May 3, 2021

Grievance Committee for the Tenth Judicial District
150 Motor Parkway, Suite 102
Hauppauge, NY 11788
ad2-grv10@nycourts.gov

Re: Grievance Regarding Attorney Jared Rosenblatt, State Bar No. 4218806.

To the Grievance Committee:

We write to complain about the professional misconduct of Jared Rosenblatt.[1] In *People v. Luis Cherry*, the Appellate Division found several of Rosenblatt's opening and direct examination remarks "could only have been intended to evoke the jury's sympathy" and were "improper."[2] The Appellate Division was even harsher in oral argument. Justice Scheinkman noted that it was "obvious" that Rosenblatt "was saying things for the purpose of winning" the trial.[3] Justice Austin exclaimed that many of Rosenblatt's remarks "were irrelevant and only there to invoke sympathy! Your job … is not to invoke sympathy. It is not to have the jury thinking about tangential, irrelevant things."[4] The appellate prosecutor who argued Cherry on appeal conceded that some of Rosenblatt's remarks were "irrelevant" and that it was "a mistake" to make others.[5]

Moreover, two other cases that Rosenblatt prosecuted suggest that his summation misconduct in *Cherry* was not an isolated incident. Though the Appellate Division cases in *People v. Singh*[6] and *People v. Gillespie*[7] do not make specific findings of misconduct, the appellate briefs and summation trial transcripts reveal improper arguments in both cases.

Rosenblatt's misconduct in Queens was far from unique; serious misconduct at the Queens District Attorney's Office (QDAO) has been regularly reported for years. For example, beginning in 2007, Queens prosecutors utilized interviewing practices that undermined suspects'

---

[1] Jared Ryan Rosenblatt, State Bar No. 4218806, Nassau County District Attorney's Office, 262 Old Country Rd., Mineola, N.Y. 11501. Phone: (516) 571-3461. The Unified Court System website does not list an email for Rosenblatt. We do not have personal knowledge of any of the facts or circumstances of Rosenblatt or the cases mentioned; this grievance is based entirely on the court opinions, briefs and other documents cited herein.

[2] Exhibit A, *People v. Cherry,* 163 A.D.3d 706, 707 (2d Dep't 2018).

[3] *People v. Cherry,* 2014-10909*,* Oral Argument, Appellate Division, 0:27:50-0:28:10 (March 13, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1520949280.External_(Public).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1520949280.External_(Public).mp4.

[4] *Id.* at 0:28:10-0:29:15.

[5] *Id.* at 0:27:50-0:28:10; 0:29:15-0:30:05.

[6] Exhibit B, *People v. Singh*, 109 A.D.3d 1010, 1013 (2d Dep't 2013).

[7] Exhibit C, *People v. Gillespie*, 97 A.D.3d 763, 763 (2d Dep't 2012).

Miranda rights, according to the Appellate Division and the Court of Appeals.[8] 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.[9] The Appellate Division has repeatedly criticized Queens prosecutors' improper summation conduct and advised that the Office better train its trial prosecutors.[10] There are numerous court decisions finding that QDAO prosecutors acted improperly—a recent civil lawsuit contains a list of 117 published decisions involving prosecutorial misconduct in Queens cases.[11] Rosenblatt's misconduct appears to fall within this appalling, unprecedented, and largely-unaddressed pattern of improper conduct.

Rosenblatt must be held accountable for his misconduct. In 2014, when he tried Cherry's case, Rosenblatt was a career prosecutor with over 10 years of experience. The professional misconduct in *Cherry, Singh* and *Gillespie* constituted multiple violations of Rule 8.4 of the New York Rules of Professional Conduct. Just as prosecutors hold individuals accountable for crimes, so should prosecutors be held accountable for their misconduct. Despite the findings of misconduct noted in this grievance, as of the writing of this grievance, the New York Attorney Detail Report lists "Disciplinary History: No record of public discipline" for Rosenblatt.[12]

For this misconduct, the Grievance Committee must suspend Rosenblatt.

