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### Flaws in the Justice System: Examining the Angel Cordero Case

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## Flaws in the Justice System: Examining the Angel Cordero Case By Rose Itzcovitz

“Coming Home,” a documentary that follows a man as he’s finally released after spending 12 years in prison—for a crime the film claims he did not commit—screened in Downtown Manhattan last year and in Los Angeles this year. The movie shows the man, Angel Cordero, reuniting with tearful and ecstatic family members, and it specifically focuses on his continuous efforts to win back the affection of his daughter, mostly in vain. Although the film takes the position that Cordero is innocent, some quick research reveals that he’s never been exonerated of the crime—even though the evidence seems to stack up in his favor.

According to the Innocence Project, a national litigation and public policy organization that works to exonerate wrongfully convicted individuals, Cordero fits the description of the average wrongfully convicted individual pretty well:

The average age of an exoneree when first convicted is 26.5. Cordero was 25. The average time an exoneree spends in prison before being released is 14 years. Cordero spent 12.

Records show exoneration numbers are climbing by the year. The National Registry of Exonerations in 2014 recorded 125 exonerations. That’s the highest number recorded yet; the two previous years were second highest at 91 apiece. While this number may weaken our confidence in the judicial system, we can at least rest assured that with the advent and popularization of new techniques—mainly, for example, DNA evidence—that even in this flawed system, mistakes can be found and wrongs can be made right.

But Cordero’s case shows that courts are not so quick to admit they’re wrong, and an exoneration is not as easy as organizations working hard for the cause make it seem. Over the past 17 years, Cordero’s filed several appeals, each time showing new evidence, he has a confession and witnesses to back that confession up, suggestive blood evidence, evidence against the cops testifying against him and legitimate issues with the way his original case was handled—still, he has yet to be exonerated. The Cordero case displays, despite the recent rash of exonerations, the court’s reluctance to revisit old decisions, even when the mounting evidence at least suggests the possibility of error.

### **Cordero’s Case**

#### *The incident*

On May 16, 1999, hours before the incident occurred, Angel Cordero and his younger brother, Ramon Rivas, were at a party in Hunts Point celebrating the birthday of a friend’s child. Cordero, then 25, was a father himself of a 3-year-old girl with his off-again girlfriend; he was living at home with his mother and had just left his job loading trucks at the Hunts Point Market. Rivas, 18 at the time, was a senior in high school, also living at home. Dario Rodriguez, 22 at the time and an acquaintance of the two brothers, was also at the party. Minutes before the incident occurred, Rivas headed out to the nearby 24-hour store to buy a pack of cigarettes. Cordero set out to accompany him.

Around 2 a.m., a scuffle broke out on Hunts Point and Lafayette Avenues. A young man visiting home from his first semester of college was stabbed. Four plainclothes police officers came on the scene minutes later. The accused resisted and a melee ensued. The 18-year-

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old Boston University student who was stabbed—Jason Mercado—was taken by ambulance to the hospital. He would fully recover. Five young men around Mercado's age were arrested: they were Julio Sanchez, Greg "Wuga" Martin, Pierre Robinson, Cordero and Rivas.

In November 1999, Sanchez and Robinson separately pleaded guilty to second-degree attempted murder of Mercado and related charges—Justice William I. Mogulescu sentenced them to seven years and seven and a half years, respectively.

In January 2002, during post-trial litigation, Martin pleaded guilty to first-degree robbery of Mercado, formally stating he acted in concert with others in the robbery. The same judge gave Martin a six year sentence. Martin's case was delayed because according to records, "while at liberty, Mr. Martin did not return to court for an extended period of time."

Brothers Cordero and Rivas, who maintained their innocence while the others pleaded guilty for lesser sentences, were tried jointly. On June 15, 2000, a jury was selected before Justice Lawrence J. Tonetti. Fourteen days later, that jury found Cordero and Rivas guilty of second-degree attempted murder, robbery in the first degree and assault in the first degree; Cordero was also convicted of resisting arrest. That November, the Bronx County Supreme Court sentenced them both to 15 years in prison.

Cordero and his brother, Rivas, appealed the first conviction almost two years after the original sentence. By this time, the lawyers had found more witnesses to support the brothers' innocence.

In 2003, an appeals court ruled on both brothers' fates. It unanimously reversed Rivas's conviction due to a technicality: Rivas was removed from the courtroom before the verdict of his sentence was read. Rivas decided then to plead guilty on the condition that he refused to say he acted in concert with his brother, Cordero. Rivas received six years in prison, but by that time, he only had about one year left. By 2005, Rivas was freed.

The same day that Rivas's sentence was reversed, the First Department of Appellate affirmed Cordero's conviction. Later that year and again in 2005, Cordero tried to get state courts to re-examine his case, but he was denied. So he went to federal court instead: In October 2005, Cordero filed a federal habeas corpus petition—to this day it's pending in the Southern District of New York. Then in November 2006, Dario Rodriguez—the fellow party-goer in May 1999, who was accused by several witnesses, but never tried (in fact he served as a witness for the prosecution against Cordero and Rivas)—came forward with a four-page sworn statement, confessing to Mercado's stabbing.

Cordero's lawyers tried again in 2007 to vacate his conviction. After a hearing was held based on Rodriguez's confession, the judge denied the request in 2008.

