

For the People?: The Role of Prosecutorial Misconduct in the Rise of Progressive Prosecution in
Brooklyn, 1964-2019

Kayla Abrams
Undergraduate Senior Thesis
Department of History
Columbia University
March 2021

Seminar Advisor: Professor Samuel Roberts
Second Reader: Professor Kellen Funk

Abstract

In this paper, I investigate how “progressive prosecution” arose in Brooklyn in the early 2010s. I argue that “progressive prosecution” emerged in reaction to the prosecutorial misconduct that characterized the Office for most of its history. To prove this, I show that the history of the Brooklyn DA’s Office is one in which the Office was constantly combating the reality and perception of malpractice. While the Office was able to limit corruption when it professionalized in the late 1960s, it was unable to do the same with prosecutorial misconduct due to a lack of political pressure or the respective DA’s “insider” status—and often both. Therefore, Ken Thompson was able to capitalize on this inability to deal with prosecutorial misconduct throughout those fifty years, along with a growing national desire for a less punitive criminal justice system, to bring progressive prosecution to Brooklyn.

As Brooklyn is the fifth largest jurisdiction in the country, with an estimated population of over 2.5 million people, any change in Brooklyn always has national implications. However, while my analysis has this specific regional focus, the story I tell is not just a Brooklyn story. Although every Office does have their own unique history, the factors I discuss – continual prosecutorial misconduct, changing public opinion on the punitiveness of the justice system, and “progressive” candidates – were present in other cities who in the ensuing decade have similarly elected “progressive prosecutors”, such as Chicago, Philadelphia, Boston, St. Louis, and Orlando.

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Table of Contents

<i>Abstract</i>	2
<i>Table of Contents</i>	3
<i>Acknowledgements</i>	4
<i>Introduction: The Same Problem</i>	5
<i>Chapter 1: The Professionalization of the Kings County District Attorney’s Office</i>	16
<i>Aaron Koota (1964-1968)</i>	17
<i>Eugene Gold (1969-1981)</i>	22
<i>Chapter Two: The Enduring Problem of Prosecutorial Misconduct</i>	31
<i>Elizabeth Holtzman (1981-1990)</i>	32
<i>Charles J. Hynes (1990-2014)</i>	42
<i>Chapter Three: The Rise of Progressive Prosecution in Brooklyn</i>	57
<i>Ken Thompson (2014-2016)</i>	58
<i>Eric Gonzalez (2016-present)</i>	66
<i>Conclusion: A National Movement</i>	70

Acknowledgements

I have far more people to thank than the space on this page allows. First, I must thank the many people who took the time out of their day to respond to my often cold emails, and allowed me to interview them for this thesis. This thesis would not exist without your incredible kindness. To Stacy Caplow, Richard Emery, Michael Gold, Elizabeth Holtzman, James J. Fishman, Barry Kamins, Judy Kluger, Richard Laskey, and Mina Malik, I am profoundly grateful. As well, to my phenomenal second reader Professor Funk, thank you for agreeing to help me before even meeting me. Your contribution and belief shaped this thesis more than you know. To Professor Roberts, you have been with me through this thesis journey for the last two years. Thank you for your guidance and support.

Secondly, I must thank my incredible mentors whom without, this thesis (and my life) would not be the same. Professor Richman, from my first tentative email freshman year, you always took me and my passion about prosecutorial reform seriously. That is the greatest gift anyone can give a young person. Without your constant mentorship, book recommendations, and office chats, I do not know where I (or this thesis) would be. Marjory Fisher, similarly, you never once met my enthusiasm with condescension. You have been a constant mentor, assisting me more than I could ever imagine to full my dreams and write this thesis. Similarly, to every boss I have been so privileged to have, you never once responded to my idealism with anything but support, encouragement, and assistance. Thank you for believing in me more than I dared to believe in myself.

Thirdly, to my Kent people, particularly, Emile, Julia, Zach, Julia, Ramsay, and, through virtual representation, Maya: your constant companionship, laughter, advice, and providing of caffeinated beverages and green grapes made this thesis process more joyful than I could have imagined. This thesis would not have been completed without your simultaneous peer pressure and distraction. To my friends, Eva, Grace, Maria, Yael, Maxine, and Maddie, thank you for putting up with my months-long disappearances and for hearing far more than you could have ever wanted about DA's Offices and Chicago formatting. Your hugs and snacks made this happen. To my history people, Zach, Bella, and Ramsay, you constantly inspire me beyond belief. Fate was definitely involved in our meeting, and every day I thank whichever power pulled those strings. To all my classmates and professors through my four years here, I still pinch myself every day that I somehow tricked this school into letting me be in the same classes as you all. Thank you for providing me with the best education I could imagine, and, for making it fun along the way.

Finally, to my family, thank you...for well everything. You guys are the best.

Introduction: The Same Problem

“I must say the greatest disappointment, I think, in my life, really and so unexpected is that things like segregation and bias and discrimination against persons of color and poor people in society would be the same as it was back then...And you see the number of people who are innocent and serve years in jail...That's just shocking. I mean, it's the sort of thing you'd expect 50 years ago. But I never expected it to be an issue today.”¹

In Spring and Summer 2020, thousands of protestors filled the streets of Brooklyn in response to the killing of George Floyd and continued white supremacy in the United States. Protestors pointed towards the need to rethink “public safety” in the United States. While many of these conversations focused on the police, particularly given their violent reactions to the protestors, many activists and reformers focused on another criminal justice actor—the District Attorney.² This was in no way a new conversation in Brooklyn. Since the Office first professionalized in the 1960s, it consistently made national headlines for both its promises of reform and allegations of misconduct. In the mid-2010s, a new movement emerged in Brooklyn through the election of Ken Thompson. It promised to reform the Brooklyn District Attorney’s Office by creating the most progressive DA’s Office in the country. This movement would

¹ Interview with James J. Fishman (12/18/2020)

² District Attorneys are a type of prosecutor, who represent the state in criminal matters that occur in their designated jurisdiction. They can also be called State’s Attorney, Prosecuting Attorney, Commonwealth’s Attorney etc., depending on the state. Accordingly, the Kings County District Attorney prosecutes any criminal matter, which occurs in Kings County or Brooklyn, and, in which, the state has jurisdiction. District Attorney’s Offices are headed by the District Attorney, which is an elected position. The District Attorney at larger Offices, like in Brooklyn, is mainly a managerial position. They are responsible for overseeing and shaping through policy the work of the Assistant District Attorneys (ADAs), who do most of the actual casework. Thus, DAs are responsible for creating a culture of accountability, and ensuring ADAs do not commit any form of misconduct on their watch. (Walther, Susanne. “The Position and Structure of the Prosecutor’s Office in the United States.” *European Journal of Crime, Criminal Law & Criminal Justice* 8, no. 3 (August 2000): 283–95)

inspire the “progressive prosecution” movement, which would attempt to use the power of prosecutors to reform and shrink the criminal justice system.³

In this paper, I investigate how “progressive prosecution” arose in Brooklyn in the early 2010s. I argue that “progressive prosecution” emerged in reaction to the prosecutorial misconduct that characterized the Office for most of its history. To prove this, I show that the history of the Brooklyn DA’s Office is one in which the Office was constantly combating the reality and perception of malpractice. While the Office was able to limit corruption when it professionalized in the late 1960s, it was unable to do the same with prosecutorial misconduct due to a lack of political pressure or the respective DA’s “insider” status—and often both. Therefore, Ken Thompson was able to capitalize on this inability to deal with prosecutorial misconduct throughout those fifty years, along with a growing national desire for a less punitive criminal justice system, to bring progressive prosecution to Brooklyn.

As Brooklyn is the fifth largest jurisdiction in the country, with an estimated population of over 2.5 million people⁴, any change in Brooklyn always has national implications. However, while my analysis has this specific regional focus, the story I tell is not just a Brooklyn story. Although every Office does have their own unique history, the factors I discuss – continual prosecutorial misconduct, changing public opinion on the punitiveness of the justice system, and “progressive” candidates – were present in other cities who in the ensuing decade have similarly elected “progressive prosecutors”, such as Chicago, Philadelphia, Boston, St. Louis, and Orlando.

³ Sklansky, David Alan. “The Progressive Prosecutor’s Handbook.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, February 13, 2017. <https://papers.ssrn.com/abstract=2916485>.

⁴ “Kings County (Brooklyn Borough) Population,” United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/kingscountybrooklynboroughnewyork/AFN120212>

District Attorneys have dual roles. They are both elected officials and the representative of the “people” in the courtroom. Thus, because of their simultaneous political and legal roles, they are susceptible to a different type of abuse of power than other elected representatives—“prosecutorial misconduct.” To define prosecutorial misconduct, I borrow from Ridolfi’s and Possley’s study of prosecutorial misconduct in California and define it as any illegal behavior directly related to the role of the prosecutor in the courtroom, which should be disciplined internally by the District Attorney.⁵ This includes Brady violations⁶, improper argumentation at trial, improper questioning of witnesses, compulsory self-incrimination, discriminatory jury selection, false evidence, and witness intimidation.

Research has shown that some “prosecutorial misconduct” may not in fact be purposeful i.e., the prosecutor did not know they were breaking the law.⁷ This is a complicated issue and one which much has already been written. Therefore, this thesis does not concern itself with the individual decisions of the Assistant District Attorneys (ADAs), but rather, the DA’s ability to create or not create a culture of accountability and awareness of prosecutorial obligations under the law.

⁵, Kathleen Ridolfi and Maurice Possley. “Preventable Error: A Report on Prosecutorial Misconduct in California 1997–2009.” *Northern California Innocence Project Publications*, October 1, 2010.

⁶ “Brady violations” occur when prosecutors fail to disclose exculpatory evidence or “evidence that could accuse, justify, or absolve the alleged fault or guilt of a defendant” or, simply, be favorable to the accused and their case. (Cornell Law School. “Exculpatory Evidence.” Legal Information Institute. Accessed March 27, 2021. https://www.law.cornell.edu/wex/exculpatory_evidence.) “Brady” refers to the Supreme Court case on which the “Brady Rule is based, *Brady v. Maryland* (1963). (Kim, Jonathon. “Brady Rule.” Cornell Law School. Legal Information Institute, October 2017. https://www.law.cornell.edu/wex/brady_rule.) I quite like the way one of my interviewees explained it: “You know [Holtzman’s] Chief Assistant, he once said to me, they way to know it’s Brady... is if it hurts [your case]... he said I should apply the “ouch standard” meaning if you think it’s going to make a difference in your case, if it’s going to hurt your case somehow, you should disclose it. Now, I’m you know, that’s sort of an overgeneralization. But, you know, it’s not a bad instinct to start with.” (Interview with Stacy Caplow, 12/11/2020)

⁷ Green, Bruce, and Ellen Yaroshefsky. “Prosecutorial Accountability 2.0.” *Notre Dame Law Review* 92, no. 1 (November 1, 2016). <https://scholarship.law.nd.edu/ndlr/vol92/iss1/2>.

Historiography

Despite the immense power of District Attorneys in their communities, prosecutors are only mentioned as sidenotes in larger histories on mass incarceration. While it is important to understand the historical literature on mass incarceration as “progressive prosecution” at its core arises out of concern about the number of people in prison, this is an insufficient basis for me to center my thesis. Thus, I orient my thesis in two separate literatures: the historical literature on mass incarceration, and the legal literature on prosecutorial reform and misconduct. While there is historical discussion about the importance of prosecutors in the creation of mass incarceration and contemporary legal argumentation about prosecutorial reform and misconduct over time, there is not a historical understanding of how prosecutors changed throughout the mid-20th and early 21st century. Therefore, my thesis intervenes by bringing these literatures together, and using them to tell the history of the Brooklyn DA’s Office to understand the development of “progressive prosecution.”

Many historical texts on mass incarceration mention the role of prosecutors in creating our modern-day criminal justice system. Khalil Gibran Muhammad writes about the racism that prosecutors have helped perpetrate, particularly their targeting of men of color for sexual offenses against white women.⁸ James Forman Jr., similarly to Muhammad, talks about how prosecutors have historically used their prosecutorial discretion to pursue cases against people of color, rather than white people for the same crime.⁹ He also cites the role that prosecutors played as instruments of the state to increase incarceration, and, specifically, the role Black prosecutors

⁸ Muhammad, Khalil Gibran. *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America, With a New Preface*. 2nd edition. Harvard University Press, 2019.

⁹ Forman Jr, James. *Locking Up Our Own: Crime and Punishment in Black America*. New York: Farrar, Straus and Giroux, 2018.

played in the process.¹⁰ Like Forman, Elizabeth Hinton writes about how prosecutors were instruments of the federal government to grow mass incarceration, mainly by increasing the size and power of the Offices through boosting their federal funding.¹¹ Michelle Alexander in her famous book, most directly, refers to the role that prosecutors played in enforcing War on Drug policy, and, consequently contributing to the rise of mass incarceration.¹² Alexander specifically calls prosecutors “the most powerful law enforcement official in the criminal justice system,” citing their use of plea bargaining, mandatory minimum statutory schemes, and vast prosecutorial discretion.¹³ John Pfaff, expands on this statement, arguing that prosecutors have been the crucial drivers of mass incarceration in the last few decades.¹⁴ Therefore, while this background is fundamental to understanding the importance of studying DAs, it is insufficient for interpreting their history.

Accordingly, I pull from the sizeable legal literature on prosecutorial reform and misconduct. Discussions on the excessive power of prosecutors date back to the mid-20th century. In the early 1960s, many well-known legal scholars were already critiquing the outsized power and ceaseless misconduct of state prosecutors and how their actions helped create inequities in the American criminal justice system.¹⁵ A law review article from 1960s writes, “cheap indiscretion, bargain justice, and the tentacles of ward politics govern the prosecutor’s

¹⁰ Ibid.

¹¹ Hinton, Elizabeth. *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*. Reprint edition. Cambridge London: Harvard University Press, 2017.

¹² Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press, 2012.

¹³ Ibid.

¹⁴ Pfaff, John. *Locked In: The True Causes of Mass Incarceration-and How to Achieve Real Reform*. New York: Basic Books, 2017.

¹⁵ Brennan, William J. Jr. “The Criminal Prosecution: Sporting Event or Quest for Truth.” *Washington University Law Quarterly* 1963, no. 3 (1963): 279–95; Kuh, Richard H. “Careers in Prosecution Offices.” *Journal of Legal Education* 14, no. 2 (1962 1961): 175–90; “Prosecutor Indiscretion: A Result of Political Influence.” *34 Indiana Law Journal* 477 (1959) 34, no. 3 (April 1, 1959).

office, Justitia stops breathing.”¹⁶ These conversations were present through the 1970s and 1980s with scholars citing the importance of prosecutorial discretion for prosecutors to do their jobs, but also the likelihood of it leading to abuse.¹⁷ In the 1990s and early 2000s, legal scholars started to write about the concept of “new prosecution” or “community prosecution.”¹⁸ This referred to the idea of a prosecutor who aimed to be more participatory in communities by emphasizing prevention and fixing larger societal problems, rather than resorting to solely punitive solutions for crime.¹⁹ This earlier reform movement is particularly important as it shows the beginning of a prosecutorial reform movement from within the DA’s Office, rather than from outside. In many ways, the “progressive prosecution” movement is reacting to the successes and failures of this earlier push. As part of this literature, there is significant discussion of prosecutorial misconduct.²⁰ In this arena, Angela J. Davis wrote a seminal book, examining the thin line between legal prosecutorial behavior and illegal prosecutorial misconduct, as well as the need for greater accountability.²¹ These writings on prosecutorial misconduct tie-in with writings

¹⁶ Mueller, Gerhard O. W. “Criminal Law and Administration 1960 Survey of American Law.” New York University Law Review 35, no. 1 (1960): 111–44.

¹⁷ McDonald, W F. *Prosecutor’s Domain*. United States: Sage Publications, 1979; Kress, J.M. “Progress and prosecution.” *Annals of the Amer. Academy of Political and Social Science* 423: 99-116.

¹⁸ Thompson, Anthony C. “It Takes a Community to Prosecute.” *Notre Dame Law Review* 77, no. 2 (2002 2001): 321–72; Cunningham, Wm. Scott, Brian C. Renauer, and Christy Khalifa. “Sharing the Keys to the Courthouse: Adoption of Community Prosecution by State Court Prosecutors.” *Journal of Contemporary Criminal Justice* 22, no. 3 (2006): 202–19; Alfieri, Anthony V. “Community Prosecutors.” *California Law Review* 90, no. 5 (October 2002): 1465; Jacoby, Joan E. “Pushing the Envelope: Leadership in Prosecution Leadership.” *Justice System Journal* 17, no. 3 (1995 1994): 291–308.

