

## Justice Delayed

BOB HERBERT

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In America

BOB HERBERT

# Justice Delayed

Think of the criminal justice system as an old dilapidated vehicle, a jalopy. Sometimes it will get you where you want to go. Frequently it will not.

Jeffrey Blake is in prison in upstate New York, serving a sentence of 36 years to life for a double homicide, because the jalopy broke down.

Mr. Blake, who is 29 and has already served eight years, was accused of ambushing and killing two men in a car in the East New York section of Brooklyn on the afternoon of June 18, 1990. It was a spectacular and brazen crime. The victims were killed by a gunman who riddled them with bullets from an Uzi as they tried to get away by backing down the street. The car crashed into a building and the gunman fled.

The only evidence against Mr. Blake was the testimony of a man named Dana Garner, who said he saw Mr. Blake running beside the moving car, firing the Uzi. Mr. Blake had an alibi. He was at work that day in Bedford-Stuyvesant, about 4½ miles from the murder scene. His boss and co-workers testified on his behalf. But the alibi was not airtight. Mr. Blake had taken his regular lunch break, from 1:15 to 2 P.M., and the murder happened at 1:45.

It is not likely that within 45 minutes a man could travel 4½ miles through busy neighborhoods in Brooklyn, ambush and execute two men, dispose of the murder weapon, and return to work as if nothing had happened. But it is not impossible.

Mr. Blake said he had eaten lunch at his sister's apartment, not far from his job. His sister concurred.

## Second look at a murder conviction.

But the jury chose to believe Dana Garner, the man who said he had seen the murder. Mr. Blake was convicted of two counts of second-degree murder and was sentenced to 18 years to life on each count, the sentences to be served consecutively.

This kind of case tends to get very little scrutiny. The police, the prosecutors and the press all see it as cheap, not worth getting excited about. The accused probably did it, the victims probably deserved it. Case closed. Who's on Leno tonight?

But this case demands a closer look. Mr. Blake is very likely innocent.

For starters, Dana Garner has an almost miraculous penchant for witnessing homicides. These are not murders in which he is involved. He just happens upon them. A week after the murders that landed Jeffrey Blake in prison, Mr. Garner stumbled upon a double shooting at another Brooklyn intersection. This one took place at 3 or 4 o'clock in the morning and one man died. Mr. Garner said he saw it and testified in that case, too.

There were more. Detective Richard Brew said at Jeffrey Blake's trial that Mr. Garner had been a witness in two or three other cases.

"Also homicides?" asked a lawyer.

"Yes," said the detective.

There were problems with Dana Garner's testimony in the Blake case. He said Mr. Blake had fired into the passenger side of the car. But the medical examiner who performed the autopsies on the victims said the wounds indicated the gunman had fired from the driver's side.

More significantly, when it came time for Mr. Garner to testify, he balked. He told prosecutors from the office of Brooklyn District Attorney Charles Hynes that he couldn't remember whether Mr. Blake had been involved in the shooting. That led to a flurry of conversations, after which Mr. Garner agreed to go ahead and testify. He took the witness stand and said Mr. Blake was the killer.

A year and a half after the conviction, while the case was on appeal, Mr. Garner admitted on videotape that he had lied. But according to Michelle Fox, a legal aid lawyer who handled Mr. Blake's appeal, when it came time to testify at a post-conviction hearing, Mr. Garner refused. He invoked his Fifth Amendment right against self-incrimination. Mr. Blake's appeal was turned down.

Now, with the appeals process exhausted and Mr. Blake having spent more than a quarter of his life in prison, Mr. Garner is admitting once more that he lied. At Ms. Fox's request, he submitted to a polygraph test and passed. Mr. Blake also took a polygraph test, and he passed.

On Tuesday a spokesman for Mr. Hynes said investigators were willing to take another look. They've asked to see the polygraph results. □

## In America

BOB HERBERT

# A Case Of Lies

The days and nights pass with excruciating slowness for Jeffrey Blake. At age 29, he has spent more than a quarter of his life in state prison. Now the man whose testimony put him in prison says he was lying all along.

Dana Garner has passed a lie detector test with his latest story. The test results are no guarantee, but you need them with a fellow like Garner. He's the kind of guy who will tell you in the middle of a blizzard that the sun is shining and the temperature is approaching 90.

Back in 1990 he told police and prosecutors that he saw Mr. Blake murder two men in a car in the East New York section of Brooklyn. He said he saw it with his own eyes, saw Mr. Blake running beside the moving car, firing into it with an Uzi.

The testimony was the only evidence against Mr. Blake and even the lead prosecutor, Assistant District Attorney Anthony Catalano, said at a hearing that it "was not a particularly strong case." But a jury convicted Mr. Blake and he was sentenced to 36 years to life in prison.

It turns out that Mr. Catalano's comment was a gross understatement. The case against Jeffrey Blake was virtually nonexistent. Dana Garner is a flake who has claimed to have stumbled across several homicides and has changed his story a number of times in the Blake case. It now appears unlikely that he was even in New York on the day the two men were killed.

Mr. Garner testified in 1991 that his girlfriend, Margaret Allen, had also witnessed the murders. In a sworn affidavit this month, Ms. Allen, a resident of North Carolina, said: "During the time I was in Brooklyn, at no time did I ever witness two men being shot in a car, nor any other murder. I would remember a murder if I had seen one."

She said that she and Mr. Garner had walked and hitchhiked from North Carolina to Brooklyn in June of 1990, arriving in East New York late in the month. While in Brooklyn, she stayed with Mr. Garner at his grandmother's house, she said.

The murders occurred on June 18. Not only did she not see them, said Ms. Allen, but Dana Garner never mentioned to her that he had seen them.

Ms. Allen did not testify at Mr. Blake's trial. A spokesman for Brooklyn District Attorney Charles

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## A murder conviction that should never have happened.