Cordero sought another writ of habeas corpus in 2009—once again trying to gain relief from wrongful imprisonment—but in 2011 he was denied again. Cordero remained in prison until he was paroled in 2012, all the while, gaining more media attention for the accumulating evidence that seemed to prove his innocence.

In 2012, Cordero was released three years early under parole supervision. Now an

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electrician in the local union, Cordero's been dealing with struggles not limited to finding better work with a criminal record, and he's still on parole for another year and a half.

Within this case, most of the details—including everything from the reason for the incident, the people involved and most importantly, the identity of the knife-wielder—differed greatly between the victim/prosecution side and the majority of witnesses/defense side.

“At first blush,” one page of court records starts out, Cordero appears to be guilty. He was there in the melee, he was covered in blood and he bears the resemblance of the one who dozens of others say was actually the stabber—the one who would eventually confess. Four police officers and the victim himself identified Cordero as the stabber.

However, as more and more information came in, the seemingly open-and-shut case unraveled as a confession was made, more witnesses continued to come forward, an alibi proved false, and CCRB complaints were revealed against half the officers involved.

### **Witnesses**

#### *The confession*

On November 28, 2006, nearly seven years after the incident took place, Dario Rodriguez—who originally testified as a police informant against Cordero and Rivas—executed a four-page sworn statement, confessing to the stabbing which Cordero was accused of.

According to his confession—which has been backed up by the other members who pleaded guilty to the stabbing—Rodriguez was the one who called Mercado out for wearing a red shirt and then stabbed Mercado (“Blood” members like Rodriguez associated red shirts with their gang).

When the cops hit him over the head, Rodriguez said a melee ensued and after pretending to be knocked out, he was able to crawl away and hide in an alley. He later dumped his bloody clothes and returned home. Within a few days, he learned of Cordero's and Rivas's arrests. Rodriguez knew them from the neighborhood—in fact, he said in his sworn statement, he dated Cordero's sister (an assertion the Cordero family denies).

“I believed the police would find me eventually when they tested the knife for fingerprints and discovered mine,” Rodriguez said in his confession statement.

However, according to records, the police who dusted for fingerprints—officer Kenneth Staten of the Evidence Collection Unit and Manishi Agarwal, a police fingerprint expert—were unsuccessful in finding any prints at all, except for one set of fingerprints from the wrist-watch dial Mercado handed over to the assailants.

It apparently did not match the fingerprints of anybody known to be involved—the victim, the accused, the police or anyone else. The records say, however, that the print could have been a palm print, but Detective Daniel Peruzza, who examined the watch-face print, did not make palm print comparisons, just fingerprint comparisons.

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Though Rodriguez knew Cordero was not a part of the crime, he says he never came forward because of course, he did not want to go to prison, but also because he never thought the crime would be pinned on people he grew up with.

“When I learned that Angel Cordero had been convicted of the stabbing,” Rodriguez said in his statement, “I felt bad. But I did not want to come forward because I did not want to go to jail for the stabbing myself. I chose to let Angel Cordero take blame for my actions. I stopped hanging out in the Hunts Point area and started staying with relatives in another neighborhood.”

Rodriguez says his conscience eventually led him to confess.

“Over the years, the guilt has grown difficult for me to bear,” he said toward the end of the statement, which he and a notary signed. “I have started having dreams about Angel Cordero and what I have done to him. I believe that the only way to relieve the guilt is to come forward and to be honest about my actions. I know that Angel Cordero did not stab the kid on Hunts Point Avenue, because I did it.”

### *Why they didn't believe him*

The court held a hearing following the letter, but eventually threw out Rodriguez's confession, calling it “utterly incredible and unworthy of belief.” The court found Rodriguez not credible for a variety of reasons: first, the court said Rodriguez's testimony “strongly conflicts” with both the testimony by Mercado and by police officers, and even his own earlier statements.

Rodriguez's testimony conflicts with his own previous testimonies because he said he previously was avoiding jail time, however, due to his guilt, he confessed. The accounts mostly matched Mercado's and polices' testimonies, except for one damning piece of evidence: Mercado himself says he knew Rodriguez from the neighborhood and was sure it wasn't him. Because of that, he says he's sure Cordero stabbed him.

Mercado had a chance to view Rodriguez behind a two-way mirror before the initial trial. At trial, Mercado said he would have recognized Rodriguez.

“He's a face that I remember seeing in the neighborhood on more than one occasion in my life,” Mercado said. “It's the kind of thing where had I, you know, had I, you know, had I seen him when everything was happening I would have, you know, I would have recognized his face like at the time of the incident.”

However, while arguing that the defense tried to paint Mercado as “weak minded,” even the prosecutors say Mercado could have misidentified Cordero.

“It is fair argument to submit that the defendant was misidentified or, based on the circumstances of the assault, Mr. Mercado lacked the opportunity to develop a recognition of and capacity to identify his assailant,” the prosecution begins before making the point that the defense attacked Mercado's integrity.

However, the main “attack” on Mercado was trying to prove that he was with a female at the

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time of the incident, since the majority of witnesses say he was.