---

[8] *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.

[9] 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).

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

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

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

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

A. Prosecutorial Misconduct is Pervasive and Unchecked.

Our legal system holds prosecutors to the highest standards of all attorneys.[13] 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.[14]

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."[15] 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."[16]

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.[17] 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."[18] 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

---

[13] *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.").

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

[15] *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).

[16] 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.

[17] *Id.*

[18] *Id.*

publicly censured and, according to personnel records gathered by ProPublica, several prosecutors were promoted and given raises soon after courts cited them for abuses.[19] 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."[20]

B. 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"[21] and are not permitted to make arguments that rely on facts that are not in evidence.[22] Prosecutors are not permitted to engage in prejudicial or misleading argumentation that are sometimes referred to as "cardinal sins."[23] These missteps include making "irrelevant and inflammatory comments;"[24] expressing "personal belief or opinion as to the truth or falsity of any testimony or evidence,"[25] also known as vouching; appealing to the jurors' sympathies or fears;[26] shifting the burden from the prosecution to the defense;[27] and denigrating the defense, defense counsel or the defendant.[28] Engaging in these prejudicial forms of arguments is improper and can violate the constitutional right to a fair trial.[29]

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."[30] In

---

[19] *Id.*

[20] 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.

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

[22] *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).

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

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

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

[26] *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).

[27] *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).

[28] *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).

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

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

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.[31]

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."[32] 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."[33]

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

> At what point does the unprofessionalism stop? At what point do we stop trying to win trials by being glib and win them on the evidence?… why weren't these [summation] statements so prejudicial, so unprofessional, so glib, as to inflame the passions of the jury so they wouldn't even consider themselves of the evidence, and come back with a verdict simply based on those [] unprofessional statements?[34]

As the above statement of Justice LaSalle makes clear, prosecutors make improper arguments in summation because such remarks are *effective* at winning cases—they go beyond the evidence, to manipulate biases, prejudice, and passions. Discussing prosecutorial misconduct in opening statements—where attorneys are even more limited than in summation—Justice Alan D. Scheinkman of the Appellate Division remarked in oral argument, "It's obvious that the prosecutor who tried this case was saying things for the purpose of winning it."[35]

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

---

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

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

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

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

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

prosecutors "seek justice…not merely to convict."[36] In this role, the law requires of prosecutors "to see that the defendant is accorded procedural justice."[37] Winning a case through summation misconduct violates this fundamental obligation. The American Bar Association's own ethical standards insist that "prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office, but also because of the fact-finding facilities presumably available to the office."[38]

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.[39]

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.[40]

Justice Leventhal, in turn, suggested that the Queens District Attorney's Appeals Bureau train the trial prosecutors about summation misconduct.[41]

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

---

[36] 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/.

[37] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

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

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

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

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

> federal and state appellate court at one time or another has bemoaned the 'disturbing frequency' and 'unheeded condemnations' of flagrant and unethical prosecutorial behavior.[42]

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

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

The Grievance Committee is in a unique position to hold New York prosecutors accountable for misconduct. While other attorneys and law enforcement officers are liable to civil lawsuits when they neglect their duties, the absolute immunity doctrine shields prosecutors from civil accountability.[43] 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.[44]

Unfortunately, the U.S. Supreme Court's assumption—that professional disciplinary actions "would provide an antidote to prosecutorial misconduct"[45]—has not been borne out. A 2013 report from the Center for Prosecutor Integrity identified 3,625 cases of prosecutorial misconduct between 1963 and 2013. Of those, only 63 prosecutors—less than 2 percent—were ever publicly sanctioned.[46]

---

[42] 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).

[43] *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").

[44] *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).

[45] 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).

[46] 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).

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."[47] "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."[48]

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.[49] In December 2020, the Appellate Division imposed the same penalty for the egregious misconduct of ex-prosecutor Glenn Kurtzrock.[50] But even a short suspension like that received by Rain and Kurtzrock[51]—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 Rosenblatt will continue unabated and undeterred.

