Grievance Committee for the Second,
Eleventh & Thirteenth Judicial Districts
Renaissance Plaza
335 Adams Street, Suite 2400
Brooklyn, New York 11201
ad2-grv2@nycourts.gov

Re: Grievance Complaint Regarding Attorney Kyle Reeves, State Bar No. 2343911

To the Grievance Committee,

We write to complain about the serious professional misconduct of Kyle Reeves[1] when he worked as a prosecutor in Brooklyn and Staten Island.

Jabbar Washington spent over 20 years in prison due to the wrongful conviction that Reeves unethically obtained. Washington was finally freed in 2017, when the Kings County District Attorney's Office ("KCDA") moved to vacate the conviction based on "prosecutorial misconduct" by Reeves that resulted in "gross due process violations."[2]

At the hearing to reverse Washington's conviction, the KCDA's Conviction Review Unit revealed that Reeves had withheld "critical *Brady* information"[3]—the fact that the key eyewitness had *denied* identifying Washington was the perpetrator. As described by the KDCA at the hearing, this "intentional withholding [of evidence]" by Reeves aimed to put "the defense at a disadvantage in terms of the trial,"[4] and did in fact "severely prejudice[]" the defense's "preparation for the trial."[5] The KCDA also lambasted Reeves for "intentionally and improperly" questioning witnesses, including asking misleading questions to try to get the jury to draw a conclusion based on inadmissible evidence and asking a question without any good faith basis.[6] The KCDA concluded that either of two of the questions that Reeves asked Washington, on its own, was so improper that it would have triggered a reversal of the conviction.[7]

---

[1] Kyle Charles Reeves, State Bar No. 2343911, Cook Group, 115 Broadway, New York, NY 10004-2434. Phone: 646-960-2214. Email: kreeves@cookgrouplegal.com. These writers do not have personal knowledge of any of the facts or circumstances of Reeves or the cases mentioned; this grievance is based entirely on the court opinions, briefs and other documents cited herein.

[2] Exhibit A, Transcript in *People v Washington*, Sup Ct, Kings County, indictment No. 2585/1996 (July 12, 2017) at 3, 13 (hereafter "Washington §440.10 Ruling").

[3] *Id*. at 5; see also *Washington v The State of New York,* Ct Cl, Feb. 4, 2019, Weinstein, J., claim No. 130708, available at https://tinyurl.com/nfasuaew (quoting the Kings County District Attorney's Office at the hearing on Washington's motion to vacate the conviction pursuant to §440.10) (hereafter "Washington Ct Cl Decision").

[4] *Id.* at 5.

[5] *Id*. at 6.

[6] *Id*. at 7-14.

[7] *Id*.

In its "426 Years Report," examining the causes behind 25 wrongful convictions in Brooklyn, the KCDA CRU discussed the *Washington* case. For reasons unknown to the authors of this grievance, the report could not determine whether Reeves had actually withheld the exculpatory evidence that the CRU had earlier described as an intentional withholding. Nonetheless, the report made clear that Reeves was "deceptive" when he elicited "intentionally misleading testimony" to give the impression that the witness *had* identified Washington.[8] The report also concluded that Reeves committed further misconduct during cross-examination.[9]

Based on the KCDA's findings of egregious, intentional misconduct by Reeves, the court granted the joint motion to vacate the conviction. By that time, Jabbar Washington had already served two decades behind bars. At the vacatur hearing, Washington's attorney told the court: "The Assistant District Attorney Kyle Reeves was the principal villain here and I duly note that he has been fumigated out of the KCDA some time ago, but he wasn't the only one."[10] The City paid Jabbar Washington $5.75 million to settle his wrongful conviction claim, seemingly before a formal lawsuit was even filed.[11]

While Washington was still languishing in prison, Reeves prosecuted Trevis Ragsdale. In that trial, Reeves apparently violated the court's pretrial ruling by referencing Ragsdale's prior uncharged bad act.[12] The trial court struck Reeves's question, the witness' answer, and gave a curative instruction to the jury. On appeal, the Appellate Division decision did not specifically hold that Reeves committed misconduct, simply finding that the trial court sufficiently cured any prejudice and a mistrial was unnecessary. Nonetheless, the Grievance Committee should investigate the circumstances of the *Ragsdale* case, as it suggests an apparent disregard for a judge's orders in service of obtaining a conviction.

Nine years after prosecuting Trevis Ragsale, Reeves committed misconduct while prosecuting Asim Martinez. In *People v. Martinez*, Reeves's "prosecutorial misconduct during the voir dire

---

[8] Exhibit B, Kings County District Attorney, 426 Years Report: An Examination of 25 Wrongful Convictions in Brooklyn, New York (July 9, 2020), https://tinyurl.com/552ejuem (hereafter "426 Years Report"). The report refers to Jabbar Washington by the pseudonym of "Zander Wright," ostensibly because of a court order. However, a comparison between the discussion of the Wright case in the report and the facts of Jabbar Washington's case reveals that they are the same person, including that the crime was a felony-murder that occurred in Brooklyn in 1995 (*see* Washington Ct Cl Decision; 426 Years Report at 90); the charged incident involved seven suspects in an apartment and a dispute over drugs (*see* Washington Ct Cl Decision, 426 Years Report at 90-91); the defendant was sentenced to 25 years to life and served approximately 20 years in prison (*see* Washington Ct Cl Decision, 426 Years Report at 90); the eyewitness was a woman who had ostensibly identified the defendant in a line-up but disavowed any identification a few days later, saying that she only knew the defendant from the building and had not identified him as a participant in the crime (*see* Washington Ct Cl Decision, 426 Years Report at 90-91); and that the prosecutor asked the witness a series of misleadingly sequenced questions at trial to give the impression that she did identify the defendant as the perpetrator (*see* Washington Ct Cl Decision, 426 Years Report at 52).Washington Ct Cl Decision.

[9] *Id*.

[10] Washington §440.10 Ruling Transcript at 15.

[11] City of New York, Office of Comptroller, *Claims Report: Fiscal Year 2019* at 16, https://tinyurl.com/3vervxwy.

[12] Exhibit C, *People v Ragsdale*, 68 AD3d 897, 898 (2d Dept 2009); Exhibit C1, *Ragsdale v Warden*, 2015 WL 5675867, at *6 (ED NY, Sept. 24, 2015, No. 11–CV–1681, Irizarry, J.).

questioning and cross-examination" led the Appellate Division to vacate the murder conviction, finding that Reeves had "unfairly deprived the defendant of the ability to present his defense."[13] As an example of this misconduct, at one point in summation, Reeves suggested that the defense expert witness was a "whore."[14]

While all three men remained in prison, Reeves appears to have enjoyed a prosperous legal career. By 1996—the year before he committed serious misconduct in Washington's case—Reeves was promoted to the position of Executive Assistant District Attorney, a position he seems to have occupied until 2012, when he joined the Staten Island District Attorney's Office ("SIDA") as Chief Trial Counsel.[15] In 2016, a year before Washington was released, Reeves went into private practice, and ultimately became a partner at The Cook Group.[16]

Disturbingly, Reeves' work as a supervisor and trainer imply a significant impact on the practices of other prosecutors. In Brooklyn, Reeves supervised 12 senior-level attorneys in the Homicide Bureau, while in Staten Island "he supervised the trial work of 45" prosecutors.[17]

Though Reeves was twice found to have committed misconduct *in cross-examination*, the Kings County Criminal Bar Association website still offers Reeves's *Effective Cross-examination Techniques* tip sheet online in its "CLE Program Materials Library."[18]

But Reeves's influence as a trainer of other prosecutors stretches far beyond Brooklyn and Staten Island. Reeves's website claimed that he has "conducted hundreds of Continuing Legal Education courses, primarily focused on jury selection, cross-examination of expert witnesses and ethical considerations for lawyers."[19] Reeves was "a regular speaker at the New York Prosecutor Training Institute Spring and Summer Colleges on all issues involving homicide prosecutions and capital case litigation."[20]

As of the writing of this complaint, the National District Attorney Association's website still hosts Reeves's article on how prosecutors should use Power Point in compliance with their ethical

[13] Exhibit D, *People v Martinez*, 127 AD3d 1236, 1236-37 (2d Dept 2015), available at https://tinyurl.com/2ywt47pb.