Rodriguez and Cordero also looked very similar at the time—having the same ethnicity, similar frames, hair color and cuts and short goatees—and while Mercado viewed Rodriguez ahead of time, he never had the chance to identify Cordero from a lineup or a photo, as he was never shown any.

“That identification is quite suspect,” Barry Pollack, who defended Cordero later in the case, said. “It comes about a year after the fact. The victim does not identify Cordero from a photo or a mug shot or a lineup; he doesn’t identify him until a year later during the trial, when he was asked, ‘Can you identify him?’ He says, ‘Yeah, it’s the guy sitting there where the defendant sits. That’s the guy who did it.’ That to me is a pretty suspect identification.”

According to the Innocence Project, eyewitness misidentification is the greatest contributing factor to wrongful convictions—DNA evidence has proven to overturn more than 70 percent of them nationwide.

“Identification even when one’s memory is fresh is notoriously inaccurate,” Pollack said. “To try to make an identification even a year later is a very difficult thing to do, and there could be few more suggestive situations than being in a courtroom when you know which table is the prosecution and you know which table is the defense.”

Since the incident, Mercado is known for refusing press interviews and wants nothing to do with the case. He stands firm in his contention that Cordero committed the stabbing and Rodriguez did not. Cordero says he thinks Mercado just wants to put the whole thing out of his mind because he was traumatized.

“He knows that I didn’t do it,” Cordero said. “The thing with him is something harsh happened to him that shouldn’t happen, and you know, after the fact there was doubt that it wasn’t me in his mind again: ‘Did I put an innocent man in jail?’ So that was like, double the burden, you know? So he just doesn’t want to deal with it.”

Another reason the court called Rodriguez’s testimony unbelievable is because the court contends that Mercado’s description was far more detailed than Rodriguez’s.

“Mr. Mercado described an extended interplay between himself and the defendant, including a colloquy in which the defendant exhibited escalating anger, and physical interaction, beginning with the defendant’s approach of Mr. Mercado and concluding with the defendant stabbing Mr. Mercado. Mr. Rodriguez does not provide a rendition of events consistent with Mr. Mercado’s rendition of facts,” court records read.

However, Mercado gave his testimony over and over from the night the incident occurred, while Rodriguez—though allegedly telling some witnesses after the occurrence—never came forward with the truth until nearly seven years later. Not to mention Rodriguez said he was drunk at the time he committed the stabbing.

Additionally, the court says that Rodriguez didn’t seek out Mercado because of his red shirt—the court concludes therefore that Rodriguez acted more like a witness who saw the stabbing

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from afar. However, in his confession letter, Rodriguez mentions that he asked Mercado why he was wearing a red shirt.

Also, while Mercado said immediately that Rodriguez stabbed him one time, the court says Rodriguez couldn't remember how many times he stabbed Mercado. But the defense did elicit an answer from Rodriguez.

When questioned by the defense, Rodriguez said, "I don't know about how many times, I just know I stabbed him and the knife dropped." Upon further questioning, Rodriguez testified that he 'believed' that he stabbed the victim one time, and when asked again, Rodriguez stated that he stabbed the victim one time.

Additionally, Mercado testified that he was also robbed of the two dollars that he had in his pocket, and Rodriguez made no mention of robbing him—however, according to Gregory "Wuga" Martin's testimony, he was the one in the group who demanded money from Mercado, not Rodriguez. In fact, Martin pleaded guilty to first-degree robbery, not attempted murder like all the others.

The court also dismissed Rodriguez's confession because, as records read, "there was, at trial, substantial evidence showing that Mr. Rodriguez did not participate in the crimes against Mercado." The argument was that Rodriguez said there should be a hole in Mercado's red shirt, however at trial, there was no hole in the shirt. This goes back to one inconsistency where Rodriguez said he stabbed Mercado through his red shirt, however Mercado was actually stabbed through his white undershirt after he was told to take off his red shirt.

The court further said that Rodriguez's testimony could not be accepted because he changed his story. Rodriguez made 10 total statements regarding his involvement in the stabbing. He denied stabbing Mercado on five occasions (twice under oath) and he admitted stabbing Mercado five times (three times under oath).

"The truth has no meaning to Mr. Rodriguez," court records read. "Mr. Rodriguez is thus not the source of reliable information. By his testimony and by his conduct Mr. Rodriguez has demonstrated that his word cannot be relied upon in any context."

The reason Rodriguez said his story changed though, was because his guilt led him to come forward. Seven years earlier when at trial, Rodriguez was testifying against Cordero to keep himself out of jail and also in exchange for a softer punishment for previous crimes he was already in trouble for.

Another reason Rodriguez's confession was less credible to the court was because he only confessed after knowing the statute of limitations expired. Evidence was found that he had researched it, and knew if he confessed at this point, he would not go to prison for the stabbing. In conjunction with his guilt, this likely played a large role in Rodriguez's coming forward, however Pollack says it doesn't make his confession any less true.

"People over time are willing to talk about things for any number of reasons," Pollack said. "It may be that they were on probation at the time of the offense and didn't want to get involved but they're not on probation later. Maybe they were worried about going to jail at the time, but

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a statute of limitations runs,” he said.

