May 3, 2021

Grievance Committee for the Tenth Judicial District
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RE: Grievance Complaint Regarding Attorney Patricia Theodorou, State Bar No. 2627362

To the Grievance Committee:

We write to complain about the professional misconduct of attorney Patricia Theodorou[1] in *People v. Bristol*.[2] While an Assistant District Attorney with the Queens District Attorney's Office, Theodorou made various improper comments during the summation in *People v. Bristol*. As detailed below, Theodorou acted improperly when she vouched for the strength of her own case, appealed to the sympathies of the jury, and disparaged Mr. Bristol and defense counsel, among other improper comments. The Appellate Division found that "certain remarks made by [Theodorou during summation] were improper" but did not reverse the conviction.[3]

Theodorou's misconduct in Queens was far from unique; serious misconduct at the Queens District Attorney's Office (QDAO) has been regularly reported for years. For example, beginning in 2007, Queens prosecutors utilized interviewing practices that undermined suspects' *Miranda* rights, according to the Appellate Division and the Court of Appeals.[4] Another QDAO policy established a wall between different units in the office, leading to trial prosecutors failing to disclose exculpatory material in the hands of another unit.[5] The Appellate Division has repeatedly criticized Queens prosecutors' improper summation conduct and advised that the

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[1] Patricia Ann Theodorou, State Bar No. 2627362, registered office located at: Suffolk County District Attorney's Office, 200 Center Dr. S., Riverhead, New York 11901. Phone: (631) 852-1421. Email: patricia.theodorou@suffolkcountyny.gov. We do not have personal knowledge of any of the facts or circumstances of Theodorou or the cases mentioned; this grievance is based entirely on the court opinions, briefs and other documents cited herein.

[2] Exhibit A, *People v. Bristol,* 140 A.D.3d 781 (2d Dep't 2016). The decision does not identify Theodorou by name, but the trial transcript does. Trial Transcript at 731, *People v. Bristol*, Ind. No. 1936-2011 (Queens Sup. Ct. June 18, 2013).

[3] *Id.*

[4] *People v. Dunbar*, 104 A.D.3d 198 (2d Dep't 2013), *aff'd*, 24 N.Y.3d 304 (2014). *See also People v. Perez*, 37 Misc. 3d 272 (Queens Sup. Ct. 2012) (deeming QDAO's *Miranda* interview practice an ethical violation of Rule 8.4(c)); Russ Buettner, *Script Read to Suspects Is Leading to New Trials*, New York Times (January 30, 2013) https://www.nytimes.com/2013/01/31/nyregion/appellate-panel-overturns-3-queens-convictions-based-on-rights-preamble.html.

[5] Sarah Maslin Nir, *Murder Conviction Tossed Out in Queens*, New York Times (March 18, 2013) https://www.nytimes.com/2013/03/19/nyregion/murder-conviction-reversed-over-withheld-information.html. *See also People v. Petros Bedi*, Ind. No. 4107/96, NYLJ 1202592836531 (Queens Sup. Ct. March 13, 2013) (Witness Security Program documents, which were not made part of prosecutor's file "as matter of custom," were *Rosario* and *Brady* materials; failure to disclose required vacating murder conviction).

Office provide better training for its trial prosecutors.[6] There are numerous court decisions finding that QDAO prosecutors acted improperly—a recent civil lawsuit contains a list of 117 published decisions involving prosecutorial misconduct in Queens cases.[7] Theodorou's misconduct appears to fall within this appalling, unprecedented, and largely-unaddressed pattern of improper conduct.

Theodorou's improper summation comments in *People v. Bristol* constituted multiple violations of Rule 8.4 of the New York Rules of Professional Conduct. Yet Theodorou was neither sanctioned nor held accountable for her improper actions. Instead, she has been promoted and is now in a position of even greater power as the Deputy Trial Division Chief at the Suffolk County District Attorney's Office. Despite the findings of misconduct noted in this grievance, as of the writing of this grievance, the New York Attorney Detail Report lists "Disciplinary History: No record of public discipline" for Theodorou.[8]

The Grievance Committee must suspend Theodorou for her misconduct.

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[6] *See, e.g.*, *People v. Velez*, 2014-09698, Oral Argument, Appellate Division, 48:30-50:15 (March 16, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1521208616.External_(PubliP).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1521208616.External_(Public).mp4; *People v. Cherry,* 2014-10909*,* Oral Argument, Appellate Division, 26:34-29:31 (March 13, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1520949280.External_(Public).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1520949280.External_(Public).mp4.

[7] Amended Complaint, *Julio Negron v. The City of New York et al.*, No.18-cv-6645 (DG) (RLM) (filed March 10, 2021).

[8] *See Attorney Detail Report*, Attorney Online Services -- Search, New York Unified Court System, available at https://iapps.courts.state.ny.us/attorneyservices.

1. The Grievance Committee has a Unique Duty to Protect the Public by Holding Prosecutors Accountable for Misconduct.

A. Prosecutorial Misconduct is Pervasive and Unchecked.

Our legal system holds prosecutors to the highest standards of all attorneys.[9] When any attorney missteps, it can cause harm, typically to an individual client. But a prosecutor's misconduct can destroy a person's life—and that of their family. Moreover, a prosecutor's misconduct negatively affects both law and society. A single prosecutor's misconduct can damage "the reputation and public confidence placed" in all prosecutors and the justice system itself.[10]

As the United States Supreme Court and the New York Court of Appeals have stated, a prosecutor "may strike hard blows, [but] he is not at liberty to strike foul ones. *It is as much* his duty to refrain from improper methods calculated to produce a wrongful conviction *as it is* to use every legitimate means to bring about a just one."[11] Hal Lieberman, former Chief Counsel for the Departmental Disciplinary Committee in New York's First Department, has noted how unchecked prosecutorial misconduct "undermines the integrity of the entire system."[12]

But misconduct by prosecutors remains widespread and unchecked in the New York criminal legal system. A 2013 analysis of ten years of state and federal decisions revealed more than two dozen instances in which judges reversed convictions explicitly because of prosecutorial misconduct.[13] Yet these appellate courts "did not routinely refer prosecutors for investigation by the state disciplinary committees," and the disciplinary committees "almost never took serious action against prosecutors."[14] In the 30 cases where judges overturned convictions based on prosecutorial misconduct, only one prosecutor was publicly disciplined by a New York disciplinary committee. None of the other implicated prosecutors were disbarred, suspended or publicly censured and, according to personnel records gathered by ProPublica, several

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[9] *Matter of Rain*, 162 A.D.3d 1458, 1462 (3d Dep't 2018) ("prosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice"); *see also* 2017 ABA Prosecution Function Standards, Standard 3-1.4(a) ("In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations.").

