May 3, 2021

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 Brad Leventhal, State Bar No. 2235547.

To the Grievance Committee,

Brad Leventhal,[1] who just resigned his position as the Bureau Chief of Homicide at the Queens District Attorney's Office, must be disciplined for his egregious misconduct in the prosecutions of George Bell, Rohan Bolt, and Gary Johnson. In *People v. Bell*,[2] Leventhal (and his colleague, Charles Testagrossa) suppressed exculpatory evidence, misled the trial court and other parties, and permitted perjured testimony to stand. The Queens Supreme Court found that the "extensive" record "ma[de] clear" that the prosecution "deliberately withheld" crucial exculpatory evidence from the defense.[3] "The prosecution"—that is, Leventhal and Testagrossa—"completely abdicated [their] truth-seeking role,"[4] leaving the court with the "distinct impression… [of a] pattern of behavior that was calculated to deprive the defendants of fair trials."[5]

Leventhal's misconduct led to the wrongful conviction and imprisonment of the three men for 24 years. Following the reversals of their convictions and the public outcry that followed, Testagrossa resigned from the Nassau District Attorney's Office. Leventhal was quick to follow.

But *Bell* was not the only case in which Leventhal committed egregious misconduct in violation of the constitution. In 2006, the Appellate Division found that Leventhal committed

---

[1] Brad Alan Leventhal, State Bar No. 2235547, Queens District Attorney's Office, 125-01 Queens Blvd., Kew Gardens, New York, 11415. Phone: (718) 286-7017. The Unified Court System website does not list a number for Leventhal. We do not have personal knowledge of any of the facts or circumstances of Leventhal or the cases mentioned; this grievance is based entirely on the court opinions, briefs and other documents cited herein.

[2] Exhibit A, *People v. Bell*, 2021 WL 865420 (Queens Supreme Court, March 8, 2021). This grievance uses "*People v. Bell*" for brevity, but the case addressed and vacated the convictions of all three men. *See also* Exhibit A1, Prosecution Affirmation In Support of Motion to Vacate Convictions and Sentence Pursuant to C.P.L. §440.10 (hereinafter "QDAO Brief"), and Exhibit A2, Memorandum of Law of George Bell, Rohan Bolt, and Gary Johnson in Support of Motion to Vacate Their Convictions (hereinafter "Defense Brief").

[3] Ex. A, *Bell* at *9.

[4] *Id.*

[5] *Id.* at *12.

serious misconduct in *People v. Brown* by violating Brown's constitutional right to a fair trial.[6] The court found that Leventhal engaged in extensive summation and cross-examination misconduct when prosecuting Brown, including acting as an unsworn witness and implying that certain key evidence had been kept from the jury due to "legal technicalities."[7] The Appellate Division reversed the conviction on another basis, but made clear that Leventhal's misconduct justified reversal in and of itself, ordering: "*[t]his misconduct should not be repeated*."[8]

Given Leventhal's senior position in the Queens District Attorney's Office ("QDAO") for many years (before his sudden retirement), his earlier professional misconduct is of extreme gravity and importance to the public. Serious misconduct at the Queens District Attorney's Office 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.[9] 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.[10] The Appellate Division has repeatedly criticized Queens prosecutors' improper summation conduct and advised that the Office provide better training for its trial prosecutors.[11] There are numerous court decisions finding that QDAO prosecutors acted

---

[6] Exhibit B, *People v. Brown*, 30 A.D.3d 609 (2d Dep't 2006). Available at: https://www.nycourts.gov/reporter/3dseries/2006/2006_05028.htm. The prosecutor is not named in the appellate decision, but a contemporary article identifies Leventhal as the prosecutor. *See* Tom Perrotta, "Judge Errs In Treatment Of Alibi Issue," *New York Law Journal* (Online), June 27, 2006 ("The appeals court also faulted Assistant District Attorney Brad A. Leventhal for 'prosecutorial misconduct' during the cross-examination of Mr. Brown, and during his summation."), https://www.law.com/newyorklawjournal/almID/900005456752/?slreturn=20210213105155

[7] *Id*.

[8] *Id*.

[9] *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

[10] 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).

[11] *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

improperly—a recent civil lawsuit contains a list of 117 published decisions involving prosecutorial misconduct in Queens cases.[12] Leventhal's misconduct appears to fall within this appalling and largely-unaddressed pattern of improper conduct.

Just as prosecutors hold individuals accountable for crimes, so should prosecutors be held accountable for their misconduct. Despite the numerous findings of serious 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 Leventhal.[13]

The Grievance Committee must disbar Leventhal for his serious misconduct in *Bell* and *Brown*.

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.[14] 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.[15]

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."[16] Hal Lieberman, former Chief Counsel for the

---

or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1520949280.External_(Public).mp4

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

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

[14] *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.").

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

[16] *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).

Departmental Disciplinary Committee in New York's First Department, has noted how unchecked prosecutorial misconduct "undermines the integrity of the entire system."[17]

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.[18] 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."[19] 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 prosecutors were promoted and given raises soon after courts cited them for abuses.[20]

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."[21]

B. The *Brady* Rule and State Discovery Laws are Fundamental to the Constitutional Rights to a Fair Trial and Due Process, Yet Prosecutors Often Fail to Provide Favorable Evidence to the Defense.

One of the most damaging forms of prosecutorial misconduct is the *Brady* violation—when a prosecutor suppresses exculpatory or impeachment evidence.[22] A prosecutor's duty to disclose *Brady* evidence is indispensable to the rights to due process and a fair trial.[23] In our legal system, *Brady* disclosures permit the defense to investigate and litigate different leads and to protect the defendant from wrongful convictions. It is unsurprising, then, that suppression of favorable evidence has played a role in over 30% of known wrongful convictions and 44% of known wrongful convictions for murder.[24]

---

[17] 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

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 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

[22] *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

[23] *Brady*, 373 U.S. at 87.

