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

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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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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.”

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.\(^1\) 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

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\(^1\) 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.

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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. This includes Brady violations, 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. 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.

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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](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](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 Yaroshesky. “Prosecutorial Accountability 2.0.” Notre Dame Law Review 92, no. 1 (November 1, 2016). [https://scholarship.law.nd.edu/ndlr/vol92/iss1/2](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

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played in the process. 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. 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. 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. John Pfaff, expands on this statement, arguing that prosecutors have been the crucial drivers of mass incarceration in the last few decades. 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. A law review article from 1960s writes, “cheap indiscretion, bargain justice, and the tentacles of ward politics govern the prosecutor’s

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10 Ibid.
13 Ibid.
office, Justitia stops breathing.” 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. In the 1990s and early 2000s, legal scholars started to write about the concept of “new prosecution” or “community prosecution.” 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. 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. 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. These writings on prosecutorial misconduct tie-in with writings

19 Ibid.
on prosecutorial ethics, which Bruce Green has spearheaded\(^{22}\) 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


\(^{25}\) Ibid.


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. 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 crime, 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

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.”

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. Jack Newfield, a prominent local journalist, once referred to him, as “the kind of prosecutor generally limited to the musings of paranoid liberals.” Koota was a symbol of the perils of the Brooklyn political system. He had risen to power not due to his 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)
32 Ibid.
Aaron Koota (1964-1968)

Fig. 1 Picture of Aaron Koota (1973)

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


\(^{34}\) Fleming, “Case of the Debatable Brooklyn D.A.; Brooklyn D.A.”

\(^{35}\) Ibid.

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. In 1950, he decided to stay on at the DA’s Office. He joined a political club in 1955 becoming close with many of the borough leaders. These connections allowed him to climb the office ladder. He became the head of the Racket’s Bureau in 1963 and then acting DA when the previous DA resigned. 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.

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.” He even allegedly admitted to one local journalist that he took all ADA appointments from the county leader. DA Koota was not unique in this regard. At the time, Democratic leaders in Brooklyn held unilateral control. If you wanted any influential position in Brooklyn, you had to both have and keep the Party on your side. Political patronage reigned supreme. Koota and the Party

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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.”
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.”

Like many other Brooklyn elected officials too, Koota was rumored to have ties to the mob. At the time, the Democratic party in Brooklyn was intertwined with organized crime. 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. 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. 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. 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.

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

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47 Ibid.
48 Ibid.
51 Ibid.
52 Ibid.
53 Ibid.
the charges. After Koota was no longer on the front page, he would let the “investigation…quietly die,” 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.” 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].” 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. During his interrogation, he confessed to the murder of Edmonds and the unsolved murders of two other women, Janice Wylie and Emily Hoffert. As Wylie and Hoffert were murdered in Manhattan, Manhattan DA Frank Hogan, whose Office was nationally regarded, took over their part of the case. He eventually threw out the Brooklyn confession saying that it was “full of holes” and his office later convicted another man for the murders. 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. 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. Koota pursued the case, convicting Whitmore of attempted rape. When Whitmore’s lawyer showed there was racial bias in the first jury, Koota re-convicted Whitmore.

In another instance, Koota charged Ernest Gallaschaw, another young black man, for the murder of 11-year-old Eric Dean. Koota claimed to have a “rock solid” case, but holes started to quickly appear in the witness testimony. Gallaschaw also had a solid alibi—he had been on his stoop when the murder had allegedly taken place. 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. The Congress of Racial Equality (CORE), a national civil rights organization, even telegraphed Governor Rockefeller asking for DA Koota’s removal. Despite this, Koota survived these challenges and was even appointed to the New York Supreme Court in 1968. This left a vacancy at the DA’s Office. Like the Democratic party had done in the past, they nominated a politically-connected attorney—native Brooklynite Eugene Gold. 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.