[10] *Rain*, 162 A.D.3d at 1462.

[11] *Berger v. United States,* 295 U.S. 78, 88 (1935) (emphasis added); *People v. Jones*, 44 N.Y.2d 76, 80 (1978) (quoting *Berger*, 295 U.S. at 88). *See also People v. Calabria*, 94 N.Y.2d 519, 523 (2000) ("Evenhanded justice and respect for the fundamentals of a fair trial mandate the presentation of legal evidence unimpaired by intemperate conduct aimed at sidetracking the jury from its ultimate responsibility--determining facts relevant to guilt or innocence.") (citation omitted); *People v. Levan*, 295 N.Y. 26, 36 (1945).

[12] Joaquin Sapien and Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody,* ProPublica (April 3, 2013), https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody.

[13] *Id.*

[14] *Id.*

prosecutors were promoted and given raises soon after courts cited them for abuses.[15] As the *New York Times* Editorial Board wrote in 2018, "there's no reliable system for holding prosecutors accountable for their misconduct, and they certainly can't be entrusted with policing themselves."[16]

B. Summation Misconduct is Pernicious and Widespread.

In closing arguments ("summation"), the prosecutor's task is to explain how evidence introduced at trial applies to the legal elements of the charged offenses. Thus, prosecutors "must stay within the four corners of the evidence"[17] and are not permitted to make arguments that rely on facts that are not in evidence.[18] Prosecutors are not permitted to engage in prejudicial or misleading argumentation that are sometimes referred to as "cardinal sins."[19] These missteps include making "irrelevant and inflammatory comments;"[20] expressing "personal belief or opinion as to the truth or falsity of any testimony or evidence,"[21] also known as vouching; appealing to the jurors' sympathies or fears;[22] shifting the burden from the prosecution to the defense;[23] and denigrating the defense, defense counsel or the defendant.[24] Engaging in these forms of arguments is prejudicial and improper and can violate the accused's constitutional right to a fair trial.[25]

As far back as 1899, the New York Court of Appeals cautioned prosecutors against appealing to "prejudice" or seeking conviction "through the aid of passion, sympathy or resentment."[26] In 1906, the Court of Appeals reversed a criminal conviction because of the prosecutor's improper comments to the jury and expressed its frustration with the frequency of such misconduct:

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[15] *Id.*

[16] New York Times Editorial Board, *Prosecutors Need a Watchdog*, N.Y. Times, (August 14, 2018), https://www.nytimes.com/2018/08/14/opinion/new-york-prosecutors-cuomo-district-attorneys-watchdog.html.

[17] *People v. Mehmood*, 112 A.D.3d 850, 853 (2d Dep't 2013) (internal quotation marks and citation omitted).

[18] *People v. Ashwal*, 39 N.Y.2d 105, 109-10 (1976). *See also People v. Wright*, 25 N.Y.3d 769, 779-780 (2015); *People v. Singh*, 128 A.D.3d 860, 863 (2d Dep't 2015).

[19] *See* Daniel S. Medwed, *Prosecution Complex: America's Race to Convict and Its Impact on the Innocent*, 103-118 (2012).

[20] *Mehmood*, 112 A.D.3d at 853.

[21] *People v. Bailey,* 58 N.Y.2d 272, 277 (1983) (citation omitted).

[22] *See, e.g., Ashwal,* 39 N.Y.2d at 110; *People v. Lindo*, 85 A.D.2d 643, 644 (2d Dep't 1981); *People v. Fernandez*, 82 A.D.2d 922, 923 (2d Dep't 1981); *People v. Fogarty*, 86 A.D.2d 617, 617 (2d Dep't 1982); *People v. Brown,* 26 A.D.3d 392, 393 (2d Dep't 2006).

[23] *People v. DeJesus*, 137 A.D.2d 761, 762 (2d Dep't 1988); *People v. Lothin*, 48 A.D.2d 932, 932 (2d Dep't 1975).

[24] *See, e.g., People v. Damon*, 24 N.Y.2d 256, 260 (1969); *People v. Lombardi*, 20 N.Y.2d 266, 272 (1967); *People v. Gordon*, 50 A.D.3d 821, 822 (2d Dep't 2008); *Brown,* 26 A.D.3d at 393; *People v. LaPorte,* 306 A.D.2d 93, 95 (1st Dep't 2003).

[25] *DeJesus*, 137 A.D.2d at 762.

[26] *People v. Fielding*, 158 N.Y. 542, 547 (1899).

> We have repeatedly laid down the rule governing prosecuting officers in addressing the jury… We have repeatedly admonished [prosecutors] at times with severity… not to depart from that rule, but our admonitions have not always been regarded, although they were followed by a reversal of the judgment involved, founded solely on the improper remarks of the prosecuting officer… *Why should court and counsel violate the law in order to enforce it?* What a pernicious example is presented when such officers, intrusted [sic] with the most important duties, in attempting to punish the guilty, are themselves guilty of departing from the law.[27]

But those early rebukes from the courts seem to have had little impact on prosecutors' practices. Over the last few decades, New York courts have had to remind prosecutors over and over that "summation is not an unbridled debate in which the restraints imposed at trial are cast aside so that counsel may employ all the rhetorical devices at his command."[28] Countering the gamesmanship and instinct to win that overcomes many prosecutors at trial, courts have reminded them that "our adversarial system of justice is not a game, it has rules, and it is unfortunate when a prosecutor … plays fast and loose with them."[29]