The court also rejected Rodriguez’s testimony because of his criminal record: “His testimony shows that, when not incarcerated, he has focused a lot of energy to selling drugs—including cocaine and heroin—and to robbing people and burglarizing,” the court records read. “He began selling heroin at age fourteen. He was first convicted of a crime at age 15, and he has been convicted numerous times since.”

Yadira Zapata, one of the witnesses, was friends with both Rodriguez and Cordero at the time of the incident.

“The thing is, about the Bloods thing, I mean Dario was a straight-up troublemaker,” Zapata said in a 2015 interview. “Stabbing, he did it all. He did heroin, you know he was really on the street. He was known to wear red, he was known to fight, he was known to be a Blood. He was known to stab people. You know what I mean? He was that type of guy.”

His wild history was a part of what the court used to call him unbelievable, however, it allowed the prosecution to use Rodriguez for the initial trial to testify against Cordero.

Meanwhile, to this day, Cordero has never been convicted of a single crime, except for the one he maintains he was wrongfully convicted of.

Although most of the above inconsistencies that the court brought up have explanations, there are some reasons to doubt Rodriguez’s confession.

One detail that doesn’t match up is that most of the witnesses who either saw Rodriguez commit the crime or said he confessed to them also said it was over a comment he made to Mercado’s girlfriend. Rodriguez never mentioned that in his sworn statement, though neither did Mercado.

Also, during the course of the hearing, court records indicate Rodriguez acted strangely, refusing to answer certain questions and suppressing a smirk the entire time.

But Rodriguez was not the only witness who posed problems for Cordero's lawyers.

### *“Cumulative” witnesses and reluctance to overturn*

At the time of the very first trial, less than half the total witnesses came forward, and Rodriguez’s confession would not come until nearly seven years later. However, by the time more evidence became available, Cordero and Rivas had already been sentenced and it became much harder for them to appeal, despite the multitude of evidence continuing to surface in the brothers’ favor.

Pollack says the system is designed more to quickly judge and move on to the next case.

“I think that courts are very skeptical of evidence that comes after somebody has been convicted,” he said. “Courts want convictions to be final, they want them to be over and done with—they don’t want to have to continually revisit cases over and over in the years to come.



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The problem with that, while it makes a lot of sense in the institutional standpoint for the courts, it just doesn't conform with how evidence is developed in the real world."

In the real world, as more witnesses come forward, ideally, the math would go something like this:

Witness = possible, but not overly convincing.

Witness + witness = possibly more convincing.

Witness + witness + witness = a good chance to become more convincing.

And so on.

However, in court, as more witnesses come forward, the math goes like this:

Witness = possible, but not overly convincing.

Witness + witness = two of the same thing. So still possible with no added weight.

Witness + witness + witness = three of the same thing. So still possible with no added weight.

And so on.

In other words, the added witnesses are not new evidence, so they aren't seen as anything to add, when the court looks to appeal.

"I think that's a real irony in the way courts approach cases, post conviction," Pollack said.

"Courts, again, they don't want to hear a case over and over again, so they set up a rule that you can only come back if you have new evidence, and it has to be not just more of the same, it has to truly be new."

Pollack says this is problematic because new evidence, while supporting something already there, oftentimes is stronger than what has already been found out.

"What happens is, in many of these cases, over time, you obtain some evidence that shows the defendant is innocent," he said.

When Rodriguez confessed to the crime, another hearing was held, but even his confession was not seen as new evidence, but as cumulative to all the previous witnesses' testimonies who had already come forward.

Defense attorney Julia P. Kuan says the fact that Rodriguez himself came in and confessed means the court should see it as new evidence and not merely cumulative.

"I completely disagree with that," she said. "I mean it's one thing to have other people say that it's him, it's quite another for the guy himself to say, 'it was me.' And that was not available to the defense at the time."

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Claudia Trupp, Cordero's defense attorney, says after the initial trial, even if the evidence is new, it's tough to sway an already-decided court.

"Once there's a conviction, society is very hesitant to overturn it," she said. "It's like, so few cases go to trial, it's so resource-intensive."

Only up to 10 percent of cases ever go to trial at all—the Bureau of Justice Statistics estimates that between 90 to 95 percent of both federal and state court cases are resolved through plea bargaining. Most people—like the three other youths charged alongside Cordero and Rivas—plead guilty in exchange for a reduced sentence. However, when one knows he is innocent that could become harder to do, even if he knows he risks longer time in prison.

The judge or jury may also be biased since the person has already been called guilty by the court.

"Once there is that jury verdict, there is a huge hesitancy on the part of the judicial system, of the justice system, to revisit past convictions," Trupp said. "So it's not as if we're starting from an even playing field, there's a presumption that this conviction is valid."

### *False alibi*

One of the reasons the court decided Dario Rodriguez was not involved in the crime—even though the majority of people, including those who pleaded guilty to the crime said he was—was because he provided an alibi.

Rodriguez was supposedly with his then-girlfriend and the mother of his son, Janet Carrasquillo. He said she accompanied him to the same party that Cordero and Rivas were attending before the fight broke out.

Although Carrasquillo was unavailable to testify in the beginning of the first trial in June 2000, by the end of that month, the court deliberated and the defense moved to reopen to allow her to testify. At that time, she said she had been at the homeless shelter where she was staying that night with her baby. She testified that Rodriguez had previously threatened her to say otherwise.