¹⁹ *Ibid.*

²⁰ To name just a few: Baer, Miriam H. “Timing Brady.” *Columbia Law Review* 115, no. 1 (2015): 1–68; Bazelon, Lara A. “Hard Lessons: The Role of Law Schools in Addressing Prosecutorial Misconduct.” *Berkeley Journal of Criminal Law* 16, no. 2 (2011): 391–441; Fisher, Michael T. “Harmless Error, Prosecutorial Misconduct, and Due Process: There’s More to Due Process Than the Bottom Line Notes.” *Columbia Law Review* 88, no. 6 (1988): 1298–1324; Schoenfeld, Heather. “Violated Trust: Conceptualizing Prosecutorial Misconduct.” *Journal of Contemporary Criminal Justice*, July 24, 2016; Henning, Peter J. “Prosecutorial Misconduct and Constitutional Remedies.” *Washington University Law Quarterly* 77, no. 3 (1999): 713–834; Joy, Peter A. “Relationship between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System.” *Wisconsin Law Review* 2006, no. 2 (2006): 399–430.

²¹ Davis, Angela J. *Arbitrary Justice: The Power of the American Prosecutor*. Electronic resource. New York: Oxford University Press, Incorporated, 2009.

on prosecutorial ethics, which Bruce Green has spearheaded²² and writings on the modern role of the prosecutor.²³

In the last few years, the legal literature on prosecution has turned to “progressive prosecution,” which my thesis focuses on. In the 2010s, the “progressive prosecution” movement first started to gain traction with victories in Chicago, Philadelphia, and Brooklyn.²⁴ The “progressive prosecutor” movement, according to scholars, represented a growing belief that elected prosecutors should use their large discretionary powers “to [reduce] mass incarceration and racial disparities in the criminal justice system.”²⁵ Since these elections, there has been a substantial amount of commentary on “progressive prosecutors” ability to create reform and limit misconduct in their Offices. Proponents of “progressive prosecution” cite it as the key to change in the criminal justice system.²⁶ While detractors criticize the movement for claiming to fix the criminal justice system without making any substantial structural change or decreasing the power of the prosecutor.²⁷ In many ways, this criticism stems from the vagueness of the

²² Green, Bruce A. “Prosecutorial Ethics in Retrospect 30th Anniversary Commemorative Issue: Commemorative Contributions.” *Georgetown Journal of Legal Ethics* 30, no. 3 (2017): 461–84; Green, Bruce A., and Samuel J. Levine. “Disciplinary Regulation of Prosecutors as a Remedy for Abuses of Prosecutorial Discretion: A Descriptive and Normative Analysis Symposium: The Civil Side of Criminal Procedure.” *Ohio State Journal of Criminal Law* 14, no. 1 (2017 2016): 143–82; Green, Bruce A. “Prosecutors and Professional Regulation.” *Georgetown Journal of Legal Ethics* 25, no. 4 (2012): 873–904.

²³ Levine, Kay L., and Ronald F. Wright. “Prosecution in 3-D Criminal Law.” *Journal of Criminal Law and Criminology* 102, no. 4 (2012): 1119–80; Sklansky, David Alan. “The Problems With Prosecutors.” *Annual Review of Criminology* 1, no. 1 (2018): 451–69.; Wright, Ronald F. “How Prosecutor Elections Fail Us Symposium: Prosecutorial Discretion.” *Ohio State Journal of Criminal Law* 6, no. 2 (2009 2008): 581–610.

²⁴ Davis, Angela J. “Reimagining Prosecution: A Growing Progressive Movement.” *UCLA Criminal Justice Law Review* 3, no. 1 (2019); Balboni, Jennifer M., and Randall Grometstein. “Prosecutorial Reform from within: District Attorney ‘Disruptors’ and Other Change Agents, 2016–2020.” *Contemporary Justice Review* 23, no. 3 (July 2, 2020): 261–90.

²⁵ *Ibid.*

²⁶ Bazelon, Emily. *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*, n.d.; Bellin, Jeffrey. “Defending Progressive Prosecution.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, November 1, 2019.

²⁷ Gajwani, Seema, and Max G Lesser. “The Hard Truths of Progressive Prosecution and a Path to Realizing the Movement’s Promise” 64 (n.d.): 25; Note. “The Paradox of ‘Progressive Prosecution.’” *Harvard Law Review*, no. 132 (December 10, 2018); Alec Karakatsanis. *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System*. New York: The New Press, 2019; Fryer, Daniel. “Race, Reform, & Progressive Prosecution” 110 (n.d.): 35; Additional writings by Paul Butler.

terminology. As running as a “progressive prosecutor” has started to be an effective campaign strategy, many candidates with diverging backgrounds and platforms have claimed the title.²⁸ My thesis aims to bridge the gap between these two literatures by trying to understand historically how prosecutor’s offices have developed, and how “progressive prosecution” arose. While previous writings argue that “progressive prosecution” emerged due to a growing recognition of the problems of mass incarceration and a downtrend in crime²⁹, I show, by examining the history of Brooklyn DA’s Office, the importance of prosecutorial misconduct in the rise of this movement.

Method

For my analysis, I took a dual approach—I both consulted written primary sources and conducted interviews. I mainly reviewed newspapers which covered the Brooklyn DA’s Office from 1964-2019. I also reviewed legal journals, government documents, academic articles, and various databases from this period. In addition, I was privileged to interview various individuals who interacted with the Office either as the DA, ADAs, defense attorneys, and researchers. This included: Elizabeth Holtzman, former DA; Barry Kamins, former ADA under DA Gold, former Administrative Judge of the Criminal Court of NYC, and criminal defense attorney; Richard Emery, former staff counsel for the New York Civil Liberties Union (NYCLU), former head of the Civilian Complaint Board, and civil rights attorney; Stacy Caplow, former defense attorney at the Legal Aid Society, former Chief of the Criminal Court Bureau and Director of Training

²⁸ Sklansky, David Alan. “The Progressive Prosecutor’s Handbook.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, February 13, 2017; Levin, Benjamin. “Imagining the Progressive Prosecutor.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, February 22, 2020; Green, Bruce A, and Rebecca Roiphe. “When Prosecutors Politick: Progressive Law Enforcers Then and Now.” *The Journal of Criminal Law and Criminology* (1973-) 110, no. 4 (2020): 719–68.

²⁹ Bellin, Jeffrey. “Expanding the Reach of Progressive Prosecution.” *The Journal of Criminal Law and Criminology* (1973-) 110 (2020): 12.

under Holtzman, and law professor; James J. Fishman, former researcher on the Brooklyn DA's Office under Gold and law professor; Richard Laskey, former ADA under Gold and former Special Assistant under Holtzman; Mina Malik, former Special Counsel under Thompson, former head of the Civilian Complaint Board, and law professor; Judy Kluger, former ADA under Gold, former Bureau Chief under Holtzman, former judge, and executive director of Sanctuary for Families; Michael Gold, former attorney at the Legal Aid Society, son of Gold, and defense attorney. I was unable to interview either DA Hynes or DA Thompson, as they are both deceased. Quotes from these interviews are incorporated throughout my thesis. Thus, by using both types of sources, I was able to show that "progressive prosecution" developed in Brooklyn due the Kings County DA's Office's inability to limit prosecutorial misconduct throughout its 60-year history after it first professionalized. An investigation of this scope and methodology studying the history of a prosecutor's office has not been conducted before this thesis.

Chapter Descriptions

My first chapter discusses the professionalization of the Brooklyn DA's Office as it moved from both a corrupt office under DA Koota to a legitimate office with serious issues of prosecutorial misconduct under DA Gold. Koota, the last of the truly political prosecutors in Brooklyn, was infamous both for his enmeshment with the Brooklyn Democratic party and, allegedly, with organized crime. Even more concerning for most attorneys at the time, he was incompetent. Thus, upon his election, DA Gold faced corruption head on by professionalizing the Office. By the end of his tenure, the Office was the third largest DA's Office in the country. However, he was less successful at creating accountability mechanisms to curb prosecutorial misconduct because of his own integration with the Brooklyn legal community and the lack of

political pressure. This problem of prosecutorial misconduct would haunt the Brooklyn DA's Office for the next five decades and lead to a radical shift in governance.

In my second chapter, I discuss how the next two DAs both tried and failed to deal with the problem of prosecutorial misconduct. DA Holtzman and DA Hynes inherited a professional office, though one with significant issues of accountability. Because of her "outsider status", DA Holtzman worked to actively fight against prosecutorial misconduct. At the same time though, because of her own future ambitions, Holtzman could not fully eradicate misconduct and failed to grapple with her predecessors' misconduct. DA Hynes took a completely opposite approach. Despite being viewed as a reformer, he both personally engaged in misconduct and created a culture that allowed misconduct to flourish. This led to many wrongful convictions during his tenure.

My third chapter explains how this continued prosecutorial misconduct led to the rise of "progressive prosecution" in Brooklyn through the elections of DA Thompson and DA Gonzalez. Thompson was the right person at the right time. He was able to capitalize on a national reexamining of punitive policy and, mainly, a reckoning with past misconduct at the Brooklyn DA's Office, to win election. His victory symbolized the beginning of "progressive prosecution" in Brooklyn. After his early death from cancer, his appointed successor, Eric Gonzalez, the current DA, continued in Thompson's footsteps and further aligned the Office with the new "progressive prosecution" movement. Therefore, the best way to explain the rise of "progressive prosecution" in Brooklyn is to view it as a reaction to the Office's inability to successfully limit misconduct since it first professionalized in the 1960s. In my conclusion, I argue that while my thesis is regionally-focused on Brooklyn, the factors I discuss –prosecutorial

misconduct, a public reckoning with mass incarceration, and “progressive” candidates – existed in other large, liberal cities that have similarly elected “progressive prosecutors.”

Chapter 1: The Professionalization of the Kings County District Attorney's Office

“I think [Gold’s greatest accomplishment was] transforming the office into a viable and respected law enforcement tool...taking it from a backwater, a political dumping ground into a professional, respected organization.”³⁰

DA Aaron Koota stood only five feet, five inches, wore tailor-made suits with a gold watch chain tucked into the pocket, and, according to reports, was never without a corona cigar.³¹ Jack Newfield, a prominent local journalist, once referred to him, as “the kind of prosecutor generally limited to the musings of paranoid liberals.”³² Koota was a symbol of the perils of the Brooklyn political system. He had risen to power not due to his now own merit, but, instead due to his party connections. Therefore, his tenure was ridden with many of the same problems other “political” officials faced. His corruption and misconduct laid the groundwork for DA Eugene Gold to radically change the Brooklyn’s DA Office. Gold refuted the corruption that flourished under DA Koota by professionalizing the Office and rejecting the previous political patronage system. However, he struggled to create institutional accountability, leading to continuing issues of prosecutorial misconduct in the Office, which future DAs would have to grapple with.

³⁰ Interview with Michael Gold (12/04/2020)

³¹ Thomas J. Fleming, “Case of the Debatable Brooklyn D.A.; Brooklyn D.A.” *The New York Times*, March 19, 1967.

³² *Ibid.*

Aaron Koota (1964-1968)



*Fig. 1 Picture of Aaron Koota (1973)*³³

DA Koota first rose to prominence as special prosecutor for the “Gross investigation.”³⁴ As a special prosecutor, he investigated the police misconduct which allowed a \$20-million gambling ring headed by Harry Gross to continue without arrests for years.³⁵ The investigation soon ballooned into one of the biggest scandals in NYPD history, leading to the indictments of more than 100 police officers.³⁶ However, Koota’s early penchant for rooting out misconduct did not last. Like other Brooklyn politicians at the time, his tenure was plagued by corruption due to his entanglement with the Brooklyn Democratic Party and, allegedly, organized crime. Even more

³³ *Case-Fixing Linked To Koota's Office By Bond Swindler*. July 1973. The New York Times Collection, New York.

³⁴ Fleming, “Case of the Debatable Brooklyn D.A.; Brooklyn D.A.”

³⁵ *Ibid.*

³⁶ James J Fishman. “The Bronx and Brooklyn District Attorney’s Offices: Change, Accommodation, and Recruitment in Two Legal Bureaucracies.” *Political Science*, New York University, 1979., 101.

concerning, though, was the Office's prosecutorial misconduct, which DA Koota did not just ignore, but, in fact, encouraged. He tried cases in the press by making inaccurate and inflammatory comments to the media and in two highly publicized cases refused to follow the rule of law.

Koota used his connections to the Brooklyn Democratic party to become DA. Before the Gross investigation, he had been practicing law in Manhattan, but due to the investigation's length, his private practice collapsed.³⁷ In 1950, he decided to stay on at the DA's Office.³⁸ He joined a political club in 1955 becoming close with many of the borough leaders.³⁹ These connections allowed him to climb the office ladder.⁴⁰ He became the head of the Racket's Bureau in 1963 and then acting DA when the previous DA resigned.⁴¹ After his appointment, he easily won election in 1965 to finish the DA's term, backed by the Brooklyn Democratic organization, including its leader Stanley Steingut.⁴²

This interlaced relationship with the Brooklyn Democratic party continued throughout his tenure. He "made no pretense that he or his office were divorced from politics."⁴³ He even allegedly admitted to one local journalist that he took all ADA appointments from the county leader.⁴⁴ DA Koota was not unique in this regard. At the time, Democratic leaders in Brooklyn held unilateral control.⁴⁵ If you wanted any influential position in Brooklyn, you had to both have and keep the Party on your side.⁴⁶ Political patronage reigned supreme. Koota and the Party

³⁷ Fleming. "Case of the Debatable Brooklyn D.A."

³⁸ Fishman, "The Bronx and Brooklyn District Attorney's Offices.," 132.

³⁹ Fleming. "Case of the Debatable Brooklyn D.A."

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Fishman, "The Bronx and Brooklyn District Attorney's Offices.," 133.

⁴⁴ Fleming. "Case of the Debatable Brooklyn D.A."

⁴⁵ Jack Newfield. "Meade, the Mob, & the Machine." *The Village Voice*, January 3, 1974.

⁴⁶ Ibid.

made a mutually beneficial deal—Koota was able to become District Attorney, and, in turn, he allowed corruption to continue unchecked. A federal investigator who was looking into the Brooklyn Democratic Party, remarked years later in 1972 that, “Back during the 1960s, when Joe Hoey was the U. S. Attorney and when Aaron Koota was the D. A., no politicians were ever investigated in Brooklyn. The borough was wide open.”⁴⁷

Like many other Brooklyn elected officials too, Koota was rumored to have ties to the mob.⁴⁸ At the time, the Democratic party in Brooklyn was intertwined with organized crime.⁴⁹ While rumors about his own involvement were never substantiated during his tenure, a Senate Investigation in 1974 heard testimony from a bond swindler who claimed to have been involved in case-fixing under Koota.⁵⁰ He claimed to be involved in one case where a \$5,000 bribe was given to a DA staff member, in exchange for either a suspended sentence or a finding of not guilty.⁵¹ In a second allegation, he asserted that Cosa Nostra leader, Joseph Colombo was able to obtain a delay in testifying, in exchange for a new Buick being sent to the DA’s chief investigator.⁵² He alleged that the case fixing was funneled through a Brooklyn law firm where a middleman would arrange with the DA’s Office to fix cases for their clients.⁵³

While these claims of party influence and corruption were concerning for attorneys in Brooklyn at the time, even more concerning was DA Koota’s encouragement of prosecutorial misconduct. In direct violation of American Bar Association (ABA) ethical standards, he would “[conduct] investigations in the papers” by calling press conferences to announce an investigation and try to persuade the public of an individual’s guilt—before even investigating

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Jack Newfield. “Memories of Meade and the Mob.” *The Village Voice*, June 17, 1986.

⁵⁰ Martin Tolchin. “Case-Fixing Linked To Koota’s Office By Bond Swindler.” *The New York Times*, July 17, 1973.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

the charges.⁵⁴ After Koota was no longer on the front page, he would let the “investigation...quietly die,”⁵⁵ doing undue harm to individuals’ reputations and lives for no reason. A former ABA president stated at the time that, “Every responsible lawyer is deeply concerned over [DA Koota’s] tendency to try defendants in the press, even before they are indicted.”⁵⁶ At one point, he even claimed that “Brooklyn High School chemistry labs were all being used to manufacture LSD and Communists were infiltrating [the horse racing industry].”⁵⁷ There was no evidence to support this.

Similarly, in two high-profile cases which were illustrative of greater misconduct in his Office, DA Koota refused to follow the law. In 1964, a 20-year-old black man, George Whitmore was arrested for the murder of Minnie Edmonds.⁵⁸ During his interrogation, he confessed to the murder of Edmonds and the unsolved murders of two other women, Janice Wylie and Emily Hoffert.⁵⁹ As Wylie and Hoffert were murdered in Manhattan, Manhattan DA Frank Hogan, whose Office was nationally regarded, took over their part of the case.⁶⁰ He eventually threw out the Brooklyn confession saying that it was “full of holes” and his office later convicted another man for the murders.⁶¹ However, despite this exoneration and outcry from the NYCLU, DA Koota refused to release Whitmore, who had recanted his confessions and said the police had tortured him to obtain them.⁶² Information later came out that two of Koota’s staff had been there when Whitmore signed the coerced confession, making it likely they knew it

⁵⁴ Fleming. “Case of the Debatable Brooklyn D.A.”.