Summation misconduct continues—apparently unabated—to this day. During oral argument in 2018, Justice LaSalle of the Appellate Division sharply criticized the regularity of summation misconduct:

> At what point does the unprofessionalism stop? At what point do we stop trying to win trials by being glib and win them on the evidence?… why weren't these [summation] statements so prejudicial, so unprofessional, so glib, as to inflame the passions of the jury so they wouldn't even consider themselves of the evidence, and come back with a verdict simply based on those [] unprofessional statements?[30]

As the above statement of Justice LaSalle makes clear, prosecutors make improper arguments in summation because such remarks are *effective* at winning cases—they go beyond the evidence, to manipulate biases, prejudice, and passions. Discussing prosecutorial misconduct in opening statements—where attorneys are even more limited than in summation—Justice Alan D. Scheinkman of the Appellate Division remarked in oral argument, "It's obvious that the prosecutor who tried this case was saying things for the purpose of winning it."[31]

For that reason, summation misconduct is not trivial or a "mere technicality." Summation misconduct increases the likelihood of a guilty verdict—and of the prosecutor winning their case. However, the prosecutor's role in a criminal trial is not just to win the case: the law requires that prosecutors "seek justice…not merely to convict."[32] In this role, the law requires of prosecutors

[27] *People v. Wolf*, 183 N.Y. 464, 471-76 (1906) (emphasis added).

[28] *Ashwal*, 39 N.Y.2d at 109.

[29] *People v. Payne,* 187 A.D.2d 245, 247 (4th Dep't 1993).

[30] *Velez*, 2014-09698, Oral Argument at 0:46:55-0:48:05.

[31] *Cherry,* 2014-10909, Oral Argument at 0:27:45-0:28:13.

[32] American Bar Association, Standard 3-1.2 Functions and Duties of the Prosecutor (2017) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict."), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.

"to see that the defendant is accorded procedural justice."[33] Winning a case through summation misconduct violates this fundamental obligation. The American Bar Association's own ethical standards insist that "prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office, but also because of the fact-finding facilities presumably available to the office."[34]

Improper summations have been a particular problem at the Queens District Attorney's Office in recent years, distorting numerous trials, and sometimes resulting in reversal. As Justice Miller of the Appellate Division stated in oral argument:

> I could read this summation and without knowing what office it is from would say it is from Queens. That's the reputation that your office is building with this court. Because this [summation misconduct] happens repeatedly.[35]

Similarly, commenting on the Queens District Attorney's Office's opening and closing statement misconduct, Justice Austin of the Appellate Division stated in oral argument:

> I feel like a broken record because I address this every time. Almost every time the Queens DA is before us . . . When do we say to your office, enough is enough? . . . I've got to tell you, it distresses me to no end, the line that you consistently cross. Consistently! . . . You always agree [that these remarks are improper] when you're here [in the Appellate Division]. But you keep doing it and you keep doing it and you keep doing it … I've heard somebody from your office standing there every time I've been here saying the same exact thing [agreeing remarks were improper]. And I'm here 9 years this week. It's 9 years of the same thing.[36]

Justice Leventhal, in turn, suggested that the Queens District Attorney's Appeals Bureau train the trial prosecutors about summation misconduct.[37]

Professor and former prosecutor Bennett Gershman highlights the broad shadow that summation misconduct continues to cast over the entire criminal justice system:

> The problem is not new … [M]isconduct by prosecutors in oral argument has indeed become staple in American trials. Even worse, such misconduct shows no sign of abating or being checked by institutional or other sanctions … Virtually every federal and state appellate court at one time or another has bemoaned the 'disturbing frequency' and 'unheeded condemnations' of flagrant and unethical prosecutorial behavior.[38]

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[33] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

[34] Commentary, Criminal Justice Standards Comm., Am. Bar Ass'n, Standards for Criminal Justice: Prosecution and Defense Function Standards 3-5.8 (3d ed. 1993).

[35] *Velez*, 2014-09698, Oral Argument at 0:48:30-0:49:00.

[36] *Cherry,* 2014-10909*,* Oral Argument at 0:26:34-0:29:31.

[37] *Velez*, 2014-09698, Oral Argument at 0:49:30-0:50:15.

[38] Bennett L. Gershman, *Prosecutorial Misconduct*. § 11:1. Introduction (2d ed.) (August 2018 update) (internal citations omitted.) Gershman is a former New York prosecutor. See also Daniel S. Medwed,

Despite the courts' clear prohibition of summation misconduct, prosecutors often ignore the law in an attempt to win their cases.

C. The Grievance Committee, as the Only Body Entrusted with Checking Prosecutorial Misconduct, has an Important Duty to Hold Prosecutors Accountable.

The Grievance Committee is in a unique position to hold New York prosecutors accountable for misconduct. While other attorneys and law enforcement officers are liable to civil lawsuits when they neglect their duties, the absolute immunity doctrine shields prosecutors from civil accountability.[39] In 1976, the U.S. Supreme Court partly justified absolute immunity for prosecutors because it believed that prosecutorial misconduct would be regulated by the "checks" of "professional discipline" by state bar organizations.[40]

Unfortunately, the U.S. Supreme Court's assumption—that professional disciplinary actions "would provide an antidote to prosecutorial misconduct"[41]—has not been borne out. A 2013 report from the Center for Prosecutor Integrity identified 3,625 cases of prosecutorial misconduct between 1963 and 2013. Of those, only 63 prosecutors—less than 2 percent—were ever publicly disciplined.[42]

In their 2016 article, "Prosecutorial Accountability 2.0," ethics experts Professors Ellen Yaroshefsky and Bruce Green pointed out that prosecutors "were rarely disciplined for misconduct, and if so, not very seriously." Indeed, "neither judges nor defense lawyers ordinarily alerted disciplinary agencies when prosecutors acted wrongly … [D]isciplinary agencies and the courts overseeing them largely gave prosecutors a pass, perhaps hoping that prosecutors' offices would clean up their own messes."[43] "It's an insidious system," said Marvin Schechter, then-

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Closing the Door on Misconduct: Rethinking the Ethical Standards that Govern Summations in Criminal Trials, 38 Hastings Const. L. Q.915 (2011).