The court denied the info as belated and would not let the nun at the shelter onto the stand to testify. A few years later when the defense sought to appeal the case, however, the defense was able to prove that Carrasquillo was not with Rodriguez that night by using a log book that Carrasquillo had signed and dated showing she was in fact at the shelter. The nun would later testify.

"We proved conclusively that that was a lie," Trupp, the appeals lawyer said.

### *Witnesses knew both Cordero and Rodriguez*

Awilda Carrasquillo, 37 at the time of the incident, said she saw someone she knew as "Set It"

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commit the stabbing. “Set It” was Rodriguez’s street name.

Like most of the witnesses, Carrasquillo knew Rodriguez: her niece, Janet Carrasquillo, whom she did not get along with and hadn’t spoken to in years, was his girlfriend at the time and is the mother of his child.

The prosecution said that since most of the witnesses knew Rodriguez and Cordero, they gave biased testimonies. Cordero’s defense attorney, Barry Pollack, says it should also be looked at as the opposite.

“It also means that they have a base of knowledge that the other witnesses don’t have,” Pollack said. “It is one thing to make an eye witness identification of a stranger, who you only see for a couple of seconds, in a chaotic situation. It is another thing when you’re there, you’re talking about people you know, and you’re asked was it person A, or was it person B, and you know both of those people. So that identification is grounded in a lot more information than the quote, ‘unbiased’ eyewitness’s information is grounded in.”

Pollack says if it were only one witness who had bias, there would be more reason to discount that witness, but that wasn’t the case.

“Here, you don’t have one person saying, you don’t have two people saying, you don’t have three people saying, you don’t have four people saying—and is it a suggestion that all of them are lying just because they have some bias?” he said. “It just seems incredible to believe that that many people are going to lie under oath, you know about the same thing. So the more witnesses that you have, that are fundamentally saying the same thing, to me makes the fact of the supposed bias far less significant.”

Another witness, Yadira Zapata, now 38, was best friends with Cordero’s sister, however she was also friends with Rodriguez at the time of the incident.

“It was kinda hard ‘cause we was all friends, we grew up together, you know,” Zapata said in a 2015 interview. “So it’s kinda hard to like, you know, point a finger at a friend and try to save the other.”

But Zapata said she began to distance herself from Rodriguez the moment he got in her taxi right after the incident and told her he committed the stabbing.

“He did say, ‘I didn’t wanna stab him but I did,’” she said. “When he said that, I said, ‘Oh my God.’ That’s when I started asking him to get out of my car.”

As for Awilda Carrasquillo, who witnessed the stabbing from her window, she passed away seven months ago.

Another argument the prosecution gave was that there were small inconsistencies between the witnesses.

“There are always inconsistencies between witnesses,” Pollack said. “No two witnesses who describe an event describe it in precisely the same way.”

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Pollack says the fact that the trial went on for so many years didn't help with the inconsistencies, but some inconsistencies carry more weight than others.

"You have to look at," he said, "what are they inconsistent about and what are they consistent about. And here what they're consistent about to a person, is the fundamental issue of whether or not Cordero stabbed Mercado, and whether or not Cordero was even there, or whether it was Rodriguez that stabbed him, and on those points, which are the points that matter, they're all uniform. They're all consistent."

### *Prosecution had no civilian witnesses*

By the time Cordero appealed for the first time, the defense had more than a dozen witnesses asserting that Cordero and his brother were innocent. Meanwhile, throughout the years, the prosecution had four witnesses: the victim and three police officers.

Four plainclothes cops arrived at the scene minutes after the altercation began. Three of them say they saw Cordero stab the victim as they were driving up. Pollack says that's the entire prosecution: the victim and three police officers.

"There's no civilian witness that corroborates the victim, there's no physical evidence," Pollack said.

While Pollack says he understands how one victim plus three police identifications were sufficient to convict Cordero, he thinks the case should be revisited.

"Given the wealth of testimony from eye witnesses who weren't strangers who knew the players," he said, "who knew which one was Rodriguez and knew which one was Cordero, and to have so many of them all identify Rodriguez and then have Rodriguez himself admit it, to me is overpowering evidence, far stronger than what the state presented at trial."

Claudia Trupp, Cordero's attorney who stepped in when he first appealed in 2002, says the court is typically reluctant to go against a police officer's testimony.

"There were a lot of police officers who testified and that's always hard, for the court to say, 'Oh, all of these police officers came in and lied,'" she said.

## **Missing Evidence**

### *DNA*

If 70 percent of wrongful convictions are overturned by DNA evidence, then it's no wonder courts use it to help decide tough cases in modern day systems. However, in 1999, testing for DNA evidence was costly, and less frequently used.

"Cases do need to be revisited and the criminal justice system needs to get its arms around that," Pollack said.

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On the night of the crime, Cordero was badly beaten by police officers and according to records, he suffered “multiple trauma to the chest, shoulders and face.” He was taken to Jacobi Hospital, where he received six staples on his forehead.

Derek Hutchinson, a paramedic with the fire department, along with police officer Ricardo Cordero, both testified that Cordero had no blood on his clothing.

“Mr. Cordero appeared to have been maced and had a three-inch laceration on top of his head,” court records read. “The prosecution elicited that Hutchinson observed no blood on Mr. Cordero’s clothing and that there was no active bleeding by the time the ambulance responded.”

Court records also state that Mercado bled heavily, while Cordero at least didn’t have any visible blood on him.

Rodriguez, on the other hand, in his confession, said that he had blood on his clothes and his sneakers (which he said he dumped in the trash before he was a suspect—his clothes were never recovered).

Cordero’s clothing was never tested for blood, however, his brother Rivas’s clothing, which clearly had blood on it, was tested.

Before the DNA test results returned, the prosecution used the fact that Rivas had blood all over himself as a sign of guilt for him and his brother. This claim hurt Cordero’s and Rivas’s stance that the two were latecomers to the incident, which has consistently been their story since the night of the attack.

The court says the prosecution received the DNA two and a half months after the trial. The results showed conclusively that there was no match with the victim, Mercado’s blood. It showed that Rivas had his brother’s blood on him, as well as Julio Sanchez’s, one of the three who pleaded guilty to the crime, who was also accosted by police.

In his 2005 appeal, Cordero’s defense argued that the prosecution falsely claimed Rivas had the victim’s blood on him; the court denied this claim, saying the prosecution believed it was Mercado’s blood at the time.

According to court records, Mercado’s clothing, which originally was sent to the Medical Examiner’s Office, was never tested. It said, “the prosecution are attempting to locate this evidence in order to re-submit it to the Medical Examiner’s Office for testing,” however it still has not come back. The knife with Mercado’s blood on it was also never tested because, according to court records, “the instant case did not involve a homicide.”

“The victim’s clothes weren’t tested, the knife wasn’t tested and if we were able to do that testing, it could potentially be very powerful,” Pollack said. “It’s not uncommon in a stabbing that the perpetrator’s DNA will be on the weapon, so that kind of testing could have been important. We have asked the DA if the physical evidence still exists and if we can get it back for testing, and to date we have been told they have not been able to locate any of the

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physical evidence from the case.”

### *Impeaching evidence against police witnesses*

Of the four cops present, three of them said they saw Cordero commit the stabbing. However, two of those three cops were found to have had numerous Civilian Complaint Review Board accusations against them.

In the beginning of the trial, the defense submitted a request for complaint history of the four officers testifying. However, they never received any information until after Cordero and Rivas were already convicted.

At that time, the counsel learned that Sgt. Michael Delaney and police officer Mark Kurys had a total of 22 CCRB charges arising from 13 separate incidents. Four of them—involving three separate incidents—were substantiated. Those involved abuse of authority in each case, and included an illegal detention, an illegal car stop and two illegal car searches.

In April 1998, Sgt. Delaney illegally searched the vehicle of Ramakish McNeil. The CCRB concluded that Delaney’s and his partner’s statements were contradictory and incredible. On February 5, 1999, Delaney and Officer Kurys illegally stopped Hakim Taylor and illegally searched his car. And on March 26, 1999, Delaney and Kurys abused their authority as police officers by illegally stopping and searching Anthony Chilliast’s car under false pretenses. CCRB concluded that both Delaney and Kurys gave incredible testimony.

Trupp says four substantiated complaints is a large number.

“So here we have a number of substantiated complaints against these officers, which is unusual.”

Of the four officers, Sgt. Delaney was the only one who claims to have never lost sight of the five youths supposedly involved in the crime.

On June 15, 2000—the day before the trial—Justice Tonetti signed a subpoena for the CCRB records, but he received no response until June 27th, after calling CCRB. The CCRB representative said they had just mailed out the materials that morning, but told Tonetti that Delaney had a total of 22 charges.

Since the CCRB histories came to the defense late, the defense counsel asked for a mistrial or to recall Delaney for further cross examination. However, the prosecution opposed re-opening the case because it said the officers’ prior misconduct was irrelevant to the facts of the case. The court denied the defense’s application to reopen the case and would not allow the defense to cross examine the police officers again.

According to Cordero, the officers’ conduct that night was abusive. Cordero says Officer Kurys hit him in the head with his gun first. Other witnesses say they also saw him hit over the head with a flashlight.

Cordero says then Sgt. Delaney maced him.

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“After that it was a bunch of hits,” he said in a 2015 interview. “And I was covered up so I wasn’t really sure what I was being hit with but the initial hit was with a gun.”

At the time, Sgt. Delaney accused Cordero of reaching for his gun. None of the officers would respond for comments, but Cordero says they used that as an excuse to beat him so hard.

“I never reached for the officer’s gun, that’s their story or their theory of the reason why they stuck me up, you know?” Cordero said. “But he put the gun to my face and had my hands together and me up against the wall, and I’m refusing because obviously I didn’t do anything, I’m just a stranger to him that he got handed, you know somebody that had nothing to do with it with my brother, and the next thing you know he smacked me with the gun. And then I just curled up then.”

Julia P. Kuan, a defense attorney at Romano & Kuan who’s never worked on this case, says it’s not unusual for a court to deny the defense’s requests for a mistrial or to cross examine the officers with new information—that is, if the information does not pertain to the defense’s case.

“If they were just cases where they were involved in excessive force with other arrestees,” Kuan said, “I don’t know if it’s so relevant to this case and their cross examination that he would even be allowed to cross examine the cops on it, let alone having to recall them to simply put that out there.”

However, Kuan says in this case she would be raising the same arguments the defense was.

“If it’s something on the CCRB records that they lied on other cases or that they committed perjury, or that they were not to be believed because they were not credible,” she said, “then it’s really sort of important because then that would undermine their credibility as a witness.”

*Dario Rodriguez’s undisclosed status as a police informant*

During the initial trial, in order for Rodriguez to receive a smaller sentence for previous arrests, he agreed to testify against Cordero for the prosecution.

Cordero’s defense filed a Freedom of Information request, in which Rodriguez’s status as a police informant was in question from a previous incident he was involved in. The police would not answer whether he was or was not, stating a confidential source would be endangered.

When Cordero filed his first appeal, his defense asserted that Rodriguez’s status as a police informant motivated the police to lie about Rodriguez’s involvement in the assault.

The prosecution denied he was a police informant throughout, but the defense argued he was and was never informed of the status, as they tried to subpoena Rodriguez on behalf of the defense.

However, the court ruled the defense could not demonstrate that Rodriguez was actually an

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informant, even after the police did not deny it.

“The state has the obligation to turn over to the defendant information that would call into question the credibility of a witness or the bias of a witness,” Pollack said. “And the fact that the witness has acted as an informant or had or has a relationship with the police is something that is critical to assess.”

Pollack says that whether it’s an unbiased witness or someone slanted in some way because of a relationship with the police, it needs to be disclosed.

“That’s sort of classic information that the state is required to turn over to the defendant.”

The prosecution was able to use Rodriguez because at the time of the initial trial, he denied he committed the stabbing.

“He didn’t want to get caught for it and he didn’t want to go to jail and so the state recognized that part of the defense was going to be, ‘You got the wrong guy, it was Rodriguez who did it.’”

Pollack says the prosecution knew the defense would try to show Rodriguez did it because that’s what all the witnesses were saying.

“The state wanted to call Rodriguez to have him deny it because they wanted to take that defense away from the defendants, and it worked,” he said. “Dario denied it and the jury convicted the defense.”

Still, Pollack says, the prosecution must have believed that Rodriguez was innocent if it used him.

“If they knew that Rodriguez was lying, they absolutely would not be permitted to put him on the stand,” he said. “I don’t have any reason to know or believe that they intentionally put on perjured testimony; they may well have believed that Dario was telling the truth. They may well have believed that these defendants were the right people and I assumed that they did, and I assumed that’s why they prosecuted. But that doesn’t mean that they were right.”

In addition to Rodriguez, Pierre Robinson, one of the other three men involved who pleaded guilty, initially said in questioning that Cordero was not involved; he said Rodriguez committed the stabbing. However since this crime on top of his previous attempted murder of a Latin King member left him with a sentence of seven and a half years to life in prison, he took a plea bargain, and his story changed. When asked to implicate all involved, he mentioned Cordero as part of the group. However, according to court records, Robinson still told the judge that Rodriguez was the stabber, and it says, “the judge got angry, so Robinson retracted that assertion.”

### **Biased Judging**

Some of the lawyers felt that the judges were biased toward the victim and against Cordero in particular.



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“I think the judge looked at Angel as the bad guy,” Arnold Saphirstein, Rivas’s first defense attorney, said.

Before sentencing them, Justice Tonetti said he didn’t “believe for one second” the defendant-brothers were innocent.

“If you guys aren’t guilty, then Santa Claus exists,” he said at that time.

Judge Tonetti, now 82, declined an interview, telling his son, Larry Tonetti Jr., that he doesn’t remember much from the case anymore.

“It’s a pretty upsetting story, you know,” Larry Tonetti Jr. said.

He says he tried to jog his father’s memory. “He did think he remembered a little bit about it, but it was right before he retired and so he kind of wasn’t paying attention, ‘cause he just wasn’t around and stuff, and he wasn’t sure that he’d have much to offer you,” Larry Tonetti Jr. said.

### *A case of rebuttals*

Gueisha Rosa, 17 years old at the time of the trial, had been dating Rodriguez for six months when he confessed the crime to her in December 1999. Once they had broken up—just in time for the initial trial proceedings—Rosa testified. She said Rodriguez told her that he had been at the same party as Cordero, got drunk and got into a dispute with someone and stabbed him. She named the three others involved, the other three to plead guilty to the crime: Robinson, Martin and Sanchez. Similar to Rodriguez’s confession later on, she said that Rodriguez was hit over the head with a police radio and fell. Cordero and Rivas came soon after, and when police accosted the two brothers, Rodriguez ran away.

Since this was before Rodriguez confessed, he testified shortly after that that Rosa lied because she was pressured by the defense to provide that testimony. Rosa herself never said that; nevertheless, she was never allowed to come back on the stand to defend her testimony.

Justice Lawrence J. Tonetti held that Rosa’s proposed rebuttal was on a collateral matter.

“Collateral means it goes to an issue that was separate from the one that needs to be decided,” Cordero’s defense attorney at the time, Claudia Trupp said.

According to Trupp, the judge thought the issue was that Rosa was threatened by Rodriguez—and it’s true, she was later on—however she apparently wasn’t threatened by Rodriguez until after he claimed she lied. The defense merely wanted her back on the stand to rebut Rodriguez’s claim that was pressured by the defense.

At the time of the case, the defense said Hon. Tonetti could not be persuaded to bring Rosa back on the stand simply to say her testimony was true. According to the defense records, Tonetti said, “We could go on with surrebuttal and surrebuttal forever,” if he allowed Rosa to

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retake the stand. The defense said Tonetti was in error in thinking the matter was collateral in the first place, but also according to court rules, Rosa was completely entitled to a rebuttal.

The defense called the judge's refusal to allow Rosa to rebut an error of "constitutional dimension."

Barry Pollack, who did not yet defend Cordero, says it's up to the judge whether or not a witness is allowed to be recalled. However, the judge is supposed to rule with discernment.

"There is a real unfairness in making a suggestion that somebody tampered with a witness and then not giving them a full opportunity to rebut that suggestion," he said.

### *The victim's letter*

Jason Mercado, the victim of the stabbing, wrote a letter to a probation officer, which showed his bias toward the accused, however the defense was not shown the letter until after the trial.

According to the defense's records, "the trial assistant admitted that she had actually possessed a copy of this letter well before the trial."

The defense called the letter Rosario material, because by law, the prosecutor must provide the defense with statements that relate to a witness' testimony at trial.

"If a complainant wrote a letter about the defendant or a letter about the incident, then it really should be Rosario material," defense attorney, Kuan, said.

Kuan says evidence must be turned over to the defense if it is favorable to the defendant.

After belatedly receiving the letter, the defense asked to cross examine Mercado; however, the judge ruled that the letter was not Rosario material, even though it was allowed to be incorporated for prosecution.

According to the defense, the "letter could have been used to impeach Mercado on cross with his otherwise unrevealed bias against, and hostility towards, appellant."

In the letter, Mercado wrote about the fact that he hoped each of the five accused of the crime were kept off the streets. Although Mercado did not specifically name Cordero nor Rivas, the defense argued that he was clearly speaking about both brothers, as well as the three others convicted of his assault, because he unequivocally believed that all five accused were actually guilty. So although he used neither Cordero nor Rivas's name in the letter, he was speaking about them.

However, because neither the names Cordero nor Rivas were specifically mentioned, the judge ruled that the material was not Rosario.

## **A look at the court system and its future**

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Defense attorney Claudia Trupp says 22 years into practicing law, she is still surprised and saddened with injustices like Cordero's.

"This isn't the only case where this has happened in," she said. "I mean it's just a reality that you have to live with when you're a defense attorney, post-conviction."

People v. Cordero can serve as an example of the problems within the court system. For one thing, once the court rules an individual is guilty, it's extremely difficult to reverse that. Defense attorney, Barry Pollack, says there are simply finite resources in courts.

"I mean the courts are overwhelmed and overburdened trying to keep up just processing current cases," he said. "And so if cases never concluded and had to be re-litigated over and over again, it would cause a real problem for the system, the system would just be overloaded, and so the trick is figuring out which post-conviction cases really need a second look and which ones don't."

He says judges and juries should rule with a more open mind, post-conviction.

"In my mind, courts err too far on the side of hardly ever wanting to give a serious look post-conviction because of the limited resources," he said, "but that stance simply doesn't reflect the reality of the number of times that we know the criminal justice system gets it wrong in the first instance and you know, I think the advent of DNA evidence has been eye-opening for everybody."

Trupp agrees. "It's really hard to move cases, there's really a resistance to revisiting past errors," she said. "And I don't mean to sound jaded, but it's just hard, it's really hard to win in any case. The reversal rate in most post-conviction trial is like maybe, 5 percent? That means 95 percent of our cases were getting affirmed?"

But Pollack says the closed-mindedness often starts with notoriously unreliable eye-witness accounts—that is, accounts from witnesses who've never seen the person they are identifying before—upon which the police develop theories.

"They go out to develop evidence to try to corroborate that theory and they're frankly not working for evidence that is inconsistent with that theory, they're looking for evidence to corroborate that theory," he said. "And so oftentimes the police simply miss evidence, they develop a theory and they have tunnel vision that causes them to look at evidence that seems to corroborate the theory and to ignore, discount evidence that seems to contradict it. And unfortunately, that is not uncommon. And that is a real problem, and one of the main causes that leads to wrongful conviction."

Trupp says she'd like to see a change, but she remains doubtful of the impact anything will have.

"I would like to see courts be more open to the idea that mistakes are made and that these things are well-documented," she said, "and I think there has been a certain evolution over the years, where we recognize the fallibility of the criminal justice system. But I don't think there's going to be a major shift in how we're handling this type of situation."

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In recent years, however, with conviction integrity review boards and DNA testing, Trupp remains part optimistic and part skeptic, saying rather than trying to overturn a conviction, more can be done to prevent a wrongful conviction in advance.

“There could be broader discovery that allows people to have a better sense of the evidence against them—there are so many reforms that could be put in place to prevent wrongful conviction, that you know, run into obstacles for various reasons. So, yeah I would like to see the system change, I just don’t think there’s going to be major changes in the foreseeable future in New York.”