[14] Exhibit D1, Brief for Appellant at *27 in *People v Martinez*, 127 AD3d 1236 (2d Dept 2015), available at 2015 WL 4739551 (hereafter "Martinez Appellant Brief").

[15] Exhibit E, The Cook Group, Kyle C Reeves, https://tinyurl.com/52n2j8ty (hereafter "Reeves Cook Group Profile").

[16] *Id.*

[17] Reeves Cook Group Profile.

[18] Kings County Criminal Bar Association, CLE Program Materials Library, https://tinyurl.com/335fx9p4.

[19] *Id.*

[20] *Id*.

obligations.[21] In 2015, Reeves apparently taught a seminar to Indiana prosecutors on "false confessions."[22] Finally, Reeves is the co-author of a guidebook for prosecutors on winning trial strategies.[23]

That a prosecutor with such a significant track record of misconduct should teach less experienced prosecutors underscores a deep-rooted problem in our profession. Despite the misconduct noted in this grievance, as of this writing, the New York Attorney Detail Report lists "Disciplinary History: No record of public discipline" for Reeves.[24]

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.[25] When any attorney errs, it can cause harm, typically to an individual person. But a prosecutor's misconduct can not only destroy a person's life, and that of their family, but also derail the legal system's promises of fairness and equality for all. When state actors harness the punitive power of the state in a manner that violates the state's own rules, it sends the message that power—not justice—is the driving force behind legal actions. A single prosecutor's misconduct can damage "the reputation and public confidence placed" in all prosecutors and the justice system itself.[26]

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."[27] 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."[28]

---

[21] Kyle C. Reeves, *PowerPoint in Court: The Devil's Own Device, or A Potent Prosecution Tool?*, The Prosecutor (2014), https://tinyurl.com/4wk9xxpn.

[22] 2015 Indiana Prosecuting Attorneys Council and Attorney General's Winter Conference, Schedule, https://tinyurl.com/fedm75jd.

[23] Reeves Cook Group Profile.

[24] *See* New York Unified Court System, Attorney Online Services – Search, https://tinyurl.com/347srhpu [search by attorney Kyle Reeves, click on Name hyperlink].

[25] *Matter of Rain*, 162 AD3d 1458, 1462 (3d Dept 2018) ("[P]rosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice."); *see also* ABA Criminal Justice Standards: Prosecution Function 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.").

[26] *Rain*, 162 AD3d at 1462.

[27] *Berger v United States,* 295 US 78, 88 (1935) (emphasis added); *see also People v Jones*, 44 NY2d 76, 80 (1978) (quoting *Berger*, 295 US at 88); *People v Calabria*, 94 NY2d 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."); *People v Levan*, 295 NY 26, 36 (1945).

[28] Joaquin Sapien & Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody,* ProPublica (Apr. 3, 2013), https://tinyurl.com/t2ryucec.

But misconduct by prosecutors remains widespread and unchecked in the New York criminal legal system. A 2013 study of ten years of state and federal decisions revealed more than two dozen instances in which judges reversed convictions explicitly because of prosecutorial misconduct.[29] Yet these appellate courts "did not routinely refer prosecutors for investigation by the state disciplinary committees," and the disciplinary committees otherwise "almost never took serious action against prosecutors."[30] Indeed, among these numerous cases in which judges overturned convictions based on prosecutorial misconduct, only one prosecutor was publicly disciplined by a New York disciplinary committee.[31] None of the other implicated prosecutors were disbarred, suspended, or publicly censured and, according to personnel records gathered by ProPublica, several prosecutors were promoted and given raises soon after courts cited them for abuses.[32] 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."[33]

B. Prosecutors are Required to Provide Exculpatory Evidence to the Defense under the *Brady* Doctrine, State Discovery Laws, and Rule of Professional Conduct 3.8, Yet Often Fail to Comply with these Obligations.

One of the most damaging forms of prosecutorial misconduct is the *Brady* violation—when a prosecutor suppresses exculpatory or impeachment evidence.[34] A prosecutor's duty to disclose *Brady* evidence is indispensable to the rights to due process and a fair trial.[35] Consequently, a conviction must be overturned when the suppressed evidence is "material"[36] and where there is a

---

[29] *Id.*

[30] *Id.*

[31] *Id.*; *see also In re Stuart*, 22 AD3d 131, 133 (2d Dept 2005) (holding, following a Grievance Committee disciplinary proceeding, that a prosecutor's misconduct warranted a three-year suspension from the practice of law).

[32] *See* Sapien & Hernandez.

[33] Editorial Board, *Prosecutors Need a Watchdog*, NY Times (Aug. 14, 2018), https://tinyurl.com/4ntvsv85.

[34] *See generally Brady v Maryland*, 373 US 83 (1963); *Giglio v United States*, 405 US 150 (1972).

[35] *Brady*, 373 US at 87.

[36] *United States v Bagley*, 473 US 667, 669, 676 (1984); *Kyles v Whitley*, 514 US 419, 433 (1995). The U.S. Supreme Court has not addressed, and courts and scholars disagree, whether the appellate-level "materiality" standard applies to a prosecutor's pre-trial disclosure burden. *See, e.g.*, *Boyd v United States*, 908 A2d 39, 60 (D.C. 2006) (the "Supreme Court in *Strickler* contemplated the existence of a broad 'duty of disclosure,' but recognized that, when the government fails to carry out its duty, its noncompliance with that obligation will only rise to the level of a constitutional violation if materiality is subsequently established. *The Court thus recognized that a duty of disclosure exists even when the items disclosed later prove not to be material.*") (emphasis added). This appears to coincide with Justice Kennedy's understanding, as summed up in a 2012 oral argument: "I think you misspoke when you [were asked] what is the test for when *Brady* material must be turned over. And you said whether or not there's a reasonable probability . . . that the result would have been different. That's the test for when there has been a *Brady* violation. You don't determine your *Brady* obligation by the test for the *Brady* violation. You're transposing two very different things." Transcript of Oral Argument at 49, *Smith v Cain*, 565 US 73 (2012) (No. 10-8145), https://tinyurl.com/dmmu7b44; *see also* Janet C. Hoeffel & Stephen I. Singer, *Activating A Brady Pretrial Duty to Disclose Favorable Information: From the Mouths of Supreme Court Justices to Practice*, 38 NYU Rev L & Soc Change 467, 473 (2015) ("[B]y the very nature of appellate