[39] *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976); *Shmueli v. City of New York*, 424 F.3d 231, 237 (2d Cir. 2005) (noting that prosecutors have "absolute immunity" for the "conduct of a prosecution"); *Dann v. Auburn Police Dep't*, 138 A.D.3d 1468, 1469 (4th Dep't 2016) ("The law provides absolute immunity for conduct of prosecutors that was intimately associated with the judicial phase of the criminal process.") (internal quotation marks omitted); *see also Ryan v. State*, 56 N.Y.2d 561, 562 (1982) (holding that "the doctrine of prosecutorial immunity" precludes "recovery against the State" for "acts of prosecutorial misconduct").

[40] *Imbler,* 424 U.S. at 429; *see also Matter of Malone*, 105 A.D.2d 455, 459 (3d Dep't 1984) (rejecting public official's claim to prosecutorial immunity in a professional ethics proceeding).

[41] Karen McDonald Henning, *The Failed Legacy of Absolute Immunity Under Imbler: Providing A Compromise Approach to Claims of Prosecutorial Misconduct*, 48 Gonz. L. Rev. 219, 242–43 (2012).

[42] Center for Prosecutor Integrity, *White Paper: An Epidemic of Prosecutor Misconduct* (December 2013) www.prosecutorintegrity.org/wp-content/uploads/EpidemicofProsecutorMisconduct.pdf; *see also Proj. On Gov't Oversight*, Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards (Mar. 12, 2014), http://pogoarchives.org/m/ga/opr-report-20140312.pdf; Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 Washburn L.J. 59, 81 (2012) (citing "the small number of sanctions against prosecutors, relative to lawyers as a whole"); Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721, 725 (2001) (describing the "rarity of discipline" of prosecutors).

chairman of the criminal justice section of the New York State Bar Association, to ProPublica. "Prosecutors engage in misconduct because they know they can get away with it."[44]

In 2018, the Appellate Division suspended New York prosecutor Mary Rain's law license for two years for a variety of misconduct, including summation misconduct.[45] In December 2020, the Appellate Division imposed the same penalty for the egregious misconduct of ex-prosecutor Glenn Kurtzrock.[46] But even a short suspension like that received by Rain and Kurtzrock[47]—indeed, public discipline of any kind—remains rare.

Prosecutors, the public officials tasked with holding the public accountable, are not held accountable themselves. Absent strong, public discipline by the Grievance Committee, misconduct like that of Theodorou will continue unabated and undeterred.

2. The Appellate Division Found That Theodorou Made Improper Remarks in *Bristol*.

In *People v. Bristol*, Mr. Bristol's attorney raised Theodorou's summation misconduct on appeal. The Appellate Division found that the misconduct claim was unpreserved for appellate review, presumably based on Mr. Bristol's trial attorney's failure to object. The Appellate Division nonetheless found that "certain remarks made by the prosecutor were improper [but] they were not so flagrant or pervasive as to deprive the defendant of a fair trial."[48]

The Appellate Division did not specify which parts of Theodorou's summation were improper, but Mr. Bristol's appellate attorney argued that Theodorou committed several types of summation misconduct, including: (1) vouching for the strength of the prosecution's case; (2) appealing to the jury's sympathies and fears; (3) disparaging the defendant; (4) denigrating the defense; and (5) turning the jury into a community defender and avenger.[49]

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[43] Bruce Green & Ellen Yaroshefsky, *Prosecutorial Accountability 2.0*, 92 Notre Dame L. Rev. 51, 65 (2017) (internal citations omitted); *see also* Richard A. Rosen, *Disciplinary Sanctions Against Prosecutors for Brady Violations: A Paper Tiger*, 65 N.C. L. Rev. 693, 697 (1987).

[44] *ProPublica Investigates Prosecutorial Misconduct in New York,* Innocence Project (April 3, 2013) https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody.

[45] *Rain*, 162 A.D.3d at 1462.

[46] *Matter of Kurtzrock*, 192 A.D.3d 197 (2d Dep't 2020).

[47] In the context of the apparently rampant and egregious misconduct by Rain and Kurtzrock, the court's sanction was surprisingly light. *See, e.g.*, Bennett L. Gershman, *The Most Dangerous Prosecutor In New York State, HuffPost (September 20, 2017)*, https://www.huffpost.com/entry/the-most-dangerous-prosec_b_12085240; Bennett L. Gershman, *A Most Dangerous Prosecutor: A Sequel*, HuffPost (October 1, 2016), https://www.huffpost.com/entry/a-most-dangerous-prosecutor-a-sequel_b_57effb8fe4b095bd896a0fba; Nina Morrison, "What Happens When Prosecutors Break the Law?" *New York Times*, June 18, 2018 https://www.nytimes.com/2018/06/18/opinion/kurtzrock-suffolk-county-prosecutor.html (see also Morrison's twitter thread following the *Kurtzrock* decision, https://twitter.com/Nina_R_Morr/status/1344413003903602688).

[48] Ex. A, *Bristol,* 140 A.D.3d 781.

[49] Brief for Appellant at 20-27, *People v. Bristol* (2d Dep't).

A. Vouching for the Strength of the Prosecution's Case.

It is improper for a prosecutor to vouched for the strength of the government's case. A prosecutor "may not inject his own credibility into the trial" because of the "possible danger that the jury, impressed by the prestige of the office of the District Attorney, will accord great weight to the beliefs and opinions of the prosecutor."[50]

In *Bristol*, Theodorou repeatedly told the jury how strong the evidence was:

- Theodorou claimed to the jury that, "this is a simple case, ladies and gentlemen. If you do not get distracted this is a simple case." [51]

- While speaking about challenged DNA evidence tying Mr. Bristol to a gun, Theodorou told the jury: "Plus that DNA. It's like the sprinkles on a cupcake that's already got the icing on it. It's already good, already complete, just got something else on it to make it better. That's what you got here."[52]

- Towards the end of her summation, Theodorou told the jury that the case was "a slam dunk." [53]

Theodorou's comments—calling the case "simple," "already complete," and a "slam dunk"—implicitly inserted her own evaluation of the strength of her case. The implicit message of these comments was that the prosecutor, speaking with the authority, prestige and credibility of the office behind her, knows her own case; if she says this is an open and shut case, it is.