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Hynes said he believed investigators were unable to locate her.

Investigators knew all along that Dana Garner's story was as shaky as knickknacks in an earthquake. He tried to recant during the trial but somehow was persuaded to go ahead with his original account. In April 1993, while Mr. Blake was appealing his conviction, Mr. Garner signed a sworn affidavit saying he had never witnessed the killings, that he arrived in Brooklyn from North Carolina after they had occurred and that he heard about them from people in the neighborhood.

But when it came time to tell that story in court, he refused, saying: "I would like to plead the Fifth because it might discriminate [sic] myself."

Mr. Blake's appeal was turned down. And that happened quietly, routinely, which tells you something. There was no outcry from the criminal justice system, no collective gasp at the fact that a man could be sent to prison for many long years on the uncorroborated word of an utterly worthless witness.

Mr. Garner said that Mr. Blake had escaped in a brightly colored van driven by a man named Tonto. But no van was found and no Tonto was produced. The Uzi was never found. No corroborating evidence of any kind was ever found.

And yet Jeffrey Blake, his appeals exhausted, is serving 36 years to life in Green Haven, a maximum security prison in upstate Dutchess County.

Last week I spoke with Barry Schreiber, a Deputy District Attorney in Mr. Hynes's office. Referring to Mr. Blake and the Legal Aid lawyers representing him, Mr. Schreiber said: "We haven't said to them, 'You've run out of legal options and we're not interested in talking to you.'"

He said the D.A.'s office is interested "if there is reason now to believe that [Garner's] testimony was not truthful, that his recantation is a legitimate one."

A meeting with Mr. Blake's lawyers has been scheduled, he said, adding, "If, in fact, an injustice was done because he's in fact innocent, we're as interested in getting to the bottom of it as they are."

**In America**

BOB HERBERT

# Justice, at Long Last

This summer I wrote two 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 the East New York section of Brooklyn in 1990.

It was a spectacular and brazen crime, an execution in broad daylight. The victims were in a car. They were killed by a gunman who ran beside the car and riddled them with bullets from an Uzi as they tried to get away by backing down the street. The car crashed into a building and the gunman fled.

A man who claimed to be an eyewitness told authorities that Mr. Blake was the gunman. On the basis of his testimony, and his testimony alone, Mr. Blake was convicted.

It turned out that it was almost physically impossible for Mr. Blake to have committed the murders. He was at work that day in Bedford-Stuyvesant, about 4½ miles away. And while the murders took place about 1:45 P.M., during his 45-minute lunch break, it is highly unlikely that he could have traveled the requisite distance through busy Brooklyn neigh-

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## The Brooklyn D.A. reverses his stand on a murder case.

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borhoods, ambushed and executed the two men, disposed of the murder weapon and returned to work as if nothing had happened by 2 P.M., which is when his boss and co-workers said he came back from lunch.

It also turned out that the "eyewitness," a flake and chronic liar named Dana Garner, had witnessed nothing. His girlfriend, Margaret Allen, who was supposed to have witnessed the murders with him, said in a sworn affidavit in July that she hadn't seen those murders "nor any other murder." She added, "I would remember a murder if I had seen one."

Mr. Blake recanted several months ago and when he was hooked up to a polygraph machine, he passed.

I wrote in August that the case against Jeffrey Blake "was virtually nonexistent" and that it was unlikely that Dana Garner was even in New York when the murders were committed.

Yesterday the District Attorney for Brooklyn, Charles Hynes, said he agreed. He directed his office to join in a motion, filed by Mr. Blake's attorney, Michelle Fox of the Legal Aid Society, to set aside the guilty verdict. He said Mr. Blake should be released from prison. That could

happen as early as today.

Mr. Blake's appeals had been exhausted, and Mr. Hynes was under no obligation to reopen the case. But Ms. Fox continued her diligent efforts to prove her client innocent. After the columns ran, the D.A.'s office conducted a new investigation.

"We are convinced," said Deputy District Attorney Dennis Hawkins, "that the evidence that Legal Aid has found and that we've discovered in our own independent investigation — if it had been revealed at the time of the trial, Jeffrey Blake probably would not have been convicted."

What usually happens in such cases, he said, is that the judge — in this instance Acting Supreme Court Justice Robert Kreindler — would vacate the guilty verdict and order a new trial.

But the D.A.'s office will not pursue another trial. Mr. Hawkins said, "Since we do not think that would be the fair thing to do, we would at that point dismiss the indictment against Mr. Blake."

Mr. Blake learned of the new developments on Tuesday night, when he called his attorney from the maximum-security Green Haven prison in upstate Dutchess County. Ms. Fox said: "It was so wonderful to be able to tell him, 'Jeffrey, you're coming home.' He was so happy. He said, 'Yes-s-s.'"

Ms. Fox's feelings are mixed. She had spent several years working on appeals, convinced that her client was not only innocent but a decent person.

"It's gratifying that things finally worked out," she said. "I'm grateful to the D.A.'s office for finally looking at the case again and reinvestigating. But it saddens me that my guy had to give up eight years of his life before this happened."

Mr. Hynes said he was "relieved that this thing has been uncovered and this guy is going to walk out of jail after serving eight unnecessary years."

He reflected for a moment on the time when he had been a defense lawyer, and said: "The thing that scares the hell out of the better lawyers — and I like to think I was one of them — is representing someone who is innocent. In this case, not only was there an alibi that was rejected by the jury, but Garner's cousin, who was described to me as a spit-and-polish young marine who was very believable, testified that Garner was not even in town, and the jury rejected that. I'm relieved that we were able to find other witnesses to confirm what the cousin said."

Meanwhile, there remains the problem of who committed the murders. Mr. Hawkins, the Deputy District Attorney, said he and others were now faced with the task of finding the real killers. □

# Man Is Cleared In Murder Case After 8 Years

## An Eyewitness Recants, So Prisoner Will Go Free

By JIM YARDLEY

Jeffrey Blake went to prison for murder in 1991 on the weight of one man's word. Today, after spending more than a quarter of his life behind bars, Mr. Blake will go free, because, officials now concede, that man's word was a lie.