[24] *Government Misconduct and Convicting the Innocent*, National Registry of Exonerations (September 1, 2020): https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

A prosecutor has an affirmative duty to search for favorable material in their own records and those of related agencies—and to turn these over to the defense.[25]

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, 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.[26] Other New York criminal procedure law sections obligated the prosecutor to disclose types of evidence that commonly contain *Brady* information.[27] The 2020 discovery reform preserved the statutory codification of *Brady* and further expanded a prosecutor's discovery obligations.[28] Additionally, under federal law, a prosecutor who commits an intentional *Brady* violation can be charged with a felony.[29]

Indeed, the *Brady* rule is of such import that it has been codified into its own subsection in New York Rule of Professional Conduct 3.8(b):

> 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….[30]

Rule 3.8 makes clear that the professional rule is broader than the *Brady* obligation: all evidence that tends to exculpate the defendant must be turned over, rather than just *materially* exculpatory evidence. As a consequence, more conduct will violate Rule 3.8 than the constitutional rule.

Despite the significance of the *Brady* rule in the criminal legal system, New York prosecutors often violate it. 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."[31] 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."[32]

---

[25] *Kyles v. Whitley*, 514 U.S. 419, 432 (1995); *Strickler v. Green,* 527 U.S. 263, 280-81 (1999).

[26] C.P.L. § 240.20(1)(h) (McKinney) (repealed); *Doorley v. Castro*, 160 A.D.3d 1381, 1383 (4th Dep't 2018).

[27] C.P.L. § 240.20 (McKinney) (repealed).

[28] C.P.L. § 245.20(1)(k).

[29] 18 U.S.C. § 242.

[30] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b). This Rule was previously codified in New York's Code of Professional Responsibility DR 7-103, 22 N.Y.C.R.R. § 1200.34 (repealed).

[31] N.Y. State Bar Ass'n, *Report of the Task Force on Criminal Discovery*, at 52 (Jan. 30, 2015) https://nysba.org/NYSBA/Practice%20Resources/Substantive%20Reports/PDF/Criminal%20Discovery%20Final%20Report.pdf

[32] N.Y. State Justice Task Force, *Report of the New York State Justice Task Force of Its Recommendations Regarding Criminal Discovery Reform*, at 2 (July 2014), http://www.nyjusticetaskforce.com/pdfs/Criminal-Discovery.pdf

C. Prosecutors Have a Duty to Present Evidence Honestly.

Prosecutors may not mislead the court or jury and many prohibitions on prosecutorial conduct relate to dishonesty. For example, it can violate due process for a prosecutor to knowingly present perjured testimony.[33] 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.[34] Prosecutors possess a "special duty" not to mislead a judge, jury, or defense counsel.[35]

D. Summation Misconduct is Pernicious and Widespread.

In closing ("summation") arguments, the prosecutor's task is to explain how trial evidence applies to the legal elements of the charged offenses. Thus, prosecutors "must stay within the four corners of the evidence"[36] and are not permitted to make arguments that rely on facts that are not in evidence.[37] Prosecutors are not permitted to engage in prejudicial or misleading argumentation that are sometimes referred to as "cardinal sins."[38] These missteps include making "irrelevant and inflammatory comments;"[39] expressing "personal belief or opinion as to the truth or falsity of any testimony or evidence,"[40] also known as vouching; appealing to the jurors' sympathies or fears;[41] shifting the burden from the prosecution to the defense;[42] and denigrating

---

[33] *See, e.g., Miller v. Pate*, 386 U.S. 1 (1967).

[34] *See People v. Waters*, 35 Misc.3d 855 (Bronx Sup. Ct. 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 U.S. 264, 269 (1959) (prosecutor failed to correct witness's false testimony that he had not received any promise in return for his testimony).

[35] *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 U.S. 51, 65-66 (2011). *See also* Bennett L. Gershman, The Prosecutor's Duty to Truth, 14 Geo. J. Legal Ethics 309, 316 (2001) http://digitalcommons.pace.edu/lawfaculty/128/ ("The courts have recognized that, as a minister of justice, a prosecutor has a special duty not to impede the truth.").

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

[37] *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).

[38] *See, e.g.,* Daniel S. Medwed, *Prosecution Complex*.

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

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

[41] *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).

[42] *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).

the defense, defense counsel or the defendant.[43] Engaging in these prejudicial forms of arguments is improper and can violate the constitutional right to a fair trial.[44]

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."[45] 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:

> 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.[46]

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."[47] 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."[48]

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, particularly in Queens:

> 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?[49]

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,

---

[43] *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).

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

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

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

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

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

[49] V*elez*, 2014-09698, Oral Argument at 0:46:55-0:48:05.

to manipulate biases, prejudice, and passions. Discussing prosecutorial misconduct in a Queens prosecutor's opening statement—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."[50]

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."[51] In this role, the law requires of prosecutors "to see that the defendant is accorded procedural justice."[52] Winning a case through summation misconduct violates this fundamental obligation.

The American Bar Association's 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."[53]

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.[54]

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.[55]

---

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

[51] 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

[52] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

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

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

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

Justice Leventhal, in turn, suggested that the Queens District Attorney's Appeals Bureau train the trial prosecutors about summation misconduct.[56]

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.[57]

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

E. 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.[58] 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.[59]

Unfortunately, the U.S. Supreme Court's assumption—that professional disciplinary actions "would provide an antidote to prosecutorial misconduct"[60]—has not been borne out. A 2013 report from the Center for Prosecutor Integrity identified 3,625 cases of prosecutorial misconduct

---

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

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

[58] *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").

[59] *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).

[60] 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).

between 1963 and 2013. Of those, only 63 prosecutors—less than 2 percent—were ever publicly sanctioned.[61]

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."[62] "It's an insidious system," said Marvin Schechter, then-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."[63]

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.[64] In December 2020, the Appellate Division imposed the same penalty for the egregious misconduct of ex-prosecutor Glenn Kurtzrock.[65] But even a short suspension like that received by Rain and Kurtzrock[66]—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 Leventhal will continue unabated and undeterred.