⁵⁵ Ibid.

⁵⁶ Fleming. “Case of the Debatable Brooklyn D.A.”

⁵⁷ Fishman, “The Bronx and Brooklyn District Attorney’s Offices.,” 134.

⁵⁸ Fleming. “Case of the Debatable Brooklyn D.A.”

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

was coerced.⁶³ Koota pursued the case, convicting Whitmore of attempted rape.⁶⁴ When Whitmore's lawyer showed there was racial bias in the first jury, Koota re-convicted Whitmore.⁶⁵

In another instance, Koota charged Ernest Gallashaw, another young black man, for the murder of 11-year-old Eric Dean.⁶⁶ Koota claimed to have a "rock solid" case, but holes started to quickly appear in the witness testimony.⁶⁷ Gallashaw also had a solid alibi—he had been on his stoop when the murder had allegedly taken place.⁶⁸ These cases, in particular, enraged Brooklyn's black community leading to the DA's Offices being picketed and individuals calling DA Koota a member of the Ku Klux Klan.⁶⁹ The Congress of Racial Equality (CORE), a national civil rights organization, even telegraphed Governor Rockefeller asking for DA Koota's removal.⁷⁰ Despite this, Koota survived these challenges and was even appointed to the New York Supreme Court in 1968.⁷¹ This left a vacancy at the DA's Office. Like the Democratic party had done in the past, they nominated⁷² a politically-connected attorney—native Brooklynite Eugene Gold.⁷³ But Gold would surprise them all by bucking the system of political patronage and corruption that had led to his appointment.

⁶³ Fishman, "The Bronx and Brooklyn District Attorney's Offices.," 136.

⁶⁴ *Ibid.*

⁶⁵ Fleming. "Case of the Debatable Brooklyn D.A."

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Sheppard. "New Kings County DA's Rights Stand."

⁷² During this time, the executive committee of the Democratic party in Brooklyn (at that time led by Assemblyman and Brooklyn powerbroker Stanley Steingut) chose the Democratic nominee for District Attorney. (Zion, Sidney. "Koota Expected to Be Named By Democrats for Court Today." *New York Times*. September 6, 1968.)

⁷³ *Ibid.*

Eugene Gold (1969-1981)



Fig. 2 Picture of Eugene Gold (1972)⁷⁴

Gold was Brooklyn through and through. He attended Brooklyn College and, after enlisting in the Army, returned to enroll in Brooklyn Law School.⁷⁵ Throughout his twelve years as a criminal defense attorney, Gold won numerous community and civic awards and became close to many top Brooklyn politicians.⁷⁶ Therefore, it is even more remarkable that, after winning a run-off special election against Albert J. Millus, a former FBI agent and the Republican nominee for District Attorney⁷⁷, he was able to professionalize the Kings County DA's Office, changing the Office's trajectory. He worked to eradicate the previous system of political patronage, which had allowed corruption to fester in Koota's Office by changing internal policies, instituting merit hiring, and investigating Democratic leaders. At the same time, though, he failed to grapple with the prosecutorial misconduct that ran through the Office. While

⁷⁴ Walker, Robert, *Eugene Gold testifying before House Select Committee on Crime*. June, 1972. The New York Times Collection, New York.

⁷⁵ Fiery Prosecutor: Eugene Gold." *New York Times*. June 21, 1972.

⁷⁶ Ibid.

⁷⁷ "Kings G.O.P Names Prosecutor Choice." *New York Times*. September 24, 1968.

there were accusations throughout his tenure of misconduct, they were only strengthened by the exonerations that followed in the years preceding his retirement.⁷⁸

Gold used the Office to fight against corruption by implementing new internal policies and instituting merit hiring, which minimized the power of the Democratic Party in the Office and removed it from its employment decisions. He enforced the Office's ban on prosecutors practicing law outside their duties as ADAs, a common practice under DA Koota, which created huge conflicts of interest.⁷⁹ In reaction to this change, many older ADAs resigned.⁸⁰ Gold, in response, hired twenty-three new ADAs.⁸¹ According to James J. Fishman, a researcher who studied the Office in the 1960s, because of Gold's changes, within three years, 75% of the staff had turned over and, within one year, "the average age of his assistants had dropped from fifty-nine to thirty-six."⁸²

Despite this pushback, DA Gold implemented merit hiring for the first time in Brooklyn DA history. Previously, the Democratic Party had "assisted" with hiring decisions. As Fishman, stated in our interview, "I remember one of the responses by an Assistant DA in Brooklyn, who joined the Office before Gold became DA. The first question when he came in was: 'what was your club?' In other words, your political club, because that's how you got the job."⁸³ In direct contrast to this, DA Gold ran an advertisement in the "New York Law Journal," inviting qualified attorneys outside of the political patronage systems to apply.⁸⁴ He sent experienced ADAs to recruit at law schools all over the country and bring back recent graduates to come

⁷⁸ Ibid.

⁷⁹ Fishman, "The Bronx and Brooklyn District Attorney's Offices.," 138.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Interview with James J. Fishman (12/18/2020)

⁸⁴ Martin Karopkin, "Good As Gold." *Newsday*, October 27, 1987, Combined edition.

work in Brooklyn.⁸⁵ As a former ADA summarized, “Gold made a point when he came in of saying... I want people who are qualified, who have merit, and I'm not just going to appoint somebody, because I've been asked to do that by a political club.”⁸⁶ This was a significant departure from past practice.⁸⁷

Gold was much less successful though in ensuring that race-based or sex-based discrimination did not get in the way of merit hiring. According to a Bedford-Stuyvesant Lawyers Association's report in 1977, out of a staff of 230 ADAs, only eight were Black or Puerto Rican.⁸⁸ This disparity was particularly impactful since while “Kings County [was] only 25 percent Black and Hispanic, they [represented] 80 percent of defendants in the courts.”⁸⁹⁹⁰ Additionally, during his tenure, there were no women or people of color as bureau chiefs⁹¹ and no female or Black ADAs in the homicide bureau.⁹² In short, when one of the ADAs I spoke with started her career at the Office in 1977, it “was still heavily male, heavily white.”⁹³

⁸⁵ William Miller, “Letters: How Eugene Gold Picks His Assistant DA's.” *The New York Times*. June 26, 1981, Late City Final edition, sec. Editorial Desk; A.

⁸⁶ Interview with Barry Kamins (12/03/2020)

⁸⁷ Interview with Michael Gold (12/04/2020): “But at the time, given the nature of how things have been done, and were being done, it was kind of revolutionary. Not to be hyperbolic about it, but it was it was a significant departure from past practice.”

⁸⁸ Gold Promises To Recruit Black Attorneys.” *New York Amsterdam News*. April 30, 1977.

⁸⁹ Ibid.

⁹⁰ In April 1977, DA Gold met with a committee of frustrated Black and Latinx lawyers in the hopes of “increase[ing] the number of minority assistant district attorneys in Kings County” According to a report of the meeting, Gold was interesting in hiring more qualified Black and Puerto Rican attorneys and law graduates.⁹⁰ He agreed to contact Black and Puerto Rican student associations at law schools all over New York City “to generate interest...in joining his prosecutorial staff.” The committee even gave Gold the resumes of twenty candidates who wanted to join his staff immediately. However, a few months later, in June 1977, Randolph Jackson, the outgoing president of the Bedford-Stuyvesant Lawyers Association, who had met with Gold in April, bemoaned that very little had changed: The Association claimed as well that ADAs of color in Gold's Office experienced “unjustified failures to promote, unequal salaries, unpleasant working conditions, unwanted derogatory evaluations and sudden termination.” (Gold Promises To Recruit Black Attorneys.” *New York Amsterdam News*. April 30, 1977; Major Robinson, “Blast DA Gold for Not Hiring Blacks.” *New York Amsterdam News*. June 18, 1977.)

⁹¹ Interview with Judy Kluger, (01/19/2021): “At the time...there were no women bureau chiefs. There were no women in the homicide Bureau, the investigations bureau where you went out on serious cases in the middle of the night to interview witnesses. There were no women when I started.”

⁹² Ibid.: “I don't think there were any people of color as bureau chiefs, or in the executive level of the DAO.”

⁹³ “It changed over the course of a couple of years...but when I started it was still heavily male, heavily white.”

In addition to this policy and hiring changes, Gold investigated both organized crime leaders and Democratic party leaders, including his own friends—demonstrating his commitment to fighting corruption in the Office. In 1972, he obtained authorization to bug a “nondescript blue and gray trailer” in Southern Brooklyn which was the headquarters of the Mafia in the area.⁹⁴ The probe led to the indictment of Paul Vario Jr. who was one of the high-ranking members of the Carmine Tramunti Mafia family⁹⁵ as well as 40 Mafia members and 21 policemen and implicated high ranking Brooklyn politicians.⁹⁶ The bug became known as the “gold bug.”⁹⁷ DA Gold also indicted Brooklyn politicians on corruptions charges.⁹⁸ In 1975, he obtained indictments for his close friend and party leader, Stanley Steingut , when he and his offered a businessman a political position in exchange for a \$2500 campaign donation.⁹⁹ While according to reports, DA Gold was “in an agonized state” over the investigation¹⁰⁰, the fact he proceeded with the investigations despite both his political and personal connections symbolizes his refutation of the corruption, which had previously defined the Office. These changes should not be minimized. As Fishman stated in our interview: “One of the things to remember is DA’s run for reelection. And in those days, if the party put up somebody else and sent out the word, Gold would not have been reelected.”¹⁰¹ Thus, Gold was quite literally willing to risk his own political career to professionalize the Office.

⁹⁴ Martin Arnold, “Gold Used Electronic Bug To Get Evidence on Mafia.” *The New York Times*, October 17, 1972, sec. Archives.

⁹⁵ James M. Markham, “Mario, Son and 2 Others Indicted After Trailer Bug.” *The New York Times*, November 2, 1972, sec. Archives

⁹⁶ Jack Newfield, “Meade, the Mob, & the Machine.”

⁹⁷ Ibid.

⁹⁸ Andy Cooper, “Sen. Vander Beatty Faces Indictment: Elections Violations Involved.” *New York Amsterdam News*. November 12, 1975..

⁹⁹ Marcia Chambers, “Steingut and Son Indicted, Investigation Sources Say.” *The New York Times*, November 6, 1975, sec. Archives.

¹⁰⁰ Andy Cooper, “Sen. Vander Beatty Faces Indictment: Elections Violations Involved.”

¹⁰¹ Interview with James J Fishman (12/18/2020)

However, despite DA Gold's success at mitigating corruption, he was much less successful with prosecutorial misconduct. The lack of political pressure and his own integration with the Brooklyn legal community meant that Gold did not actively work to root out prosecutorial misconduct. As one former Gold ADA summarized, "We were obviously trained that...the goal was not a conviction; the goal was justice. But at that time, in New York City, crime was up and there was a focus on getting a conviction. Not to the exclusion of fairness, but the focus was on law and order."¹⁰² Thus, throughout his tenure, his Office was hit by allegations of unprofessional conduct. In 1972, individuals incarcerated in the Brooklyn House of Detention accused DA Gold and other ADAs in the Grand Jury of denying them due process.¹⁰³ In November 1981, a Brooklyn judge accused the DA's Office of "unprofessional if not contemptuous" conduct and dismissed multiple bribery indictments because of the "undue delay" in prosecuting the cases.¹⁰⁴

Part of this was not Gold-specific. Unlike in later years, there was not as much political pressure on DAs to focus on rooting out prosecutorial misconduct. As one ADA who worked under Gold commented, "You know, in those years [in the 1960s-1970s], prosecutors [all over the city] were not as mindful of Brady as they are today. And that's really a big change."¹⁰⁵ This, along with his own "insider perspective," meant that DA Gold did not create managerial structures to limit misconduct. As another ADA who worked under Gold noted, "If DA Gold found that out that an assistant DA was knowingly involved [in violating rules on disclosure], for example, deliberately deep-sixing evidence harmful to the People's case into a drawer because

¹⁰² Interview with Judy Kluger, (01/19/2021)

¹⁰³ "Boro Inmates Bring DA Gold to Court." *New York Amsterdam News*. August 26, 1972.

¹⁰⁴ Joseph P. Fried, "NY State Supreme Court Judge Ruth Moskowitz Dismisses Bribery Indictments..." *New York Times Abstracts*, November 22, 1981.

¹⁰⁵ Interview with Barry Kamins (12/03/2020)

he was afraid of losing the case, the DA would definitely impose significant discipline upon that ADA in some way, but the management controls on that issue were, I would say, not uniformly a priority in every bureau.”¹⁰⁶

This lack of oversight led to many wrongful convictions. One particularly egregious example of misconduct involved Eric Jackson who was charged with felony murder and arson in 1978 for the deadly Waldbaum’s supermarket fire, which killed six firefighters.¹⁰⁷ There were four different fires in the supermarket—the original fire, which started in the men’s room and three others that started beneath a stairwell.¹⁰⁸ Despite the detective’s belief at the time that the original fire was accidental and caused by an electrical malfunction and that the three others had been set by the Fire Department to increase pensions for their dead colleagues, the DA’s Office still charged Jackson.¹⁰⁹ An ADA at the time had asked to be relieved of their duties in connection with the Waldbaum case as they believed the facts did not merit convicting Jackson.¹¹⁰ To make matters worse, an ADA forged a fake witness statement to manipulate a woman into making incriminating statements against Jackson to strengthen their case.¹¹¹ There were also notes that prosecutors had taken summarizing the conclusions of the arson investigators—that Jackson could not have started the fire.¹¹² None of these facts were disclosed to the defense until after Jackson was convicted.¹¹³ Most concerning, despite supervisors in

¹⁰⁶ Interview with Richard Laskey (01/06/2021)

¹⁰⁷ Bob Herbert, “In America; Disregard Of The Truth.” *The New York Times*. August 7, 1994, Late edition, sec. Editorial Desk; 4.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

Gold's Office knowing about the forged statement, the ADA who forged it was not fired and his career was even boosted by the conviction.¹¹⁴¹¹⁵

Another example involved the case of Robert "Bobby" McLaughlin. McLaughlin, who was 20 at the time, was charged with holding up a group of young people along with three other gunmen.¹¹⁶ One of the young people who was 15 identified McLaughlin from a photograph.¹¹⁷ Solely based off this testimony and despite testimony from another witness that said it was not McLaughlin, and the fact that McLaughlin had an alibi, he was convicted.¹¹⁸ McLaughlin's photo had been presented by mistake to the witness, while they were looking for the photo of a different "Robert McLaughlin."¹¹⁹ Nonetheless, the detective told the young witness that Bobby McLaughlin was the right McLaughlin and improperly influenced the identification.¹²⁰ None of this information was turned over to the defense and, therefore, during the trial, none of it was relayed to the jury.¹²¹ A later report on the DA's actions in the case, ironically handled by Charles J. Hynes who would later become DA and be known for his own wrongful convictions, stated that the prosecution and the police knew at the time that the witness had been misled.¹²²

¹¹⁴ Ibid.

¹¹⁵ Evidence of this misconduct emerged during DA Hynes tenure. Despite this evidence, DA Hynes in 1992 moved to retry Jackson. While that case was pending, Hynes indicted Jackson for many other crimes, including the rape and murder of a homeless woman in Coney Island. This final indictment led the Justice handling the case to remark, "Are you going to arrest this guy for every unsolved crime in Brooklyn?" Despite the underwhelming evidence, Hynes pursued the case. Knight was eventually acquitted of the felony murder and arsons charges in 1994, 14 years after he was convicted. (Bob Herbert, "In America; Disregard Of The Truth." *The New York Times*. August 7, 1994, Late edition, sec. Editorial Desk; 4.; Denzel, Stephanie. "Eric Jackson-Knight." National Registry of Exonerations, September 18, 2014. <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3320>.)

¹¹⁶ Joseph P. Fried, "Man's Exoneration Was Half the Battle." *The New York Times*, November 14, 2004, sec. New York.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Jonah Horowitz, "Robert McLaughlin." National Registry of Exonerations. Accessed December 8, 2020. <https://www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=222>.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Howard W. French, "No Grounds to Prosecute in Overturned Case." *The New York Times*, July 30, 1987, sec. New York.