Gold was Brooklyn through and through. He attended Brooklyn College and, after enlisting in the Army, returned to enroll in Brooklyn Law School. Throughout his twelve years as a criminal defense attorney, Gold won numerous community and civic awards and became close to many top Brooklyn politicians. 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 Attorney, 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

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76 Ibid.
there were accusations throughout his tenure of misconduct, they were only strengthened by the exonerations that followed in the years preceding his retirement.\textsuperscript{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.\textsuperscript{79} In reaction to this change, many older ADAs resigned.\textsuperscript{80} Gold, in response, hired twenty-three new ADAs.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{84} He sent experienced ADAs to recruit at law schools all over the country and bring back recent graduates to come

\begin{footnotes}
\footnotetext{78}{Ibid.}
\footnotetext{79}{Fishman, “The Bronx and Brooklyn District Attorney’s Offices.,” 138.}
\footnotetext{80}{Ibid.}
\footnotetext{81}{Ibid.}
\footnotetext{82}{Ibid.}
\footnotetext{83}{Interview with James J. Fishman (12/18/2020)}
\footnotetext{84}{Martin Karopkin, “Good As Gold.” Newsday, October 27, 1987, Combined edition.}
\end{footnotes}
work in Brooklyn. 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.” This was a significant departure from past practice.

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. 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.” Additionally, during his tenure, there were no women or people of color as bureau chiefs and no female or Black ADAs in the homicide bureau. 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.”

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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.”
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 interested in hiring more qualified Black and Puerto Rican attorneys and law graduates. 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. The probe led to the indictment of Paul Vario Jr. who was one of the high-ranking members of the Carmine Tramunti Mafia family as well as 40 Mafia members and 21 policemen and implicated high ranking Brooklyn politicians. The bug became known as the “gold bug.” DA Gold also indicted Brooklyn politicians on corruption charges. 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. While according to reports, DA Gold was “in an agonized state” over the investigation, 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.” Thus, Gold was quite literally willing to risk his own political career to professionalize the Office.

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.
101 Interview with James J Fishman (12/18/202...
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.” 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. 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.

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.” 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)
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 lead 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)
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 persued 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.)
117 Ibid.
118 Ibid.
120 Ibid.
121 Ibid.
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.
125 Ibid.
126 Ibid.
127 Ibid.
128 Ibid.
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. Gold, after signing a statement admitting responsibility, received probation and returned to Israel, where he had a home.

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.”\textsuperscript{134}

“I think [Hynes] was kind of stunned by the loss…people wanted change, which what is they have a right to do.”\textsuperscript{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.\textsuperscript{136} Before running to be DA, she had a storied political career which, ended with a failed Senate run.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{134} Interview with Richard Laskey, (01/06/2021)
\textsuperscript{135} Interview with Barry Kamins (12/03/2020)
\textsuperscript{137} Ibid.
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)

In 1963, when Elizabeth Holtzman was a first-year student at Harvard Law School, she worked for a civil rights attorney in southwest Georgia. 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. She cited this experience as one of the main reasons she entered politics—“I learned from that experience, not

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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.
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.”\textsuperscript{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.”\textsuperscript{144} In the end though, her ambition to move past the Office would make 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.\textsuperscript{145} At age 31, she decided to run for Congressional office, challenging 84-year-old incumbent Emanuel Celler who had been serving Brooklyn’s 16\textsuperscript{th} 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.”\textsuperscript{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.)\textsuperscript{147}

\textsuperscript{143} Ibid.
\textsuperscript{144} Interview with Elizabeth Holtzman (3/26/2021)
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. Throughout her eight years in Congress, Holtzman earned a reputation “as an unabashed crusader for liberal causes.” 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. 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. 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.

However, because of her “outsider” status, she faced tremendous pushback. While campaigning, Rosen’s campaign manager created a radio commercial 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.” 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.
150 Ibid.
152 Ibid.
performance. 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.” She also alleged that the Brooklyn DA’s Office remained a political office, which former Gold ADAs strongly refuted. Throughout her tenure and campaign, Holtzman particularly clashed with one former ADA, the city’s Fire Commissioner—future DA Charles J. Hynes. 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.”