2. The Appellate Division Found that Rosenblatt Made Multiple Improper Statements in Opening Statement and in Direct Examination in *People v. Cherry.*

While the Appellate Division reversed *Cherry* over a charging error, the Court discussed Rosenblatt's statements and found them improper.[52] Specifically, Rosenblatt's comments about the grand jury indictment in opening were improper; other statements, also in opening, "could only have been intended to evoke the jury's sympathy" and were therefore improper; and Rosenblatt's direct examination of the medical examiner improperly elicited "irrelevant" information that was intended to, again, "evoke the jury's sympathy."[53]

---

[47] 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).

[48] *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.

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

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

[51] 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).

[52] Ex. A, *People v. Cherry*, 163 A.D.3d 706 (2d Dep't 2018).

[53] *Id.* at 707.

A. Rosenblatt Suggested That the Indictment Was Evidence of Guilt.

An indictment is not evidence against a criminal defendant.[54] This observation is such a fundamental principle of criminal law that a judge is to instruct the jury about it in every felony case.[55] As a result, courts have long held that it is improper for a prosecutor to suggest that an indictment is evidence of guilt.[56]

And yet Rosenblatt told the jury:

> We are here, members of the jury … because of [Cherry's] actions, because of his choices, because he murdered [the deceased]. As a result of his actions and as a result of his decision, a Grand Jury comprised of citizens just like you from this county indicted him … [they i]ndicted him for three counts.[57]

With these words, Rosenblatt improperly suggested that the grand jury credited the prosecution's case. He used the indictment as evidence of guilt. Rosenblatt, a seasoned prosecutor at that point, opened the case with improper remarks that undermined a fundamental principle of criminal law.

Rosenblatt did not escape scrutiny and scathing admonishments from the Appellate Division. In the *Cherry* oral argument, Justice Austin rhetorically inquired, "I'm concerned about the opening statement … How in the world does the DA make statements with regard to [] the grand jury?"[58] Justice Scheinkman, too, noted the problematic nature of Rosenblatt's remarks:

> It's obvious that [Rosenblatt] was saying things for the purpose of winning it. I mean, what would be the legitimate purpose behind arguing, telling the jury while a grand jury comprised of citizens just like you from this county indicted him?[59]

---

[54] *People v. Greaves*, 94 N.Y.2d 775, 776 (1999).

[55] *Id.*; CJI2d[NY] Indictment Is Not Evidence (charge) http://www.nycourts.gov/judges/cji/1-General/CJI2d.Indictment_Not_Evid.pdf.

[56] *See, e.g., People v. LaDolce*, 196 A.D.2d 49, 54-55 (4th Dep't 1994) (prosecutor's suggestion that grand jury has already made a preliminary evaluation of guilt was improper); *People v. Payne*, 187 A.D.2d 245, 247-48 (4th Dep't 1993) (same); *People v. Jamal*, 307 A.D.2d 267, 268 (2d Dep't 2003) (improper for prosecutor to argue that the indictment is evidence of guilt); *People v. Ferrara*, 78 A.D.2d 660, 661 (2d Dep't 1980) (improper for prosecutor to remark that grand jury heard witnesses and "properly" voted to indict).

[57] Trial Transcript at 408:23-409:7, *People v. Cherry*, Ind. No. 182/2012 (July 2014).

[58] *People v. Cherry,* 2014-10909*,* Oral Argument, Appellate Division, 0:26:30-0:26:44 (March 13, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1520949280.External_(Public).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1520949280.External_(Public).mp4.

[59] *Id.* at 0:27:50-0:28:10.