"reasonable probability" that the undisclosed evidence would have changed the result.[37] New York places an even greater burden on prosecutors, as it uses a less stringent standard for *Brady* reversals than the U.S. Supreme Court.[38] In New York, if the defense requested the evidence and the prosecution still failed to provide it, the conviction must be reversed if there is a "reasonable possibility"—less than the "reasonable probability" required under *United States v. Bagley*—that the failure to disclose contributed to the verdict.[39]

In our legal system, *Brady* disclosures permit the defense to investigate and litigate different leads, present evidence that the prosecution's case is inaccurate, present evidence that the testimony of the prosecution's witnesses is inaccurate or false, present evidence of the accused's innocence to the jury, and ultimately, to protect the accused from a wrongful conviction. It is unsurprising, then, that suppression of *Brady* evidence has played a role in over 44 percent of known wrongful convictions and 61 percent of known wrongful convictions for murder.[40]

A prosecutor has an affirmative duty to search for favorable and material evidence in their own records and those of related agencies—and to turn these over to the defense.[41] Under federal law, a prosecutor who commits an intentional *Brady* violation could seemingly be charged with a felony.[42]

The New York legislature and the New York judiciary have emphasized the importance of the *Brady* rule by codifying it in statutes and court orders. Even before the 2020 discovery reform legislation, New York State's discovery statute required prosecutors to disclose all evidence that must be disclosed per the United States and New York constitutions—including any *Brady* evidence.[43] Other New York criminal procedure law sections obligated the prosecutor to disclose types of evidence that commonly contain *Brady* information.[44] The 2020 discovery reform preserved the statutory codification of *Brady* and further expanded a prosecutor's discovery obligations.[45]

The prosecutor's obligation to provide helpful evidence to the defense is of such import that it is codified into its own subsection in New York Rule of Professional Conduct 3.8(b):

---

and post-conviction review, the Court has not had to decide the proper standard for the prosecution's pretrial duty to disclose favorable evidence."). The ethical rules governing a prosecutor's pretrial disclosure obligations, however, do not include a materiality requirement.

[37] *Bagley*, 473 US 667.

[38] *People v Vilardi*, 76 NY2d 67 (1990).

[39] In the 1990 *Vilardi* case, the New York Court of Appeals emphasized the importance of "elemental fairness to the defendant and … concern that the prosecutor's office discharge its ethical and professional obligations." The Court maintained the New York rule that if the defense has requested the favorable evidence, the suppression of that evidence mandates reversal if there is just a "reasonable possibility" that the failure to disclose contributed to the verdict.

[40] National Registry of Exonerations, Government Misconduct and Convicting the Innocent at 81 (Sept. 1, 2020), https://tinyurl.com/yha56e4b.

[41] *See Kyles v Whitley*, 514 US 419, 432 (1995); *Strickler v Green,* 527 US 263, 280-281 (1999).

[42] 18 USC § 242.

[43] McKinney's Cons Laws of NY, CPL 240.20(1)(h) (repealed); *Doorley v Castro*, 160 AD3d 1381, 1383 (4th Dept 2018).

[44] McKinney's Cons Laws of NY, CPL 240.20 (repealed).

[45] CPL § 245.20(1)(k).

> A prosecutor . . . shall make timely disclosure…of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence, except when relieved of this responsibility by a protective order of a tribunal.[46]

Rule 3.8, which binds New York prosecutors, is broader than the *Brady* obligation in an important respect: the prosecutor must provide *all* evidence that tends to negate the guilt of the accused, not just *materially* exculpatory evidence.[47] That is, there is no requirement that disclosure of the evidence would have any probability of changing the result of the proceeding. As a consequence, a significant amount of conduct will violate Rule 3.8 but not the constitutional rule. Similarly, the Standards of the American Bar Association Standards extend beyond the *Brady* rule with respect to materiality, requiring the prosecutor to "diligently seek to identify" and disclose all mitigating, exculpatory and impeachment evidence "regardless of whether the prosecutor believes it is likely to change the result of the proceeding."[48]

Despite the significance of the *Brady* rule and Rule 3.8 in the criminal legal system, the New York State Justice Task Force has pointed to "[d]ocumented instances of inconsistent application by prosecutors of the requirement for disclosure of exculpatory evidence." The New York State Bar has acknowledged that "New York *Brady* violations occur at all phases of the criminal justice process and are often not discovered until after conviction."[49]

C. Prosecutors Have a Duty to Present Evidence Honestly.

Prosecutors may not mislead the court or jury and multiple prohibitions on prosecutorial conduct relate to dishonesty. For example, it violates due process for a prosecutor to knowingly present perjured testimony.[50] If a prosecutor knows that a witness intends to lie on the stand, she must encourage the witness not to do so or else refuse to call the witness to testify. If a prosecutor later learns that a witness fabricated testimony, she is required to take remedial steps.[51] Because they

---

[46] Rules of Professional Conduct (22 NYCRR 1200.0) rule 3.8(b). This Rule was previously codified in New York's Code of Professional Responsibility DR 7-103 (22 NYCRR 1200.34 (repealed)). As is evident from the text of the rule (quoted above), Rule 3.8 only applies to evidence known to the prosecutor, unlike *Brady*, which applies to evidence in the possession of the entire prosecution team, including evidence in the possession of investigative agencies of which the prosecutor is unaware. *See, e.g., United States v. Agurs*, 427 U.S. 97, 110 (1976); *Kyles*, 514 US at 437.

[47] NY City Bar Assn Comm on Prof Ethics Formal Op 2016-3 (2016) ("While *Brady* has been held to require a prosecutor to disclose only 'material' evidence favorable to the accused, Rule 3.8 on its face is not subject to the same materiality limitation."); *see also*, ABA Comm on Ethics and Prof Responsibility Formal Op 09–454 (2009); *United States v. Gatto,* 316 F.Supp.3d 654, n 17 (2018); and *People v Waters*, 35 Misc 3d 855, 859-60 (Sup Ct, Bronx County 2012) (Rule 3.8(b) is "[i]ndependent of *Brady*").

[48] ABA Criminal Justice Standards: Prosecution Function Standard 3-5.4(c).

[49] NY State Bar Assn, *Report of the Task Force on Criminal Discovery* at 52 (Jan. 30, 2015), https://tinyurl.com/f78tjetx.

[50] *See, e.g.*, *Giglio v United States*, 405 US 150, 153-154 (1972); *Miller v Pate*, 386 US 1, 7 (1967).

[51] *See People v Waters*, 35 Misc 3d 855, 861 (Sup Ct, Bronx Cty 2012) (violation of due process when prosecutor "although not soliciting false evidence, allows it to go uncorrected when it appears" (quoting *Napue v Illinois*, 360 US 264, 269 (1959)); *see also Napue*, 360 US at 271 (finding a due process violation

are representatives of the state, not lawyers for an individual, prosecutors possess a "special duty" not to mislead a judge, jury, or defense counsel.[52]

D. 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.[53] 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.[54]

Unfortunately, the U.S. Supreme Court's assumption—that professional disciplinary actions would "provide an antidote to prosecutorial misconduct"—has not been borne out.[55] 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.[56]

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."[57] Indeed, "neither judges nor defense lawyers ordinarily alerted

---

when prosecutor failed to correct witness's false testimony that he had not received any promise in return for his testimony)).