However, the report did say there was insufficient grounds to bring criminal charges against the ADA on the case.¹²³

In a third case, in which the individual was exonerated as recently as 2016 under DA Thompson, the DA's Office under DA Koota did not tell the defense that a supposed eyewitness had been used frequently in other cases and had himself been convicted of perjury.¹²⁴ To disprove the defendant's alibi, the DA's Office heavily relied on this supposed eyewitness and the victim's wife, who had been unable to pick Gatling out of a line-up.¹²⁵ When Gatling's attorney presented this evidence of misconduct to Gold's Office, they did nothing.¹²⁶ This inaction led to Paul Gatling, a 29-year-old black man, being wrongfully imprisoned for ten years.¹²⁷ Prosecutors under Thompson who supported Gatling's exoneration, remarked that while Gatling's case came at a "different time" that did not relieve police and prosecutors "from the fundamental decency that should have been afforded" to him.¹²⁸

DA Gold retired in 1981.¹²⁹ He told the press that he wanted to work to assist charitable Jewish causes.¹³⁰ By the time of his retirement, DA Gold had a complicated reputation. He had succeeded in professionalizing the Office and minimizing corruption. Under his tenure, the office became the third largest DA's Office in the country, with more than 300 ADAs and a \$14 million budget.¹³¹ At the same time, the Office remained staffed by almost solely white, male attorneys hurting his mission of merit hiring. As well, due the lack of public pressure and his own "insider

¹²³ Ibid.

¹²⁴ Andrew Keshner, "Lawyer and Client Exult at Vacated 1964 Conviction." *New York Law Journal*. May 3, 2016, sec. current.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Joseph. P. Fried, "Gold, Near Retirement, Asks Justice System Aid: 'It's Wrong for State to Kill' Sees Action Forthcoming Bureau for 'Career Criminals.'" *New York Times*. August 9, 1981.

¹³⁰ Ibid.

¹³¹ Ibid.

status,” DA Gold had unable to limit prosecutorial misconduct. He was increasingly haunted by allegations of wrongful convictions, and these allegations were strengthened as more information came out after his retirement. Adding to this complication, Gold was charged with sexual assaulting a minor. While at a national district attorneys convention in 1983, Gold was arrested in Nashville for kissing and groping the 10-year-old daughter of a Nashville prosecutor.¹³² Gold, after signing a statement admitting responsibility, received probation and returned to Israel, where he had a home.¹³³

¹³² Frank J. Prial, “Ex-Prosecutor Charged with Molesting Girl, 10.” *The New York Times*, August 18, 1983, B3 edition, sec. New York.

¹³³ “Gold Gets Probation in Fondling of Child; Agrees To Treatment.” *The New York Times*. October 21, 1983, Late City Final edition, sec. Metropolitan Desk; B.

Chapter Two: The Enduring Problem of Prosecutorial Misconduct

“When [Holtzman] came into the office, [she wanted to make] sure that [misconduct didn’t] exist under [her] watch because, upholding the constitution to [her was] more important than... sending [people] to jail.”¹³⁴

“I think [Hynes] was kind of stunned by the loss...people wanted change, which what is they have a right to do.”¹³⁵

Like Gold, both Elizabeth Holtzman and Charles J. Hynes, grew-up in Flatbush in central Brooklyn, and became lawyers. But that is where their similarities end. Holtzman studied at Harvard Law School.¹³⁶ Before running to be DA, she had a storied political career which, ended with a failed Senate run.¹³⁷ In contrast Hynes attended St. John’s University in Queens for both undergraduate and law school, where his law school classmates included future Police Commissioner Robert McGuire and Chief Administrative Judge Joseph W. Bellacosa.¹³⁸ After working as a defense attorney, Hynes joined the Kings County DA’s Office in 1969, where he rose to first assistant under Gold.¹³⁹ Holtzman both due to her gender and her lack of prosecutorial experience was always an outsider. Hynes due to his decades long career in the New York City legal world was the proverbial insider. After inheriting a professionalized Office from DA Gold, though one that had yet to create true accountability, these diverging personal identities impacted their approaches to prosecutorial misconduct. DA Holtzman confronted prosecutorial misconduct head-on by making numerous policy changes. However, due to her own political ambitions, she failed to both fully eradicate prosecutorial misconduct and confront

¹³⁴ Interview with Richard Laskey, (01/06/2021)

¹³⁵ Interview with Barry Kamins (12/03/2020)

¹³⁶ Howard Kurtz, “The Private Public Prosecutor: Elizabeth Holtzman, Tough & Guarded as Brooklyn’s DA.” *The Washington Post*, October 27, 1987, Final edition.

¹³⁷ Ibid.

¹³⁸ James Barron, “Farsighted Prosecutor: Charles J Hynes,” *The New York Times*, January 14, 1987, sec. New York.

¹³⁹ Joseph P. Fried, “Charles J. Hynes, Brooklyn D.A. in a Tumultuous Era, Dies at 83.” *The New York Times*, January 30, 2019, sec. Obituaries

past misconduct and quickly left the Office. DA Hynes entered the Office with a reputation as a highly accomplished attorney and public servant and quickly created an image of himself as a reformer. But, despite this reputation, his “insider” status and political goals meant he both engaged in misconduct himself and perpetuated a culture of prosecutorial misconduct through his 24 years in the role.

Elizabeth Holtzman (1981-1990)



Fig. 3 Picture of Elizabeth Holtzman (1986)¹⁴⁰

In 1963, when Elizabeth Holtzman was a first-year student at Harvard Law School, she worked for a civil rights attorney in southwest Georgia.¹⁴¹ While there, she represented activists who were peacefully marching for voting rights when the police stung them with cattle prods, beat them, and convicted them for trying to overthrow the state of Georgia.¹⁴² She cited this experience as one of the main reasons she entered politics—“I learned from that experience, not

¹⁴⁰ Henry, Diana M., *Elizabeth Holtzman on the Brooklyn Bridge*, 1986, Diana Mara Henry Papers, Special Collections and University Archives, University of Massachusetts Amherst Libraries.

¹⁴¹ Elizabeth Holtzman, *The Reminiscences of Elizabeth Holtzman*. The Rule of Law Oral History Project. Columbia University, 2011. Columbia Center for Oral History.

¹⁴² *Ibid.*

only the brutality of the society there and the fact that the U.S. government was condoning it...but that young people...armed with nothing but their determination for justice, could take a system that was controlled by violence and enforced by the local judicial system and just change it.”¹⁴³ This lesson would serve Holtzman well as Kings County District Attorney. As DA, she would ensure “merit hiring” expanded to women and people of color, start the Law Enforcement Investigation Bureau, and create internal accountability structures to focus on misconduct. As DA Holtzman summarized, in her own words, “We were doing something unique and different.”¹⁴⁴ In the end though, her ambition to move past the Office would made her defend past Office misconduct and shepherded her quick exit when she decided to run for comptroller.

Before her election to DA, Holtzman had never worked as a prosecutor, reinforcing her “outsider” status. Upon graduation from law school, she went to work for Wachtell, Lipton, Rosen & Katz, a well-known law firm in New York City.¹⁴⁵ At age 31, she decided to run for Congressional office, challenging 84-year-old incumbent Emanuel Celler who had been serving Brooklyn’s 16th Congressional District for 50 years and served as chairman of the House Judiciary Committee and the dean of Congress—and was backed by the Democratic machine. Celler was unthreatened by her, quipping, “my opponent is vigorously campaigning and making a lot of irrational statements which trifle with the truth. So my conclusion is: She is as irritating as a hangnail, which nail I am going to cut off on June 20.”¹⁴⁶ To everyone’s amazement, despite only raising \$32,000, she won by 635 votes and became the youngest woman ever elected to Congress (Alexandria Ocasio Cortez now holds that distinction.)¹⁴⁷

¹⁴³ Ibid.

¹⁴⁴ Interview with Elizabeth Holtzman (3/26/2021)

¹⁴⁵ Kurt F. Stone, *The Jews of Capitol Hill: A Compendium of Jewish Congressional Members*. Scarecrow Press, 2010.

¹⁴⁶ Richard L. Madden, “Despite Issue of Age, Celler Is Confident.” *The New York Times*, June 18, 1972, sec. Archives.

¹⁴⁷ Ginia Bellafonte. “Before Ocasio-Cortez, the Elizabeth Holtzman Effect.” *The New York Times*, July 5, 2018.

As a congresswoman, she founded what is now the Congressional Caucus for Women's Issues, sued the Nixon administration for the bombing of Cambodia, and, as a member of the House Judiciary committee, voted to impeach President Nixon.¹⁴⁸ Throughout her eight years in Congress, Holtzman earned a reputation "as an unabashed crusader for liberal causes."¹⁴⁹ In 1980, she won the 1980 Democratic nomination for Senate by beating her previous boss John Lindsay. Her path to Senate victory looked clear. However, Senator Jacob K. Javits, who lost to Republican nominee Alfonso M. D'Amato in the primary, ran a third-party campaign leading to a spoiler effect and Holtzman's eventual loss.¹⁵⁰ After her loss, she decided to run for DA and she faced Norman Rosen, DA Gold's former executive assistant, in the 1981 Democratic primary.¹⁵¹ As neither candidate had prosecutorial experience (Rosen's position was solely an administrative one), the race came down to "public presence and intellect," and, unsurprisingly, Holtzman prevailed.¹⁵²

However, because of her "outsider" status, she faced tremendous pushback. While campaigning, Rosen's campaign manager created a radio commercial¹⁵³ which featured a woman saying, "Liz Holtzman, she's a nice girl; maybe I'd like to her as a daughter but not as a DA."¹⁵⁴ During her tenure as DA, she faced constant criticism, from both ADAs within her Office and defense attorneys, that "her inflexible style and desire for publicity" hurt the Office's

¹⁴⁸ Ibid.

¹⁴⁹ Kurtz. "The Private Public Prosecutor: Elizabeth Holtzman."

¹⁵⁰ Ibid.

¹⁵¹ "Judging the Prosecutors." *The New York Times*. September 4, 1981, Late City Final Edition edition, sec. Editorial Desk; A.

¹⁵² Ibid.

¹⁵³ Jane Perlez, "Ms. Holtzman Beats Rosen in Brooklyn DA's Primary." *The New York Times*. September 23, 1981, Late City Final edition, sec. Metropolitan Desk; B.

¹⁵⁴ Holtzman, Elizabeth, and Shirley Williams. "Women in the Political World: Observations." *Daedalus* 116, no. 4 (1987): 25–33.

performance.¹⁵⁵ In addition, her criticism of DA Gold’s Office ruffled the feathers of his admirers. Holtzman claimed the Office, before she took over, had been “in a rather sorry state” and that “cases would mosey along” with “no sense of urgency.”¹⁵⁶ She also alleged that the Brooklyn DA’s Office remained a political office, which former Gold ADAs strongly refuted.¹⁵⁷ Throughout her tenure and campaign, Holtzman particularly clashed with one former ADA, the city’s Fire Commissioner—future DA Charles J. Hynes.¹⁵⁸ In response to her critics, Holtzman remarked “the criticism was unfounded, motivated by a male-dominated criminal-justice hierarchy that is prejudiced against her as an outsider and as the first woman to be a District Attorney in the city.”¹⁵⁹

Despite these critiques, Holtzman quickly worked to ensure “merit hiring” included women and people of color, which Gold had been either unwilling or unable to do. When she arrived at the Office, she discovered that there were no women in supervisory roles and that Black employees had been banned from working in the homicide bureau.¹⁶⁰ She quickly changed these policies,¹⁶¹ and, appointed multiple women as bureau chiefs.¹⁶² It was the first-time women had been appointed to head any Bureau in a DA’s Office in New York City.¹⁶³ By 1987, almost half of the bureaus were run by women.¹⁶⁴ Additionally, she appointed the first person of color to

¹⁵⁵ Dennis Hevesi and Selwyn Raab, “Holtzman’s 6 Years: Innovations and Antagonism,” *The New York Times*, January 5, 1988, Late City Final edition, sec. Metropolitan Desk; B.

¹⁵⁶ *Ibid.*

¹⁵⁷ Martin Karopkin, “Good As Gold,” *Newsday*, October 27, 1987, Combined edition.

¹⁵⁸ Jane Perlez, “Six Former Prosecutors Call Miss Holtzman Unsuitable: Miss Holtzman Responds,” *New York Times*, August 13, 1981, sec. Metropolitan Report.

¹⁵⁹ Hevesi and Raab, “Holtzman’s 6 Years.”

¹⁶⁰ Kurtz. “The Private Public Prosecutor: Elizabeth Holtzman.”; Interview with DA Holtzman (03/26/2021): There had never been a black person in the Homicide Bureau, so I had desegregate the Homicide Bureau.

¹⁶¹ *Ibid.*

¹⁶² Elizabeth Holtzman, ““Not a Job for a Woman,”” *POLITICO Magazine*, June 29, 2016.

¹⁶³ Interview with Elizabeth Holtzman (03/26/2021): First, I appointed, when I became DA, Barbara Underwood as Chief of the Appeals Bureau. She was the first woman appointed to head any Bureau in any DA’s Office in New York City...So, that was one enormous change that took place the minute I became the DA.

¹⁶⁴ Holtzman, ““Not a Job for a Woman.””

a top management role with the appointment of Zachary Carter.¹⁶⁵ In summary, according to DA Holtzman, her philosophy was that “race and gender were not going to be taken into account in terms...of excluding people from positions. We were going to be a merit-based organization. We were going to pick the best people we could find for the job. And we were not going to turn our eyes away from people of color, or women, indeed, we would reach out for them.”¹⁶⁶

Holtzman also tried to ensure that her office, despite its close daily collaboration with police officers, professionally and impartially handled police misconduct cases. She created a separate body in the DA’s Office to investigate complaints of police brutality—the Law Enforcement Investigation Unit.¹⁶⁷ Despite tremendous pushback from the all-powerful police union, Holtzman persisted.¹⁶⁸ From 1984-1987, the unit brought both felony and misdemeanor charges against 27 police and correctional offices.¹⁶⁹ In reality though, only one officer who was indicted was sent to prison.¹⁷⁰ However, in reaction to Holtzman’s establishment of the Unit, five thousand police officers in November 1985 demonstrated outside her Office calling her “a prosecutor of cops, not a prosecutor of criminals.”¹⁷¹ They claimed that new guidelines which allowed the Unit to investigate abuse allegations in arrests made by off-duty officers showed that she was merely using the unit to further her own political ambitions.¹⁷² Holtzman responded to these allegations by stating, “As a law-enforcement official, I find it particularly regrettable when a police officer commits a crime. But it is my job to prosecute those cases. There must be

¹⁶⁵ Interview with Elizabeth Holtzman (03/26/2021): The second thing I did, and this is not necessarily in order of priority, was to appoint Zachary Carter as one of my top assistants. He was the first person of color appointed to a top position in the Brooklyn DA office and possibly the first in the city.

¹⁶⁶ Ibid.

¹⁶⁷ Kurtz. “The Private Public Prosecutor: Elizabeth Holtzman.”

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Jesus Rangel, “5,000 Officers, at Rally, Call Holtzman ‘Soft on Crime,’” *The New York Times*, November 8, 1985, sec. New York.

¹⁷² Ibid.

one standard of justice for all.”¹⁷³ This dislike of the Unit extended to the ADAs Holtzman supervised.¹⁷⁴ One of Holtzman’s former ADA remarked he had a difficult time convincing ADAs to join the Unit as they believed it would hurt their careers in the long term by being “identified with a unit the cops did not like.”¹⁷⁵ Hynes after his election quickly abolished the Unit.¹⁷⁶

Most significantly, Holtzman worked to limit prosecutorial misconduct by keeping a close watch on her ADAs and creating disciplinary structures. In her words: “I [was] not trying to hold people accountable. I [was] trying to get them to do justice in their cases...I guess if they did something unethical, and improper, definitely they'll be held accountable. The objective was to train them and, and a set of professional techniques and values that reflected mine.”¹⁷⁷ Thus, she focused extremely hard on training incoming ADAs on their Brady obligations.¹⁷⁸ She also created an office culture that emphasized making sure every box was checked. The expectation for her ADAs was to “Dispose of your case speedily, as best you can. But make sure that everything that you have an obligation to do as an assistant, you do and work very long hours. Therefore, to take the time to prepare your case, and follow all the constitutional and statutory requirements. And get your witnesses on and so forth.”¹⁷⁹

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ [We created it] so that there would be no question of the independence and integrity of those investigations. I didn't think that was a particularly novel concept. But it turned out to be a very novel concept. When I set up the Unit, I was picketed by 5,000 police officers. I didn't back down, not one inch. And by the way, that was one of the first things that my successor [DA Hynes] did. He promised to abolish that unit. And he did that when he became DA. (Interview with Elizabeth Holtzman, 03/26/2021)

¹⁷⁷ Interview with Elizabeth Holtzman (03/26/2021)

¹⁷⁸ Interview with Stacy Caplow (12/11/2020): “I did training for [the entering ADAs] ...and when I did training, we worked hard on Brady.”