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. She quickly changed these policies, and, appointed multiple women as bureau chiefs. It was the first time women had been appointed to head any Bureau in a DA’s Office in New York City. By 1987, almost half of the bureaus were run by women. Additionally, she appointed the first person of color to

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156 Ibid.
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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{167} Despite tremendous pushback from the all-powerful police union, Holtzman persisted.\textsuperscript{168} From 1984-1987, the unit brought both felony and misdemeanor charges against 27 police and correctional offices.\textsuperscript{169} In reality though, only one officer who was indicted was sent to prison.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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

\textsuperscript{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.
\textsuperscript{166} Ibid.
\textsuperscript{167} Kurtz. “The Private Public Prosecutor: Elizabeth Holtzman.”
\textsuperscript{168} Ibid.
\textsuperscript{169} Ibid.
\textsuperscript{170} Ibid.
\textsuperscript{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. 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. 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.

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.” 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

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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.”
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.”
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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{196,197} 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.\textsuperscript{198} To further this mission, Holtzman filed a suit to encourage the Courts

\textsuperscript{194} Ibid.
\textsuperscript{195} Interview with Barry Kamins (12/03/2020)
\textsuperscript{196} DeStefano, “B’klyn Leaves Political Clubhouse Holtzman Pushes DA’s Office Into Innovation Series.”
\textsuperscript{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. Kleinfield. “Review of 50 Brooklyn Murder Cases Ordered.” \textit{The New York Times}, May 11, 2013, sec. New York.)
\textsuperscript{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 juror. 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,” \textit{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,” \textit{New York Times}, July 1, 1987, sec. Metropolitan News.; Elizabeth Holtzman, “To the Editor: Jury Selection Bias Needs Fuller Restraint,” \textit{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.\footnote{Ibid.}

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.\footnote{Ibid.} 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.”\footnote{Ibid.}

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.\footnote{Bob Liff, “Interview with Elizabeth Holtzman: The Race for Comptroller,” \textit{Newsday}, August 24, 1989.} 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.\footnote{Hevesi and Raab, “Holtzman’s 6 Years.”} 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.\footnote{Ibid.} Holtzman denied the accusations.\footnote{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 Comptroller\(^{207}\) 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)**

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\(^{206}\) Liff, “Interview with Elizabeth Holtzman: The Race for Comptroller.


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. 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. 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

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209 Gelman, “Interview with Charles J. Hynes: The Race for Brooklyn DA.”
210 Ibid.
office fascinating and exciting.” 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. 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. 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. As they made their way into the neighborhood, a group of White teenagers chased them screaming racist slurs. Armed with bats and other weapons, the mob beat one man savagely, and chased Griffith into the path of a moving car, killing him. 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. 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. Hynes won three convictions for manslaughter for three of the young White men who had chased Griffith to his

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211 Ibid.
212 Glaberson, “Hynes, Taking Over Brooklyn Job, Takes On Holtzman.”
214 Ibid.
215 Ibid.
216 Ibid.
217 Ibid.
218 Ibid.
death and convinced the judge to impose strict sentences.\textsuperscript{219} The mother of Griffith later worked for Hynes as a community liaison when he was DA.\textsuperscript{220}

During the ensuing publicity surrounding the arrests and trial, Hynes became a household name\textsuperscript{221} \textsuperscript{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.\textsuperscript{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.\textsuperscript{224} After receiving Governor Mario Cuomo’s endorsement\textsuperscript{225}, Hynes sailed to victory in the general election, becoming the next Brooklyn DA, assuming Office in 1990.\textsuperscript{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.”\textsuperscript{227} Hynes claimed the Office was left in disarray with high turnover, an overdrawn payroll account and low morale.\textsuperscript{228} Holtzman disputed these charges.\textsuperscript{229} According to one local paper, Hynes attacks on Holtzman showed that he was,

\begin{itemize}
\item \textsuperscript{219} Ibid
\item \textsuperscript{220} Ibid.
\item \textsuperscript{221} Barron, “Farsighted Prosecutor: Charles J Hynes.”
\item \textsuperscript{226} Glaberson, “Hynes, Taking Over Brooklyn Job, Takes On Holtzman.”
\item \textsuperscript{227} Ibid.
\item \textsuperscript{228} Ibid.
\item \textsuperscript{229} Ibid.
\end{itemize}
“carving out an identity as a combative candidate for political stardom who is willing to do the political dirty work to establish himself.”