[52] *See, e.g.*, Daniel S. Medwed, Prosecution Complex: America's Race to Convict and its Impact on the Innocent, 80-81 (2012); *Connick v Thompson*, 563 US 51, 65-66 (2011); *see also* Bennett L. Gershman, The Prosecutor's Duty to Truth, 14 Geo J Legal Ethics 309, 316 (2001) ("The courts have recognized that, as a minister of justice, a prosecutor has a special duty not to impede the truth.")

[53] *See, e.g.*, *Imbler v Pachtman*, 424 US 409, 427 (1976); *Shmueli v City of New York*, 424 F3d 231, 237 (2d Cir 2005) (noting that prosecutors have "absolute immunity" for the "conduct of a prosecution"); *Dann v Auburn Police Dept*, 138 AD3d 1468, 1469 (4th Dept 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 NY2d 561, 562 (1982) (holding that "the doctrine of prosecutorial immunity" precludes "recovery against the State" for "acts of prosecutorial misconduct").

[54] *Imbler,* 424 US at 429; *see also Matter of Malone*, 105 AD2d 455, 459 (3d Dept 1984) (rejecting public official's claim to prosecutorial immunity in a professional ethics proceeding).

[55] *See* 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, 242–243 (2012).

[56] Center for Prosecutor Integrity, *An Epidemic of Prosecutor Misconduct* at 8 (Dec. 2013) https://tinyurl.com/rpxyadhb; *see also* Project On Government Oversight, *Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards* (Mar. 2014), https://tinyurl.com/vjkfr2eh; 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 NC L Rev 721, 725 (2001) (describing the "rarity of discipline" of prosecutors).

[57] Bruce Green & Ellen Yaroshefsky, *Prosecutorial Accountability 2.0*, 92 Notre Dame L Rev 51, 65 (2017).

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."[58] "It's an insidious system," said Marvin Schechter, then-chairman of the criminal justice section of the New York State Bar Association, to ProPublica.[59] "Prosecutors engage in misconduct because they know they can get away with it."[60]

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.[61] In December 2020, the Appellate Division imposed the same penalty for the egregious misconduct of ex-prosecutor Glenn Kurtzrock.[62] But even a short suspension like that received by Rain and Kurtzrock[63]—indeed, public discipline of any kind—remains rare.

Prosecutors, the public officials tasked with holding the public accountable, are not being held accountable for their own misconduct. Absent strong, public discipline, misconduct like that of Reeves will continue unabated and undeterred.

2. The Kings County District Attorney's Office Concluded that Reeves Committed Serious Misconduct in the *Washington* Case.

Reeves's extensive, serious misconduct in the Washington case is apparent from a multitude of sources.[64] The Kings County District Attorney's Office ("KCDA") issued a report detailing the reasons for vacating Washington's conviction, which to our knowledge, has not been made publicly available online. However, other sources are available. First, the transcript of the hearing to reverse Washington's conviction pursuant §440.10 is available online.[65] Second, the KCDA's "426 Years Report"—a report analyzing 25 different Brooklyn wrongful convictions—discusses the different factors, and responsible parties, that were involved in the Washington case (under a

[58] *Id.* at 65 (citation omitted); *see also* Richard A. Rosen, *Disciplinary Sanctions Against Prosecutors for Brady Violations: A Paper Tiger*, 65 NC L Rev 693, 697 (1987).

[59] Sapien & Hernandez.

[60] *Id.*

[61] *Rain*, 162 AD3d at 1462.

[62] *In the Matter of Glenn Kurtzrock*, 192 AD3d 197 (2d Dept 2020).

[63] 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 (Sept. 20, 2017), https://tinyurl.com/yhvmd43k; Bennett L. Gershman, *A Most Dangerous Prosecutor: A Sequel*, HuffPost (Oct. 1, 2016), https://tinyurl.com/fp9yfs8x; Nina Morrison, *What Happens When Prosecutors Break the Law?*, NY Times (June 18, 2018), https://tinyurl.com/52ar9tjx.

[64] Multiple sources have identified Reeves as the trial prosecutor in Washington's case. *See, e.g.*, Alan Feuer, *Brooklyn District Attorney Hopes to Void 1997 Murder Conviction*, NY Times (July 11, 2017), https://tinyurl.com/4muc2rkv; Christina Carrega, *Brooklyn man who claimed ex-Detective Louis Scarcella coerced him into 1995 murder confession walks free*, NY Daily News (July 12, 2017), https://tinyurl.com/2vbru6d2.

[65] Exhibit A, Washington §440.10 Ruling.

pseudonym).[66] , Finally, we have reviewed a 2019 decision by the Court of Claims[67] and an Appellate Division decision denying a FOIL request for the KCDA's Washington report.[68] Therefore, it is possible to glean quite a few of the KCDA's conclusions regarding Reeves's misconduct.

Reeves prosecuted Washington for a robbery and murder that occurred in 1995,[69] ultimately obtaining a conviction at trial in 1997.[70] He was imprisoned until his release in 2017, when the KCDA agreed to vacate the conviction.

Police claimed that an eyewitness had identified Washington as having participated in the crime.[71] However, two days after making the identification, and while testifying in the grand jury, the eyewitness said that "she had not identified Washington as a perpetrator, but simply as someone she knew from her building."[72] A note memorialized this exculpatory statement by a key eyewitness.[73] Unsurprisingly, this evidence was later recognized as "crucial" for Washington's defense.[74]

At the §440.10 hearing, the KCDA determined that by "intentional[ly] withholding" this evidence, Reeves intended "to put the defense at a disadvantage in terms of the trial."[75] At the hearing, the KCDA described this evidence as "critical *Brady* information"[76] and stated the suppression did in fact "severely prejudice[]" the defense's "preparation for the trial."[77] This was reaffirmed in a statement to the press, where the District Attorney said, "Following a thorough and fair investigation by my Conviction Review Unit, it was determined that Mr. Washington did not receive a fair trial and *crucial information that would have been useful to the defense was withheld*. Therefore, I am moving, in the interest of justice, to have this conviction vacated."[78]

For reasons unknown to these authors, in its "426 Years Report," the KCDA CRU took a seemingly different position, saying that it was unable to determine whether Reeves had actually withheld the exculpatory evidence.[79]

---

[66] *See generally* 426 Years Report; *see also New York Times,* 179 AD3d at115 (summarizing facts of Washington's case); Washington Ct Cl Decision (same); The National Registry of Exonerations, Jabbar Washington, https://tinyurl.com/58h9hujr.

[67] Washington Ct Cl Decision.

[68] *New York Times v District Attorney of Kings County*, 179 AD3d 115 (2nd Dept 2019).

[69] *New York Times*, 179 AD3d at 118.

[70] *Id.*

[71] Washington Ct Cl Decision.

[72] *Id.*

[73] *Id.*

[74] *New York Times*, 179 AD3d at 118.

[75] Washington §440.10 Ruling at 5.

[76] *Id*.

[77] *Id*. at 6.

[78] *See* Morgan Winsor, *Murder conviction overturned after man spends 21 years in prison*, ABC News (July 13, 2017) , https://tinyurl.com/2try5kj4 (emphasis added).

[79] 426 Years Report at 52.