"Oh, man," exclaimed Michelle Fox, the Legal Aid Society lawyer who handled the six-year appeal, "this is a case of a lifetime. This is a case that has been haunting me for six years."

Late Tuesday night, Ms. Fox delivered the stunning news to her client: the Brooklyn District Attorney, Charles J. Hynes, had agreed to ask that the guilty verdict be set aside and that the indictment against Mr. Blake be dismissed. Today, Mr. Blake, 29, will leave his Dutchess County prison cell and appear before Acting Justice Robert S. Kreindler of State Supreme Court, who is expected to grant the requests and make him a free man.

"I said, 'Jeffrey, you're coming home,'" Ms. Fox said, recounting her Tuesday night telephone conversation with Mr. Blake. "He was silent for a minute, and then he said, 'Yes,' really softly. He was so happy. We've

been fantasizing for this moment for five and a half years."

Patrick Clark, a spokesman for Mr. Hynes, credited Ms. Fox and Bob Herbert, a columnist for The New York Times, for setting in motion the events that led to Mr. Blake's exoneration. During the summer, Mr. Herbert wrote two columns revealing critical weaknesses



Jeffrey Blake, 29, has been exonerated in two killings.

es in the case against Mr. Blake, most notably that the only witness, Dana Garner, had passed a polygraph test admitting that his original testimony was a lie. The columns and a later meeting with Ms. Fox prompted Mr. Hynes to order that the case be re-examined.

Mr. Hynes was the Brooklyn District Attorney during the 1990 trial, which was prosecuted by an assistant district attorney, Anthony Catalano. Yesterday, a Deputy District Attorney, Dennis Hawkins, who led an intensive three-month re-examination of the case, defended the handling of the trial.

"What do you say to a Jeffrey Blake?" Mr. Hawkins asked, repeating a reporter's question. "We live by an adversarial system. Our job is to present evidence we believe is credible. The defense's job is to poke holes in it. In a sense, the system worked, although it took some time."

Ms. Fox was less forgiving, particularly since her client had spent a little more seven years in prison and about a year in jail for a double murder. She said investigators should have taken a harder look at Mr. Garner's credibility, particularly because he also claimed to be a witness to a second double shooting two weeks later. "Nobody cared about the case," she said.

The 13th of 14 children, Mr. Blake will be greeted today by a joyous family. His sister, Denise Blake, spent yesterday shopping for

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# Cleared in a Murder Case, A Prisoner Will Be Freed

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boots, pants and a shirt to give to him at the courthouse.

"We're planning a big party for him," Ms. Blake said. "Everybody is happy. Every time I went to visit him, all he could say was that he would be glad when he gets out of there. He said he was in there for something he didn't do."

But Mr. Blake seemed to have little hope of an early release. By this summer, Ms. Fox said she had exhausted her appeals, when she happened to read a July 12 column by Mr. Herbert entitled, "Wrong Man at Rikers," about a different case in which Mr. Hynes's office put the wrong man in Rikers Island. In the column, Mr. Herbert quoted Mr. Hynes as saying, "I'm the last person in the world who wants the wrong person in jail." So Ms. Fox picked up the telephone.

"I got a call from her," Mr. Herbert said yesterday. "She said the appeals process had been exhausted. She wanted to know if I was interested in writing about the case. I said I was interested only if I could be fully convinced that the guy was innocent. Everybody in prison says they didn't do it."

Mr. Herbert said he reviewed trial transcripts and appeal records and interviewed prosecutors. The killings happened on June 18, 1990, when two men, Everton Denny and Kenneth Felix, were killed by dozens of bullets fired from an automatic weapon into their car in East New York, Brooklyn. The police canvassed the area, but found no one willing to testify, Mr. Hawkins said. A few days later, Dana Garner told the police he saw Mr. Blake firing into the passenger side of the car.

Mr. Garner's testimony became the heart of the prosecution's case. The Garner and Blake families lived a block apart in East New York and often socialized. But Mr. Garner's credibility was suspect. Ms. Fox said his cousin testified that Mr. Garner was not in the city at the time of the shootings.

During the trial, Ms. Fox said Mr. Garner initially hesitated, leaving the witness stand to speak with prosecutors in private. When he took the stand again, Mr. Garner accused Mr. Blake of the killings.

Mr. Blake had no record of violent criminal offenses, though in 1986 he had been sentenced to five years' probation after being convicted of

possessing a small quantity of cocaine. At the time of the shootings, he worked at a religious supply store in Bedford-Stuyvesant about five miles away. His co-workers testified that on the day of the killings, he had been on the job. But prosecutors established that Mr. Blake had taken his lunch break between 1:15 P.M. and 2 P.M. The murder occurred at 1:45 P.M. His sister testified that Mr. Blake ate lunch at her apartment, not far from his job. Forensic evidence also indicated that most of the bullets had been fired into the driver's side of the car, not the passenger's side, as Mr. Garner testified.

But Mr. Blake was convicted in May 1991 and sentenced to 36 years to life in prison. In 1993, Ms. Fox had reason to hope: Mr. Garner recanted his testimony on videotape and agreed to testify at Mr. Blake's appeal. Upon taking the stand, though, Mr. Garner refused to testify, invoking his Fifth Amendment right against self-incrimination.

A line in Mr. Garner's original testimony offered another opening. He had testified that his girlfriend, Margaret Allen, had also witnessed the 1990 killings. But Ms. Allen could not be found for the original trial. Five years later, Janice Mitchell, an investigator in Ms. Fox's office, tracked Ms. Allen to North Carolina. She swore in an affidavit that she had not witnessed the killings.