Indeed, even Rosenblatt's own colleague—the attorney who handled the appeal and argued the oral argument—conceded to the judges, "we acknowledge in our brief that [Rosenblatt's statements about the grand jury are] a mistake."[60]

B. Rosenblatt Intended to Evoke The Jury's Sympathies in Opening Statement and Direct Examination.

Although "emotional turmoil tends to cloud the mind and interferes with the jury's function to weigh and evaluate the evidence objectively,"[61] Rosenblatt "could only have intended" to do just that.[62] The first words he uttered in the opening statement were: "Tony McFadden[,] who will forever be 26 [years] old."[63] Such an elicitation of emotional turmoil is improper.[64]

This was only the beginning. Rosenblatt continued to inappropriately appeal to the jurors' sympathies by emphasizing the impact of the crime on McFadden's family. On direct examination of McFadden's father, Rosenblatt elicited heartbreaking, detailed testimony of how the family had found out about McFadden's death, and how the father was "forced" to identify his son's body in the morgue.[65] These details served no purpose whatsoever in the case—except to improperly create the "emotional turmoil" that could sway the jurors' toward McFadden's family and against Cherry.[66]

Rosenblatt's improper statements continued when he focused his statements on the background of both McFadden and his family. The Court of Appeals has made it abundantly clear:

> [T]estimony about victims' personal backgrounds that is immaterial to any issue at trial should be excluded… Although family information about a victim is an important aspect of the victim's life, generally, it has no bearing on defendant's guilt or innocence. We are not unmindful of a prosecutor's desire to convey to the jury the seriousness of the loss of a life. However, our case law is clear that testimony of this type should not be used for that purpose.[67]

---

[60] *Id*.

[61] *People v. Nevedo*, 202 A.D.2d 183, 185 (1st Dep't 1994).

[62] Ex A. *Cherry* at 707 (2d Dep't 2018).

[63] *Cherry* Trial Tr. at 407:12-14.

[64] *See, e.g., People v. Grice*, 100 A.D.2d 419, 422 (4th Dep't 1984) (crime had "cut short" victim's ability to "love" and "take care of his children"; "nothing we could do, you can do, I can do, is ever going to bring [the victim] back.").

[65] *Cherry* Trial Tr. at 545:4-21, 546:3-15.

[66] *People v. Nevedo*, 202 A.D.2d 183, 185 (1st Dep't 1994); *People v. Cherry*, 163 A.D.3d 706, 707 (2d Dep't 2018). *See also People v. Roman*, 150 A.D.2d 252, 256-57 (1st Dep't 1989) (prosecutor improperly argued victim had been a "healthy, living human being with a family", and "to give an identity to the lifeless corpse," the prosecution had called the deceased's brother to the stand.").

[67] *People v. Harris*, 98 N.Y.2d 452, 491 (2002).

The decedent's family's background was "immaterial" to the case against Cherry. But Rosenblatt, "intend[ing]"[68] to evoke the jurors' sympathy, did not hesitate to violate our highest state court's ruling:

> Our victim Tony McFadden was *born in New York*. He was the son of Tony McFadden [who] works as a *security guard at Rochdale Village*. His mother Sherian has spent the last *15 years working at the MTA as a station agent*. You will meet Mr. McFadden [Sr.] and while he *works full time*, you are going to learn about his other *true passion, his work at his church* because Tony's dad, Tony, Sr., is a *devoted* member and *pastor at the Church* of the Lord Jesus Christ here in Queens… When talking about their son, Mr. and Mr. [sic] McFadden refer to Tony as Junior. Junior as his *loving parents* call him has *three living sisters and two living brothers.*[69]

These details were irrelevant to whether Cherry had committed the crime or not. Instead, they painted a portrait of familial love, a hardworking family, and a father who is a devoted and trustworthy religious figure—a sympathetic family for the jurors to feel, and vote, for.