---

[61] 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).

[62] 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).

[63] *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

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

[65] *In the Matter of Glenn Kurtzrock*, 192 A.D.3d 197 (2d Dep't, Dec. 30, 2020). http://courts.state.ny.us/courts/ad2/Handdowns/2020/Decisions/D65317.pdf

[66] 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)

2. The Queens Supreme Court Found that Leventhal Committed Multiple Forms of Serious Misconduct in the *Bell*, *Bolt*, and *Johnson* Cases.

In a March 2021 decision that reverberated throughout New York, the Queens Supreme Court vacated the murder convictions of George Bell, Rohan Bolt, and Gary Johnson.[67] The decision found that the prosecutors who had handled the cases, Charles Testagrossa and Brad Leventhal, had committed prosecutorial misconduct, including suppressing evidence that someone else committed the murders.[68] By the end of March, both of these career prosecutors had resigned from management positions at the Nassau and Queens District Attorney's Offices (QDAO), respectively.[69]

To understand the subsequent fallout, some background is essential. In 1996, several men tried to rob a check cashing business on Astoria Boulevard in Queens and ended up killing the owner and an off-duty police officer. The case sparked a "ferocious manhunt" that led to the arrest, prosecution and conviction of Bell, Bolt, and Johnson for the check-cashing murders.[70] The recent defense motion to vacate the convictions described the context:

> No physical evidence — none — connected any of the three men to the crime, not at the time of their arrests, and not at any time thereafter. But there was enormous pressure to "solve" the crime. According to a press report, detectives told Mayor Giuliani that they wanted to question Bell and Johnson more before any announcement was made. But Giuliani "could not be held back for long" and insisted that his Christmas Day press conference go forward. And so, at a televised press conference, at about the same time that Bolt was being arrested, Bell and Johnson were identified as Davis's and Epstein's murderers, Giuliani lauded the detectives for solving the crime so quickly, and Giuliani and police brass offered the view that Bell should face the death penalty. The press then proceeded to convict the three, with a full front-page *Daily News* story labeling Bell as the "CRYBABY COP KILLER" and a full front-page *New York Post* story labeling Bell's perp walk picture as "THE FACE OF EVIL."
>
> It was all false. The notion that Bell, a 19-year-old stock boy at Old Navy with no criminal record, his friend, 22-year-old Gary Johnson, who worked as a store clerk and who also had no criminal record, and Rohan Bolt, the 35-year-old owner of a Caribbean restaurant, who didn't even know Bell and Johnson, committed these heinous murders was always implausible. And indeed, in the days after the crime was committed, the NYPD flooded Queens with wanted posters seeking information

[67] Ex. A, *Bell*, 2021 WL 865420 (Queens Sup. Ct. 2021).

[68] *Id.*

[69] David Brand, *Top prosecutor quits after Queens judge accuses him of lying in death penalty case*, Queens Daily Eagle (March 11, 2021). Available at: https://queenseagle.com/all/charles-testagrossa-quits-nassau-county-queens-da

[70] George Joseph, *He Spent 24 Years Behind Bars Because Queens Prosecutors Broke the Rules. Was This Their Only Wrongful Conviction?* Gothamist (April 5, 2021), https://gothamist.com/news/he-spent-24-years-behind-bars-because-queens-prosecutors-broke-rules-was-their-only-wrongful-conviction. *See also* Troy Closson, *They Spent 24 Years Behind Bars. Then the Case Fell Apart*, New York Times (March 5, 2021), https://www.nytimes.com/2021/03/05/nyregion/queens-wrongful-convictions.html

about a gang that had committed multiple armed robberies in Queens, including the armed robbery of a Queens check cashing store when it opened at 7:00a.m. just two days before, on December 19, 1996.

Around the same time as the intense political pressure[71] to solve these killings, police and the Queens District Attorney's Office were investigating, arresting, and prosecuting members of the "Speedstick" crew, led by brothers Aaron and Ammon Boone, who were suspected in a string of other crimes, including murder and robbery. Heading these investigations and prosecutions at that point was Charles Testagrossa, the then-head of the QDAO's Career Criminals / Major Crimes Bureau.[72]

Both the press and defense attorneys for Bell, Bolt, and Johnson recognized "a connection" between the check cashing incident and the Speedstick crimes.[73] As outlined by the Queens Supreme Court decision, this connection "sparked a flurry of discovery demands" by the defendants regarding the Speedstick investigations;[74] they had recognized the exculpatory nature of these investigations.

In response to the numerous defense requests for exculpatory evidence, the QDAO, led by Leventhal and Testagrossa, denied outright any connection between the Speedstick investigations and the case against the three men. Leventhal claimed the attorneys' request for these materials amounted to a "fishing expedition."[75] Testagrossa "derisively" claimed that a Speedstick robbery was a "completely different case," with "no connection" to the check-cashing murder case.[76] Prosecutor Gary Fidel, responding to one such demand by Bell, affirmed that there was "no evidence" connecting anyone Bell, Bolt, and Johnson to the check cashing shooting.[77] After these unequivocal denials by the prosecutors, the trial court denied the defense's requests for these exculpatory materials.[78]

Leventhal and Testagrossa tried Bell together in 1999 and sought the death sentence, but the jurors declined to impose this sentence, and the judge sentenced Bell to life without parole.[79]

---

[71] These circumstances invite clear parallels to another horrible miscarriage of justice in New York, when the 'Exonerated Five' were wrongfully imprisoned for attacking a jogger in Central Park. Then, as here, political pressures apparently encouraged a prosecutor to ignore inconsistent or exculpatory evidence for the sake of expediency, ruining the lives of the accused. *See* Monica Hesse, *The slippery moral calculus of Linda Fairstein*, The Washington Post (June 5, 2019), https://www.washingtonpost.com/lifestyle/style/the-slippery-moral-calculus-of-linda-fairstein/2019/06/05/f7ff1aac-86d4-11e9-98c1-e945ae5db8fb_story.html

[72] Ex. A, *Bell* at *4.