Nonetheless, the KCDA CRU consistently concluded, at the hearing and in the report, that Reeves improperly elicited testimony from the key witnesses at trial and the detective to have the jury draw the conclusion that the witness—who apparently did not identify Washington as the perpetrator at trial—had previously identified Washington as the perpetrator from a line-up procedure, something the witness had explicitly denied.[80]

At the hearing to vacate the conviction, the KCDA told the court that Reeves questioned the civilian witness in this fashion "*intentionally* to give the impression to the jury to get evidence in which would not otherwise be admissible."[81] The KCDA also noted that Reeves also "intentionally and improperly" questioned Detective Scarcella, in order to elicit the impression—and ultimately, Scarcella's unimpeached testimony—that the witness had positively identified Washington as the perpetrator.[82]

The 426 Years Report similarly concluded that Reeves was "deceptive" when he elicited "intentionally misleading testimony" to give the impression that the witness had identified Washington.[83] That is, Reeves intended to mislead the jury by making it appear, through his questioning of the eyewitness, that she had identified Washington as the perpetrator—even though she had denied this, saying she had only identified him as someone she knew. The KCDA's 426 Years Report found Reeves's "intentional[] misleading" questioning of the eyewitness to be the "most problematic example of misleading direct testimony" among the 25 wrongful conviction cases that it surveyed.[84]

Furthermore, the KCDA concluded at the hearing and in its 426 Years Report that Reeves committed misconduct in his cross-examination of Mr. Washington, the accused. The Report concluded that, as with Reeves' misconduct in questioning of prosecution witnesses, his cross-examination of Washington was also "the most problematic example" of cross-examination misconduct among the 25 wrongful convictions cases surveyed by the KCDA.[85] Reeves asked Washington, "Do you have any reason why [the eyewitness] would frame you for a murder you say you didn't commit?" This question, in the context of the intentionally misleading direct-examination of the eyewitness, "would have further misled the jury to believe" the eyewitness had identified Washington as the perpetrator, "which she had not."[86] At the §440.10 hearing, the KCDA went on to explain, "There was no good faith basis for asking him that question. It was highly prejudicial. That, in and of itself, we believe, would have mandated reversal."[87]

Additionally, Reeves asked Washington whether the detective had told him that a co-defendant had identified Washington as one of the shooters.[88] By asking this, Reeves improperly "com-

[80] Washington §440.10 Ruling at 6-7.

[81] *Id*. at 7 (emphasis added).

[82] *Id*. at 7-10.

[83] Washington Ct Cl Decision.

[84] 426 Years Report at 65.

[85] *Id.* at 66.

[86] *Id.*

[87] Washington §440.10 Ruling at 12.

[88] *Id.*

municate[d] to the jury that a non-testifying co-defendant had implicated" Washington, in violation of the Confrontation Clause.[89] According to the KCDA at the hearing, the question "[c]learly … was improper [and] would have mandated reversal on its own."[90] Reeves had asked the detective to name Washington's co-defendants, and asked the detective if he had told Washington that the co-defendants had been convicted. Reeves used this improper questioning to tell the jury that the co-defendants had been convicted, "improperly inviting them to convict [Washington] through guilt-by-association."[91]

3. The Appellate Division Found That Reeves Committed Serious Misconduct by Asking Improper Questions During Cross-Examination and Voir Dire.

By 2012, Reeves had moved from Brooklyn to Staten Island, where he committed additional misconduct as a prosecutor. Reeves prosecuted Asim Martinez, who was convicted of murder at trial.[92] Upon appeal, the Appellate Division vacated the murder conviction solely because of Reeves's "prosecutorial misconduct."[93] Specifically, Reeves improperly stated that the defense expert "had repeatedly lied to the judges in other cases and during his testimony in" Martinez's case.[94] Reeves also "presented himself as an unsworn witness at the trial, suggesting that he had been present" in a different trial where "the defendant's expert had lied."[95] Finally, Reeves improperly and "repeatedly questioned another defense witness about lying."[96] The "cumulative effect of this misconduct," the court concluded, "unfairly deprived [Martinez] of the ability to present his defense."[97]

While the Appellate Division's decision does not outline the words that Reeves used, Martinez's appellant brief does.[98] The defense presented testimony from Dr. Marc Janoson that Martinez was not feigning a memory deficit,[99] making the doctor's credibility "integral to the defense."[100] Reeves therefore attacked the doctor directly, not only by repeatedly claiming the doctor had lied, but also by impliedly calling the doctor a "whore": "*I had actually toyed with the idea of*

---

[89] *Id.*

[90] *Id*. at 11-12.

[91] 426 Years Report at 66.

[92] *Martinez*, 127 AD3d at 1236-37. The decision does not identify Reeves by name. However, Martinez's Appellant Brief identifies Reeves as the trial prosecutor, as does a news article. *See* Martinez Appellant Brief at 20-21; Ann Givens and Chris Glorioso, *I-Team: Despite Misconduct Finding, Prosecutor Back on Murder Case*, NBC New York (Oct. 27, 2015), https://tinyurl.com/hd643mhs.

[93] *Martinez*, 127 AD3d at 1236.

[94] *Id.* at 1236-37.

[95] *Id.* at 1237.

[96] *Id.*

[97] *Id.*

[98] *See* Martinez Appellant Brief *26-*27 (noting that the prosecutor asked disparagingly if Dr. Janoson had "stop[ped] lying to courts"; insisted that he was "kind of free basing" his testimony and was "making stuff up"; and even told Dr. Janoson directly, "You lied."). The brief also notes that the prosecutor peppered his examination with flippant editorial comments of no conceivable relevance. *See id.* at *27 ("Sir, can you answer the questions directly or do we have to tap dance until 9:00 o'clock tonight?" "Are you going to take your ball and go home?"; and "I should be charging you for therapy").

[99] *Id.* at *4.

[100] *Id.* at *26.

using the word whore. But I thought that might be offen[sive] to prostitutes when I refer[ed] to Dr. Janoson," adding that Janoson "w[ould] *do anything for money*, including *selling [his] credibility*."[101]

4. The Grievance Committee Should Investigate a Trial Court's Apparent Finding that Reeves Violated a Court Order.

In 2004, Reeves prosecuted Trevis Ragsdale and he was ultimately convicted.[102] Prior to trial, it seems that the court issued a *Molineux* ruling: a pretrial ruling that dictates what, if any, of the defendant's uncharged, alleged past actions would be admissible at trial.

The Appellate Division and federal District Court opinions appear to assume, without addressing squarely, that Reeves violated the trial court's order—both opinions address the issue of prejudice. Both the Appellate Division and the federal District Court found that Reeves made an "isolated and brief reference to [Ragsdale's] prior uncharged crime."[103] Both courts declined to extend a remedy, finding that the trial court's "prompt action" in striking Reeves's question and issuing curative instructions to the jury remedied any prejudice.[104]

The Appellate Division and federal District Court did not make their own finding of misconduct in *Ragsdale*, unlike the KCDA in the *Washington* case and the Appellate Division in the *Martinez* case. However, it seems apparent that the *trial court* found that Reeves violated a court order and felt compelled to strike testimony and issue a curative instruction to the jury. The Grievance Committee should investigate this case, and if Reeves did indeed intentionally violate the court's order, this constitutes a serious ethical violation, particularly for a prosecutor whose job is to uphold the law.

