

Legal minds eye quality control for convictions

Apr 22, 2014

By Jennifer Peltz, Associated Press Writer

NEW YORK (AP) — Hospitals have staff conferences to examine why patients died. Airline pilots have a system for voluntarily submitting information on safety concerns. Yet the life-and-death world of criminal justice often operates without a similar mechanism for probing its most feared failures: wrongful convictions.

Some legal thinkers say it's time for a criminal-justice version of quality control: frank scrutiny of cases gone wrong to identify potential weaknesses in the justice system and keep errors from happening again.

"Every time you've got a mistake, you've got all those phases in the system that failed to pick it up," says John Hollway, the executive director of the University of Pennsylvania Law School's Quattrone Center for the Fair Administration of Justice.

District attorneys, defense lawyers, police officials and law professors traded thoughts there last week with some uncommon counterparts: doctors, a National Transportation Safety Board member, a NASA official and an expert on research-lab safety.

The gathering crystallized discussions that have percolated in recent years, as DNA has exonerated hundreds of people and raised broader concerns about false convictions — concerns echoed April 8 with the exoneration of a New York man imprisoned for nearly a quarter-century in a murder case. A few cities are testing out problem-solving reviews of cases gone wrong.

Backers of such reviews say they can only work if people feel free to speak up about mistakes with a goal of fixing problems, not assessing blame. But that may be difficult in the inherently adversarial realm of crime and punishment.

"There's a withholding of information and a defensiveness that prevents us from getting to root causes of problems," says Jeffrey Deskovic, a reform advocate who has felt the toll of those problems firsthand.

He spent 16 years in prison in a suburban New York high school classmate's 1989 death. He lost appeals but was exonerated in 2006, after DNA linked the slaying to another man who had been convicted of killing someone else in the meantime. Jurors had known that DNA evidence didn't point to Deskovic, but they were apparently convinced by a confession he said was coerced by 7 ½ hours of interrogation when he was 16 years old.

Prosecutors, lawmakers, judicial commissions and various other panels have sometimes analyzed the causes of wrongful convictions and other criminal justice problems. And the justice system has its own checks and balances, such as appeals courts, though their task is generally case-specific.

But in recent years, some prosecutors and public defenders including San Francisco's Jeff Adachi have taken a page from "The Checklist Manifesto," Dr. Atul Gawande's 2009 book arguing that humble lists prove to be powerful tools for combatting oversights in medicine, aviation and beyond. District attorneys' offices in New York City, Dallas and Santa Clara, Calif., among other places, have launched conviction-review units meant as non-antagonistic venues for raising innocence claims.

The units review cases defense lawyers present to them, reinvestigate new leads and sometimes agree to ask a judge to throw out convictions. In a recent example, Brooklyn District Attorney Kenneth Thompson agreed last week to exonerate Jonathan Fleming of a 1989 Brooklyn killing that, prosecutors now agree, happened while he was vacationing at Disney World. A key eyewitness had recanted, newly found witnesses implicated someone else and prosecutors' review of authorities' files turned up documents supporting Fleming's alibi. He had served 25 years in prison.

And the federal National Institute of Justice has cited medicine and aviation as inspirations for upcoming experiments with "all-stakeholder, non-blaming" reviews of criminal cases in Baltimore, Philadelphia and Milwaukee.

Milwaukee District Attorney John Chisholm is asking defense lawyers, judges, child welfare officials and others connected to a prominent local case — a killing committed by a teen on juvenile-court probation for an armed robbery — to help analyze what officialdom could have done differently.

As prosecutors, "we should be open to examining the system in a collaborative way," Chisholm says.

But collaborating is not always easy when information is scattered across a criminal justice system made up of 3,000 county court systems and 18,000 police forces.

“It’s like trying to reduce the numbers of deaths in the hospital when you only hear about 1 in every 100 deaths that occur,” says Samuel Gross, a professor at the University of Michigan Law School, who maintains a list of nearly 1,350 exonerations but believes there are countless more.

And some caution that a non-fault-finding approach can go only so far.

“Creating a culture of blame and a punitive culture is counterproductive when you’re trying to figure out what went wrong and how to fix it,” says defense lawyer Barry Scheck, a founder of the Innocence Project, which works to clear wrongly convicted people. “But you have to, clearly, do something about those who are deliberate rule-breakers.”