[73] *Id.* at *5.

[74] *Id.*

[75] *Id.* at *5.

[76] *Id*.

[77] *Id*.

[78] *Id*.

[79] *Id*. at *6.

Leventhal alone tried Johnson and Bolt in 1999 and 2000. Both men were sentenced to 50 years to life in prison.[80]

Though this grievance is focused on Leventhal's actions, we ask the Grievance Committee to carefully review the relevant exhibits attached, which suggest the involvement of other prosecutors in denying defense discovery requests and other possible misconduct.

A. Leventhal Suppressed Exculpatory Evidence Showing that Speedstick Committed the Check-Cashing Murders.

Despite the fervent denials of Leventhal and Testagrossa at the time of the trials, there is no longer any dispute that the QDAO failed to provide crucial exculpatory evidence to the defense. In the QDAO's brief from March 2021, the QDAO "concede[d]" that the Speedstick investigation, as well as information relating to a key prosecution witness, was suppressed.[81] Moreover, the QDAO conceded that this information was *Brady*, i.e., material and exculpatory.[82]

The Queens Supreme Court was much more devastating in its findings. The Court found that the "extensive" record in the proceeding to vacate the convictions "makes clear" that the QDAO "deliberately withheld" exculpatory evidence from the defense.[83] "The prosecution"—that is, Leventhal and Testagrossa—"completely abdicated [their] truth-seeking role."[84]

The Queens Supreme Court found that the prosecution had suppressed "a significant amount of material that implicated" the Speedstick crew in the check-cashing shooting,[85] including police reports tying the Speedstick crew to the check-cashing shooting.[86] As the QDAO conceded, prosecutors had also failed to turn over the psychiatric records and initial cooperation agreement for one of their central witnesses in Johnson's and Bolt's trials.[87] Finally, the wrongfully convicted men argued—and the prosecution did "not really dispute"—that exculpatory interviews with five eyewitnesses, unrelated to the Speedstick evidence, were never provided to the defense.[88]

---

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

[81] *Id*. at *8.

[82] *Id*. (QDAO conceded that had prosecutors turned over such information, there would have been a "reasonable possibility" that Bell, Bolt, and Johnson would not have been convicted.). *See also* *11 (prosecution's "concession of a material *Brady* violation").

[83] Ex. A, *Bell* at *9.

[84] *Id*.

[85] *Id*.

[86] *Id*.

[87] *Id*. at *8, *12. The decision does not note the prosecution's concession that the cooperation agreement was suppressed; however, the decision notes that it was not disclosed.

[88] *Id*. at *12. The prosecution's theory at trial appears to have been that the defendants used Bolt's red vehicle in the robbery/murder. According to the defense brief, the prosecution had, in its possession, the statements of five eyewitnesses who were interviewed within days of the robbery who described a *different* vehicle. *See* Ex. A1, QDAO Brief at 17 and Ex. A2, Defense Brief. According to the Defense

The Queens Supreme Court found that Testagrossa knowingly suppressed the exculpatory evidence related to Speedstick. Testagrossa had been chief of the bureau that prosecuted the Speedstick crew and Testagrossa personally prosecuted Bell, along with Leventhal.[89] Testagrossa had personally "investigated, and documented in handwritten notes" information that tied the Speedstick crew to the check-cashing shooting.[90] He was also "apparently briefed" about such a connection by detectives.[91] It was thus "clear….that Testagrossa had knowledge of this information."[92] The Court found that Testagrossa "unquestionably knew" about the connection between Speedstick and the prosecuted cases.[93]

Testagrossa's lies about the Speedstick connection were lambasted by the court:

> [The prosecutors'] repeated denial of any connection between the perpetrators of the [Speedstick crimes] and [the check-cashing shooting] was a complete misrepresentation. Most troublingly, it was a misrepresentation made by a prosecutor, ADA Testagrossa, whose own handwritten notes refuted it. This was, in short, not a good-faith misstatement; it was a deliberate falsehood.[94]

Testagrossa's trial partner in the Bell prosecution was Leventhal. Although the court did not make the same finding of personal knowledge for Leventhal, the circumstances are damning.

Leventhal prosecuted the first trial, the death penalty prosecution of Bell, with Testagrossa.[95] It was a widely-publicized murder case involving the killing of a police officer—just the second Queens death penalty case since the death penalty was reinstated in 1995.[96] Leventhal then led the prosecution of Bolt and Johnson, through separate trials, in 1999 and 2000.

The court noted that it was "difficult to believe" that in 1997, Testagrossa, as he led the unit investigating Speedstick and possessed evidence exculpating Bell, Bolt, and Johnson, did not "immediately convey" the exculpatory "information to the prosecution" handling the Bell, Bolt, and Johnson cases (two years before Bell's trial).[97]

The defense 440.10 motion details several other compelling reasons that "[i]t is hard to believe that the failure to turn over this large volume of exculpatory evidence in a death penalty

---

440.10 Motion, the prosecution never provided these records to the defense until the FOIL (Freedom of Information Law) request 20 years later.

[89] Ex. A, *Bell* at *4, *6.

[90] *Id.* at *9.

[91] *Id.*

[92] *Id*.

[93] *Id*. at *10. *See also* *11 ("But ADA Testagrossa's handwritten notes show beyond any doubt that he was aware of the essence of the information in those reports.").

[94] *Id*..

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

[96] Ex. A2, Defense Brief at 54.

[97] Ex. A, *Bell* at *9.

case was the result of inexcusable sloppiness."[98] These reasons included: law enforcement cooperation between the Speedstick and check cashing murder investigations; media coverage alleging Speedstick involvement in the check cashing homicides; and repeated requests to the prosecution from the Bell, Bolt, and Johnson attorneys for information about Speedstick involvement.[99] Even the defense became aware that law enforcement had compared ballistic evidence between Speedstick and the check-cashing murders; it is unimaginable that Leventhal would not have noticed any connection.

