



New York State Justice Task Force

Recommendations Regarding Discovery of Case File Materials

Introduction

The New York State Justice Task Force was convened on May 1, 2009 by Chief Judge Jonathan Lippman of the New York Court of Appeals. Its mission is to eradicate the systemic and individual harms caused by wrongful convictions and to promote public safety by examining the causes of wrongful convictions and recommending reforms to safeguard against any such convictions in the future. Because it is a permanent task force, it is charged not only with the task of implementing reforms but monitoring their effectiveness as well. The Justice Task Force is chaired by Janet DiFiore, Westchester County District Attorney, and before his untimely death in November 2012, the Honorable Theodore T. Jones, Associate Judge, New York Court of Appeals, co-chaired the Task Force with DA DiFiore. Task Force members include prosecutors, defense attorneys, judges, police chiefs, legal scholars, legislative representatives, executive branch officials, forensic experts and victims' advocates. The differing institutional perspectives of Task Force members allow for thorough consideration of the complex challenges presented by the occurrence of wrongful convictions and the evaluation of recommendations to prevent them in the future, while also remaining mindful of the need to maintain public safety.

Recognizing the importance of biological evidence in exonerating the wrongfully convicted and bringing the guilty to justice, the Task Force charged the Forensics Subcommittee with examining potential issues related to the disclosure of documentation underlying forensic laboratory reports, which provide the results associated with the testing of biological evidence. In particular, the Forensics Subcommittee considered whether any changes need to be made to New York's Criminal Procedure Law governing a defendant's right to discovery upon demand of documentation underlying forensic laboratory reports, also referred to as "forensic case file materials." The Subcommittee also examined the practices with regard to the disclosure of forensic case file materials.

The Subcommittee observed that although the Court of Appeals recognized nearly two decades ago that CPL "section 240.20 is generally construed as a mandatory directive, compelling the People to provide the items when sought by the defendant," People v. DaGata, 86 N.Y.2d 40, 44 (1995), in practice that directive is not always followed. In DaGata, the Court found that the notes created by the FBI in their analysis of the defendant's DNA should have been provided to the defendant. Id. at 45. The Court also noted that even if the FBI's notes could not be considered "exculpatory" under Brady v. Maryland, they might still have been useful to the defendant in challenging "(1) the FBI's methodology in general, (2) the type of DNA testing used, (3) storage methods or (4) whether other tests or analyses could have resulted in a more proficient reading of the materials analyzed." Id. It is in light of the holding and rationale

in DaGata, as well as CPL 240.20's "mandatory directive," that the Subcommittee reached consensus on the long-overdue recommendations set forth herein.

After careful examination by the Subcommittee, the full Task Force considered the various possible reforms presented by the Subcommittee and overwhelmingly, and in most cases unanimously, approved the recommendations of the Subcommittee. The Task Force fully examined each of the recommendations below and considered the benefits and practical implications each of the proposals would have on the criminal justice system. The Subcommittee members' diverse backgrounds and relevant experiences provided valuable perspectives on these issues.

Recommendations

I. Reminder to Practitioners Regarding Existing Obligations

Task Force members unanimously agreed that CPL 240.20 entitles a defendant, upon demand, to discovery of the forensic case file materials that accompany a forensic test or experiment that was performed at the request of the prosecution or other members of law enforcement or that will be presented by a prosecution witness at trial or otherwise introduced at trial by a prosecution witness. Task Force members recognized that some practitioners are not fully aware of their obligations and entitlements under CPL 240.20, and as a result, full disclosure of case file materials is not always made in a timely manner. Furthermore, Task Force members acknowledged that varying policies and practices which have developed across the State may also lead to inconsistent disclosure. Therefore, the Task Force emphasizes here the importance of full and timely disclosure pursuant to CPL 240.20 and 240.80. In particular, CPL 240.20(1)(c) mandates that prosecutors disclose and make available for inspection, photographing, copying or testing, upon a defendant's request:

[a]ny written report or document . . . concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial.

CPL 240.80 provides that a demand to produce "be made within thirty days after arraignment and before the commencement of trial." Furthermore, "[a] refusal to comply with a demand to produce shall be made within fifteen days of the service of the demand" or, with a showing of good cause, thereafter. CPL 240.80(2). Absent such refusal, "compliance with such demand shall be made within fifteen days of the service of the demand or as soon thereafter as practicable." CPL 240.80(3).

The Task Force recommends that this report be disseminated broadly to the legal community in order to remind practitioners about the importance of full and timely disclosure pursuant to CPL 240.20 and 240.80, which should be construed to include complete forensic case files. The report should be shared with the New York State Bar Association, the New York State Defenders Association, the New York County Lawyers' Association, the Office of Court Administration, the District Attorney's Association, the New York State Association of Criminal Defense Lawyers, Attorneys for Children, the Women's Bar Association of the State of New York, and the New York Council of Defense Lawyers, among other organizations, with the goal of broad dissemination to the membership of each organization.

II. Notice Regarding the Existence of Case File Materials

The Task Force also recognized that while it is crucial for practitioners in New York State to know the law governing the discovery of case file materials, it would be helpful if both laboratories and District Attorney's offices throughout the State provide additional notice to practitioners regarding the existence of such documentation. Some Task Force members

observed that while prosecutors can include notice regarding the existence of case file materials in their disclosures, this should not be left to prosecutors alone. Laboratories should include such notice in the laboratory reports themselves as well. After discussion, the Task Force overwhelmingly agreed to make the following recommendations.

A. Laboratories

The Task Force recommends that all forensic laboratory reports contain a notification that additional documentation exists concerning the testing performed. For example, the Task Force recommends that a report regarding DNA testing should contain language to the following effect: “Note: This report has an associated forensic biology case file.”

In response to the Forensic Subcommittee’s discussion on this topic, the New York City Office of the Chief Medical Examiner, the New York State Police Department and some additional New York laboratories now include language to the effect of the above in their reports. The NYPD and other laboratories use language that states in substance: “This report does not constitute the entirety of the case file. Copies of notes, worksheets and other supporting materials are available upon request.” The specific language contained in a report might vary by laboratory and across forensic disciplines, but the recommendation is designed to ensure that a notification that additional documentation exists appears in laboratory reports across the State.

B. District Attorneys’ Offices

The Task Force also recommends that discovery disclosure provided by prosecutors regarding scientific tests and experiments contain notification that additional documentation exists concerning the testing or experiment performed and will be made available upon request pursuant to CPL 240.20.

III. Education Relating to Case File Materials

Lastly, the Task Force agreed that because different practices exist throughout the State with respect to the discoverability of case file materials, practitioners would benefit from additional education in this context.

Therefore, the Task Force recommends that prosecutors, defense attorneys, and judges participate in educational programs that include a discussion of the content and relevance of forensic case files. As part of this recommendation, the Task Force requested that the Forensics Subcommittee further examine what should be included in the training and that the Training Subcommittee be convened thereafter in order to implement the training, as appropriate.