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.” Their names were both mentioned in conversations about future political positions, including as candidates for everything ranging from NYC mayor to governor. 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.”

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. 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 past and William McKechnie, the former chief of the transit police union. 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. This was in direct contrast to Holtzman who had aimed to increase police

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230 Ibid.
231 Ibid.
232 Ibid.
233 Ibid.
234 Ibid.
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

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239 Ibid.
240 Ibid.
241 Ibid.
242 Ibid.
244 Gelman, “Interview with Charles J. Hynes: The Race for Brooklyn DA.”
245 Ibid.
of a non-violent felony to go through therapeutic residential (TC) treatment for 18 to 24 months, instead of jail. DA Hynes also helped start the Brooklyn Treatment Court in 1996. The Court was for adults arrested for non-violent felonies with substance abuse problems. Once sentenced to the Treatment Court, individuals would be connected to services including counseling and healthcare. 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. 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. While many of these practices are now controversial, at the time, they were innovative.

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. 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. After three trials, O’Hara was the first New York City resident to be convicted of illegal voting since Susan B.

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247 Ibid.
249 Ibid.
250 Ibid.
251 Ibid.
252 Ibid.
255 Ibid.
Anthony in 1873. 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.”

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. 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. 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. After serious concerns with the legitimacy of the complaint emerged, the case ended in a mistrial. 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. 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. The article concluded, “there are accusations that link those

256 Ibid.
257 Ibid.
259 Ibid.
260 Ibid.
261 Ibid.
262 Ibid.
264 Glaberson, “In Brooklyn, Prosecutor’s Race Is Grudge Match.”
265 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.”

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. To do this, Hynes courted the support of ultra-Orthodox rabbis. 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.

However, victims’ rights groups accused Hynes of prioritizing his relationships with these rabbis over the rights of child sexual abuse victims and for “treating the issue of childhood sexual abuse in certain Jewish communities with a stance ranging from passive to weak-willed.” 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. The defendant’s attorney was a close friend of Hynes who had volunteered on all of Hynes’ reelection campaigns and often attended his fundraisers. Apparently, Hynes specifically told the attorneys what evidence they would need to arrest the victim’s father. The victim’s father


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


Ibid.


Ibid.

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.”\textsuperscript{274} After Hynes lost, Eric Gonzalez, the then counsel to Thompson and future DA, told the \textit{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.”\textsuperscript{275,276}

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.\textsuperscript{277} Additionally, Hynes refused to publicize the names of ultra-Orthodox defendants in sexual abuse cases, even if the defendants were convicted.\textsuperscript{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.\textsuperscript{279} While Hynes denied this was politically motivated, one ultra-Orthodox rabbi told the \textit{Times} that he and other rabbis had asked Hynes to not publish the names.\textsuperscript{280}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{274} Ibid.
\item \textsuperscript{275} Ibid.
\item \textsuperscript{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,” \textit{The New York Times}, May 11, 2012, sec. New York; Aviv Rachel, “The Outcast,” \textit{New Yorker}, November 10, 2014, sec. A Reporter At Large.)
\item \textsuperscript{277} Rivera and Otterman, “For Ultra-Orthodox in Abuse Cases, Prosecutor Has Different Rules.”
\item \textsuperscript{278} Ibid.
\item \textsuperscript{279} Ibid.
\item \textsuperscript{280} Ibid.
\end{enumerate}
\end{footnotesize}
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. 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). After two years investigating Zahrey, IA was only able to come up one witness to the alleged murder. The witness had serious credibility issues and gave bizarre and often contradictory statements. 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. 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).