It is striking, then, that Leventhal and Testagrossa did not submit affirmations to the court explaining their conduct or suggesting that they were unaware of the exculpatory evidence. The Queens Supreme Court noted that since the prosecutors did not submit such affirmations, "there is no explanation for why this information was not disclosed, let alone an explanation that would support the conclusion that the nondisclosure was fairly attributable to negligence, inadvertence, or anything else short of *deliberate suppression*."[100]

The court also referenced other dishonest conduct by Leventhal, noted in more detail below, in support of the court's "distinct impression" that the suppressed Speedstick evidence was "part of a larger pattern of behavior that was *calculated to deprive the defendants of fair trials*."[101] This court finding applies as much, if not more, to Leventhal, as Testagrossa, since Leventhal prosecuted all three trials.

Finally, even were Leventhal able to show that he was unaware of the Speedstick connection, his actions appear to parallel the "deliberate pattern of avoidance, or willful blindness" to exculpatory evidence for which the Second Department Appellate Division disciplined ex-prosecutor Glenn Kurtzrock.[102] After all, Leventhal was on notice that the defense and law enforcement believed a connection between the two cases existed, but chided such claims as "fishing expedition[s]."[103] In rejecting the QDAO's claim of a good faith mistake, the Queens Supreme Court noted that even if Leventhal and other prosecutors somehow did not know about the Speedstick investigation, "it would not have been difficult to figure out" the connection and reach out to their colleagues.[104] Similarly, in responding to defense's repeated request for information about the link between the two cases, Leventhal would not have needed "much legwork to figure out" if a connection existed.[105] These were "obvious opportunities" for finding and sharing the Speedstick investigation information with the defendants.[106]

---

[98] Ex. A2, Defense Brief at 10-11.

[99] *Id*.

[100] Ex. A, *Bell* at *11 (emphasis added).

[101] *Id*. at *12 (emphasis added).

[102] *Kurtzrock*, 192 A.D.3d 197 (deliberate pattern of avoidance or willful blindness constitutes knowledge under Rule 3.8(b), the modern equivalent of Rule DR 7-103(b)).

[103] Ex. A, *Bell* at *5.

[104] *Id*. at *10.

[105] *Id*.

[106] *Id*.

B. Leventhal Suppressed Evidence that a Crucial Witness Suffered Auditory Hallucinations and Had Entered Into a Later-Canceled Cooperation Agreement with the Prosecution.

The initial justification behind the arrest and prosecution was prosecution witness John Mark Bigweh, who was in custody for an unrelated drug sale. Bigweh made a series of statements to law enforcement, incriminating, to various degrees, Bell, Bolt, and Johnson. Bigweh was ultimately charged with the check-cashing murders, entered a cooperation agreement, and testified in the Johnson and Bolt trials.

But the prosecution never provided Bigweh's psychiatric records, which revealed a history of mental illness, including auditory hallucinations. The QDAO admits receiving these records in 1997, two years before trial,[107] and that their suppression of those records violated due process.[108]

Moreover, the prosecution never provided Bigweh's first cooperation agreement, which lasted from 1997-1999. In exchange for testifying against the defendants, Bigweh was promised "a more favorable recommendation of disposition that included a *possible dismissal* of the pending charges" and possible relocation to another part of the United States.[109] This agreement remained in place for two years until it was revoked in advance of Bell's trial by Testagrossa.[110] Though the prosecution provided a second cooperation agreement that began in 1999, both the existence of the first cooperation agreement and its nullification were suppressed.

Bigweh's cooperation agreement was crucial, as the court noted that the agreement "allowed him to avoid a homicide conviction."[111] Bell avoided lethal injection but was sentenced to life in prison without the possibility of parole; Bolt and Johnson were sentenced to 50 years to life. Bigweh, on the other hand, plead guilty only to robbery and weapon possession and was sentenced to an indeterminate term of five to ten years.[112]

Even if Leventhal somehow did not know of the exculpatory Speedstick evidence, he must have known about the exculpatory evidence for his central witness in Johnson's and Bolt's trials: the psychiatric records and initial cooperation agreement.[113] The Queens Supreme Court found that the witness's initial, terminated cooperation agreement "had not been disclosed" to the defense in Johnson's trial,[114] which Leventhal handled by himself. Additionally, the prosecution

[107] Ex. A1, QDAO Brief at 20.

[108] *Id*. at 35.

[109] *Id*. at 21.

[110] Ex. A2, Defense Brief at 9.

[111] Ex. A, *Bell* at 7.

[112] *Id.*

[113] Ex. A, *Bell* at *8, *12.

[114] *Id.* at *6

conceded that the psychiatric records for that witness had not been disclosed but constituted *Brady* material.[115]

C. Leventhal Misled the Court and Defense, and Permitted Perjured Testimony to Stand Uncorrected.

As noted above, Leventhal denied any connection between the Speedstick crew and the check-cashing murders. In one instance of a misrepresentation in open court, Leventhal and Testagrossa "disclaimed any insight" as to why the ballistics evidence in a Speedstick investigation was compared to the ballistics from the check-cashing murders.[116] Additionally and "more troubling[]," Leventhal and Testagrossa "accused" Bell's attorneys of embarking on a "fishing expedition" and expressed "annoyance" over their repeated questions regarding a possible connection to the Speedstick investigation.[117] As the Queens Supreme Court summarized:

> These performances by [Leventhal and Testagrossa] were clearly delivered with aplomb; they certainly convinced [the trial judge] that the defense's refusal to drop the issue was an utter waste of everyone's time. Testagrossa's and Leventhal's vociferous denials, however, *were completely false*.[118]

Similarly troubling was Leventhal's elicitation of, and failure to correct, perjury from key witness Bigweh. As noted above, Leventhal withheld the fact that this central witness signed an initial cooperation agreement.[119] Testifying in Bolt's and Johnson's trials under the second cooperation agreement, Bigweh testified that he began cooperating in 1999 (the date of the second cooperation agreement) instead of 1997 (the date of the first cooperation agreement).[120] Leventhal, however, did not correct this testimony in either trial,[121] misleading the court, the jury and the defense counsel.