¹⁷⁹ Interview with Richard Laskey (01/06/2021):

To manage these expectations, she brought in a management consulting firm to help her evaluate ADAs and created a disciplinary system for them when they failed to meet expectations.¹⁸⁰ Consequently, when Holtzman heard about possible misconduct, she acted. When two ADAs were accused of being privy to the forging of a forensic report to win a case and then attempting to cover-up the forgery, Holtzman immediately took them off the case and brought in a special prosecutor to investigate the allegations.¹⁸¹ In other instances, when Holtzman discovered misconduct, she pushed back against beliefs that it came with the territory. In short, her philosophy was that “The point of [the] office was not to rack up wins. The point of the office was to do justice and you didn't get brownie points for [wins]... bought by cutting corners. You got brownie points by doing justice.” Thus, when Holtzman discovered misconduct, she moved to terminate the ADA’s employment, and, if necessary, reported them to the character committee.¹⁸²

While these policies successfully limited prosecutorial misconduct, they had mixed reviews with ADAs. One ADA remarked that, “it is a very rigidly run place, and if you make the slightest mistake, your ears will be ringing that Liz won't like this. But those are the kind of standards that keep you on your toes and separate the strong from the weak.”¹⁸³ However, not all ADAs felt this was a character-building environment. They grumbled about what they saw as structural overreach, which made them clear even minor decisions with supervisors and the 50- to 60-hour work weeks they were expected to keep, to make sure they had dotted all their I’s and

¹⁸⁰ Ibid: “She even brought in “a management consulting firm to set up a whole way of evaluating assistance and setting up a disciplinary system for failing to meet expectations.”

¹⁸¹ M. A. Farber, “A ‘Simple’ Slaying Spawns a Mystery About Prosecution,” *The New York Times*, January 17, 1984, Late City Final edition, sec. Metropolitan Desk; B.

¹⁸² Interview with Richard Laskey (01/06/2021): “[Holtzman] took the other point of view, which was, this is a serious misconduct, serious thing. We are going to terminate [the ADA’s employment and, where appropriate, report the ADA to the character committee]” if we discover misconduct.”

¹⁸³ Kurtz. “The Private Public Prosecutor: Elizabeth Holtzman.”

crossed all their T's in their upcoming cases.¹⁸⁴ As, the Chief of her Appeals Bureau, Barbara Underwood, remarked, Holtzman "doesn't have a lot of patience for inadequate work."¹⁸⁵

ADAs also complained about their lack of discretion to manage on-the-fly moments in the courtroom.¹⁸⁶ Barry Kamins, the head of the Bar Association at the time, claimed he knew of many instances where younger ADAs delayed cases by saying they had to clear their next move with their supervisors before proceeding.¹⁸⁷ Holtzman released written guidelines to her ADAs telling what they were able to do in specific cases while in court.¹⁸⁸ If a case was lost through an acquittal, Holtzman required ADAs to write reports explaining what had occurred in the case, though Holtzman claimed this was a carryover policy from Gold.¹⁸⁹ In addition, Holtzman also held moot court sessions for ADAs before they were to argue crucial appeals and trials to make sure they were prepared for their argument.¹⁹⁰ One high-ranking police officer stated, "The assistants are robots. They can't sneeze without clearing it with the front office."¹⁹¹ Another defense attorney remarked that Holtzman was training "automatons rather than thinking attorneys."¹⁹²

Holtzman dismissed much of this criticism. When questioned about it, she stated "I am the person elected district attorney and I feel responsible for what happens. Obviously, my prosecutors have an enormous amount of discretion and responsibility. But in the end, I'm accountable for what happens."¹⁹³ It was this belief, that at the end of the day she was

¹⁸⁴ Ibid.

¹⁸⁵ DeStefano, "B'klyn Leaves Political Clubhouse Holtzman Pushes DA's Office Into Innovation Series."

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

accountable for the actions of the Office, along with her “outsider identity” which allowed her to successfully minimize prosecutorial misconduct in the Office.¹⁹⁴ As one prominent Brooklyn attorney in the 1980s told me, “She’s was known for her independence, and for being apolitical. And to her credit, that’s the kind of office she tried to run.”¹⁹⁵ Her exacting standards and micromanagement meant that her Office avoided any significant misconduct scandals, although one of her top assistants was accused of misconduct that he committed during the Gold administration during the Robert McLaughlin case.¹⁹⁶¹⁹⁷ In addition to these reforms, she also pushed to expand the definition of “prosecutorial misconduct.” Holtzman was a fervent advocate against discrimination in jury selection and did not allow her ADAs to strike jurors on the basis of race, religion, sex, or national origin, even though such strikes were not legally considered misconduct at the time.¹⁹⁸ To further this mission, Holtzman filed a suit to encourage the Courts

¹⁹⁴ Ibid.

¹⁹⁵ Interview with Barry Kamins (12/03/2020)

¹⁹⁶ DeStefano, “B’klyn Leaves Political Clubhouse Holtzman Pushes DA’s Office Into Innovation Series.”

¹⁹⁷ DA Holtzman was implicated in the troubles with Detective Scarella. Detective Scarella was accused of using questionable methods in his murder investigations throughout the 1990s, leading the Brooklyn Conviction Review Unit in 2013 to re-open every case he investigated. 10 of the cases he investigated were closed under DA Holtzman. DA Hynes also aggressively fended off appeals and denied public records request as evidence of Scarella’s misconduct emerged. (Robles, Frances, and N. R. Kleinfeld. “Review of 50 Brooklyn Murder Cases Ordered.” *The New York Times*, May 11, 2013, sec. New York.)

¹⁹⁸ At the time, it was not yet illegal to use a peremptory challenge to strike a juror on the basis of race. A “peremptory challenge” allows attorneys to strike certain jurors without having to give a reason on the record for the strike. Each attorney has a certain number of peremptory strikes. This had been used before to strike jurors of color as attorneys often believed jurors of color would side with the defendant, if a defendant of color was being tried. On the second day of her term, DA Holtzman issued internal guidance that banned her Office from striking jurors “on the basis of race, religion, sex, or national origin.” She did this by citing a ruling by the Appellate Division of the New York State Supreme Court, the year previously, which ruled that during a 1978 trial under Gold, an ADA had unconstitutionally used his peremptory strikes to strike all Black jurors. This decision would align with a later Supreme Court decision in April 1986, which banned state and Federal prosecutors from excluding black jurors, which Holtzman filed a brief in support of, and, in which, her own early case was cited. (Joseph P. Fried, “Miss Holtzman Moves to Insure Fair Trial Tactics,” *The New York Times*, January 10, 1982, Late City Final edition, sec. Metropolitan Desk; 1.; Leonard Buder, “Holtzman Sues Courts to Prevent Discrimination in Jury Selection,” *New York Times*, July 1, 1987, sec. Metropolitan News.; Elizabeth Holtzman, “To the Editor: Jury Selection Bias Needs Fuller Restraint,” *The New York Times*, January 12, 1984, Late City Final edition, sec. Editorial Desk; A.)

to rules that these strikes were unconstitutional, and, that case was cited by the Supreme Court when they did rule accordingly.¹⁹⁹

Despite her large success with decreasing prosecutorial misconduct by ensuring that police brutality cases were handled fairly by her Office and creating polices which decreased either purposeful or accidental misconduct in cases, Holtzman was still not successful in limiting all misconduct due to her own political ambitions. Richard Emery, a former counsel to NYLCU remarked that she was the “constant candidate” weighing the political implications of every decision she made.²⁰⁰ Another defense attorney remarked, a “lot of the assistants don't like her because they feel she has dedicated herself to one thing, her career...Everyone is aware she wants convictions to build up a record as an effective prosecutor and that the ends justify the means.”²⁰¹

While it is unclear if these statements are truly one hundred percent accurate, there is some truth in the assertion that Holtzman had larger political ambitions—she would run for NYC Comptroller after she completed her two terms at the DA’S Office.²⁰² These political ambitions did incentivize her to avoid any bad press for the Office, which impacted her openness to reckoning with her predecessor’s prosecutorial misconduct. According to Robert McLaughlin’s defense attorney at the NYCLU, when they uncovered new evidence that McLaughlin had been wrongfully convicted, Holtzman waited a year before dropping the charges against him.²⁰³ Then, due to the criticism Holtzman received over the case, the attorney alleged that Holtzman demanded a letter from the NYCLU “praising her ‘professionalism and integrity’” before she would reduce charges in another case they were handling.²⁰⁴ Holtzman denied the accusations.²⁰⁵

¹⁹⁹ Ibid.

²⁰⁰ Kurtz. “The Private Public Prosecutor: Elizabeth Holtzman.”

²⁰¹ Ibid.

²⁰² Bob Liff, “Interview with Elizabeth Holtzman: The Race for Comptroller,” *Newsday*, August 24, 1989.

²⁰³ Hevesi and Raab, “Holtzman’s 6 Years.”

²⁰⁴ Ibid.

²⁰⁵ Ibid.

As many observers expected, Holtzman left the DA's Office after two terms to run for Comptroller in 1989, which race she later won.²⁰⁶ Holtzman had inherited a professional office from Gold and worked to keep it out of the hands of the political machine. Due to her "outsider" status, she was able to institute policies to manage prosecutorial misconduct by creating a new Unit to ensure police misconduct cases were handled correctly and enforcing a culture of justice. However, she struggled to fully confront past misconduct due to her own future political ambitions. In the end, though, it was her political ambitiousness which made her run for Comptroller²⁰⁷ that undermined many of her improvements. It allowed for the election of one of her biggest critics, Charles J. Hynes, who would dismantle many of the changes she made and approach prosecutorial misconduct far differently.

Charles J. Hynes (1990-2014)



Fig. 4 Picture of Charles J. Hynes (1994)²⁰⁸

²⁰⁶ Liff, "Interview with Elizabeth Holtzman: The Race for Comptroller.

²⁰⁷ Mitch Gelman, "Interview with Charles J. Hynes: The Race for Brooklyn DA," *Newsday*, August 28, 1989.

²⁰⁸ Washington, Ruby. *Charles J. Hynes campaigning to be state attorney general near City Hall, 1994*. The New York Times Collection, New York.

When Charles J. Hynes went on his first date with his future wife, Patricia Pennisi he told her that he would be New York City Mayor one day.²⁰⁹ However, in 1989, he set his eye on a different prize—Kings County District Attorney. By the time of his campaign announcement, Hynes was a well-known figure in the Brooklyn legal world. He brought this “insider perspective” to his six-term tenure as DA. It was this perspective and his focus on loyalty, which both allowed him to create important reforms in how the Office handled drug cases, leading to his reputation as a reformer, and allowed prosecutorial misconduct to flourish in his Office. Hynes, himself, was accused of personal misconduct, including, the questionable prosecution of political opponents and the under-prosecution of sex abuse cases in the Orthodox Jewish community in Brooklyn (a significant political demographic for Hynes). It was not until his sixth and final term that the wheels fully came off, and the depth of the Office’s prosecutorial misconduct was revealed. It would be this misconduct permitted by the Office’s inability since the 1960s to reckon with past, present, and future misconduct which would set the stage for Ken Thompson to take over the DA’s Office and for “progressive prosecution” to take hold in Brooklyn.

Hynes was very much a political “insider” in Brooklyn. After working as a defense attorney for a few years after his graduation from law school, he joined the Kings County DA’s Office in 1969, the year after Gold took over. During his time at the Office, he quickly rose through the ranks becoming Chief of the Rackets Bureau and then First Assistant District Attorney from 1973-1975.²¹⁰ When reflecting on his time in the Office during his campaign, Hynes called Gold the “best district attorney in the history of the county.” He explained, “most of what I learned about management came from him... We had spirit over there that made Gold’s

²⁰⁹Gelman, “Interview with Charles J. Hynes: The Race for Brooklyn DA.”

²¹⁰ Ibid.

office fascinating and exciting.”²¹¹ In 1975, Hynes left the Office to serve as a deputy state attorney general in charge of prosecuting Medicaid fraud in nursing homes before serving as New York City’s fire commissioner. After his term as fire commissioner, he returned to his role as a deputy state AG, this time prosecuting corruption in the criminal justice system.

While serving as a deputy state AG, Hynes was appointed to the role that would make him a “celebrity prosecutor”—the Howard Beach case.²¹² In the case, Michael Griffith, a 23-year-old Black construction worker, traveled with three Black co-workers from Brooklyn to Queens to pick up his paycheck in December 1986.²¹³ After their car broke down, they all started walking from where their car had broken down into Howard Beach, an overwhelmingly White neighborhood in southwest Queens.²¹⁴ As they made their way into the neighborhood, a group of White teenagers chased them screaming racist slurs.²¹⁵ Armed with bats and other weapons, the mob beat one man savagely, and chased Griffith into the path of a moving car, killing him.²¹⁶ The case became a flashpoint for raising racial tensions in New York City and a symbol that racist violence could indeed happen in the North.²¹⁷ In response to demands for a fair investigation from the deputy mayor, Reverend Al Sharpton, and other Black leaders, Governor Mario M. Cuomo appointed Hynes as special prosecutor in the case.²¹⁸ Hynes won three convictions for manslaughter for three of the young White men who had chased Griffith to his

²¹¹ Ibid.

²¹² Glaberson, “Hynes, Taking Over Brooklyn Job, Takes On Holtzman.”

²¹³ Sam Roberts, “A Racial Attack That, Years Later, Is Still Being Felt,” *City Room* (blog), December 18, 2011,

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

death and convinced the judge to impose strict sentences.²¹⁹ The mother of Griffith later worked for Hynes as a community liaison when he was DA.²²⁰

During the ensuing publicity surrounding the arrests and trial, Hynes became a household name²²¹ ²²² helping him easily win election as the next DA. He even wrote a book about the case titled, “Incident at Howard Beach” which was reviewed in the *New York Times*.²²³ Despite the less than favorable reviews it received, the book symbolized how high Hynes star had risen since his days as a line ADA in Gold’s Office. This new-found fame, along with the backing of the Brooklyn Borough President and Democratic leader, allowed him to easily win the Democratic primary in September 1989.²²⁴ After receiving Governor Mario Cuomo’s endorsement²²⁵, Hynes sailed to victory in the general election, becoming the next Brooklyn DA, assuming Office in 1990.²²⁶

From the moment Hynes took over, he made it clear his Office would differ significantly from Holtzman’s Office. In line with Holtzman’s indictment of Gold, Hynes called Holtzman’s work “dismal” and her management style “reckless.”²²⁷ Hynes claimed the Office was left in disarray with high turnover, an overdrawn payroll account and low morale.²²⁸ Holtzman disputed these charges.²²⁹ According to one local paper, Hynes attacks on Holtzman showed that he was,

²¹⁹ Ibid

²²⁰ Ibid.

²²¹ Barron, “Farsighted Prosecutor: Charles J Hynes.”

²²² E. R. Shipp, “Expert on Juries Advises Hynes in Howard Beach Case,” *The New York Times*, September 9, 1987, sec. New York.

²²³ Linda Wolfe, “One Night in Queens,” *The New York Times*, February 11, 1990, sec. Books.

²²⁴ Leonard Buder, “Hynes Wins Nomination For Prosecutor,” *The New York Times*, September 13, 1989, Late Edition-Final edition, sec. Metropolitan Desk; B.

²²⁵ Leonard Buder, “Hynes Receives Cuomo Support For Prosecutor,” *The New York Times*, September 7, 1989, Late Edition-Final edition, sec. Metropolitan Desk; B.

²²⁶ Glaberson, “Hynes, Taking Over Brooklyn Job, Takes On Holtzman.”

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

“carving out an identity as a combative candidate for political stardom who is willing to do the political dirty work to establish himself.”²³⁰

Hynes and Holtzman’s political rivalry had spanned years as they both rose through the Democratic Party ranks—and would have substantial implications for the Office’s ability to reckon with “prosecutorial misconduct.” Their similar liberal Democrat ideology often meant they were trying to occupy “the same political turf.”²³¹ Their names were both mentioned in conversations about future political positions, including as candidates for everything ranging from NYC mayor to governor.²³² One political consultant said at the time, “[They’re] like two superjets that have been put by some twisted air controller into the same airspace.”²³³

In execution, their rivalry meant that Hynes moved to quickly undo any of the safeguards Holtzman had created to limit misconduct, specifically by changing personnel.²³⁴ Hynes replaced almost all of Holtzman’s top staff members, including 14 bureau chiefs and nine executive-staff members. He replaced them with many people from the NYC legal establishment. These appointments included Joseph Fish, a former strategist for Queens DA John J. Stantucci who had his own murky past²³⁵ and William McKechnie, the former chief of the transit police union.²³⁶ The appointment of a former police union official showed Hynes’s desire to bring the Office closer to police unions, something Holtzman had dutifully avoided as DA’s Offices are often tasked with investigating cases of police brutality and unions are tasked with defending accused officers.²³⁷ This was in direct contrast to Holtzman who had aimed to increase police

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Joseph P. Fried, “John Santucci, Prosecutor in High-Profile Cases in New York, Dies at 85,” *The New York Times*, June 27, 2016, sec. New York.

