dr. Kassin has authored numerous scholarly works on psychology, including *Confessions in the Courtroom* and *The American Jury on Trial: Psychological Perspectives*. He is responsible for pioneering the scientific study of false confessions, including why innocent people are targeted for interrogation, why they confess, and the impact of such evidence on juries. In 2007, he received a Presidential Citation Award for his work on false confessions from the American Psychological Association. He's a frequent national lecturer and analyst on network news shows. Dr. Kassin previously served as a U.S. Supreme Court judicial fellow. He received a Ph.D. from the University of Connecticut.

Our last presenter is Stephen Saloom, Policy Director for the Innocence Project at Cardozo Law School. The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and to improving the accuracy of the criminal justice system. I can personally attest to how knowledgeable he is in this area based on the assistance he has provided to the Justice Task Force. Mr. Saloom previously directed state policy projects for the National Association of Criminal Defense Lawyers, served as Executive Director of the Criminal Justice Policy Coalition, worked as an attorney for the ACLU of Massachusetts, and taught as an adjunct professor in the graduate program of criminal justice at Suffolk University. He graduated from the University of Connecticut School of Law.

So without further ado let’s hear from our first presenter, Dr. Acker.