5. The Grievance Committee Must Seek Discipline for the Serious 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."[105] Professional misconduct occurs with a "violation of any of the Rules of Professional Conduct."[106] Grievance Committees are "committed to . . . recommending discipline for lawyers who do not meet the high ethical standards of the profession."[107]

---

[101] *Id.* at *27.

[102] *See Ragsdale*, 2015 WL 5675867 at *2. The *Ragsdale* decisions do not identify Reeves by name. However, news coverage of the case did reveal he was the trial prosecutor. William Glaberson, *In Trial of a Slain Witness, A Crucial Figure Is Absent*, NYTimes (May 29, 2004), https://tinyurl.com/2mmknx4s.

[103] *Ragsdale*, 68 AD3d at 898; *see also Ragsdale*, 2015 WL 5675867 at *6.

[104] *Ragsdale*, 68 AD3d at 898; *Ragsdale*, 2015 WL 5675867 at *6.

[105] Attorney Grievance Committee of the First Judicial Department, *How to File a Complaint*, https://tinyurl.com/39axvffr.

[106] Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.2(a).

[107] *How to File a Complaint*.

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."[108]

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."[109]

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."[110] 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.[111] The New York professional rules reflect this higher standard: prosecutors are the only category of attorneys with their own ethical rule.[112] 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. Reeves's Misconduct in *Washington* Violated the Code of Professional Responsibility.

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.[113] As the Court of Appeals explained, "the 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."[114]

The applicable professional set of rules in 1997, when Reeves prosecuted Washington, was the Code of Professional Responsibility ("Code"). Rule DR 7-103(b) required a prosecutor to make "timely disclosure . . . of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment."[115] Two other rules, DR 7-102(a)(3) and DR 7-109(a), similarly required

[108] *Connick v Thompson*, 563 US 51, 65-66 (2011) (quotation marks omitted).

[109] *Kurtzrock*, 192 AD3d 197, 219.

[110] Rules of Professional Conduct (22 NYCRR 1200.0) rule 3.8(b) Comment [1].

[111] ABA Criminal Justice Standards: Prosecution Function Standard 3-1.2 ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.").

[112] *See* Rules of Professional Conduct (22 NYCRR 1200.0) rule 3.8(b).

[113] *See, e.g.*, *Matter of Capoccia*, 59 NY2d 549, 551 (1983).

[114] *Matter of Seiffert,* 65 NY2d 278, 280 (1985) (quotation marks omitted); *see also Matter of Scudieri*, 174 AD3d 168, 173 (2019).

[115] Code of Professional Responsibility DR 7-103(b) (22 NYCRR 1200.34 (repealed)). This rule was in effect when the discussed misconduct occurred. However, Rule 3.8(b) of the Rules of Professional Conduct replaced it in 2009.

disclosure, and prohibited knowing concealment, of evidence.[116] The KCDA stated, at the hearing to vacate Washington's conviction, that Reeves intentionally suppressed *Brady* evidence—the eyewitness's recantation and the note documenting the recantation—with the goal of getting an edge at trial. As noted above, the KCDA later issued a report saying that it could not determine whether this suppression occurred. The Grievance Committee should investigate, as such serious misconduct would be a violation of these rules.[117]

Under Rule 7-102, attorneys were not to knowingly make a false statement to the court or use evidence they knew to be false.[118] Rule DR 1-102 prohibited attorneys from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation."[119] The KCDA's *426 Years Report* found that Reeves's "intentional[] misleading" questioning of the eyewitness was the "most problematic example of misleading direct testimony" that it surveyed.[120] Thus, Reeves misled the jury in violation of these rules.[121]

Reeves's misconduct in *Washington* prejudiced the legal process and was not befitting of a lawyer. Rule DR 1-102 prohibited attorneys from engaging in conduct that was prejudicial to the administration of justice, or engaging in any other conduct that adversely reflected on their fitness to practice law.[122] The KCDA said at the hearing to vacate Washington's conviction that Reeves withheld *Brady* evidence, which if so, violates constitutional, state and professional law.[123] The

---

[116] Code of Professional Responsibility DR 7-102(a)(3) (22 NYCRR 1200.33 (repealed)); Code of Professional Responsibility DR 7-109(a) (22 NYCRR 1200.40 (repealed)). These two rules were replaced in 2009 by Rules of Professional Conduct (22 NYCRR 1200.0) rules 3.4(a)(1), (3) (a lawyer shall not "suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce . . . [or] conceal or knowingly fail to disclose that which the lawyer is required by law to reveal"). *See also Rain*, 162 AD3d at 1460-61 (suppression of exculpatory evidence violated Rule 3.4(a)(1)).

[117] *See Rain,* 162 AD3d at 1460-61 (upholding disciplinary referee's finding that a prosecutor's violation of *Brady* violated Rule 3.8(b) of the Rules of Professional Conduct, the modern equivalent of Rule DR 7-103(b)).

[118] Code of Professional Responsibility DR 7-102 (22 NYCRR 1200.33 (repealed)). This rule was in effect when the misconduct, as outlined above, occurred. However, Rule 3.3 of the Rules of Professional Conduct replaced it in 2009.

[119] Code of Professional Responsibility DR 1-102 (22 NYCRR 1200.3 (repealed)). This rule was in effect when the misconduct, as outlined above, occurred. However, Rule 8.4(c) of the Rules of Professional Conduct replaced it in 2009. *See also In re Muscatello*, 87 AD3d 156, 158-59 (2d Dept 2011) (prosecutor misrepresentation of content of evidentiary document to the grand jury violated Rule 8.4(c)).

[120] 426 Years Report at 65.

[121] *See also Muscatello*, 87 AD3d at 158-59 (prosecutor who misrepresented the content of an evidentiary document before a grand jury had violated Rule 8.4(c) of the Rules of Professional Conduct, the modern successor to Rule DR 1-102(a)(4)).

[122] Code of Professional Responsibility DR 1-102 (22 NYCRR 1200.3 (repealed)). This rule was in effect when the misconduct, as outlined above, occurred. However, Rules 8.4(d) and (h) of the Rules of Professional Conduct replaced it in 2009.

[123] *See also Rain*, 162 AD3d at 1460-61 (upholding disciplinary referee's finding that a prosecutor's *Brady* suppression violated Rules 8.4(d) and 8.4(h) of the Rules of Professional Conduct, the modern equivalent of DR 1-102(a)(5) and (8)).

KCDA later concluded that Reeves *intentionally* misled the jury through direct examination[124] and prejudiced Washington by improperly cross-examining him. Such conducted prejudices the administration of justice and reflected conduct not befitting of a lawyer, in violation of Rule DR-102.

B. Reeves's Misconduct in *Martinez* Violated the Rules of Professional Conduct.

By 2013, when Reeves committed misconduct in Martinez's case, the Code of Professional Responsibility had been replaced by the Rules of Professional Conduct. Again, Reeves violated multiple rules governing the professional and ethical behavior of the legal profession.[125]

Under Rules 8.4(d) and 8.4(h), attorney cannot engage in conduct that is prejudicial to the administration of justice or engage in any other conduct that adversely reflects on his fitness as a lawyer.[126] The Court of Appeals has found that a prosecutor's improper statements in summation amounts to prosecutorial misconduct and constitute a violation of Rule 8.4.[127] In *Martinez*, Reeves prejudiced the administration of justice when he made improper remarks in cross-examination and summation, including the suggestion that the defense expert was a "whore."[128] His remarks were so prejudicial to the administration of justice that they led to a reversal on appeal of a murder conviction.