²³⁶ Glaberson, “Hynes, Taking Over Brooklyn Job, Takes On Holtzman.”

²³⁷ Ibid.

accountability. These changes also lead many of the Office’s “most seasoned and respected prosecutors” to resign.²³⁸ Those who left said that Hynes had a vengeful side and “rewarded loyalty above all else.”²³⁹ Hynes, additionally, made it clear from early on in his tenure that conviction rates were important to him and his political future.²⁴⁰ Each Bureau Chief had to regularly report their stats to Hynes.²⁴¹ In 1995, Hynes fired 30 prosecutors, allegedly for not having high enough conviction rates.²⁴² These early changes foreshadowed problems that would haunt Hynes throughout his term—his political ambitiousness, his closeness to the Brooklyn legal community, and his desire for loyalty from his subordinates.²⁴³ It was these problems that laid the groundwork for the prosecutorial misconduct that would soon come to define his Office.

However, before the misconduct emerged, Hynes was known as a “reformer” due to his drug policy reforms. During his election campaign, Hynes claimed that his first priority as DA would be to divert “100 non-violent drug addicts away from the criminal justice system.”²⁴⁴ He explained that instead of pandering to the public to increase criminalization that the “drug problem” required an “intelligent, creative response.”²⁴⁵ As part of this new mission to re-implement the use of drug treatment, DA Hynes started the Drug Treatment Alternative-to-Prison program or DTAP which first began operating on October 15, 1990.²⁴⁶ DTAP allowed adults who were arrested for a felony drug offense and who had been previously been convicted

²³⁸ Joaquin Sapien, “A Prosecutor, a Wrongful Conviction and a Question of Justice,” *ProPublica*, May 24, 2013, sec. World.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ Andrew Keshner, “Pioneer in Criminal Justice Initiatives Departs Leaving a Record ‘Shaded in Gray,’” *New York Law Journal*, December 27, 2013, sec. District Attorney’s Legacy.

²⁴⁴ Gelman, “Interview with Charles J. Hynes: The Race for Brooklyn DA.”

²⁴⁵ *Ibid.*

²⁴⁶ Steven Belenko and Hung-En Sung, “From Diversion Experiment to Policy Movement: A Case Study of Prosecutorial Innovation,” *Journal of Contemporary Criminal Justice* 22, no. 3 (August 1, 2006): 220–40.

of a non-violent felony to go through therapeutic residential (TC) treatment for 18 to 24 months, instead of jail.²⁴⁷ DA Hynes also helped start the Brooklyn Treatment Court in 1996.²⁴⁸ The Court was for adults arrested for non-violent felonies with substance abuse problems.²⁴⁹ Once sentenced to the Treatment Court, individuals would be connected to services including counseling and healthcare.²⁵⁰ However, individuals going through the court were forced to plead guilty to be eligible and would face harsh punishments like jail time, if they used drugs, failed to keep up with treatment, or failed to show up to court.²⁵¹ In one case, the judge in charge of BTC sent a young man who “kept smoking marijuana while in treatment” to Rikers Island for five days. In a year, over 400 “drug offenders” went through the Court.²⁵² While many of these practices are now controversial, at the time, they were innovative.²⁵³

There were warning signs, though, about Hynes, as he himself, was implicated in two major scandals for investigating political rivals and ignoring sexual abuse in the Orthodox community. Allegedly as a favor to a former Brooklyn Assemblyman, Hynes illegally put John O’Hara, a Brooklyn attorney and political activist, under surveillance.²⁵⁴ After investigators uncovered evidence that O’Hara had been living at his girlfriend’s apartment while voting in a neighboring district, Hynes in 1994 prosecuted him for illegal voting.²⁵⁵ After three trials, O’Hara was the first New York City resident to be convicted of illegal voting since Susan B.

²⁴⁷ Ibid.

²⁴⁸ Christopher S. Wren, “New Court Lets Drug Addicts Choose Treatment Program Rather Than Jail,” *The New York Times*, May 27, 1997, sec. New York.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Gonzalez, Eric. “Justice 2020 Report: An Action Plan for Brooklyn.” Kings County District Attorney’s Office, March 2019.; Drug Policy Alliance. “Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use,” n.d., 32.

²⁵⁴ Thomas Tracy, “No Free Pass for Dying; Judge OKs Targeting Late B’klyn DA Hynes’ Estate in Suit,” *New York Daily News*, January 19, 2020.

²⁵⁵ Ibid.

Anthony in 1873.²⁵⁶ In 2017, a judge overturned O’Hara’s conviction and, in 2020, O’Hara was granted permission by a judge to sue Hynes’s estate in federal court for the “malicious and fraudulent prosecution.”²⁵⁷

Another case involved Sandra Roper, a civil rights attorney and, at the time, political unknown. In 2001, Sandra Roper surprised Hynes by challenging him in the Democratic primary for DA and winning 37% of the vote.²⁵⁸ Two years after the primary as rumors spread that Roper might run again, Hynes opened an investigation into Roper for stealing \$9000 from a client.²⁵⁹ While Hynes appointed a special prosecutor to handle the case because of his conflict of interest, it was alleged at the time that Hynes pushed for the case to become a criminal prosecution.²⁶⁰ After serious concerns with the legitimacy of the complaint emerged, the case ended in a mistrial.²⁶¹ In 2005, a Brooklyn judge dismissed the felony charges after Roper agreed to pay back the disputed money and the special prosecutor asked for the case to be dropped.²⁶² While Hynes and his staff insisted, they had done nothing wrong, the *New York Times* reported in 2005 that, “some of his opponents who have no involvement in the three cases say there is an atmosphere of fear about taking on Mr. Hynes,” due to fear that he will create a criminal case against any political rival.²⁶³²⁶⁴ The article concluded, “there are accusations that link those

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ William Glaberson, “In Brooklyn, Prosecutor’s Race Is Grudge Match,” *The New York Times*, January 6, 2005, sec. New York.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Diane Cardwell, “Theft Charges Against a Rival to a Prosecutor Are Dismissed,” *The New York Times*, March 1, 2005, sec. New York.

²⁶³ Glaberson, “In Brooklyn, Prosecutor’s Race Is Grudge Match.”

²⁶⁴ A third example involved retired Judge John L. Phillips, known as the “kong-fu judge” due to his penchant for doing martial art moves from the bench, suggested he might run against Hynes in 2001, Brooklyn prosecutors started investigating whether Phillips had been swindled out of real estate holdings. According to the DA’s Office at the time, the investigation into the holdings raised questions about Phillips’s mental competence leading the DA’s Office to started guardianship proceedings against Phillips. The available records about the proceedings raised many questions, including the fact, that Phillip’s court-ordered guardian was a former ADA and a close friend of Hynes.

stories: go up against District Attorney Charles J. Hynes, some of his enemies say, and he will find a reason to prosecute you.”²⁶⁵

Similarly, Hynes was once again accused of misusing the power of his Office to prioritize his own political future during child sexual abuse cases in the Brooklyn ultra-Orthodox community. Hynes depended on huge vote margins in the ultra-Orthodox neighborhoods to continually win re-election.²⁶⁶ To do this, Hynes courted the support of ultra-Orthodox rabbis.²⁶⁷ This strategy worked for Hynes and, in a close primary in 2005, Hynes won 84% of the vote in Williamsburg, at the time a heavily Hasidic neighborhood.²⁶⁸

However, victims’ rights groups accused Hynes of prioritizing his relationships with these rabbis over the rights of child sexual abuse victims²⁶⁹ and for “treating the issue of childhood sexual abuse in certain Jewish communities with a stance ranging from passive to weak-willed.”²⁷⁰ In one case, in 2008, Hynes was accused of actively trying to advise the lawyer for the defendant, who had been convicted on eight counts of sexual abuse, on how to get the victim’s father arrested for extortion and, consequently, get the conviction overturned.²⁷¹ The defendant’s attorney was a close friend of Hynes who had volunteered on all of Hynes’ reelection campaigns and often attended his fundraisers.²⁷² Apparently, Hynes specifically told the attorneys what evidence they would need to arrest the victim’s father.²⁷³ The victim’s father

Later that year, Phillips agreed to a guardianship, ending the proceedings. (William Glaberson, “In Brooklyn, Prosecutor’s Race Is Grudge Match,” *The New York Times*, January 6, 2005, sec. New York.)

²⁶⁵ Glaberson, “In Brooklyn, Prosecutor’s Race Is Grudge Match.”

²⁶⁶ Ray Rivera and Sharon Otterman, “For Ultra-Orthodox in Abuse Cases, Prosecutor Has Different Rules,” *The New York Times*, May 11, 2012, sec. New York.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Anonymous, “The Reluctant D.A.,” *The New York Jewish Week, Manhattan Edition*, November 21, 2008, sec. Editorial.

²⁷¹ Aviv Rachel, “The Outcast,” *New Yorker*, November 10, 2014, sec. A Reporter At Large.

²⁷² Ibid.

²⁷³ Ibid.

was later arrested, and Hynes announced the charges against him while standing before a large photograph of his face and told reporters, “child abuse has to be prosecuted vigorously, but we also have to be very, very careful about false complaints.”²⁷⁴ After Hynes lost, Eric Gonzalez, the then counsel to Thompson and future DA, told the *New Yorker* reporter investigating the allegations that “that the new administration was skeptical” of the indictment and that “four prosecutors had asked to be removed from the case, because they didn’t believe in it” and they had “multiple senior people saying it was the wrong thing to do.”²⁷⁵²⁷⁶

As well, Hynes did not challenge a pronouncement from influential ultra-Orthodox rabbis which instructed their congregants that they could only report allegations of child sexual abuse to DAs or the police if a rabbi had already determined the suspension was credible.²⁷⁷ Additionally, Hynes refused to publicize the names of ultra-Orthodox defendants in sexual abuse cases, even if the defendants were convicted.²⁷⁸ This policy was not followed by any other New York City DA and Hynes continued to publish the names of other child sexual abuse defendants.²⁷⁹ While Hynes denied this was politically motivated, one ultra-Orthodox rabbi told the *Times* that he and other rabbis had asked Hynes to not publish the names.²⁸⁰

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Another case involved a rabbi and grade schoolteacher, who had been the subject of sexual abuse complaints to rabbinical authorities for more than 30 years. Despite multiple allegations of felony sex offenses, Hynes at the last minute reduced the charge to a misdemeanor charge, which the rabbi plead guilty to. This switch in charges meant the rabbi served no jail time and did not have to register as a sex offender, hypothetically allowing him to continue teaching. Hynes claimed this was because the families of the victims did not want their children to testify in court. This claim was publicly refuted by one of the families. Additionally, Hynes took decades to seek the extradition of an alleged abuser and child counselor who fled to Israel after being indicted in 1984 on four counts of sodomy and eight counts of sexual abuse. (Ray Rivera and Sharon Otterman, “For Ultra-Orthodox in Abuse Cases, Prosecutor Has Different Rules,” *The New York Times*, May 11, 2012, sec. New York; Aviv Rachel, “The Outcast,” *New Yorker*, November 10, 2014, sec. A Reporter At Large.)

²⁷⁷ Rivera and Otterman, “For Ultra-Orthodox in Abuse Cases, Prosecutor Has Different Rules.”

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

Thus, it seems likely that this culture of political self-preservation, insider-dealing, and rewarding of loyalty above all else (along with Hynes's dismantling of Holtzman's accountability mechanisms), helped misconduct flourish throughout his Office leading to numerous wrongful convictions. Horrifically, there are far too many wrongful conviction cases for me to cover them all in this thesis, so I have chosen some of the most egregious ones as examples of the Office's institutional prosecutorial misconduct.²⁸¹ At the end of Hynes first term in office, Zaher Zahrey, an undercover narcotics detective, was accused of murdering his childhood best friend by NYPD's Internal Affairs (IA).²⁸² After two years investigating Zahrey, IA was only able to come up one witness to the alleged murder.²⁸³ The witness had serious credibility issues and gave bizarre and often contradictory statements.²⁸⁴ On tape, one of the detectives promised the witness, who at the time was incarcerated for robbery in Sing Sing, "a very sweet deal" and suggested a clearly false story implicating Zahrey.²⁸⁵ Brooklyn prosecutors,

²⁸¹ For more examples of prosecutorial misconduct in DA Hynes's Office, see the cases cited in Rudin's Fordham Law Review Article, "The Supreme Court Assumes Errant Prosecutors Will Be Disciplined by Their Offices or the Bar: Three Case Studies That Prove That Assumption Wrong." which include "Leka v. Portuondo, 257 F.3d 89, 106 (2d Cir. 2001) (prosecutor suppressed evidence that would have had a "seismic impact" on the case); People v. Calabria, 94 N.Y.2d 519 (2000) (prosecutor repeatedly defied court's ruling and made false or misleading argument to the jury); People v. Cotton, 662 N.Y.S.2d 135, 136 (App. Div. 2000) (prosecutor's summation betrayed his "duty not only to seek convictions but also to see that justice is done" and his "duty of fair dealing to the accused and candor to the courts") (citation omitted) (internal quotation marks omitted); People v. LaSalle, 663 N.Y.S.2d 79, 80 (App. Div. 1997) (prosecutor withheld impeachment evidence that "clearly" should have been disclosed); People v. Roberts, 611 N.Y.S.2d 214, 215 (App. Div. 1994) ("There is no doubt that the People violated the principles of *Brady*."); People v. Khadaidi, 608 N.Y.S.2d 471, 472-73 (App. Div. 1994) (prosecution withheld interview notes with complainant containing prior inconsistent statements); People v. Jackson, 603 N.Y.S.2d 558, 559 (App. Div. 1993) (prosecution withheld several pieces of exculpatory and impeachment evidence in arson case); People v. Inswood, 580 N.Y.S.2d 39, 40 (App. Div. 1992) (prosecutor failed to turn over *Brady* material that revealed existence of potentially exculpatory witnesses)." Also see the case of Clarence Bailey, who was convicted of murder after important evidence was not disclosed to the defense (Mark Hamblett, "City Loses Attempt to Dismiss Wrongful Conviction Lawsuit," *New York Law Journal*, January 16, 2015, sec. current.) and the case of Eric Jackson who was wrongfully convicted under DA Gold, but whom DA Hynes did everything possible to stop from being freed. (See Footnote 116).

²⁸² Joel B. Rudin "The Supreme Court Assumes Errant Prosecutors Will Be Disciplined by Their Offices or the Bar: Three Cases Studies That Prove That Assumption Wrong." *Fordham Law Review* 80 (n.d.): 36.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

after hearing this tape with its clear evidence that the detective bribed the witness, worked for two years to try corroborating his statements so they could prosecute Zahrey under state law.²⁸⁶ When they were unable to corroborate the fictional story, they convinced federal authorities, who did not need corroboration to press charges, to prosecute the case.²⁸⁷ However, they did not turn over the tape and other impeachable information.²⁸⁸ Finally, after Zahrey was held for nine months without bail, he was fully acquitted in June 1997.²⁸⁹

One of the most notorious perpetrators of misconduct was Hynes's homicide bureau chief, Michael Vecchione, whom Hynes continually defended. After a rabbi was shot to death in Williamsburg, a political nightmare for Hynes, Vecchione took over the investigation.²⁹⁰ Early reports to police hinted a black man might have been the assailant and, shortly after the murder, the police received an anonymous telephone tip that Jabbar Collins, a 21-year-old black man, was the killer.²⁹¹ The police and prosecutors quickly focused on Collins.²⁹² To prove their case, the police and prosecutors engaged in numerous instances of witness intimidation.²⁹³ Their first witness was interviewed for hours until he started to go into drug withdrawal as the detectives pressured him to implicate Collins in the killing.²⁹⁴ Eventually, the witness did, signing a statement that endorsed the detective's fictional narrative.²⁹⁵ Then, a year later, when the witness wanted to recant his false testimony after being asked to testify in court, prosecutors led by Vecchione threatened to charge him with conspiracy to commit murder.²⁹⁶ When that did not

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Sapient, "A Prosecutor, a Wrongful Conviction and a Question of Justice."

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

push the witness to testify, prosecutors sent him to a minimum-security prison in Harlem.²⁹⁷ The witness still refused. Vecchione's team then transferred him to a maximum-security prison two hours out of NYC.²⁹⁸ Therefore, when he was brought to meet with Vecchione and his partner at the Office headquarters and they told him his work release privileges would be restored if he testified, he relented.²⁹⁹

Most horrifically, it was alleged, that as Collins sat in prison for over 10 years, Vecchione ensured that any effort to get Collins the information he needed to get his freedom would be suppressed.³⁰⁰ In 2010, the Brooklyn DA's Office agreed to vacate Collin's conviction and a judge handling the case called Vecchione's conduct shameful. Despite this, Hynes refused to discipline Vecchione calling him "a very, very principled lawyer."³⁰¹ The federal judge who presided over Collin's civil case, said, "I'm just puzzled why the district attorney did not take any action against Vecchione. To the contrary, he seems to ignore everything that happened. And an innocent man has been in jail for 16 years." The city settled a wrongful conviction suit brought by Collins in 2014 for \$10 million, saying the conviction and sentencing resulted from violations of Collin's "constitutional rights."³⁰²³⁰³

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ A. G. Sulzberger, "Facing Misconduct Claims, Brooklyn Prosecutor Agrees to Free Man Held 15 Years," *The New York Times*, June 9, 2010, sec. New York.