Based on these misrepresentations and the *Brady* violations noted above, the Queens Supreme Court noted its "significant doubt" that Leventhal and Testagrossa prosecuted the

---

[115] *Id.* at *8. The prosecution conceded that had the material been disclosed, it would have been "reasonably possible" that the trials would have ended differently. This is essentially a concession that the materials met the *Brady* standard, though the court's decision does not explicitly state it as such.

[116] *Id.* at *9.

[117] *Id.*

[118] *Id*.

[119] *Id.* at *3.

[120] *Id.* at *12.

[121] *Id.* The defense 440.10 motion explains, "Bolt's trial attorney had no basis for questioning this testimony because he was never provided copies of either the original 1997 cooperation agreement or the subsequent repudiation of the agreement, let alone the records establishing that Bigweh had attempted suicide immediately before the first agreement was signed. Significantly, the same perjured testimony was elicited by Queens ADA Leventhal at Johnson's trial, a perjury that could not be uncovered at trial or even at first on appeal, because, again, the Queens DA withheld this *Brady* material despite specific requests for its production." Ex, A2, Defense Brief at 110-111.

defendants in "good faith."[122] Instead, their actions left the Court—and these readers—with the "distinct impression" of a "larger pattern of behavior calculated to deprive the defendants of fair trials."[123] Such behavior is never acceptable, but is particularly appalling where Leventhal and Testagrossa sought to execute 19-year-old George Bell.

3. The Appellate Division Found that Leventhal Committed Misconduct in His Summation and Cross-Examination in *People v. Brown.*

Leventhal's misconduct in *Bell* was not the only publicly-documented instance of his egregious misconduct in violation of the constitution. The Appellate Division in *People v. Lenworth Brown* held that Leventhal engaged in "repeated instances of prosecutorial misconduct" while cross-examining a defense witness and in his summation.[124] Since the court reversed the conviction and ordered a new trial on a different ground,[125] the Appellate Division could have simply not addressed Leventhal's misconduct. Instead, the Appellate Division made clear that Leventhal's misconduct in *People v. Brown* was so egregious that it would have required reversal of the conviction on that basis alone.[126]

While the Appellate Division did not detail the specific statements that Leventhal had made, it noted that Leventhal impermissibly acted as an unsworn witness; suggested that defense counsel did not believe his own client; made irrelevant and impermissible public safety arguments; and implied that certain key evidence had been kept from the jury due to "legal technicalities."[127]

The Appellate Division reversed the conviction.[128]

4. The Grievance Committee Must Discipline Leventhal 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."[129] Professional misconduct occurs with a "violation of any of the Rules of

---

[122] Ex. A, *Bell* at *12.

[123] *Id.*

[124] Exhibit B, *People v. Brown*, 30 A.D.3d 609, 610 (2d Dep't 2006).

[125] *Id*.

[126] Ex. B, *Brown*. The prosecutor is not named in the appellate decision, but a contemporary article identifies Leventhal as the prosecutor. *See* Tom Perrotta, "Judge Errs In Treatment Of Alibi Issue," *New York Law Journal* (Online), June 27, 2006 ("The appeals court also faulted Assistant District Attorney Brad A. Leventhal for 'prosecutorial misconduct' during the cross-examination of Mr. Brown, and during his summation."), https://www.law.com/newyorklawjournal/almID/900005456752/?slreturn=20210213105155

[127] Ex. B, *Brown* at 610.

[128] *Id*.

[129] *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

Professional Conduct."[130] Grievance Committees are "committed to … recommending discipline for lawyers who do not meet the high ethical standards of the profession."[131]

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."[132]

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."[133]

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."[134] 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.[135] The New York professional rules reflect this higher standard: prosecutors are the only category of attorneys with their own ethical rule.[136] 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. Leventhal's Misconduct Violated Rules of the New York Code of Professional Responsibility.[137]

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.[138] The Court of Appeals explained, "[T]he privilege to practice law is *not a personal or liberty*

[130] 22 N.Y.C.R.R. Part 1240.

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

[132] *Connick*, 563 U.S. at 65-66 (quotation marks omitted).

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

[134] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

[135] 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

[136] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b).

[137] The applicable professional set of rules when Leventhal committed misconduct in prosecuting Bell, Bolt, Johnson, and Brown, was the Code of Professional Responsibility.

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

interest, but 'is more nearly to be classified as a property interest, as to which the higher standard of proof has not been required.'"[139]

Leventhal violated the professional rules in the *Bell*, *Bolt*, and *Johnson* prosecutions by suppressing exculpatory evidence. The then-applicable Rule DR 7-103(b) required the 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."[140] A prosecutor's duty to disclose under DR 7-103(b) applied even if the evidence was not material under a *Brady* analysis.[141] Two other rules, DR 7-102(a)(3) and DR 7-109(a), similarly required disclosure, and prohibited knowing concealment, of evidence.[142] A prosecutor's "deliberate pattern of avoidance, or willful blindness," to the existence of such evidence—including failure to conduct a *Brady* analysis of evidence, or delegation of this duty to law enforcement—constitutes knowledge under Rule 3.8(b), the successor to Rule DR 7-103(b).[143]

In *Bell*, *Bolt*, and *Johnson*, Leventhal violated these rules repeatedly, as he withheld numerous pieces of evidence that would tend to negate the guilt of the accused: (1) the Speedstick investigation documents, (2) the initial cooperation agreement with the prosecution's key witness, (3) the key witness's psychiatric records, and (4) five exculpatory eyewitness

---

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

[140] Code of Prof. Resp., DR 7-103(b) (22 N.Y.C.R.R. § 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.