C. The Grievance Committee Should Investigate Reeves's Violation of a Court Order in the *Ragsdale* Case.

It seems apparent from the Appellate Division and federal District Court decisions that the *trial court* found that Reeves violated a court order and felt compelled to strike testimony and issue a curative instruction to the jury. Those decisions on review did not disturb this finding, but merely agreed with the trial court that a mistrial was unnecessary.

The Grievance Committee should investigate this case carefully. If indeed Reeves intentionally violated the court's order, this constitutes a very serious ethical violation, particularly for a prosecutor whose job is to uphold the law. This is no negligible misconduct—the New York Penal Law defines the misdemeanor charge of contempt as intentional disobedience to a mandate of a court.[129] If Reeves did so, he prejudiced the administration of justice and acted in a manner not

[124] *See also Muscatello*, 87 AD3d at 158-59 (holding that a prosecutor who misrepresented the content of an evidentiary document before a grand jury had violated Rules 8.4(d) and 8.4(h) of the Rules of Professional Conduct, the modern equivalent of DR 1-102(a)(5) and (8)).

[125] The citations refer to the version of the Rules applicable in 2013, which are still applicable today.

[126] Rules of Professional Conduct (22 NYCRR 1200.0) rules 8.4(d), (h).

[127] *People v Wright*, 25 NY3d 769, 780 (2015); see *also Rain*, 162 AD3d at 1459 (prosecutor violated Rule 8.4 with improper summation remarks).

[128] Martinez Appellant Brief at *27.

[129] *See* PL § 215.50(3) ("A person is guilty of criminal contempt in the second degree when [she] engages in [i]ntentional disobedience or resistance to the lawful process or other mandate of a court").

befitting of a lawyer, in violation of then-Rule DR 1-102, which prohibited attorneys from engaging in conduct that was prejudicial to the administration of justice, or engaging in any other conduct that adversely reflected on their fitness to practice law.[130]

D. For His Misconduct, Reeves Must be Disbarred.

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."[131] The ABA's Model Rule 32 for Lawyer Disciplinary Enforcement makes lawyer discipline "exempt from all statutes of limitations."[132]

In considering discipline, the Appellate Division has considered the role of prosecutor as a "substantial factor in aggravation."[133] Simply being a prosecutor supports aggravated discipline because the law tasks prosecutors "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."[134] Similarly, extensive prosecutorial experience weighs towards a more serious sanction.[135]

The Appellate Division has demonstrated that misconduct that affects the credibility of a prosecutor should not be taken lightly. It suspended a prosecutor for three years for misleading a trial court, and explained that, "such [mis]conduct strikes at the heart of [the prosecutor's] credibility as a prosecutor and an officer of the court."[136] In that same case, the Appellate Division demonstrated that a prosecutor's "ample opportunity" to correct or clarify the misrepresentation—and failure to do so—counts against him in evaluating proper disciplinary measures.[137]

Reeves was not an uninformed novice but a seasoned prosecutor when he committed the above-outlined misconduct. According to his own biography from his cross-examination outline, Reeves became a prosecutor in 1990 and by 1993 he was a felony trial attorney.[138] By 1996—the year before he committed serious misconduct in Washington's case—Reeves was already an Executive Assistant District Attorney in Brooklyn, where he stayed until 2012, when he joined the Staten Island office as Chief Trial Counsel.[139] By 2008, four years before his misconduct in the

[130] Code of Prof. Resp., DR 1-102 (22 N.Y.C.R.R. § 1200.3) (repealed). This rules was in effect when the misconduct, as outlined above, occurred. However, Rules 8.4(d) and (h) of the Rules of Professional Conduct replaced it in 2009.

[131] ABA Model Rules for Lawyer Disciplinary Enforcement rule 32 (Commentary 2020).

[132] *Id.*

[133] *Kurtzrock*, 192 AD3d at 219; *see also Rain*, 162 AD3d at 1462 ("[P]rosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice.").

[134] *Kurtzrock*, 192 AD3d at 219.

[135] *Id.*

[136] *See In re Stuart*, 22 A.D.3d 131, 133 (2nd Dep't 2005).

[137] *Id.*

[138] Kings County Criminal Bar Association, CLE Program Materials Library, https://tinyurl.com/335fx9p4.

[139] Reeves Cook Group Profile.

Martinez case led to the reversal of a murder conviction, Reeves had tried over 120 jury trials to verdict, including 95 murder cases (in five, he sought the death penalty).[140] So while he had plenty of experience to draw on, Reeves nonetheless committed violations of constitutional, state and professional laws.

The legal profession must sanction Reeves publicly and severely in light of Reeves's past and present role as a supervisor, trainer, and role model for newer prosecutors. In Brooklyn, Reeves supervised 12 senior level attorneys in the Homicide Bureau, while in Staten Island "he supervised the trial work of 45" prosecutors.[141]

Beyond those boroughs, Reeves was "a regular speaker at the New York Prosecutor Training Institute Spring and Summer Colleges on all issues involving homicide prosecutions and capital case litigation…."[142] In 2015, Reeves apparently taught a seminar to Indiana prosecutors on "false confessions,"[143] something he was accused of using himself in the *Washington* case. Reeves has "conducted hundreds of Continuing Legal Education courses," and is a co-author of "Winning Trial Strategies", which he believes is "considered by many to be the preeminent guidebook for New York state prosecutors."[144]

Though Reeves was twice found to have committed misconduct in cross-examination, the Kings County Criminal Bar Association still offers Reeves's *Effective Cross-examination Techniques* tip sheet online in its "CLE Program Materials Library."[145] Reeves's document advises prosecutors that, "Statements of defense witnesses in your possession should not be provided to defense counsel as *Rosario*…. Why make it easier for defense witness."[146] Reeves's outline further advises prosecutors that, "if self-defense case, get defendant to admit he killed victim on purpose,"[147] an apparent attempt to distract the jury with an appeal to sympathy rather than addressing a disputed issue in a self-defense case.

More generally, as a former high ranking executive in two City offices, Reeves served as a role model for hundreds of prosecutors.[148] If the Committee fails to publicly and severely sanction Reeves for his serious misconduct, the attorneys who worked under him and looked up to him will neither avoid nor fear making similar violations. Without other mechanisms to hold prosecutors

---

[140] Kings County Criminal Bar Association, CLE Program Materials Library, https://tinyurl.com/335fx9p4.

[141] Reeves Cook Group Profile.

[142] *Id*.

[143] 2015 Indiana Prosecuting Attorneys Council and Attorney General's Winter Conference, Schedule, https://tinyurl.com/fedm75jd.

[144] Reeves Cook Group Profile.

[145] Kings County Criminal Bar Association, CLE Program Materials Library, https://tinyurl.com/335fx9p4.

[146] *Id.*

[147] *Id*.

[148] *See, e.g.*, Cardozo School of Law, *Reflections on Public Service Internships 2009* at 111, https://tinyurl.com/yxjrrahn (a then-law student—who went on to become a prosecutor— raves about being able to witness Reeves in trial).

accountable, a failure to discipline a senior prosecutor such as Reeves will demonstrate to prosecutors that they are above the law; that they need not fear accountability; that they can get away with breaking the law.