B. Appealing to the Jury's Sympathies and Fears.

In her summation, Theodorou's remarks appear to have improperly appealed to the jury's sympathies and fears to align them with the complainants and against Mr. Bristol. In one particularly concerning example, Theodorou told the jury not to "be fooled" by the "small" size of the gun allegedly possessed by Mr. Bristol:

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[50] *People v. Paperno*, 54 N.Y.2d 294, 300-01 (1981). *See also People v. Irving*, 130 A.D.3d 844, 846 (2d Dep't 2015) (improper for prosecutor to vouch for strength of his case); *People v. Jodhan*, 37 A.D.3d 376, 376 (1st Dep't 2007) (prosecutor's statement to the jury that "there is no reasonable view of [the evidence] that would lead you" to find the defendant not guilty was "grossly improper."); *People v. Anderson*, 35 A.D.3d 871, 872 (2d Dep't 2006) (finding improper "unqualified statements of the defendant's guilt"); *People v. Rogers*, 59 A.D.2d 916, 918 (2d Dep't 1977) (holding improper prosecutor's statement in summation that, "we feel that we have proven this case, easily, beyond a reasonable doubt"); *People v. Jamal*, 307 A.D.2d 267, 268 (2d Dep't 2003) (improper for prosecutor to give "personal opinion . . . as to defendant's guilt"); *People v. Rivera*, 116 A.D.2d 371, 375 (1st Dep't 1986) ("[T]he District Attorney wrongfully vouched for the strength of the People's case by asserting that the prosecution had more than met its burden of proof.").

[51] Trial Tr. at 758:25-759:2.

[52] *Id*. at 787:14-17.

[53] *Id.* at 790:21.

> You can look at this gun, ladies and gentlemen, and say it's kind of small. Don't be fooled. This gun could kill you just like any other gun could kill you… All you have to do is pull that trigger, fire that gun.[54]

The Appellate Division has found similar arguments, inviting the jury to fear killings that *could* have happened during a crime, to be improper.[55]

Furthermore, Theodorou responded to admitted "problems" with the complainants' testimony by improperly appealing to the jury's sympathy:

> This is real people, real events, real trauma to real people and they didn't ask to be put in the position where they have to come in here. They did not ask to have to come in here, which you heard through Counsel's questions, 20 months ago, and sit in a room full of strangers called the grand jury and tell them what happened. They didn't ask to, last week have to come in here again, 20 months later and tell another group of strangers something very traumatic that happened to them. For their trouble they got cross examined blisteringly by a seasoned defense attorney… They didn't ask for that. See that guy sitting over there? He put them in that position. Him and his friend forced them to come in here and testify in front of strangers because they victimized them at gunpoint.[56]

It is improper for a prosecutor to "pla[y] upon the emotions of the jurors in an obvious attempt to align them with the complainant[s] and to thus bolster [their] testimony."[57] Appellate courts routinely find statements that allude to the "courage" of complainants in testifying to be improper.[58]

C. Disparaging Mr. Bristol and Resorting to Name-calling.

In her closing argument, Theodorou referred to Mr. Bristol in this manner:

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[54] *Id*. at 765:6-24.

[55] *See, e.g., Lindo*, 85 A.D.2d at 644 (reversing gun possession conviction where the prosecutor's summation improper remarks included, "had the defendant pulled the trigger that night this case would be an attempted murder or worse"); *Fernandez*, 82 A.D.2d at 923 (prosecutor improperly "inflamed the jury when he argued in effect, that while no one had been killed during the robbery, there was only God to thank.").

[56] Trial Tr. at 763:20-764:18.

[57] *Fogarty*, 86 A.D.2d at 617. *See also Ashwal,* 39 N.Y.2d at 110*; Brown,* 26 A.D.3d at 393 (prosecutor inappropriately remarked to jury, "'God forbid you had a gun pointed at your side'"); *People v. Davis*, 256 A.D.2d 474, 474 (2d Dep't 1998) (prosecutor improperly appealed to jurors' fears regarding drug dealing); *People v. Moss*, 215 A.D.2d 594, 595 (2d Dep't 1995) (prosecutor's invitation to jurors to imagine themselves in the shoes of defendant's victims was improper).

[58] *See, e.g., People v. Mohammed*, 81 A.D.3d 983, 984 (2d Dep't 2011) (improper for prosecutor to remark that the jury "saw what [the complainant] went through on the witness stand" and to ask jury "to treat [the complainant] with dignity"); *People v. Smith*, 288 A.D.2d 496, 497 (2d Dep't 2001) (prosecutor improperly appealed to jurors' sympathy by commending victim for "courageous[ly]" going to police and testifying).

> [The complainant] was prepared to fight them for his headphones if they approached him like men, but they didn't do that; did they? They approached him like cowards, like bullies. And I think all of us in our lives have seen that, when somebody is a bully, ultimately what they are is a coward because it wasn't enough to be two on one; was it? They brought a knife and they brought a gun.[59]

Appellate courts have held that name-calling and disparaging the defendant in a criminal trial exceeds the bounds of proper advocacy and constitutes prosecutorial misconduct.[60] Moreover, such conduct violates the American Bar Association Standards for a prosecutor, which require that the prosecutor behave professionally and courteously towards a criminal defendant.[61]

D. Denigrating Defense Counsel.

Theodorou's remarks appear to have denigrated defense counsel's cross-examination as "blistering," and suggested that he used an inappropriate "tone" to "confuse" the complainant:

> For their trouble [the complainants] got cross examined blisteringly by a seasoned defense attorney… that's what [defense counsel] was saying to [the complainant] and getting him confused… In a tone of voice just like that.[62]

Courts have found almost identical comments denigrating defense counsel's cross-examination to constitute prosecutorial misconduct.[63]

Theodorou further denigrated the defense by telling the jury not to be "distracted" by defense counsel's theory, asking "how dare" counsel argue that stolen cell phones were planted, and repeatedly characterizing defense arguments as "crazy," "ridiculous," and a "giant conspiracy." Examples of Theodorou's denigrating comments include:

- "If you do not get distracted this is a simple case."[64]

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[59] Trial Tr. at 780:14-21.

