

Evidence on need for reform is clear

Changing NY's discovery rules would make its criminal justice system fairer

BY N. SCOTT BANKS
AND LAURETTE MULRY

For those of us who believe in basic fairness in the criminal justice system, New York State is at a critical juncture. Lawmakers in both parties are considering a landmark bill that will bring our legal system in line with other states on a crucial issue: discovery in criminal cases.

Discovery is a legal term that describes the process by which evidence is shared between litigants in a court case. In civil matters, which usually involve disputes over money, New York's discovery laws grant parties access to all the evidence early in the case. It is a simple, fair and efficient process. Yet in criminal cases, where a person's freedom is at stake, our outdated discovery laws do not require prosecutors to share most of the evidence in their possession until the moment before a trial begins.

Notably, the vast majority of criminal cases never go to trial; they end in either negotiated

plea bargains or dismissals. That means that many defendants facing criminal charges and their attorneys never see the evidence purportedly gathered — whether good, bad, or questionable.

In short, they are blindfolded. Evidence that may be favorable to a defendant may be overlooked or withheld by prosecutors while defendants, often times incarcerated in jail on unaffordable bail or facing the threat of a lengthy term of incarceration, are forced to make critical decisions whether to proceed to trial or plead guilty to a lesser charge. Alternatively, a prosecutor may ambush the defense by turning over massive amounts of discovery on the eve of trial, leaving defense attorneys no time to appropriately analyze or investigate it, or to properly advise their client. This is untenable, and explains in part why New York has one of the highest rates of wrongful convictions in the country.

In fact, the vast majority of states across the country have



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already reformed their criminal discovery laws to ensure that evidence is turned over to the defendant at the first court appearance or soon thereafter, and on an ongoing basis. New York has fallen way behind, ranking among the bottom four states in the nation. In 2013, for example, Texas passed the Michael Morton Act, a discovery reform bill named after a man who was wrongfully convicted because important evi-

dence was not turned over to his attorney and therefore never presented to the jury. While Morton was languishing in prison, the actual killer went on to kill another woman, something that likely would not have happened if the information had been provided to the defense in the first place. While some prosecutors in Texas had reservations before the bill passed, these same prosecutors now celebrate the new discov-

ery reforms.

Here in New York, the District Attorneys Association of New York has lobbied our local legislators to thwart reform entirely, utilizing a message of fear that is not based on the actual language in the current discovery reform bill. We urge our elected state representatives, from both sides of the political aisle, to carefully examine the Discovery for Justice Reform Act and realize that it brings overdue transparency to our justice system while keeping New Yorkers safe. This bill gives judges the right to block any evidence, such as witness names or contact information, from being turned over to the defense where that is a valid concern, such as in gang cases.

Faith leaders, organized labor, and crime survivor advocates have all supported discovery reform. In the interest of fairness, we urge our local elected officials to support reform as well.

N. Scott Banks and Laurette Mulry are, respectively, the attorneys-in-chief of the Legal Aid Society of Nassau County and Suffolk County.



Emergency crews work on a train derailment at the Westbury station on Feb. 27.

HOWARD SCHNAPP

but he also drove over the rail tracks compounding his questionable behavior.

"Eliminate all the grade crossings" is the response instead of "let's make sure drivers are

trained better before they are allowed to drive." Or if not that, then at least let's raise the consequences for doing stupid things on the road. Let's impound the car, let's levy a

\$5,000 or \$10,000 fine for doing that.

If losing one's life is not an adequate deterrent, then maybe a hit to their wallets and bank accounts will get these people to obey the rules or maybe we can all benefit from just taking them off the road to begin with.

*Eugene Artemyeff,
Glenwood Landing*

When I was in Ireland more than 20 years ago, I picked up on something.

I was at a railroad crossing when I noticed the gates dropped on all four sides and a steel meshed barrier hung below so no vehicle can get through at a decent speed. Maybe this wouldn't work on Long Island, I thought then, because of emergency vehicles needing access to pass the crossing.

However, something needs to be done now at least temporarily. We can't wait almost 17

years, like the Herricks Road crossing, for permanent solutions at every crossing. We have to think outside the box for a temporary solution before sitting through years of committees and appropriations with the Metropolitan Transportation Authority and local governments.

Come up with a gate solution first, then dig underpasses or build bridges.

*Patrick Tierney,
West Babylon*

In reading comments by MTA board member Mitchell Pally on the choice the authority has about using or not using some \$400 million on grade-crossing-elimination projects, it seems there was no mention of the feasibility of adding four-quadrant gates to the more dangerous crossings in the LIRR system.

The gates block the roadway from all four corners of the crossing, eliminating the route

vehicles can take around the gates. They would create a more resolute barrier than the present two-arm gates that leave the opposing lanes open to anyone wanting to drive around them, and cost an already cash-strapped MTA much less than moving an entire roadway or track bed.

*Marek W. Jaworski,
Smithtown*

You gotta be kidding me with the money the higher-ups want to spend to make railroad crossings safer on Long Island.

I'm gonna save everyone a lot of money, time and delay. Just put up a sign that says "DANGER DO NOT CROSS A TRAIN IS COMING!"

Hell of a lot cheaper.

*Anthony Tanzi,
Mastic Beach*

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