Rosenblatt continued to pepper his opening arguments with personal facts "intended" to appeal to the jury's emotions.[70] For example, Rosenblatt told the jurors that McFadden Jr. was a "healthy" and "hardworking" young man, who "attended church regularly and on Sundays even sang at his father's church."[71] Rosenblatt also mentioned that McFadden Jr. had been dating his girlfriend for five years, and—most gratuitously—that her name was tattooed on his arm.[72] These extraneous details appear to be irrelevant, much less material, to the case; they had nothing to do with the jury's role to "weigh and evaluate the evidence objectively."[73]

In direct examination, Rosenblatt elicited the names of each of McFadden's six siblings, as well as that one of those siblings had died as an infant.[74] While a terrible loss, this fact served no purpose at trial except to evoke sympathy for the family, who now lost another child. Following up on his opening statement, Rosenblatt elicited testimony about McFadden's and his father's work and devotion to the church[75]—"irrelevant" details that were again "intended" to arouse sympathy.[76]

---

[68] Ex. A, *Cherry* at 707.

[69] *Cherry* Trial Tr. at 409:25-410:12 (emphasis added).

[70] Ex. A, *Cherry* at 707.

[71] *Cherry* Trial Tr. at 411:20-25.

[72] *Id.* at 410:13-15 , 411:25-412:2.

[73] *People v. Nevedo*, 202 A.D.2d 183, 185 (1st Dep't 1994).

[74] *Cherry* Trial Tr. at 541:23-542:18.

[75] *Id.* at 540:24-541:7, 543:9-22.

[76] Ex. A, *Cherry* at 707. *See also People v. Connette*, 101 A.D.2d 699, 700 (1984) ("Reference to race, nationality or religion may be prejudicial even though not intended that way, and should be eschewed unless in connection with a matter in issue and unavoidable.") (citation omitted).

As noted earlier, the Appellate Division was apparently very disturbed by Rosenblatt's behavior. In oral argument, Justice Austin sharply admonished the appellate prosecutor tasked with defending Rosenblatt's misconduct:

> How about the father being a pastor or singing gospel music? That's good for the sentencing, how is it even appropriate in an opening statement, even before evidence has come in? …. [The biographical details] were irrelevant and only there to evoke sympathy! Your job is to tell the jury about the four corners of the prima facie that you're going to show as to why this defendant is guilty and what the evidence will show. That's your job in an opening. It is not to evoke sympathy. It is not to have the jury thinking about tangential, irrelevant things.[77]

Responding to Justice Austin, the appellate prosecutor could not defend Rosenblatt; he conceded that biographical details that Rosenblatt brought up in opening and direct examination were "irrelevant."[78]

3. Rosenblatt Also Apparently Made Questionable Comments in *People v. Gillespie* and *People v. Singh,* Suggesting a Pattern of Improper Summation Arguments.

In at least two other cases that Rosenblatt prosecuted, the summation transcripts reveal improper arguments.

In *People v. Singh*, the Appellate Division concluded that some of Rosenblatt's summation remarks "constituted harmless error,"[79] suggesting that some of his remarks were improper—but insufficiently prejudicial to justify reversing the conviction. The Court did not specify which remarks were problematic, but Rosenblatt's summation transcript and Singh's appellate brief reveal highly improper statements. Among others, Rosenblatt disparaged the defense attorney;[80] argued that the defense's arguments were "distractions" and "lawyer tricks";[81] misrepresented the defense argument;[82] and shifted the burden to the defense.[83] Instead of evoking the sympathies of the jury for the complainant as in *Cherry*, Rosenblatt attempted to evoke the jurors' anger against Singh and his defense attorney.

In *People v. Gillespie*, the Appellate Division declined to exercise its interest of justice jurisdiction and review the allegations of Rosenblatt's misconduct.[84] The *Gillespie* appellate brief, however, analyzed numerous improper remarks that amount to serious misconduct, including advancing arguments without an evidentiary basis or contrary to facts known to the

---

[77] *Cherry*, 2014-10909, Oral Argument at 0:28:10-0:29:15.

[78] *Id.* at 0:29:15:0:30:05.

[79] Exhibit B, *People v. Singh*, 109 A.D.3d 1010, 1013 (2d Dept' 2013).