Finally, Mr. Garner passed a recent polygraph test in which he recanted his testimony. "I think he likes the attention," Ms. Fox said, trying to explain Mr. Garner's motivation in lying. "He enjoys thinking of himself as being at the center of attention of things and helping police solve crimes."

In fact, two weeks after the double slaying in East New York, Mr. Garner told the police that he had witnessed another double shooting in which one victim died and the other was wounded. A man named Ruben Ortega was convicted in the shootings. Investigators are reexamining the Ortega case, but Mr. Hawkins said that other witnesses also identified Mr. Ortega.

Mr. Garner will not be charged with perjury because the five-year statute of limitations on the charge has expired. With Mr. Blake now exonerated, Mr. Hawkins said a new investigation has begun in the search for the real killer.

"We are continuing to pursue that as well," he said, "though the leads are old and cold at this time."

# Man Cleared in 2 Murders Gets Freedom, and Apology

By JOSEPH P. FRIED

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Chester Higgins Jr./The New York Times

Jeffrey Blake embraced Michelle Fox, the Legal Aid Society lawyer who led the effort to win his freedom, in a Brooklyn court yesterday. With them was Janice Mitchell, a Legal Aid investigator who worked on his case.

## Man Cleared in 2 Murders Gets Freedom, and Apology

### Judge Says He Was 'Fooled' by a Witness

By JOSEPH P. FRIED

After eight years behind bars for a double-murder conviction based entirely on what prosecutors now concede was fabricated testimony, a Brooklyn man was exonerated and freed yesterday by a judge who apologized to him for "the entire judicial system." The judge also expressed shock that he himself had been "fooled" by the witness.

The man, Jeffrey Blake, 29, who earlier in the day had been driven to State Supreme Court in Brooklyn from a maximum-security prison upstate, where he had been serving a sentence of 36 years to life, first lowered his head when Acting Justice Robert S. Kreindler dismissed the case against him.

Then, as the court session ended and Mr. Blake was "now a free man," as the judge put it, the liberated Mr. Blake hugged Michelle Fox, the Legal Aid Society lawyer who had led the effort to convince prosecutors that his conviction had been fully based on perjury and should be thrown out.

"You did it, thank you," Mr. Blake said softly as he embraced Ms. Fox. Shortly afterward, as each new breath of free air seemed to fill him with another dose of spirit, Mr. Blake rushed from the courthouse through a pack of reporters and television cameras, saying: "I feel great! I'm going to live my life, man!"

Mr. Blake's life had been interrupted by what Justice Kreindler referred to yesterday as a nightmare: his arrest in the June 1990 killings of two men, Everton Denny and Kenneth Felix. Dozens of bullets fired from an automatic weapon ripped into their car in East New York, Brooklyn. Mr. Blake was charged after an acquaintance, Dana Garner, told the police he had seen Mr. Blake shooting into the car.

Mr. Garner was the sole witness implicating Mr. Blake, and in a 1991 trial at which Justice Kreindler presided, the jury chose to believe Mr. Garner rather than witnesses, including Mr. Blake's sister and his employer, who testified that Mr. Blake had been miles from the scene of the slayings.

But Mr. Garner — whom Ms. Fox described in court yesterday as a

chronic fabricator whose motives could only be guessed at — passed a polygraph test recently in which he recanted his testimony.

Bob Herbert, a columnist for The New York Times, wrote two columns last summer describing problems with the case, and Ms. Fox met with aides of District Attorney Charles J. Hynes of Brooklyn, whose office had prosecuted the case. Mr. Hynes ordered a review of the case and later joined Ms. Fox's motion to Justice Kreindler to dismiss the conviction and the charges that led to it.

A spokesman for Mr. Hynes, Patrick Clark, credited Ms. Fox and Mr. Herbert for setting in motion the events that led to yesterday's court session. An assistant district attorney,

### An exonerated inmate says, 'I feel great!'

ney, Jon Besunder, told Justice Kreindler yesterday that his office was now "convinced that Mr. Garner was not a witness to the crime" and that there was no other evidence implicating Mr. Blake.

Because of the five-year statute of limitations, Mr. Garner cannot be prosecuted for what the authorities now say was his perjury at the 1991 trial. Prosecutors and Janice Mitchell, an investigator for the Legal Aid Society who worked on the case, said they did not know Mr. Garner's whereabouts, and a telephone listing in Brooklyn for that name carries an unpublished number.

At a news conference at the Legal Aid Society's offices in Manhattan — where Mr. Blake asked for Kentucky Fried Chicken, "extra crispy," as his first meal in freedom — he said of Mr. Garner: "I really have no feeling against him. Now I appreciate what he did in coming forward and letting them know he was lying."

As to whether he was bitter over his conviction and years in prison, Mr. Blake said: "Not really. Right now I'm just happy it's over."

## Justice Confounded

BOB HERBERT

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### In America

BOB HERBERT

# Justice Confounded

Here we go again.

Dana Garner is the compulsive liar whose fantasies and false testimony sent an innocent man to prison for murder in 1991. The man, Jeffrey Blake, was freed two months ago. By then it had become clear to authorities that Mr. Garner, who claimed to have seen Mr. Blake kill two men in a car in Brooklyn, was not even in New York when the murders occurred.

Now it appears that Mr. Garner was lying in another case in which he claimed to have witnessed a killing. It seems, once more, that he was not at the scene at all. The defendant in that case, Rubin Ortega, was convicted of second-degree murder in February 1991, just a few weeks before Mr. Blake was convicted.

Mr. Garner was the primary witness, but not the only witness, against Mr. Ortega. It is not possible to tell at this point whether Mr. Ortega, who is serving a sentence of 25 years to life, was guilty or innocent. What is clear is that Mr. Garner and his catalogue of false stories and bogus eyewitness accounts — and the willingness of the police and prosecutors to use him as a witness in important cases — are having a dreadful effect on the criminal justice system.

In the Blake case, the real murderer or murderers went free. In the Ortega case, no one knows what's what. Mr. Garner reveled in his peculiar role as a police stooge and designated witness for the prosecution. How many other cases have his scurrilous imprint on them?

The murder that Mr. Ortega is alleged to have committed occurred shortly before 4 A.M. on June 25, 1990. Mr. Ortega was 16 years old. Prosecutors said that he and two accomplices had opened fire on three men — Lionel Diaz, Ricardo Betances and Angel Narvaez — near

## A liar's effect on two murder cases.

the intersection of Livonia Avenue and Hendrix Street in the East New York section of Brooklyn. According to prosecutors, Mr. Ortega shot Mr. Diaz in the chest at close range, killing him. Mr. Betances and Mr. Narvaez were wounded but survived.

This shooting occurred exactly one week after the June 18 murders that landed Jeffrey Blake in prison. In each case, Mr. Garner told investigators that he had just happened to witness the killings. The shootings on June 18 occurred between 1:30 and 2 in the afternoon. Mr. Garner said he had been out with his girlfriend, Margaret Allen, and that she had seen them too.

It turned out that neither of them was in New York that day. Ms. Allen would later say, "I would remember a murder if I had seen one."

Mr. Garner told authorities he was waiting near a subway station for his mother on June 25 when the shooting broke out. He said he had been hanging around for nearly an hour, from about 3 to 4 A.M., waiting for his mother to arrive so he could walk her home. He said he saw Rubin Ortega shoot and kill Lionel Diaz.

Now comes an extraordinary letter from the office of the Brooklyn District Attorney, Charles Hynes. The letter was sent to a lawyer for Mr. Ortega by Jon Besunder, an assistant to Mr. Hynes. It noted that a number of Mr. Garner's relatives had been interviewed as part of the investigation of the Jeffrey Blake

fiasco. The letter said:

"During the course of these interviews, information was received from Dana Garner's mother, which contradicted portions of his testimony at the trial of Rubin Ortega concerning the events of June 25, 1990. At that trial, Dana Garner testified, in substance, that his presence at the crime scene was the result of waiting for, and then meeting, his mother, in the vicinity of the shooting, and also to certain events and activity occurring in the presence of both he [sic] and his mother.

"In substance, Dana Garner's mother denies her presence in the area of the crimes on June 25, 1990, and she refutes several of Dana Garner's reasons for her presence at that time. In addition, several other members of his family claimed that Dana Garner's reputation for truthfulness was minimal."

In short, the prosecution has been forced to bail out on its chief witness in the Ortega murder case.

Complicating matters is the fact that the two survivors of the shooting disagree on whether Mr. Ortega was one of the gunmen. Mr. Betances said he was. Mr. Narvaez said he wasn't. But Mr. Betances did not finger Mr. Ortega until after Mr. Garner identified him as the shooter. And court papers indicate Mr. Betances may have been under the influence of crack when he was shot.

What we have is a mess. No one would mistake Rubin Ortega for a solid citizen. But if he didn't commit this murder, then another horrible injustice has been done. On the other hand, if he did kill Lionel Diaz and his conviction is thrown out because a chronic perjurer was used as a key witness, then we are faced with the danger of setting a killer free, perhaps to kill again. □

## In America BOB HERBERT

# Destroyer of Lives

Dana Garner is a man who lies as easily as most people breathe. But he is more than a compulsive destroyer of the truth. Dispensing his lies like poison, he has become a menace to the criminal justice system in Brooklyn, and a destroyer of lives.

In 1998 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. Dana Garner said he had been an eyewitness to the murders and testified against Mr. Blake. It turned out that Mr. Garner had witnessed nothing and that it was physically impossible for Mr. Blake to have committed the crime.

Mr. Garner had not even been in New York when the murders occurred. Jeffrey Blake was innocent. He was freed from prison in 1998 after spending eight years — more than a quarter of his life — behind bars for a crime he didn't commit.

One week after the double murder that resulted in Jeffrey Blake's imprisonment came another murder that Dana Garner said he had witnessed. He testified in that case, too, saying he had just happened to see the killing as he waited near a subway station for his mother. Here's what the embarrassed office of Brooklyn District Attorney Charles Hynes wrote in December 1998 about that claim: "In substance, Dana Garner's mother denies her presence in the area of the crimes on June 25, 1990, and she refutes several of Dana Garner's reasons for her presence at that time."

In other words, Mr. Garner lied. A man named Ruben Ortega is in prison for that murder. Whether he is guilty or not, I can't tell you. But I know about another case, and it's as bad as the Jeffrey Blake saga.

On Tuesday I interviewed a man named Timothy Crosby in the Lower Manhattan office of his Legal Aid lawyer, Sara Bennett. He wore a beige suit, a black shirt and, under the circumstances, a remarkably even disposition.

"My first stop was the Downstate Correctional Facility," he said. "From there they sent me to the Elmira Correctional Facility. I stayed there for a few years. From Elmira I went to Green Haven, and then to Fishkill, and then Otisville. Otisville was my last stop. I did practically 12 years. Just about 12 years."

In 1988 Dana Garner told the police that Mr. Crosby was one of a group of men who had kidnapped and

assaulted him.

"There actually was a kidnapping," said Ms. Bennett. "Garner escaped and ran to a police station."

Four people were arrested, including Mr. Crosby, who was picked up on a street in Brooklyn when Mr. Garner pointed him out to police.

Now we learn, after so many years, that Mr. Garner, as usual, lied.

Last month, in an extraordinary ruling, State Supreme Court Justice Lewis L. Douglass overturned Mr. Crosby's conviction and ordered him released from prison. The ruling came after a hearing in which Mr. Garner acknowledged that he was a liar, and his own relatives testified, in effect, that he wouldn't recognize the truth if he were drowning in it. Even his grandmother swore in an affidavit that "you never know when Dana's telling the truth."

Justice Douglass wrote: "Dana Garner, the final witness at the hearing, admitted that he had completely

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## A serial liar and his victims.

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fabricated testimony for two murder trials, identifying men as murderers even though he had not witnessed the crimes. He admitted that he had fabricated testimony in this case as well."

He noted in his ruling that in 1998 Justice Robert Kreindler had reversed Jeffrey Blake's conviction after learning of Mr. Garner's lies. Said Justice Douglass: "I similarly conclude that Dana Garner is a completely unreliable witness and where, as here, there is no other evidence connecting the defendant to the crime, I too grant the motion to vacate judgment."

The district attorney's office had planned to appeal Justice Douglass's ruling. But yesterday when I asked why, a spokesman for Mr. Hynes said the notice of appeal would be withdrawn. "We are not going to appeal," said the spokesman.

Mr. Crosby is free now and looking for a job. His father died while he was in prison, and he said he worried the whole time that his mother might die before he was released. "She's not sick or anything," he said. "But, you know, tomorrow's not promised to no one." □

## In America

BOB HERBERT

# The Truth About Justice

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. Mr. 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 attorney and federal pros-

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## How prosecutors abuse their growing powers.

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ecutors 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-miscarriage of justice was a fluke, a rare breakdown in a system dedicated to truth and justice. The prosecution of Detective 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 Mr. Hynes's 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, Mr. Hynes joined in a motion by Mr. Blake's lawyer, a diligent and remarkably persistent attorney named Michelle Fox, to have the conviction overturned. Mr. 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 Mr. Hynes's 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. Mr. 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, Detective 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. □

## In America

BOB HERBERT

# 'Sorry' Isn't Enough

They got the wrong guys Again  
Two Brooklyn men, Anthony Faison and Charles Shepherd, were released from custody on Monday after they spent 14 years in prison for the 1987 murder of a livery cab driver named Jean Ulysses

As in so many other cases here and across the country, the authorities — either through sloppiness, ineptitude or worse — managed to nail the wrong men, thus ruining their lives and allowing the real killer to roam free

Mr Faison, now 35, and Mr Shepherd, 38, had nothing to do with the murder of Mr Ulysses They were fingered by an alleged crack addict who lied to collect a \$1,000 reward Her story conflicted with what the authorities knew about the case from the beginning, but that didn't matter Prosecutors tend to be far more interested in convictions than justice The obvious holes in the witness's story were overlooked Exculpatory evidence was ignored A judge and a jury accepted the prosecution's version of events, and Mr Faison and Mr Shepherd were sent off to state prison

What if this had been a capital case? What if they had been sentenced to death? What do you do when you realize you've made a mistake after the poison's been injected into the veins of the innocent?

Do you say you're sorry?  
On Monday the State Supreme Court justice who presided over the trial, Robert S Kreindler, said, "It's hard to believe that a person for a rather small reward would name two innocent people as murderers"

Earth to Justice Kreindler That is not hard to believe What is hard to believe is that any judge familiar with the behavior of crack addicts and other criminals in New York City could make such a naive assertion It's the very willingness of crack addicts and other lowlifes to lie for virtually any consideration that prompts so many prosecutors to recruit them as witnesses when all else has failed

The office of the Brooklyn district attorney, Charles Hynes, has repeatedly relied on the word of a compulsive liar named Dana Garner in serious criminal cases Three years ago I wrote a series of columns about a man, Jeffrey Blake, who was serving a term of 36 years to life for the murder of two men in Brooklyn Dana Garner had said he had been an eyewitness to the murders and testified against Mr Blake Not only

had Mr Garner not seen the murders, he had not even been in New York when the murders occurred Mr Blake was freed, but only after he had spent more than eight years in prison

(The Supreme Court justice who reversed Jeffrey Blake's conviction was none other than Robert S Kreindler, who seemed so shocked on Monday at the thought that a crack addict would lie for \$1,000)

Then we learned that Mr Garner had lied when he claimed to have witnessed a second murder, and had

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When lies destroy  
innocent lives.

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testified falsely against a man he had accused of kidnapping him That man, Timothy Crosby, had spent nearly 12 years in prison

Justice Lewis L Douglass, who ordered Mr Crosby's release after presiding over an extraordinary hearing that explored Mr Garner's devastating penchant for lying in criminal cases, said in his ruling: "Dana Garner, the final witness at the hearing, admitted that he had completely fabricated testimony for two murder trials, identifying men as murderers even though he had not witnessed the crimes He admitted that he had fabricated testimony in this case as well"

There is little or no effort being made to protect the innocent against these kinds of utterly unsubstantiated lies Worse, when evidence is brought forward that makes it clear that a case has been built on lies, the knee-jerk reaction among criminal justice officials is to cover it up

New York's criminal justice officials were more than willing to let Anthony Faison and Charles Shepherd rot in prison Their convictions were overturned because of Mr Faison's persistence in seeking help (he wrote thousands upon thousands of letters from prison) and the dogged efforts of a lawyer, Ronald L Kuby, and a private investigator, Michael Race, who answered his plea

They didn't just prove that the two men in prison were innocent They found the man believed to be the real killer, and he is now — finally — in custody

# Ex-Officer Off Tough Beat Seeks to Free the Innocent

By JIM DWYER

With the palm of his hand, Michael S. Race pushed open the door of the Brooklyn courthouse, and there, standing under a spring sun and drawing their first breaths of freedom in 14 years, were Anthony Faison and Charles Shepherd, innocent men, home from serving time for someone else's murder. Mr. Race smiled.

As a detective-sergeant during one of Brooklyn's bloodiest eras, Mr. Race had sent hundreds of handcuffed people into the criminal courts — usually, he freely acknowledges, after rushed investigations and often on the word of a single eyewitness.