[141] In *Kurtzrock*, 192 A.D.3d 197, the Appellate Division both analyzed and found a violation of Rule 3.8(b), the contemporary successor to DR 7-103(b), as separate and distinct from a prosecutor's *Brady* violation. In finding a Rule 3.8(b) violation, the Appellate Division neither undertook a materiality analysis nor listed materiality as an element of the rule. *Id*. Thus, the Appellate Division implicitly recognized that a violation of Rule DR 7-103(b) does not depend on whether the evidence was material. *See Id. See also* NY City Bar Assn Comm on Prof Ethics Formal Op 2016–3 at 2 (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."); ABA Comm on Ethics and Prof Responsibility Formal Op 09–454 at 2 (2009) (review indicates that the model Rule 3.8 "does not implicitly include the materiality limitation recognized in the constitutional case law."); *In re Kline,* 113 A.3d 202, 213 (D.C. 2015) (holding the D.C. professional rule, modeled after ABA Rule 3.8, "requires a prosecutor to disclose all potentially exculpatory information in his or her possession regardless of whether that information would meet the materiality requirement"); *In re Disciplinary Action Against Feland*, 2012 ND 174, 14 (ND 2016) (no materiality requirement under professional conduct disclosure rule); *Matter of Larsen*, 2016 UT 26, 41 (Utah 2016); *Waters*, 35 Misc.3D at 859-60 (Rule 3.8(b) "[i]ndependent of *Brady*").

[142] Code of Prof. Resp., DR 7-102(a)(3) (22 N.Y.C.R.R. § 1200.33**)** (repealed); Code of Prof. Resp., DR 7-109(a) (22 N.Y.C.R.R. § 1200.40) (repealed). These two rule were replaced in 2009 by 22 N.Y.C.R.R. Part 1200, 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 A.D.3d at 1460-61 (suppression of exculpatory evidence violated Rule 3.4(a)(1)).

[143] *See Kurtzrock*, 192 A.D.3d 197 (deliberate pattern of avoidance or willful blindness can constitute knowledge under Rule 3.8(b), the modern equivalent of Rule DR 7-103(b)).

interviews. The Court's decision explicitly rejects the QDAO's claim of a good faith explanation. Moreover, even if Leventhal somehow did not know about any of this evidence, his failure to learn about it in the face of press reports, law enforcement ballistics tests connecting Speedstick to the charged crimes, and repeated defense inquiries, amounts to willful ignorance—a sufficient mens rea for the purpose of discipline under the *Kurtzrock* decision.

Leventhal also violated the ethical rules by making multiple misrepresentations to the court, defense counsels and two juries. The then-applicable Rule 7-102 prohibited attorneys from knowingly making a false statement to the court or use evidence they knew to be false.[144] Rule DR 1-102 prohibited attorneys from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation."[145] Rule DR 7-102 prohibited attorneys from knowingly using perjured testimony or false evidence.[146]

In *Bell*, *Bolt*, and *Johnson*, Leventhal violated these rules. On at least one occasion, cited in the *Bell* decision, Leventhal misled the Court and defense counsels, stating that the defense's requests for Speedstick materials were a fishing expedition. As noted above, Leventhal's denial was either knowing or reflects a willful blindness to the evidence. The Queens Supreme Court found that Leventhal's "vociferous denials….*were completely false*."[147] In addition, Leventhal elicited, then failed to correct, perjured testimony, actively misleading the Court, defense counsels, and two juries, when he permitted his key witness to testify that he started to cooperate in 1999, when in fact his initial cooperation agreement was signed in 1997. The defense could not expose this witness' lie because Leventhal withheld exculpatory evidence—the existence of an initial cooperation agreement.

Leventhal also violated the professional rules by prejudicing the administration of justice and acting in a manner not befitting an attorney. 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.[148] A prosecutor's violation of Rule DR 7-103(b) also violated Rule DR 1-102.[149] An attorney's misrepresentation during legal proceeding prejudiced the administration of justice and reflected adversely on the lawyer's fitness, in

---

[144] Code of Prof. Resp., DR 7-102 (22 N.Y.C.R.R. § 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.

[145] Code of Prof. Resp., DR 1-102 (22 N.Y.C.R.R. § 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 A.D.3d 156, 158-59 (2d Dep't 2011) (prosecutor misrepresentation of content of evidentiary document to the grand jury violated Rule 8.4(c)).

[146] Code of Prof. Resp., DR 7-102(a)(4) (22 N.Y.C.R.R. § 1200.33) (repealed). This rule was in effect when the misconduct, as outlined above, occurred. However, Rule 3.4(a)(4) of the Rules of Professional Conduct replaced it in 2009.

[147] Ex. A, *Bell* at *9.

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

[149] *Kurtzrock*, 192 A.D.3d 197 (finding disclosure violation prejudiced the administration of justice and reflected adversely on the prosecutor in violation of Rules 8.4(d), (h), the successors to Rule DR 1-102); *Rain*, 162 A.D.3d at 1461 (same).

violation of Rule DR 1-102.[150] The Court of Appeals has stated that a prosecutor's improper summation remarks amount to prosecutorial misconduct.[151] A prosecutor's summation misconduct violated Rule DR 1-102 by prejudicing the administration of justice and reflecting adversely on the prosecutor's fitness as a lawyer.[152]

In *Bell*, *Bolt*, and *Johnson*, Leventhal prejudiced the administration of justice for all the reasons noted above: he withheld evidence, misled the Court and other parties, and permitted perjured testimony to stand. His actions were so egregious that they led to the wrongful conviction and imprisonment of three men for 24 years. Needless to say, such actions were not befitting an attorney under Rule DR 1-102.