We believe disbarment is the appropriate sanction for the misconduct described in this grievance. As prosecutorial misconduct becomes increasingly identified as a stain on our legal system's promise of justice and fairness, some state courts have taken decisive action, disbarring prosecutors for egregious misconduct. While several states have disbarred prosecutors for on-the-job misconduct, including Texas, Minnesota, Pennsylvania, North Carolina, and Arizona, we have not found a single such occurrence in New York, despite the many criminal cases that pass through the state's large court system every year.

If disbarment is *never* applied as a sanction for prosecutorial misconduct—if it is *de facto* taken off the table—prosecutors can rest assured that, even if they are caught committing the most severe misconduct, they will face at most a short suspension of their law license. Career advancement by developing a reputation for winning cases at all costs is an obvious incentive for prosecutors to bend and break rules. If the Grievance Committee and courts do not apply an actual—rather than theoretical—disincentive, prosecutorial misconduct will continue unabated.

Conclusion

Reeves suppressed exculpatory evidence, and committed various other forms of serious misconduct. In doing so, he violated multiple professional and ethical rules. To these writers' knowledge, Reeves remains unsanctioned for his serious misconduct. Disbarment is the only appropriate sanction for suppression of exculpatory evidence and the other forms of serious misconduct described here.

As "officers of the court, all attorneys are obligated to maintain the highest ethical standards."[149] 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."[150] The findings by the KCDA and the court identified in this grievance provide 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 findings 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 Reeves. 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."[151] Using its power to investigate, including to issue subpoenas and interview witnesses, the Committee can and should

[149] NY St Bar Assn Comm on Prof Discipline, Guide to Attorney Discipline, https://tinyurl.com/47scv4pb.

[150] *Id.*

[151] Rules of Professional Conduct (22 NYCRR 1200.0) rule 8.3 Comment [1].

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 Reeves'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.

This type of comprehensive investigation may seem onerous, but the recent investigation into former Suffolk County Assistant District Attorney Glenn Kurtzrock demonstrates both the viability and overwhelming necessity of a systematic investigation. In a 2017 murder trial, *People v. Booker*, Kurtzrock committed a wide range of egregious discovery violations, leading to his resignation and the Appellate Division's December 2020 ruling suspending his law license for two years.[152] In imposing this sanction, the Appellate Division highlighted as a mitigating factor that "there was no showing that [Kurtzrock] engaged in any similar conduct in any other cases."[153]

But at the time of the December 2020 Appellate Division ruling, there was in fact already significant evidence of similar misconduct by Kurtzrock in other cases, which would have been easily identified if a systematic investigation had been undertaken.[154] To start, after Kurtzrock's *Brady* violation was revealed during the 2017 *Booker* trial, defense counsel for a different murder case in which Kurtzrock had obtained a conviction, *People v. Lawrence*, then pending on appeal, requested a reexamination of the discovery in that case. The District Attorney's Office agreed, and the investigation revealed that Kurtzrock had failed to disclose more than 40 items of *Brady* and/or *Rosario* evidence in *Lawrence* as well, including a payment to a witness and exculpatory witness statements. Consequently, the judge dismissed the indictment in 2018, and Shawn Lawrence, who had served six years of incarceration of his 75-years-to-life sentence, was released.[155] The judge concluded that the suppression constituted "more than exceptionally serious misconduct."[156]

A systematic investigation of Kurtzrock ensued that uncovered even more suppressed evidence. Following the Appellate Division's December 2020 ruling, the Suffolk County District Attorney's Office ("SCDAO") worked with the New York Law School Post-Conviction Innocence Clinic to conduct a comprehensive review of Kurtzrock's trial cases and other cases where Kurtzrock's actions raised discovery issues.[157] The

[152] *Kurtzrock*, 192 AD3d 197.

[153] *Id.* at 220.

[154] Letter to Second Department (unfiled), Nina Morrison of the Innocence Project and Paul Shechtman of Bracewell LLP, January 20, 2021; see also Morrison, *What Happens When Prosecutors Break the Law?*, NY Times, https://tinyurl.com/52ar9tjx.

[155] Morrison, *What Happens When Prosecutors Break the Law?*, NY Times, https://tinyurl.com/52ar9tjx.

[156] County of Suffolk Office of District Attorney, Review of the Disclosure Practices of Assistant District Attorney Glenn Kurtzrock, https://tinyurl.com/2a7ba9cd (hereafter "Kurtzrock report") at 11 (discussing case of *People v. Shawn Lawrence*) (internal quotation marks omitted).

[157] The SCDAO "attempted to identify and examine for *Brady/Giglio* and *Rosario* compliance all cases Kurtzrock tried while serving as an ADA with the SCDAO, both as a homicide prosecutor and while serving in a bureau that prosecutes non-fatal violent crimes and other felony offenses. The CIB also examined

investigation and resulting public report identified that numerous prosecutions by Kurtzrock were infected by "practices similar to those criticized by the Appellate Division in the [2017] *Booker* case,"[158] which the report characterized as a "potential systemic issue."[159]

As a result of the investigation, the SCDAO provided new evidence to defendants in **100 percent of Kurtzrock's homicide cases and 76 percent of all trial cases reviewed**.[160] These disclosures have already spurred applications to review convictions.[161] The SCDAO also sent its report to the Appellate Division and the Grievance Committee to determine if any additional action is appropriate,[162] an important step given that, in explaining the lenient two-year suspension for Kurtzrock's misconduct in *Booker*, the Appellate Division cited the ostensible lack of evidence of misconduct by him in other cases.

The Kurtzrock investigation thus demonstrates the sound logic behind the comment to Rule 8.3 that "[a]n apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover"[163] and the need for the Grievance Committee to systematically investigate this prosecutor's work.

2. The Committee should promptly investigate whether any supervising attorney at the KCDA or SIDA 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.[164]

3. The Grievance Committee should investigate whether the KCDA, SIDA, and its managing attorneys complied with its duties under Rule 5.1 of the New York Rules of

---

additional cases… that Kurtzrock did not try himself but in which Kurtzrock's actions prior to trial were identified as raising *Brady*/*Giglio* and/or *Rosario* compliance concerns." *Id.* at 4.

[158] *Id.* at 5.

[159] *Id.* at 4.

[160] *Id.* at 6.

[161] *Id.*

[162] *Id.* at 7.

[163] Rules of Professional Conduct (22 NYCRR 1200.0) rule 8.3 Comment [1].

[164] Rules of Professional Conduct (22 NYCRR 1200.0) rule 5.1 (d) reads: 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.

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.[165]

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

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 systematically investigate all cases identified in #1-4 above and advise the court if this investigation casts doubt on the integrity of any convictions. To be clear, we do not mean a closed-door, cloaked process inside a 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.

Cynthia Godsoe
Professor of Law
Brooklyn Law School

Nicole Smith Futrell
Associate Professor of Law
CUNY School of Law

Steven Zeidman
Professor of Law
CUNY School of Law

Daniel S. Medwed
University Distinguished Professor of
Law and Criminal Justice
Northeastern University

Abbe Smith
Scott K. Ginsburg Professor of Law
Director, Criminal Defense & Prisoner Advocacy Clin
Co-Director, E. Barrett Prettyman Fellowship Program
Georgetown University Law Center

Justin Murray
Associate Professor of Law
New York Law School

[165] District Attorney offices qualify as "law firms" under Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.0 (h). "'Firm' or 'law firm' includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization."