

Bach in the Heights presents **The B Minor Mass** by **JS Bach** Sunday, April 7th at 3pm
 with singers and Orchestra conducted by **Edward Houser** 125 Henry Street Brooklyn Heights

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April 4, 2019 Rob Abruzzese
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BROOKLYN TONIGHT

“The Brooklyn Bar Association thought it would inform this discussion to convene a panel of experts, and they really are experts, who can weigh in on some of these topics and give their perspectives on the causes and prevention of wrongful convictions,” Kamins said.



Hon. Barry Kamins (center) moderated a panel hosted by the Kings County Criminal Bar Association on wrongful convictions. Eagle photo by Rob Abruzzese

A change in mindset

Hale, chief of the Brooklyn district attorney’s Conviction Integrity Unit under both Ken Thompson and Eric Gonzalez, explained that one of the biggest things he learned since he started looking at wrongful convictions is that, to keep them from happening, an office can’t be focused on winning cases. Instead, Hale said, the focus has to be on doing actual justice even if that means not pursuing a case at all.

“Your goal is not to win, your goal is to do justice,” Hale said. “That is sometimes difficult to get across. One’s performance as a prosecutor should not just be in wins and losses, but whether you’ve operated honorably, ethically, practically and did so with restraint and came up with a just result, no matter what that result is.”

Hale admitted that changing even his own mindset wasn’t easy after having tried more than 200 jury trials to verdict. He said that the key is to acknowledge that, with so much human involvement in the process, mistakes are inevitable.

“Human beings make mistakes, whether they are witnesses, attorneys, judges, and these are mistakes that fall outside of the traditional appellate sort of work,” Hale said. “Self-examination of the work you’ve done is not a pleasant experience. It can be painful. There are a lot of people who in their positions don’t want to examine this or acknowledge it.”

Widespread problem

Rudin, a defense attorney for over 40 years, explained that, because of the way many police officers and prosecutors were trained, a lot of the issues are systemic and hard to overcome.

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“This is a widespread problem,” Rudin said. “Of the 25 convictions the Brooklyn DA’s Office has overturned...nine have been Louis Scarcella cases. But there are so many other detectives in the New York City Police Department that were as bad as Scarcella. We have just scratched the surface of wrongful conviction cases.”

Rudin was critical of one change Eric Gonzalez has made to the conviction review unit — that defense attorneys can no longer file a motion to vacate a judgment while also turning the case over the DA’s Conviction Review Unit like they did under Thompson.

Now, Rudin says, attorneys are forced to decide between the two options which risks giving up the future possibility of a federal habeas corpus review which has a very strict statute of limitations.

“Mr. Gonzalez at some point last year instituted a policy that it’s one or the other,” Rudin said. “Either you file a 4040 motion [motion to vacate a judgment] and litigate in court against his appeals unit, which is staffed by the same people who have been there for 20 years and will throw every procedural roadblock under the sun at you, or you can go with the Conviction Review Unit. But [if you go with the Conviction Review Unit], you can’t file a 4040 motion and you have to worry about giving up the possibility in the future of a federal habeas corpus review.”

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