[60] *See, e.g., People v. Shanis*, 36 N.Y.2d 697, 699 (1975) (calling defendant a liar was name-calling and "exceeded bounds of legitimate advocacy."); *People v. Bowie,* 200 A.D.2d 511, 513 (1st Dep't 1994) ("a prosecutor who resorts to name-calling instead of confining her remarks to the facts commits a blatant act of prejudice which can only result in denying a defendant a fair trial.") (citation omitted).

[61] American Bar Association, *supra*, Standard 3-6.2 ("the prosecutor should support the authority of the court and the dignity of the courtroom by adherence to codes of professionalism and civility, and by manifesting a professional and courteous attitude toward the judge, opposing counsel, witnesses, defendants, jurors, court staff and others.").

[62] Trial Tr. at 764:3-15.

[63] *See*, *e.g., Damon*, 24 N.Y.2d at 260 (holding improper prosecutor's accusation that defense was "sandbagging witnesses."); *Lombardi*, 20 N.Y.2d at 272 (prosecutor improperly characterized defense cross-examination as "foul"); *LaPorte*, 306 A.D.2d at 95 (error to warn jurors "that defense counsel was manipulating them and trying to prevent them from using their common sense."); *People v. Clemons*, 166 A.D.2d 363, 366 (1st Dep't 1990) (prosecutor improperly characterized defense's cross-examination as "slander" and "character assassination.").

[64] Trial Tr. at 759:1-2.

- "[D]on't get distracted by this crazy, I don't know, giant conspiracy to frame this defendant."[65]
- "And if you use your common sense and you don't get distracted by the six guy theory."[66]
- "Do not get distracted by [defense counsel's] alternate reality theories of what could have happened."[67]
- "I know Counsel wants you to believe [the cellphones] were planted. There's nothing, absolutely nothing that supports that and you didn't even hear him ask a single question of Officer Peart about that, so how dare he get up here and say it."[68]
- "[I]f you push aside this crazy [defense] theory of six guys out there in this giant frame of conspiracy, your common sense tells you…"[69]
- "You got to take [defense counsel's] arguments where they go, where they end up. And that's ridiculous, I submit."[70]
- "[Defense counsel] started out his summation with this DNA and he wanted to talk about the numbers and [the criminalist] was lying… [according to defense counsel,] [s]he's part of this giant conspiracy too."[71]

Appellate courts have consistently held that similar comments are improper and constitute prosecutorial misconduct.[72]

E. Turning the Jury into a Community Defender and Avenger.

It is improper for a prosecutor to prod the jury to "expand its role from that of a fact finder in this case to that of a community defender and avenger."[73] Early in her summation, Theodorou made the following statements to the jury:

> [The complainants were] minding their business that day, very close to home where you feel safe, where you have a right to feel safe… You have a right to feel safe in

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[65] *Id.* at 767:9-11.

[66] *Id.* at 759:5-7.

[67] *Id.* at 789:24-25.

[68] *Id.* at 760:18-22.

[69] *Id.* at 776:10-12.

[70] *Id.* at 778:13-15.

[71] *Id.* at 784:6-14.

[72] *See, e.g., Gordon*, 50 A.D.3d at 822 (prosecutor "improperly denigrated the defense by repeatedly likening it to a 'Hollywood' story and characterizing it as 'ridiculous' and 'absurd.'"); *Brown*, 26 A.D.3d at 393 (denigrating defense "by repeatedly referring to the defendant's testimony as a 'story' and a 'load of garbage'"); *LaPorte*, 306 A.D.2d at 95 ("characterizing the defense theory as 'mumbo jumbo'"); *People v. Ortiz*, 125 A.D.2d 502, 503 (2d Dep't 1986) (prosecutor "improperly described the defense as a 'smokescreen'"); *People v. Garrow*, 126 A.D.3d 1362, 1364 (4th Dep't 2015) (expressing "strong disapproval of the prosecutor's tactics" of "denigrating both defense strategy and defense attorney personally."); *People v. Bhupsingh*, 297 A.D.2d 386, 388 (2d Dep't 2002) (finding error for prosecutor to denigrate defense in summation); *People v. Ni*, 293 A.D.2d 552, 552 (2d Dep't 2002) (reversing conviction where prosecutor's comments denigrated the defense).

[73] *People v. Miller*, 149 A.D.2d 439, 440 (2d Dep't 1989).

> your neighborhood, right? But they weren't because of [Mr. Bristol] and that gun and his friend.[74]

At the end of summation, Theodorou's remarks reinforced the message that the community must be protected from Mr. Bristol:

> [The defendants] rode the subway, ladies and gentlemen, from Brooklyn into Queens, basically trolling for victims and they found them. Tell them it's not okay to do that, ladies and gentlemen. It's not okay to come into Queens and hold up Queens residents at gunpoint. Convict them of everything he's charged with here, acting in concert with his friend because that's exactly what the evidence has shown beyond a reasonable doubt.[75]

The argument urging the jury to keep the neighborhood safe by convicting the defendant is one that has been "consistently condemned as improperly deflecting the jurors' attention from the issues of fact on the question of guilt or innocence to that of achieving vengeance and protection for the community.[76] Appellate courts have routinely held that appeals similar to those made by Theodorou constitute prosecutorial misconduct.[77]

As a whole, the Appellate Division believed that Theodorou's summation remarks were not so flagrant or pervasive as to deprive the defendant of a fair trial," but it nevertheless found these remarks to be "improper."[78]

3. The Grievance Committee Must Discipline Theodorou for the Professional Misconduct That Occurred Here.

As noted by one Grievance Committee, "[t]he legal profession expects all lawyers to conduct themselves in an honest and ethical manner in accordance with the Rules of Professional Conduct."[79] Professional misconduct occurs with a "violation of any of the Rules of Professional

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[74] Trial Tr. at 766:14-21.

[75] *Id.* at 792:14-21.

[76] *Davis*, 256 A.D.2d at 474-75.

[77] *See People v. Collins*, 12 A.D.3d 33, 40 (1st Dep't 2004) (improper for prosecutor to ask jurors to act as community defender by stating, "Hold him responsible for his actions. Hold him accountable for his decision to be a part of narcotics street sales"); *Bhupsingh*, 297 A.D.2d at 388 (improper for prosecutor to urge jurors not to let defendant "get away with it"); *People v. Demott*, 178 A.D.2d 935, 935 (4th Dep't 1991) (prosecutor's remark that jury should not "let [defendant] get away with it" was "clearly improper"), *superseded on other grounds by* 188 A.D.2d 1068 (4th Dep't 1992); *People v. Fogel*, 97 A.D.2d 445, 446 (2d Dep't 1983) (prosecutor improperly urged jurors not to let defendant "get away with" charged crimes); *People v. Robinson*, 260 A.D.2d 508, 510 (2d Dep't 1999) (prosecutor improperly told jurors, "[t]he only way this defendant walks out of the courtroom is if you let him").

[78] *Id*.

[79] *How to File a Complaint*, Attorney Grievance Committee — First Department (July 30, 2020), https://www.nycourts.gov/courts/ad1/Committees&Programs/DDC/How%20to%20File%20a%20Complaint%2007.30.2020.pdf.

Conduct."[80] Grievance Committees are "committed to … recommending discipline for lawyers who do not meet the high ethical standards of the profession."[81]

Our laws and profession hold prosecutors to an even higher standard. Prosecutors wield immense power—the power to punish on behalf of the state. Such immense power, when left unchecked, can cause indelible harm. The United States Supreme Court has stated unequivocally that prosecutors "have a special duty to seek justice, not merely to convict."[82]

In handing ex-prosecutor Glenn Kurtzrock a two-year suspension for his past prosecutorial misconduct, the Appellate Division reminded us, "Prosecutors, in their role as advocates and public officers, are charged with seeing that justice is done—to act impartially, to have fair dealing with the accused, to be candid with the courts, and to safeguard the rights of all."[83]

Therefore, a prosecutor is not merely an advocate for a victim, a complainant, or society as a whole. Instead, a prosecutor is a "minister of justice," responsible to guarantee "procedural justice and that guilt is decided upon the basis of sufficient evidence."[84] Similarly, the professional guidelines promulgated by the American Bar Association make clear that a prosecutor's job goes well beyond achieving the maximum number of convictions.[85] The New York professional rules reflect this higher standard: prosecutors are the only category of attorneys with their own ethical rule.[86] Indeed, as agents of the state and ministers of justice, prosecutors play a highly public role. Failing to acknowledge their misconduct, or hold them accountable for it, tarnishes the legitimacy of the criminal system, the bar as a whole, and the rule of law itself.

A. Theodorou's Misconduct in Summation Violates New York Rule Of Professional Conduct 8.4.

The standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence—not a higher standard, such as clear and convincing or beyond a reasonable doubt.[87] The Court of Appeals explained, "[T]he privilege to practice law is *not a personal or liberty interest, but 'is more nearly to be classified as a property interest, as to which the higher standard of proof has not been required.*'"[88]

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[80] 22 N.Y.C.R.R. Part 1240.

[81] *How to File a Complaint*, Attorney Grievance Committee — First Department.

[82] *Connick v. Thompson*, 563 U.S. 51, 65-66 (2011) (quotation marks omitted).

[83] *Kurtzrock*, 192 A.D.3d 197.

[84] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

[85] 2017 ABA Functions and Duties of the Prosecutor, Standard 3-1.2 ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict."), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.

[86] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b).

[87] *See, e.g., Matter of Capoccia*, 59 N.Y.2d 549 (1983).

[88] *Matter of Scudieri*, 174 A.D.3d 168, 173 (2019) (emphasis added) (quoting *Matter of Seiffert,* 65 N.Y.2d 278, 280 (1985)).

The Appellate Division found that Theodorou made improper remarks in summation.[89] In New York, professional misconduct for an attorney includes any violation of the New York Rules of Professional Conduct. Theodorou's remarks constitute professional misconduct.

Under Rules 8.4(d) and 8.4(h), a lawyer shall not engage in conduct that is prejudicial to the administration of justice or engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.[90]

Summation misconduct violates these rules. The *Appellate Division* found in *People v. Wright* that prosecutor Mary Rain improperly appealed to the jury's sympathy and made other improper comments in her trial summation.[91] In a disciplinary action against Rain, stemming in part from her statements in *Wright*, the *Appellate Division* affirmed that Rain violated Rule 8.4 with her summation remarks, which were "prejudicial to the administration of justice" and constituted "conduct adversely reflecting on her fitness as a lawyer."[92]

More broadly, Theodorou's improper summation statements were prejudicial to Mr. Bristol, as the variety of appellate decisions above indicate. Therefore, these summation statements were prejudicial to the administration of justice as per Rule 8.4(d) and *Rain*. Theodorou's choice to make not only one but five different types of improper remarks reflects negatively on her fitness as a lawyer. Such a failure of judgment, which appellate courts have held to be improper, violated Rule 8.4(h), as demonstrated by *Rain*.

B. For Her Misconduct in *People v. Bristol*, Theodorou Must be Suspended.

Though the misconduct discussed here occurred years ago, New York does not have a statute of limitation barring disciplinary action against an attorney—and rightfully so. As explained by the American Bar Association, "Statutes of limitation are wholly inappropriate in lawyer disciplinary proceedings. Conduct of a lawyer, no matter when it has occurred, is always relevant to the question of fitness to practice."[93] The ABA's Model Rule 32 for Lawyer Disciplinary Enforcement makes lawyer discipline "exempt from all statutes of limitations."[94]

In considering discipline, the Appellate Division has considered the role of prosecutor as a "substantial factor in aggravation."[95] Simply being a prosecutor supports aggravated discipline because the law tasks them "with seeing that justice is done—to act impartially, to have fair

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[89] Ex. A, *Bristol,* 140 A.D.3d 781.