[80] Appellant Brief at 38-39, *People v. Singh*, Ind. No. 2203-08; Trial Transcript, *People v. Singh* at 913:12-18, Ind. No. 2203-08 (Queens Sup. Ct. June 1, 2010).

[81] *Singh* Appellant Br. at 39-41. *Singh* Trial Tr. at 922:7-925:12.

[82] *Singh* Appellant Br. at 41-42. *Singh* Trial Tr. at 926:12-927:15.

[83] *Singh* Appellant Br. at 44-46. *Singh* Trial Tr. at 929:11-13; 930:4-13; 935:13-14.

[84] Ex. C, *People v. Gillespie*, 97 A.D.3d 763, 763 (2d Dep't 2012)

prosecutor;[85] disparaging Gillespie and his testimony;[86] blaming the defense for forcing the complainant to testify;[87] and evoking the jurors' sympathies toward the complainant.[88]

Though the Appellate Division did not address Rosenblatt's *Gillespie* summation, the Grievance Committee should review the appellate brief and the summation transcript.

[85] Appellate Brief at 26-31, *People v. Gillespie,* Ind. No. 2468/09. The pages referenced in this appellate brief can be found in Trial Transcript, *People v. Gillespie,* Ind. No. 2468/09 (Queens Sup. Ct. September 1, 2010).

[86] *Gillespie* Appellate Br. at 31-34. The pages referenced in the appellate brief can be found in the *Gillespie* trial transcript.

[87] *Id*. at 34-37. The pages referenced in the appellate brief can be found in the *Gillespie* trial transcript.

[88] *Id.* at 38-41. The pages referenced in the appellate brief can be found in the *Gillespie* trial transcript.

4. The Grievance Committee Must Discipline Rosenblatt 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."[89] Professional misconduct occurs with a "violation of any of the Rules of Professional Conduct."[90] Grievance Committees are "committed to … recommending discipline for lawyers who do not meet the high ethical standards of the profession."[91]

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."[92]

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."[93]

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."[94] 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.[95] The New York professional rules reflect this higher standard: prosecutors are the only category of attorneys with their own ethical rule.[96] 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.

---

[89] *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.

[90] 22 N.Y.C.R.R. Part 1240.

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

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

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

[94] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

[95] 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/.

[96] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b).

A. Rosenblatt's Misconduct in Summation Violates New York Rule of Professional Conduct 8.4.

The standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence—not a higher standard, such as clear and convincing or beyond a reasonable doubt.[97] The Court of Appeals explained, "[T]he privilege to practice law is *not a personal or liberty interest, but 'is more nearly to be classified as a property interest, as to which the higher standard of proof has not been required.*'"[98]

In New York, professional misconduct for an attorney includes any violation of the New York Rules of Professional Conduct. Under Rules 8.4(d) and 8.4(h), a lawyer shall not engage in conduct that is prejudicial to the administration of justice or engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.[99]

Summation misconduct violates these rules. The Court of Appeals has stated that a prosecutor's improper statements in summations amount to prosecutorial misconduct.[100] Such summation misconduct violates Rule 8.4. The Third Department found in *People v. Wright* that prosecutor Rain improperly appealed to the jury's sympathy and made other improper comments in her trial summation.[101] In a disciplinary action against Rain, stemming in part from her statements in *Wright*, the Third Department affirmed that Rain violated Rule 8.4 with her summation remarks, which were "prejudicial to the administration of justice" and constituted "conduct adversely reflecting on her fitness as a lawyer."[102]

Rosenblatt's summation remarks in *Cherry* were not only improper—they were intended to evoke the jury's sympathies,[103] in violation of Rule 8.4(d). At the same time, Rosenblatt's choice to make those remarks, as well as his apparent improper behavior in *Gillespie* and *Singh*, reflect negatively on his fitness as a lawyer, in violation of Rule 8.4(h).