³⁰² Stephanie Clifford, "Exonerated Man Reaches \$10 Million Deal With New York City," *The New York Times*, August 19, 2014, sec. New York.

³⁰³ This case is illustrative of other cases in which Vecchinone perpetrated misconduct. Vecchione was accused of withholding "a cooperation agreement between himself and a key witness" in a different case. In another case, involving a former FBI agent accused of helping to arrange the murders of gangsters, Vecchione's case fell apart when it was revealed his chief witness was unreliable—and Vecchione had known this to be true the whole time. In 2012, a prosecutor, who led a sex trafficking unit which Vecchione supervised, resigned after she was accused of withholding "a victim's recantation in a high-profile rape case." (A. G. Sulzberger, "Facing Misconduct Claims, Brooklyn Prosecutor Agrees to Free Man Held 15 Years," *The New York Times*, June 9, 2010, sec. New York.; Sapien, Joaquin. "A Prosecutor, a Wrongful Conviction and a Question of Justice." *Propublica*. May 24, 2013, sec. World.) Vecchione was also accused of improper argumentation during trial while arguing an appeals case to uphold two 1996 murder convictions, a case in which a New York police officer was the victim. (Stephanie Clifford,

These cases are illustrative of a larger cultural misconduct problem in DA Hynes's Office. As one wrongful conviction suit alleged, "holding back critical materials for the defense [was] a matter of [Office] policy."³⁰⁴ The Office had no manual or published standards illustrating procedures for investigating misconduct and imposing discipline.³⁰⁵ Although the Office did "distribute memoranda on discovery and *Brady* obligations," it had no policy to determine whether prosecutors read or understood these instructions.³⁰⁶ Prosecutors were told verbally that "conscious ethical violations" would have significant consequences, including termination.³⁰⁷ However, DA Hynes's Executive Assistant who was in charge of implementing ethical discipline, when deposed, could not remember a single instance in which an ADA had been disciplined for prosecutorial misconduct due to their actions in a criminal case.³⁰⁸ This was despite many court decisions, which found Brooklyn ADAs responsible for serious misbehavior.³⁰⁹

This inaction and lack of accountability can be traced back to DA Hynes. Hynes was in charge of deciding whether to investigate ADAs or take further action when a complaint was filed or a court decision cited misconduct.³¹⁰ Given the volume of wrongful conviction suits filed against the Office, this, at best, inattention to misconduct and, at worst, encouragement of misconduct is perhaps unsurprising. As one lawsuit contended, it seems likely that, "misconduct, at least in high-profile cases that the Office was anxious to win, was the *policy* of the Office."³¹¹

"Exonerated Man Reaches \$10 Million Deal With New York City," *The New York Times*, August 19, 2014, sec. New York.)

³⁰⁴ Mark Hamblett, "City Loses Attempt to Dismiss Wrongful Conviction Lawsuit," *New York Law Journal*, January 16, 2015, sec. current.

³⁰⁵ Rudin "The Supreme Court Assumes Errant Prosecutors Will Be Disciplined by Their Offices or the Bar."

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

In response to these allegations, Hynes created an internal ethics panel in 2009, which led to two attorneys being asked to resign, and set up a Conviction Integrity Unit (CIU), which was essentially investigating its own prosecutors.³¹² Perhaps predictably, despite numerous allegations, the Unit, in two years, only assessed 14 cases and exonerated three defendants.³¹³ The Chief of the Unit, in 2013, after being questioned about this limited action remarked: “We are comfortable with our current system,” and argued that outside intervention was not needed.³¹⁴

Therefore, as more and more allegations of misconduct surrounding both his personal decision-making and office leadership emerged, Hynes started to lose political support as he prepared to run for his seventh term. A *New York Daily News* Op-ed endorsed his challenger, Ken Thompson, citing his muddled record and more endorsements started to shift to Thompson.³¹⁵ However, these allegations of misconduct should not have been such a surprise. The very factor that helped DA Hynes to create important reforms—his “insider” status—was the thing that led to his downfall. Hynes was unable to limit his own misconduct, and, therefore, consequently, create a culture of accountability in his Office. In the end, it would be both his inability, and the Office’s inability since it first professionalized in the 1960s to limit prosecutorial misconduct, which would respond to changing ideas of punitiveness in the criminal justice system and usher in “progressive prosecution.” A new era was dawning in Brooklyn

³¹² Hernandez, Sergio, and Joaquin Sapien. “Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody.” *ProPublica*, April 3, 2013.

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ Editorial Board, “Dump Hynes,” *New York Daily News*, September 8, 2013, sec. Opinion.

Chapter Three: The Rise of Progressive Prosecution in Brooklyn

“To me, Thompson was one of the pioneers, if not the first progressive prosecutor. He ran to change the criminal justice landscape and the criminal legal system...he was the first if not one of the first to create a progressive prosecutor mindset and mantra for an office going forward”³¹⁶

Ken Thompson and Eric Gonzalez were an unlikely pair to bring “progressive prosecution” to Brooklyn. Thompson was the son of a police officer and grew-up in public housing in Harlem before moving to a housing development in the Bronx.³¹⁷ After graduating from the city’s public schools, he applied to the police department before choosing to attend John Jay College of Criminal Justice in Manhattan and New York University School Law for his law degree.³¹⁸ Similarly, Gonzalez was raised mostly by his mom, a seamstress in a sweatshop, in Williamsburg, when it was known more for its crime rates than its gluten-free bakeries.³¹⁹ Gonzalez spent the rest of his childhood in East New York, which was at the time one of the most violent neighborhoods in the country, before going to Cornell University for college and University of Michigan for law school.³²⁰ Nonetheless, together, Thompson and Gonzalez were able to radically change the King’s County District Attorney Office and make it an accountable one for the first time. Thompson, was elected in response to the years of prosecutorial misconduct, exemplified by the extraordinary negligence of Hynes, that had gone unchanged at the Office since it professionalized in the 1960s. As public opinion on the punitiveness of the criminal justice system decreased and pressure to confront prosecutorial misconduct grew, Thompson was the right candidate, at the right time. With his victory, he promised to bring in a

³¹⁶ Interview with Mina Malik, (03/05/2021)

³¹⁷ Alan Feuer, “Ken Thompson, Brooklyn District Attorney, Dies After Disclosing Cancer,” *The New York Times*, October 9, 2016, sec. New York.

³¹⁸ *Ibid.*

³¹⁹ Alan Feuer, “Ken Thompson’s Successor: A ‘Pure District Attorney’ Working Under the Radar,” *The New York Times*, November 28, 2016, sec. New York.

³²⁰ *Ibid.*

new era of accountability, and, while he may not have known it at the time, bring “progressive prosecution” to Brooklyn. After Thompson’s early death, Gonzalez worked to continue his mission and identify Brooklyn as one of the most progressive offices in the country.

Ken Thompson (2014-2016)



Fig. 5 Photo of Kenneth P. Thompson (2009)³²¹

No one expected Thompson to win the 2013 Democratic Primary for District Attorney, least of all Hynes. In a series of emails that became part of judicial ethics investigation, Hynes refers to Thompson as a “clown” and critiqued his inexperience.³²² In one email exchange, a judge close to Hynes reassures him writing, “Remember — you are the senior statesman and he is ... who he is.”³²³ In the end though, Hynes had no one to blame but himself and his Office’s history. Brooklyn was at a tipping point. And, Thompson, despite being a relatively unknown

³²¹ Brabyn, Davis, *Kenneth P. Thompson, attorney*. July, 2009. https://dbrabyn.photoshelter.com/search?I_DSC=thompson&I_SORT=RANK&I_DSC_AND=t&V_ID=&G_ID=&C_ID=&_ACT=search.

³²² Stephanie Clifford and William K. Rashbaum, “Former Prosecutor in Brooklyn Was Consumed by Campaign, Emails Show,” *The New York Times*, June 4, 2014, sec. New York.

³²³ *Ibid.*

before the election was the candidate Brooklyn required. The Office needed an “outsider” who could build-off the political momentum to change the criminal justice system and reform the Office. Thompson would actively work to bring accountability back to the office through accountability structures and would investigate past misconduct through the creation of the Conviction Integrity Unit (CIU). Despite Thompson’s early death and perhaps his own lack of awareness of his place in history, he became the frontline of a new national movement, “progressive prosecution.”

As an “outsider” to Brooklyn politics with a passion for institutional accountability and a civil rights background, Thompson was the perfect candidate for the moment. After graduating from NYU Law, Thompson, on the advice of one his law professors, found a position as federal prosecutor in Brooklyn. In 1997, he was assigned to the prosecution team for Justin Volpe³²⁴, a former NYPD officer, who was charged with six federal crimes for torturing and brutally sodomizing Abner Louima, a Haitian immigrant, with a broken broomstick in the restroom of the 70th Precinct station house in Brooklyn.³²⁵ Louima was one of the first people to endorse Thompson for DA.³²⁶ Thompson also worked with congressional members and clergy to help convince the Department of Justice to re-open the 1955 murder of Emmett Till.³²⁷ After going into private practice, Thompson represented Nafissatou Diallo who accused French politician Dominique Strauss-Kahn of rape in 2011.³²⁸ The Manhattan DA, Cyrus Vance Jr., eventually asked the trial judge to dismiss the case because of credible issues with Diallo and Thompson

³²⁴ Feuer, “Ken Thompson, Brooklyn District Attorney, Dies After Disclosing Cancer.”

³²⁵ David Barstow, “The Louima Case: The Overview; Officer, Seeking Some Mercy, Admits to Louima’s Torture,” *The New York Times*, May 26, 1999, sec. New York.

³²⁶ Simone Weichselbaum and Thomas Tracy, “Abner Louima, Police Brutality Victim, to Stump for Brooklyn DA Candidate Ken Thompson,” *New York Daily News*, October 25, 2013.

³²⁷ Stephanie Colombini, “Wake Held For Brooklyn District Attorney Kenneth Thompson,” *CBS New York* (blog), October 14, 2016.

³²⁸ William K. Rashbaum and John Eligon, “District Attorney Asks Judge to Drop Strauss-Kahn Case,” *The New York Times*, August 23, 2011, sec. New York.

was criticized for his comments throughout the case.³²⁹ Despite this, an article published after his death summarized: “Thompson was a rare creature in public life for numerous reasons: He was a party outsider and first-time candidate who ousted an entrenched incumbent; and he was a prosecutor who was born in the same kind of city housing projects that, in office, he worked to clean up.”³³⁰

The timing was right for Thompson to run for DA as more allegations of Hynes’s misconduct emerged and as the people of Brooklyn wanted a less punitive candidate. In early June 2013, Thompson announced his primary challenge of Hynes, promising to “to restore confidence and integrity to our criminal justice system.”³³¹ Despite Thompson’s many accomplishments, the race really became a referendum on Hynes, and particular, the misconduct he and past DAs allowed to continue. As one Politico article titled their piece at the time, “Ken Thompson runs against Joe Hynes at a good time.”³³² They cited the many misconduct allegations emerging, including the Jabbar Collins case.³³³

Other news organizations made similar claims. A New York Daily News Op-ed, which endorsed Thompson over Hynes, cited “findings by two federal judges of grievous misconduct by a top aide, an investigation into whether dozens of cases produced wrongful convictions and credible charges of having failed to effectively act on sexual abuse in the politically powerful ultra-Orthodox Jewish community” as reasons for their lack endorsement for Hynes.³³⁴ It continues, “Forced to choose between two flawed candidates, the Daily News views Thompson as holding the potential to chart the better future for the Brooklyn DA’s office. This is hardly an

³²⁹ Feuer, “Ken Thompson, Brooklyn District Attorney, Dies After Disclosing Cancer.”

³³⁰ Gray, Geoffrey. “Ken Thompson Was a Prosecutor Who Rarely Forgot Where He Came From.” *Intelligencer*, October 14, 2016.

³³¹ Reid Pillifant, “Ken Thompson Runs against Joe Hynes at a Good Time,” Politico, June 4, 2013.

³³² *Ibid.*

³³³ *Ibis.*

³³⁴ Editorial Board, “Dump Hynes.”

endorsement. It is a judgment compelled by serious evidence that Hynes has presided over miscarriages of justice.”³³⁵ In particular, it cites the case of Collins as well as concerns over the retainment of Vecchione as evidence of “grievous misconduct.”³³⁶ Another piece written after Hynes’s death summarizes these concerns well, “Hynes lost the Office in a landslide in 2013. He was unable to persuade voters that his accomplishments over six terms as district attorney outweighed more recent controversies over wrongful murder convictions and his handling of pedophilia cases among ultra-Orthodox Jews.”³³⁷

Luckily for Thompson too, these allegations of misconduct coincided with changing public opinion on punitiveness in the criminal justice system. Starting in the late 1960s, public punitiveness had been on the rise, reflecting increasingly harsh criminal justice policy.³³⁸ However, by the mid-1990s, Americans’ perception of the criminal justice system started to drastically shift.³³⁹ Punitive public opinion peaked and, immediately started to decline throughout the 2000s.³⁴⁰ By 2013, it was a completely different world. Americans no longer wanted a criminal justice system that would harshly adjudicate for every possible transgression. They started to want a different, more preventative system. Thus, Thompson was able to use Hynes’ “bad press” to paint the “incumbent as unethical and out of touch” and paint himself as the reformer the borough both wanted and needed.³⁴¹

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Joseph P. Fried, “Charles J. Hynes, Brooklyn D.A. in a Tumultuous Era, Dies at 83,” *The New York Times*, January 30, 2019, sec. Obituaries.

³³⁸ Enns, Peter K. *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*. Reprint edition. New York NY: Cambridge University Press, 2016.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Vivian Yee, “Challenger Wins Primary for Brooklyn District Attorney,” *The New York Times*, September 11, 2013, sec. New York.

This message allowed him to win significant endorsements, including all four congress members from Brooklyn—and votes.³⁴² In September 2013, Thompson defeated Hynes with 55% of the vote, winning the Democratic primary.³⁴³ After Hynes run on the Republican ticket in the general election, Thompson beat him by an even larger margin.³⁴⁴ Hynes became the first district attorney in the city to be unseated since 1955 and Thompson became the first Black DA in Brooklyn history.³⁴⁵ Brooklyn wanted a different type of DA, one who would limit prosecutorial misconduct and create real accountability, and, to do that, they elected Thompson, who would become one of the most progressive DAs in the country and on the forefront of the “progressive prosecutor” movement.

Thompson worked quickly to change the Office. He worked to re-empower the Conviction Review Unit (CRU) that Hynes had originally created, expanding the unit from two ADAs to nine ADAs and giving it \$1 million-dollar annual budget.³⁴⁶ Thompson commented on the expansion, “This is not a criminal review unit in name only. This is a criminal review unit in substance, in spirit, and in the results – and that’s because I would not have it any other way.”³⁴⁷ His former Special Counsel commented on the CRU: “One of the things that [DA Thompson] ran on was the promise to create a meaningful conviction review unit...the question came up; how do we create this meaningful conviction review unit so that it doesn't just look like you're checking off boxes?”³⁴⁸

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ Yee, Vivian. “Thompson Defeats Hynes, Again, for Brooklyn District Attorney.” *The New York Times*, November 6, 2013, sec. New York.

³⁴⁵ Ibid.

³⁴⁶ Shortell David, “81-Year-Old’s Exoneration Underscores Success of Brooklyn Prosecutor,” *CNN*, May 3, 2016.

³⁴⁷ Ibid.

³⁴⁸ Interview with Mina Malik (03/05/2021)

Thompson answered this question well. He hired a Unit Chief who was from outside of Brooklyn and could examine the cases as impartially as possible.³⁴⁹ They recruited ADAs who were passionate about ensuring justice was achieved in these cases.³⁵⁰ Despite early pushback³⁵¹, within two years, Thompson arranged to vacate or dismiss the convictions of 21 individuals who had likely been wrongfully convicted. It was the most exonerations won by a DA in such a short period of time.³⁵² Both Legal Aid and the Innocence Project endorsed his unit, saying it was serious about actually reviewing convictions and doing something about cases of misconduct.³⁵³ Barry Sheck, the founder of the Innocence Project, credited Thompson with the expansion of conviction integrity units at other DA offices, stating, “Ken Thompson himself deserves all the credit in the world because he is passionately committed to this cause and he is getting other district attorneys across the country to take it very seriously.”³⁵⁴

Along with efforts like the CRU, Thompson was able to create institutional accountability around misconduct and work to make the Office less punitive. By examining wrongful convictions, the Office was able to determine how or why an individual was wrongfully convicted. They, then, trained their incoming ADAs using these cases to ensure they did not make the same choice.³⁵⁵ Thompson also made sure there was clarity around the Office

³⁴⁹ Ibid.: “One of the things that I suggested to Ken was to get somebody from outside of Brooklyn to lead the unit -- someone who was fair and impartial . . . who could look at a case with an objective eye with the strength to call it like he or she saw it and not simply bow to pressures from inside of the office or outside of it

³⁵⁰ Ibid.: “We recruited people who really wanted to do the work, and who really believed in the integrity of convictions and doing the right thing, regardless of what that outcome might be. We sought attorneys who were really interested in seeing that justice was achieved.”

³⁵¹ Ibid.: “Initially, there was a lot of pushback. People didn't want to be associated with the conviction review unit, because they did not want to sit in judgment of their colleagues' or in some instances their supervisor's cases, and determine whether they were sound convictions or not.”

³⁵² Shortell David, “81-Year-Old's Exoneration Underscores Success of Brooklyn Prosecutor.”

³⁵³ Ibid.

³⁵⁴ John Nichols, “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers,” *The Nation*, October 11, 2016..

³⁵⁵ Interview with Mina Malik (03/05/2021): “When you do an examination [of a wrongful conviction], one must figure out how did this wrongful conviction happen in the first place? Was it a violation of the law? Was it based on a single witness ID where the witness had an issue, whether they were drunk or high, or they incredulously happen

policy on disclosure. As his from Special Counsel described: “There were definitely rules around what needed to be disclosed before trial, and I think the rules got even clearer and more firm, when DA Thompson took over because prosecutors in the office knew he would enforce those rules. There was no question about what constituted Brady material.”³⁵⁶ Along with these accountability measures, Thompson created policy that, while holding people accountable, incarcerated less people.³⁵⁷ In one of Thompson’s first decisions as District Attorney, he decided to stop prosecuting some low-level marijuana cases, one of his campaign promises.³⁵⁸ He argued that “[t]oo many young people are being arrested for low-level drug charges that leave a permanent stain on their records for what should be a violation. I will not shrug my shoulders in the face of injustice.”³⁵⁹ He also created the Begin Again program, which brings attorneys and court officials to specific neighborhoods in Brooklyn, allowing residents to resolve criminal warrants or summons, including drug offenses, so they do not interfere with their lives.³⁶⁰ The program has helped 3,000 New Yorkers clear more than 2,100 outstanding warrants or summons.³⁶¹

Due these efforts, Thompson earned a reputation as being one of the country’s most progressive district attorneys. As the New York Times wrote after his death, Thompson, “arrived in the district attorney’s office amid slow but steady change in how prosecutors across the

to be a witness in several murder cases? We developed a process that allowed us to train prosecutors to ensure similar mistakes didn't happen again.”

³⁵⁶ Ibid.

³⁵⁷ Ibid.: “How do we incarcerate less people, but still hold people accountable for crimes they commit? How do we give people second chances when they deserve second chances instead of saddling them with a criminal conviction that could affect them for the rest of their lives? How do we really serve the people of Brooklyn, keep families whole, and make sure that racial disparities don't occur during any part of the prosecutorial process from arrest to trial that could affect the fairness of the system, especially during the stop-and-frisk era?”

³⁵⁸ Nichols, John. “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers.”

³⁵⁹ Ibid.

³⁶⁰ The Brooklyn District Attorney’s Office. “Begin Again Continues in 2018” Accessed November 22, 2019. <http://brooklynda.org/begin-again/>

³⁶¹ Ibid.

country view their role in the criminal justice system — a shift that Mr. Thompson both embraced and advanced.”³⁶² Thompson was lauded by many including the executive director of the Institute for Innovation in Prosecution (IIP) at John Jay College, Ronald Wright, an criminal justice reform advocate and professor, for inherently understanding the need to re-think prosecution by mitigating the damaging effects of over prosecution and focusing on preventing crime rather than solely prosecuting it.³⁶³ One article written after Thompson’s death was titled “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers.”³⁶⁴ Another *New York Times* article wrote that his death was a blow “to the broader cause of progressive prosecutorial reform nationwide.”³⁶⁵ These rumblings would later morph into the larger “progressive prosecutor movement.” Therefore, it was a reaction to the Office’s misconduct through the election of Thompson which opened the door for prosecutorial reform in Brooklyn. Unfortunately, despite this promising beginning, DA Thompson ended up dying from cancer at the age of 50 in 2016, without being able to complete his first term.³⁶⁶ Thus, it was up to his chosen successor, Eric Gonzalez, to truly make the Brooklyn DA’s Office, a “progressive” office.

³⁶² Alan Feuer, “Despite Ken Thompson’s Short Stint as Brooklyn Prosecutor, Agenda May Endure,” *The New York Times*, October 10, 2016, sec. New York.

³⁶³ Ibid.

³⁶⁴ Nicols, “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers.”

³⁶⁵ The Editorial Board, “Opinion | Ken Thompson: The Death of a Visionary Prosecutor,” *The New York Times*, October 12, 2016, sec. Opinion.

³⁶⁶ Feuer, “Despite Ken Thompson’s Short Stint as Brooklyn Prosecutor, Agenda May Endure.”

Eric Gonzalez (2016-present)

*Fig. 6 Photo of Eric Gonzalez (2016)*³⁶⁷

Eric Gonzalez first met DA Thompson when he was working as a mid-level ADA in the DA's Office, right after Thompson was elected.³⁶⁸ Gonzalez had joined Hynes's Office directly after law school and served in almost every bureau in the Office.³⁶⁹ As Thompson swept the Office of Hynes loyalists, Thompson and Gonzalez got to know each other.³⁷⁰ Eventually, Thompson asked him pointblank: "You worked for Hynes—can I trust you?"³⁷¹ Gonzalez responded, "Absolutely."³⁷² A powerful partnership was born. Within months, Thompson named

³⁶⁷ *Eric Gonzalez*, 2016, Kings County District Attorney's Office, New York.

³⁶⁸ Alan Feuer, "Ken Thompson's Successor: A 'Pure District Attorney' Working Under the Radar," *The New York Times*, November 28, 2016, sec. New York.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² *Ibid.*

Gonzalez chief counsel and, then in October, he promoted him to first assistant.³⁷³ As Thompson's first assistant, Gonzalez oversaw the day-to-day goings-on of the Office, including helping to re-create the CRU.³⁷⁴ Despite Thompson's and Gonzalez's very different institutional backgrounds, together, they were able to shape the Brooklyn DA's Office into one of the most progressive Offices in the country. After Thompson's death, Gonzalez took over as DA and continued Thompson's mission. Despite Gonzalez's "insider perspective", he was able capitalize on the changing political moment to push the Office even further and align it with newly emerging "progressive prosecution" movement, which his deceased boss had been credited for helping to inspire.

After the death of DA Thompson, Gonzalez became the acting district attorney³⁷⁵ and, then district attorney in his own right, and worked to continue Thompson's mission. After completing the rest of Thompson's term, Gonzalez ran for re-election in September 2017.³⁷⁶ During the election, Gonzalez promised to "make sure we lead the most progressive D.A.'s office in the country."³⁷⁷ Gonzalez won the Democratic primary by beating five other former Brooklyn prosecutors³⁷⁸, including Anne Swern, Hynes's former first assistant.³⁷⁹ During the campaign, it was clear that movement for prosecutorial reform was there to stay in Brooklyn and that Gonzalez was its political successor.³⁸⁰ As DA Thompson's former Special Counsel

³⁷³ Ibid.

³⁷⁴ "Brooklyn DA Eric Gonzalez Biography," The Brooklyn District Attorney's Office, accessed February 12, 2021, <http://www.brooklynda.org/eric-gonzalez/>.

³⁷⁵ Feuer, "Despite Ken Thompson's Short Stint as Brooklyn Prosecutor, Agenda May Endure."

³⁷⁶ Alan Feuer, "Eric Gonzalez Wins Primary Election for Brooklyn District Attorney," *The New York Times*, September 12, 2017, sec. New York.

³⁷⁷ Ibid.

³⁷⁸ Feuer, "Eric Gonzalez Wins Primary Election for Brooklyn District Attorney."

³⁷⁹ Andrew Keshner, "Brooklyn Prosecutor Ends 33-Year 'Labor of Love,'" *New York Law Journal*, March 6, 2014, sec. News in Brief.

³⁸⁰ Alan Feuer, "In Brooklyn's District Attorney Race, the Focus Isn't on Prosecuting Crime," *The New York Times*, September 7, 2017, sec. New York.

commented, “I think that when DA Gonzalez took over, he carried the torch that DA Thompson started carrying in Brooklyn...he came up with a very sound criminal justice policy that followed along Ken's vision.”³⁸¹ After Gonzalez ran un-opposed in the general, he became the first Latinx DA in Brooklyn history.³⁸²

Parallel to events in Brooklyn, the “progressive prosecutor” movement was growing nationally, as well. It represented a growing belief that elected prosecutors should use their large discretionary powers to reform the criminal justice system by fighting mass incarceration, creating accountability, and combating racial disparities.³⁸³ While “progressive prosecutors” now have varying policy platforms, at the time, they often included: opposing cash bail, implementing pre-trial diversion programs (which do not require a guilty plea), vastly decreasing the number of juveniles charged as adults, and limiting usage of the death penalty.³⁸⁴ The elections of Kim Fox in Cook County (Chicago) and Armais Ayala in the Ninth Judicial Circuit of Florida (Orlando) in 2016, as well as the election of Larry Krasner in Philadelphia in 2017 cemented the movement, which Thompson had heavily influenced.³⁸⁵ In response to a growing awareness of inequities in the criminal justice system, particularly the prevalence of internal prosecutorial misconduct, voters in large cities all over the country were clearly stating they wanted something new. These elections, along with Gonzalez’s victory, solidified the “progressive prosecutor” movement as a growing influence for reform and a legitimate platform for prosecutors to run and win on.

³⁸¹ Interview with Mina Malik (03/05/2021)

³⁸² *Ibid.*

³⁸³ Angela J. Davis, “Reimagining Prosecution: A Growing Progressive Movement,” *UCLA Criminal Justice Law Review* 3, no. 1 (2019): 1-27.

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

After Gonzalez's election, he continued to identify as a "progressive" prosecutor. His policy was a continuation of Thompson's ideas: "It was a continuation of how do we make the criminal justice system fairer for the people of Brooklyn. How do we keep more families intact? Have less people in jail and in prison? How do we keep people from recidivating and committing crimes over and over again? How do we not criminalize poverty, substance abuse and people suffering from mental health issues?"³⁸⁶ In Spring 2019, he released the Justice 2020 plan which aimed to "[establish] a national model of a progressive prosecutor's Office."³⁸⁷ In it, he clearly linked the need for transparency and accountability to his vision of the Office. The plan included policy changes like "[streamlining] case handling and [enhancing] fairness and transparency with e-discovery" to avoid Brady violations in discovery, "[developing] protocols for charges resulting from police misconduct," using external reporting to "demonstrate the reform leadership of Justice 2020 and strengthen community trust."³⁸⁸ Therefore, in the end, it was the Brooklyn DA's Office inability to deal with prosecutorial misconduct that led to the election of Thompson and Gonzalez and allowed "progressive prosecution" to emerge in Brooklyn.

³⁸⁶ Interview with Mina Malik (03/05/2021)

³⁸⁷ "Brooklyn District Attorney Eric Gonzalez Unveils Sweeping Reforms His Office Is Implementing as Part of the Justice 2020 Initiative, Establishing a National Model of a Progressive Prosecutor's Office – The Brooklyn District Attorney's Office," accessed February 12, 2021, <http://www.brooklynda.org/2019/03/11/brooklyn-district-attorney-eric-gonzalez-unveils-sweeping-reforms-his-office-is-implementing-as-part-of-the-justice-2020-initiative-establishing-a-national-model-of-a-progressive-prosecutors/>.

³⁸⁸ Ibid.

Conclusion: A National Movement

“I think that part of the legacy that DA Thompson leaves behind is a boundless inspiration for progressive-minded people in the criminal justice space to run for public office across the country.”³⁸⁹

In response to the 2020 Black Lives Matter protests in Brooklyn, DA Gonzalez released a report analyzing 25 wrongful convictions that the Office’s CRU had sought to vacate since 2014.³⁹⁰ DA Gonzalez addressed the anger and despair that so many people felt at the criminal justice system during this time, writing, “I believe that to do better, we must reckon with and be transparent about the mistakes of the past—particularly in the institutions in which we now work.”³⁹¹ This report and statement once again tied the mission of “progressive prosecution” to reckonings with prosecutorial misconduct, illuminating how intertwined they have been and continue to be.

Thus, to understand the rise of “progressive prosecution” in Brooklyn, the Office’s inability to limit prosecutorial misconduct must be grappled with. While the Office under DA Gold was able to professionalize in the late 1960s and limit corruption, it was unable to do the same with prosecutorial misconduct due to both DA Gold’s “insider status” and the lack of political pressure to address it. Because of her “outsider status,” DA Holtzman was successful at limiting prosecutorial misconduct through cultural and policy changes, but her own political ambition and rivalry with DA Hynes meant that any progress she made was quickly erased after her tenure ended. While Hynes’s “insider status” allowed him to make significant reforms, it also allowed his Office’s misconduct to go unaddressed for decades. He both created a culture that

³⁸⁹ Interview with Mina Malik (03/05/2021)

³⁹⁰ “426 Years: An Examination of 25 Wrongful Convictions in Brooklyn, New York.” Kings County District Attorney’s Office, July 9, 2020.

³⁹¹ *Ibid.*

was accused of committing misconduct as a way of Office policy and committed misconduct himself. Thus, when DA Thompson ran against Hynes in 2014, it was much less of an election based on Thompson's effectiveness as a candidate. Instead, it was a referendum on the Office's inability to limit prosecutorial misconduct, which Hynes most perilously represented. While changing public opinion on the punitiveness on the criminal justice system made Thompson's "progressive" agenda popular, it was not the most significant factor that led to his victory. Rather, it was the Office's failure to combat the realities and perceptions of misconduct, which brought "progressive prosecution" to Brooklyn.

While every jurisdiction has their own unique history, the factors I point to in this thesis – enduring prosecutorial misconduct, changing public beliefs on the punitiveness of the justice system, and the emergence of "progressive candidates" – have occurred in other liberal, large cities³⁹² who have similarly elected progressive candidates. In Chicago, there have been expos on misconduct in the Cook County DA's Office since the 1990s with one 1999 study finding that 381 homicide convictions had to be reversed due to flagrant prosecutorial misconduct.³⁹³ Only three of the prosecutors involved received any form of discipline and none of them were fired.³⁹⁴ Kim Foxx, who ran as the progressive candidate in Chicago, campaigned and won on righting wrongful convictions.³⁹⁵ The Philadelphia DA's Office, before DA Krasner was elected, had

³⁹² Between 2016-2018, this most notably included: Chicago, Boston, Orlando, Dallas, Philadelphia, St. Louis, and Baltimore. More recent 2019-2020 victories have come in Austin, Los Angeles, Detroit, and San Francisco.

³⁹³ Armstrong, Ken, and Maurice Possley. "Break Rules, Be Promoted." *Chicago Tribune*, January 14, 1999.

³⁹⁴ Ibid.

³⁹⁵ Dardick, Hal, and John Byrne. "Foxx: Cook County State's Attorney Win about 'Turning the Page.'" *Chicago Tribune*, March 16, 2016, sec, Politics. <https://www.chicagotribune.com/politics/ct-cook-county-states-attorney-anita-alvarez-kim-foxx-met-0316-20160315-story.html>.

serious problems with prosecutorial misconduct³⁹⁶ which Krasner campaigned on.³⁹⁷ Since his election in 2017, 19 individuals have been exonerated.³⁹⁸ Thus, future scholarship should consider how these discussed factors, along with others, intersected to lead to the establishment of “progressive prosecution” in cities throughout the country. As more “progressive” candidates declare for upcoming DA races, including in Manhattan, and the definition of “progressive prosecution” becomes even more muddled, it is crucial to understand the roots of this movement if we truly want to ensure that DAs are “for the people.”

³⁹⁶ Vaughn, Joshua. “The Successes and Shortcomings of Larry Krasner’s Trailblazing First Term.” *The Appeal*, March 22, 2021. <https://theappeal.org/the-successes-and-shortcomings-of-larry-krasners-trailblazing-first-term/>.

³⁹⁷ Larry Krasner for Philadelphia District Attorney. “Platform.” Accessed March 27, 2021. <https://krasnerforda.com/platform>.

³⁹⁸ Philadelphia District Attorney’s Office. “Exonerations.” PhilaDAO Data Dashboard. Accessed March 27, 2021. <https://data.philadao.com/Exonerations.html>.

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