[90] 22 N.Y.C.R.R. Part 1200, Rule 8.4.

[91] *People v. Wright*, 133 A.D.3d 1097, 1098 (3d Dep't 2015).

[92] *Rain*, 162 A.D.3d at 1459.

[93] 2020 Model Rules for Lawyer Disciplinary Enforcement, Rule 32 and Commentary, https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_32/.

[94] *Id.*

[95] *Kurtzrock*, 192 A.D.3d 197. *See also Rain*, 162 A.D.3d at 1462 ("[P]rosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice.").

dealing with the accused, to be candid with the courts, and to safeguard the rights of all."[96] Similarly, extensive prosecutorial experience weights towards an aggravated sanction.[97]

Though the ethical rules may be obscure to the general public, attorneys must know and follow them. In 2011, the District Attorneys Association of the State of New York mailed an ethical guide to *every prosecutor in the state* warning prosecutors to comply with the ethical rules and even specifically quoting Rule 8.4 - the rule that Theodorou violated.[98]

Theodorou was not an uninformed novice when she violated the Professional Rules in *People v. Bristol*. To the contrary, Theodorou was admitted to the New York Bar in 1994 and began her career as a prosecutor in 1996. At the time of Mr. Bristol's trial, she was a seasoned prosecutor who had been practicing for over 15 years and was undoubtedly well aware of her professional duties.

Professional discipline, through the Grievance Committee, is the mechanism entrusted by the Supreme Court of the United States to regulate prosecutorial behavior. Without appropriate sanctions, this Committee will derelict its duty and send a message—to prosecutors, defense attorneys, the courts, defendants and the public at large—that prosecutorial misconduct is not taken seriously. This is especially true in the case of Theodorou, who holds an executive position in the Suffolk County District Attorney Office.

Therefore, the Grievance Committee must suspend Theodorou's law license.

Conclusion

Prosecutorial misconduct in summation, as committed by Patricia Theodorou, has a devastating impact on due process. It is a long-standing, largely unaddressed problem in the court system. To our knowledge, though the Appellate Division found Theodorou to have acted improperly in her summation in *People v. Bristol*, she remains unsanctioned for this misconduct.

As "officers of the court, all attorneys are obligated to maintain the highest ethical standards."[99] To that end, "the grievance process exists to protect the public... By bringing a complaint to a committee's attention, the public helps the legal profession achieve its goal."[100]

The judicial finding identified in this grievance provides far more evidence than necessary to meet the "fair preponderance of the evidence" standard to discipline the prosecutor at issue, but we call upon the Grievance Committee to go further and investigate far beyond the court

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[96] *Kurtzrock*, 192 A.D.3d 197.

[97] *Id*. *See also Rain*, 162 A.D.3d at 1461 (prosecutor's experience an aggravating factor).

[98] "*The Right Thing" - Ethical Guidelines for Prosecutors*, District Attorneys Association of the State of New York (August 2012) http://www.daasny.com/wp-content/uploads/2014/08/Ethics-Handbook-9.28.2012-FINAL1.pdf. Note that this is the 2012 version. The introductory letter states that in 2011, the Ethics Handbook was mailed to "every District Attorney and Assistant District Attorney in the state." It is unclear if this version is the exact same as the 2011 version that was mailed.

[99] NYSBA Committee on Professional Discipline, Guide to Attorney Discipline, available at: https://nysba.org/public-resources/guide-to-attorney-discipline/.

[100] *Id.*

finding identified in this grievance. For the legitimacy of and public trust in the criminal system, and the bar, the investigation should be public at every stage possible.

Below are some essential aspects of such an investigation:

1. The Committee should begin by investigating the many other cases prosecuted by Theodorou. As the comment to Rule 8.3 of the New York Rules of Professional Conduct reminds us, "An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover."[101] Using its power to investigate, including to issue subpoenas and interview witnesses, the Committee can and should obtain a list of all cases that this prosecutor worked on and contact the attorneys, witnesses, and accused persons (while protecting the accused's rights to privacy and counsel) in those cases. The Committee should also identify all of Theodorou's other cases where the issue of misconduct was raised in the courts before trial, at trial, or on appeal, or was the subject of other ethical grievances, mentioned in the media, or identified in any other source.

2. The Committee should promptly investigate whether any supervising attorney at the Queens District Attorney's Office (QDAO) is also culpable for the ethics violation cited in this grievance under Rule 5.1(d) of the New York Rules of Professional Conduct, which provides direct culpability for supervising attorneys under various circumstances, including when a supervisor knowingly ratifies improper conduct or knows of the conduct when it could be prevented but fails to take remedial action.[102]

3. The Grievance Committee should investigate whether the Queens District Attorney's Office (QDAO) and its managing attorneys complied with its duties under Rule 5.1 of the New York Rules of Professional Conduct, requiring that law firms as a whole, and managing attorneys in particular, make efforts to ensure that all lawyers in the firm conform to the New York Rules of Professional Conduct.

4. The Committee should identify any prosecutors trained and/or supervised by Theodorou and determine whether instances of prosecutorial misconduct can also be found in their work as prosecutors.

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[101] Rule 8.3, Comment [1].

[102] Rule 5.1 (d). A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

We recognize that bar discipline provides a uniquely individual remedy that will not, on its own, remedy the systemic problems identified above in this letter. For this reason, we also call for the implementation of an independent public commission empowered to investigate all cases handled by this prosecutor and vacate convictions where appropriate. To be clear, we do not mean a closed-door, cloaked process at the Queens District Attorney's Office, but rather a commission that operates transparently and includes members of the public, including members of impacted communities of color, public defenders and other criminal defense attorneys, civil rights attorneys, and people who have been incarcerated and their loved ones.

Thank you for your careful consideration of this matter.

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