B. For His Misconduct, Rosenblatt Must be Suspended.

Though the misconduct discussed here occurred years ago, New York does not have a statute of limitation barring disciplinary action against an attorney—and rightfully so. As explained by the American Bar Association, "Statutes of limitation are wholly inappropriate in lawyer disciplinary proceedings. Conduct of a lawyer, no matter when it has occurred, is always relevant

---

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

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

[99] 22 N.Y.C.R.R. Part 1200, Rule 8.4.

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

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

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

[103] *People v. Cherry*, 163 A.D.3d 706, 707 (2d Dep't 2018).

to the question of fitness to practice."[104] The ABA's Model Rule 32 for Lawyer Disciplinary Enforcement makes lawyer discipline "exempt from all statutes of limitations."[105]

Rosenblatt's misconduct in this case fits seamlessly with the harsh criticisms voiced by the Appellate Division judges (as quoted extensively above) about the Queens District Attorney's Office's summation practices. Though the ethical rules may be obscure to the general public, attorneys must know and follow them. In 2011, the District Attorneys Association of the State of New York mailed an ethical guide to *every prosecutor in the state* warning prosecutors to comply with the ethical rules and even specifically quoting and explaining Rule 8.4 - the rule that Rosenblatt violated.[106]

Rosenblatt has seemingly faced no professional or employment consequences for serious violations of the Professional Rules of our profession. To the contrary: Rosenblatt was apparently promoted in the Queens office to a Senior Assistant District Attorney position in the prestigious Homicide Trials Bureau. Rosenblatt later moved to the Nassau County District Attorney's Office, where he now serves as the Chief of the Major Offense Bureau. In 2016, while continuing to work as a prosecutor, Rosenblatt joined the Trial Advocacy Program at Drexel University as an associate director.[107] Failing to hold Rosenblatt accountable will send a message to the entire Queens and Nassau offices, as well as to Drexel law students, that they can and should follow Rosenblatt's lead, and that they do not have to concern themselves with upholding constitutional, state and professional obligations.

Professional discipline, through the Grievance Committee, is the mechanism entrusted by the Supreme Court of the United States to regulate prosecutorial behavior. Without appropriate sanctions, this Committee will derelict its duty, and send a message—to prosecutors, defense attorneys, the courts, defendants and the public at large—that it condones prosecutorial misconduct. Only a strong message from the Grievance Committee will hold Rosenblatt accountable and minimize repeated occurrences of this misconduct by other prosecutors.

Therefore, the Grievance Committee must suspend Rosenblatt.

---

[104] 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/.

[105] *Id.*

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

[107] Drexel University, *Accomplished Prosecutor and Coach Jared Rosenblatt to Join Law School's Trial Advocacy Program (*April 11, 2016) https://drexel.edu/law/about/news/articles/overview/2016/April/Trial-Advocacy-Rosenblatt-04112016/.

Conclusion

Prosecutorial misconduct in summation, as committed by Rosenblatt, has a devastating impact on due process and the right to a fair trial. It is a long-standing, largely unaddressed problem in the court system.

As "officers of the court, all attorneys are obligated to maintain the highest ethical standards."[108] 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."[109] 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 finding identified in this grievance. For the legitimacy of and public trust in the criminal system, and the bar, the investigation should be public at every stage possible.

Below are some essential aspects of such an investigation:

1. The Committee should begin by investigating the many other cases prosecuted by Rosenblatt. 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."[110] 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 Rosenblatt'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.[111]

---

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

[109] *Id.*

[110] Rule 8.3, Comment [1].

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

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

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

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

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

4. The Committee should identify any prosecutors trained and/or supervised by Rosenblatt 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 this prosecutor and vacate convictions where appropriate. To be clear, we do not mean a closed-door, cloaked process at the Queens District Attorney's Office, but rather a commission that operates transparently and includes members of the public, including members of impacted communities of color, public defenders and other criminal defense attorneys, civil rights attorneys, and people who have been incarcerated and their loved ones.

Thank you for your careful consideration of this matter.

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

(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.