In 1993, with 750 murder cases behind him — only one of which was “done the correct way, from A to Z,” Mr. Race said — he retired with his family to a small town in upstate New York. He ran a sidewalk hot-dog stand, indulging an old daydream.

Then Mr. Race returned. He worked as a private investigator to make a few dollars and to stay busy. When Mr. Faison wrote to him from prison, Mr. Race sent back a price schedule, but changed his mind. He dropped his fee to zero and finally worked another case, from A to Z.

After two years of digging, Mr.

Race not only cleared the two men last month, but also led the authorities to a new suspect whose fingerprints had been found at the crime scene and never processed.

“Mike Race gave me back the rest of my life,” said Mr. Faison, convicted with Mr. Shepherd in 1988 of murdering a cabdriver.

Mr. Faison and Mr. Shepherd are the fourth and fifth men, wrongly convicted or accused of murder, to walk to freedom on a bridge built by Mr. Race, private investigator.

The wrongs that he is righting are not just the years stolen from the men he has been able to help, say those who know him. His work, they say, must be seen against a larger canvas of sloppy investigations during the chaotic years of crack bloodshed, failures by prosecutors and the courts to scrutinize those cases, and perhaps Mr. Race's own role in the conviction of at least two innocent people.

“As an act of penance or atonement, this work is particularly meaningful,” said Ron Kuby, the lawyer persuaded by Mr. Race to take on the cause of Mr. Shepherd.

*Continued on Page 53*



Fred R. Conrad/The New York Times

Anthony Faison, left, was convicted with another man of killing a cabdriver in 1987. He was freed from prison after he turned to Michael S. Race, a retired police detective, for help. “Mike Race gave me back the rest of my life,” Mr. Faison said.

# Former Police Officer Seeks to Free the Innocent

Continued From Page 1

and Mr Faison "People's motivations are complicated. Mike, having been a homicide cop in East New York during a time when there was so much bad police work going on, has a very deep understanding of just how easy it is to convict innocent people."

As Mr Faison saw it, "Whatever he did then, it would be hard for anyone to look at Mr. Race now and say that he is anything other than a moral person. It's just a paradox. He is so caring about justice. That's based on his actions — not just what comes out of his mouth."

Others say that Mr Race is able to unravel wrongful convictions because he knows the investigative slipknots, having bound up innocent people himself. "Race is recovering from what he used to do," said Charles J. Hynes, the Brooklyn district attorney. "Maybe he has honest guilt."

Confident that both critics and friends are wrong about what drives him, Mr. Race professes bewilderment at suggestions that his work as a private investigator is an attempt to make amends for his life as an officer, or that people can speculate intelligently about his motives.

"I don't know how people can make a determination like that when I can't," Mr. Race said. "I'm not on a guilt trip. I don't like shifting blame, but everyone involved has a responsibility to realize what was done."

Indeed, in several of Mr. Race's police cases that went wrong, a share of the responsibility would appear to fall on the office of one of his critics, Mr Hynes.

In three separate cases, men were arrested and convicted on the word of an informant, Dana Garner, developed by Mr Race in his police days. Two of those people have been exonerated and sent home from prison.

All parties now accept that the informant fabricated his testimony; only the source of Mr Garner's knowledge of the cases is in dispute. The informant says Mr. Race fed him the details, a point emphatically denied by the former detective, who suggested that Mr. Garner heard street talk about the crimes and passed it off as direct knowledge.

One fact is clear from police and court records: virtually no effort was made by detectives working under Mr. Race's supervision or prosecutors from Mr Hynes's office to

corroborate Mr. Garner's claims, despite two florid warning signs.

Mr Garner appeared in Mr Race's squad room on Monday, June 25, 1990, to claim he had witnessed a gun battle. Remarkably, he returned to the same detectives two days later to claim that he had witnessed a different shooting — one that had taken place a few hours before his visit on Monday morning, though he had not bothered to mention it then.

In addition, Mr. Garner claimed his mother also saw the second shooting. The mother later said in a post-conviction court proceeding that her son's story was fiction, but she was not interviewed by police detectives or the district attorney's investigators.

A year later, as one of the shooting cases was moving to trial, a cousin of Mr Garner came to the courthouse with an urgent message: he told the prosecutor in a hallway that Mr. Garner had not even been in the state at the time of the crime. The prosecutor asked the judge for a recess, saying he wanted to arrange a polygraph test before presenting Mr Garner as his sole eyewitness. During the recess, however, Mr Garner was interviewed by a polygraph examiner but was not tested, for reasons that have not been explained. Nevertheless, he testified and an innocent man, Jeffrey Blake, was convicted of murder.

Years later, Mr. Blake and a second man sent to prison on Mr. Garner's word, Timothy Crosby, were exonerated through the efforts of lawyers from the Legal Aid Society, Michelle Fox and Sara Bennett. Mr. Hynes acknowledged that the convictions had been wrong. A third man, Ruben Ortega, has a habeas corpus petition pending in federal court, said Steve Wasserman, a Legal Aid lawyer who represents him. He said Mr Race had much to answer for.

"This is someone uniquely qualified to identify a lack of integrity in the process of an investigation," Mr Wasserman said. "He knows what people do because he did it himself."

Mr Race denied that he ever railroaded an innocent person.

"I have never done a thing in my life to be ashamed of," Mr. Race said. "Did I make mistakes? Yeah. Do I sleep at night? Yeah."

The neighborhood endured well over 100 murders during the crack years, and there were five times as many nonfatal shootings that also had to be investigated. The volume of crimes turned every day into a blur,

## An investigator gets a second chance to work a case from A to Z.

Mr. Race said. For instance, he said, he could not recall that Mr Garner had come to the precinct twice in 48 hours.

"You were dealing with a minimum number of detectives and a vast number of bodies," said Mr. Race. "A habitual liar comes forward and fooled me. Me, the D.A., the D.A.'s detectives, the grand jury, the judge, the trial jury."

Born in Brooklyn in 1951, Mr. Race grew up on the streets of East New York and then Sheepshead Bay, the son of a detective.

Mr. Race enlisted in the Marines after he graduated from Sheepshead Bay High School in 1969. He joined the Police Department in March 1973. He met his wife, Ellen, while she was working as a waitress in a diner across from the 109th Precinct station house in Flushing. She had two sons, Donovan and John, from an earlier marriage, whom Mr. Race adopted, and together, he and his wife have a third child, Jennifer.

In 1985, he was assigned as a detective to the 75th Precinct in East New York, just as crack was added

to the menu of New York's torments. "A plague hit our community," said Mr. Faison. "People were throwing their own kids off roofs, setting them on fire."

Mr Faison became a victim of that plague: a crack addict seeking reward money was the sole witness to say that Mr Faison and Mr Shepherd killed a cabdriver in 1987. At the law library in Greenhaven Prison, Mr. Faison spotted Mr. Race's name and his Seaford address on a bulletin board. He wrote a letter.

In an age when many wrongly convicted people are freed through DNA tests performed in dust-free laboratories, Mr. Race's exoneration of Mr Faison and Mr. Shepherd stands as an especially muscular act of redemption. For two years, he knocked on the doors of drug dealers and killers, liars and hookers, the frightened and the fearless.

He found the original witness. She recanted. Mr. Race found a person who admitted plotting with the witness to score \$1,000 in police reward money. Mr. Race found one lawyer to take the case for free, and when that lawyer's efforts failed, he cold-called Mr. Kuby. Then he found a witness who said her boyfriend had confided, years earlier, that he had shot the cabbie. Mr. Race suggested that the boyfriend's fingerprints be checked against several collected from the back seat of the cab. They matched, and Mr Hynes agreed to the immediate release of Mr Faison and Mr Shepherd.

"Hey, it happens," Mr. Race said;

# Governor to Seek Harsher Penalties for Perjurers in Criminal Cases

RICHARD PEREZ-PENA

*New York Times* (1857-Current file); Jun 13, 2001;

ProQuest Historical Newspapers The New York Times (1851 - 2006)

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## Governor to Seek Harsher Penalties for Perjurers in Criminal Cases

By RICHARD PÉREZ-PEÑA

ALBANY, June 12 — Responding to notorious cases of innocent people being convicted of crimes on the basis of false testimony, Gov. George E. Pataki plans to propose tougher penalties for perjury in criminal cases, aides to the governor said today.

Mr. Pataki will call for the creation of a crime of aggravated perjury, applicable only to testimony in criminal cases, and punishable by up to 15 years in prison, the aides said. Current law makes no distinction between perjury in criminal and civil cases, and it carries a maximum penalty of seven years.

Under the governor's proposal, there would be no statute of limitations for aggravated perjury, so that people could be prosecuted no matter how many years later their lies came to light. For perjury, the statute of limitations is five years.

Officials in the governor's office

said the proposal, which he will make public on Wednesday, was prompted by several highly publicized cases in the last few years of people claiming to have witnessed crimes sending innocent defendants to prison.

One man, Dana Garner, has admitted to lying on the witness stand in three Brooklyn cases, sending two men to prison for murder and one for kidnapping; in one case he claimed to have seen a killing take place in Brooklyn at a time when he was in North Carolina. Two of the three have been freed.

"The impetus behind the governor's proposal is the recognition that perjury in criminal trials is an extraordinarily serious crime that can have enduring effects," said James McGuire, counsel to Mr. Pataki. "When there is proof of perjury, the integrity of the criminal justice system demands that prosecutions should be brought in appropriate cases."

But defense lawyers who were in-

involved in those cases said the governor's proposal would make it harder to exonerate inmates convicted on false testimony, not easier.

"This would discourage people from coming forward and admitting to perjury," said Michelle Fox, a Legal Aid Society lawyer who helped clear Jeffrey Blake, one of the men convicted of murder on Mr. Garner's testimony. "In the Blake case, I actually sent a copy of the statute of limitations to Dana Garner to show him that he couldn't be punished for coming forward, which he was very afraid of."

Mr. McGuire called that "a speculative and ill-founded objection," in part because district attorneys can offer witnesses immunity from prosecution if they come forward to change their testimony. "I don't think that there's any real likelihood that any of those people who are recanting are acting with a knowledge of whether there's a statute of limitations or not," he said. "They're

motivated by conscience."

Charles J. Hynes, the Brooklyn district attorney, said through a spokesman, Kevin Davitt, that he supports the governor's plan. Mr. Davitt said that in several instances, when convictions were overturned years later, "We would have liked to prosecute those witnesses for perjury, but we couldn't."

The defense lawyer Ronald Kuby said he, like Ms. Fox, opposed the idea, adding, "What we need is a statewide second-look unit that would review cases where there's a question about guilt."

Mr. Kuby recently secured the freedom of two men who were convicted of murder based on the perjured testimony of a crack addict seeking a reward.

The governor's proposal would also apply to people who falsely testify to protect defendants — witnesses who provide phony alibis, for instance. Many lawyers say that is a far more common practice than ly-

ing to convict someone.

Mr. McGuire said removing the statute of limitations could give prosecutors a second chance at some defendants. If, years after an acquittal, new evidence of guilt is found, a prosecutor might be able to use that evidence to build a perjury case.

The governor, a Republican, will add the perjury provisions to a bill he has already submitted to the Legislature that focuses on uses of DNA evidence in court, a bill that has been stalled in the Democrat-controlled Assembly.

The bill would expand the database of DNA samples the state takes from people convicted of violent crimes to include people convicted of all crimes, including misdemeanors. It would also eliminate the statute of limitations for some violent crimes, including rape. And it would create a state committee to determine how DNA evidence can be used, systematically, to prevent and reverse false convictions.