In *Brown*, Leventhal's extensive summation misconduct was so prejudicial that the Appellate Division reversed Brown's conviction and ordered a new trial. Therefore, Leventhal prejudiced the administration of justice. Any attorney whose misconduct is so severe as to justify the reversal of a conviction, and who has violated an accused's constitutional fair trial right, has not acted in a manner fit for a lawyer.

B. For His Misconduct, Leventhal Must be Disbarred.

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."[153] The ABA's Model Rule 32 for Lawyer Disciplinary Enforcement makes lawyer discipline "exempt from all statutes of limitations."[154]

Leventhal's extensive experience at the time of the misconduct weighs in favor of the severest sanction. In measuring the appropriate discipline for attorney misconduct, the Appellate Division has also considered the role of prosecutor as a "*substantial factor in aggravation*."[155] 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

---

[150] *In re Muscatello*, 87 A.D.3d 156, 158-59 (2d Dep't 2011) (prosecutor misrepresentation of content of evidentiary document to the grand jury violated Rules 8.4(d), (h), the modern equivalents of DR 1-102).

[151] *People v. Wright*, 25 N.Y.3d 769, 780 (2015).

[152] Code of Prof. Resp., DR 1-102 (22 N.Y.C.R.R. § 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. *See also Rain*, 162 A.D.3d at 1459 (summation misconduct violated Rules 8.4(d), (h)).

[153] 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

[154] *Id.*

[155] *Kurtzrock*, 192 A.D.3d 197 (emphasis added)*; 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.").

candid with the courts, and to safeguard the rights of all."[156] Similarly, extensive prosecutorial experience weights towards an aggravated sanction.[157]

Leventhal joined the New York State Bar in 1989 and was an attorney for many years. By the time he committed the egregious misconduct in *Bell* and *Brown*, Leventhal was an experienced criminal attorney and well-versed in criminal law and procedures. He knew, or should have known, that his actions were unconstitutional. Leventhal undoubtedly had plenty of opportunities to clarify his misrepresentations and correct his suppression of *Brady* evidence. He did not do that. Because of these failures and his vast experience at the time that he committed this misconduct, Leventhal must be disbarred.

Leventhal's failure to rectify his misconduct, and his continued denial of his knowing misconduct, further support his disbarment. 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 making a false statement to 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."[158] 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.[159]

Given the near-miraculous method that Bell, Bolt, and Johnson learned of the Speedstick evidence, it seems clear that Leventhal never changed course over the years to correct his misleading remarks or provide the *Brady* evidence he had suppressed. He did not submit an affirmation to the Queens Supreme Court to offer any explanation of what had occurred. Leventhal had years upon years to correct his misconduct — while Bell, Bolt, and Johnson were wrongfully imprisoned — but he never did so.

Finally, Leventhal's supervisory role in the Queens District Attorney's Offices further supports disbarment in this case. Significantly, Leventhal appears to have served as the Bureau Chief of the Homicide Trial Bureau in Queens for at least nine years prior to his abrupt recent resignation.[160] That means that he was the head of the unit responsible for prosecuting the most serious offenses in the office, having been promoted to this role in the wake of the Appellate Division's finding of misconduct in *Brown*. In this leadership position, Leventhal undoubtedly supervised and trained dozens of prosecutors, who presumably viewed him as a mentor and a role model. Thus, the Grievance Committee must send these prosecutors a clear message: that prosecutors, whether high-ranking or not, will be held accountable for misconduct.

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-

---

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

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

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

[159] *Id.*

[160] *Id;* David Brand, *Top prosecutor quits after Queens judge accuses him of lying in death penalty case*

the-job misconduct, including Texas, Minnesota, Pennsylvania, North Carolina, and Arizona, we have not found a single such occurrence in New York, despite the state's large court system and the many criminal cases that pass through New York courts 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

The murder convictions of the George Bell, Rohan Bolt, and Gary Johnson were vacated last month because Leventhal and Testagrossa "deliberately withheld" crucial exculpatory evidence for more than 20 years, despite the fact that much of the evidence had been specifically requested by the defense at the time of the 1999 and 2000 trials.[161] As the defense brief noted, "George Bell entered prison at the age of 19. He escaped the death penalty and is now 44. Rohan Bolt entered prison when he was [a father of young children and] 35. He is now 59. Gary Johnson entered prison when he was 22. He is now 46."[162] Their opportunity for a fair trial was denied to them by Leventhal and others, and their lives consequently ruined.

Leventhal committed serious prosecutorial misconduct by knowingly (or through willful ignorance) suppressing *Brady* evidence, misleading the court and other parties, and permitting perjured testimony to stand. The QDAO conceded that the prosecutors committed a prejudicial *Brady* violation, but weakly claimed–with little explanation—that prosecutors Charles Testagrossa and Brad Leventhal had acted in "good faith."[163] The Queens Supreme Court noted that the QDAO's claim of "good faith" was "puzzling" given the extensive evidence of suppression and other misconduct, including Leventhal's elicitation of lies from a key prosecution witness and then failing to correct them, leaving the "distinct impression… [of a] pattern of behavior that was calculated to deprive the defendants of fair trials."[164]

In an entirely separate case, *People v. Brown*, Leventhal committed misconduct that the Appellate Division found so prejudicial that it alone would justify reversing the conviction.

As "officers of the court, all attorneys are obligated to maintain the highest ethical standards."[165] 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."[166]

---

[161] Ex. A, *Bell* at *9.

[162] Ex. A2, Defense Brief at 22.

[163] Ex. A1, QDAO Brief.

[164] Ex. A, *Bell* at *11.

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

[166] *Id.*

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 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 and supervised by Leventhal. 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."[167] 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 Leventhal'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.[168]

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.

---

[167] Rule 8.3, Comment [1].

[168] Rule 5.1 (d) (emphasis added). "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."

4. The Committee should identify any prosecutors either trained or supervised by Leventhal 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 investigate all cases handled by Leventhal 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.

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 Clinic
Co-Director, E. Barrett Prettyman Fellowship Program
Georgetown University Law Center