\[283\] 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.\textsuperscript{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.\textsuperscript{287} However, they did not turn
over the tape and other impeachable information.\textsuperscript{288} Finally, after Zahrey was held for nine
months without bail, he was fully acquitted in June 1997.\textsuperscript{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.\textsuperscript{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.\textsuperscript{291} The police and prosecutors quickly focused on Collins.\textsuperscript{292} To prove their case,
the police and prosecutors engaged in numerous instances of witness intimidation.\textsuperscript{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.\textsuperscript{294} Eventually, the witness did, signing a
statement that endorsed the detective’s fictional narrative.\textsuperscript{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.\textsuperscript{296} When that did not

\begin{footnotes}
\footnotemark[286]\textit{Ibid.}
\footnotemark[287]\textit{Ibid.}
\footnotemark[288]\textit{Ibid.}
\footnotemark[289]\textit{Ibid.}
\footnotemark[290]Sapien, “A Prosecutor, a Wrongful Conviction and a Question of Justice.”
\end{footnotes}
push the witness to testify, prosecutors sent him to a minimum-security prison in Harlem. The witness still refused. Vecchione’s team then transferred him to a maximum-security prison two hours out of NYC. 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.

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. 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.” 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.”

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297 Ibid.
298 Ibid.
299 Ibid.
300 Ibid.
303 This case is illustrative of other cases in which Vecchione 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.”\footnote{Mark Hamblett, “City Loses Attempt to Dismiss Wrongful Conviction Lawsuit,” \textit{New York Law Journal}, January 16, 2015, sec. current.} The Office had no manual or published standards illustrating procedures for investigating misconduct and imposing discipline.\footnote{Rudin “The Supreme Court Assumes Errant Prosecutors Will Be Disciplined by Their Offices or the Bar.”} Although the Office did “distribute memoranda on discovery and \textit{Brady} obligations,” it had no policy to determine whether prosecutors read or understood these instructions.\footnote{Ibid.} Prosecutors were told verbally that “‘conscious ethical violations’ would have significant consequences, including termination.”\footnote{Ibid.} However, DA Hyne’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.\footnote{Ibid.} This was despite many court decisions, which found Brooklyn ADAs responsible for serious misbehavior.\footnote{Ibid.}

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.\footnote{Ibid.} 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 \textit{policy} of the Office.”\footnote{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.

313 Ibid.
314 Ibid.
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.”

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. 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. 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. 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. 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)
318 Ibid.
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)](https://dbrabyn.photoshelter.com/search?I_DSC=thompson&I_SORT=RANK&I_DSC_AND=t&V_ID=&G_ID=&C_ID=&_ACT=search.)

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

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\(^{323}\) 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 Volpe, 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. Louima was one of the first people to endorse Thompson for DA. Thompson also worked with congressional members and clergy to help convince the Department of Justice to re-open the 1955 murder of Emmett Till. After going into private practice, Thompson represented Nafissatou Diallo who accused French politician Dominique Strauss-Kahn of rape in 2011. The Manhattan DA, Cyrus Vance Jr., eventually asked the trial judge to dismiss the case because of credibly issues with Diallo and Thompson

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324 Feuer, “Ken Thompson, Brooklyn District Attorney, Dies After Disclosing Cancer.”
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.”
\(^{332}\) Ibid.
\(^{333}\) Ibid.
\(^{334}\) 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.
339 Ibid.
340 Ibid.
This message allowed him to win significant endorsements, including all four congress members from Brooklyn—and votes. In September 2013, Thompson defeated Hynes with 55% of the vote, winning the Democratic primary. After Hynes run on the Republican ticket in the general election, Thompson beat him by an even larger margin. Hynes became the first district attorney in the city to be unseated since 1955 and Thompson became the first Black DA in Brooklyn history. 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. 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.” 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?”

342 Ibid.
343 Ibid.
345 Ibid.
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 possibly.\(^{349}\) They recruited ADAs who were passionate about ensuring justice was achieved in these cases.\(^{350}\) Despite early pushback\(^{351}\), 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.


\(^{355}\) 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.”  

Along with these accountability measures, Thompson created policy that, while holding people accountable, incarcerated less people. 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. 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.” 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. The program has helped 3,000 New Yorkers clear more than 2,100 outstanding warrants or summons.

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.”

Ibid.  

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?”


Ibid.


Ibid.
country view their role in the criminal justice system — a shift that Mr. Thompson both embraced and advanced.”\textsuperscript{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.\textsuperscript{363} One article written after Thompson’s death was titled “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers.”\textsuperscript{364} Another \textit{New York Times} article wrote that his death was a blow “to the broader cause of progressive prosecutorial reform nationwide.”\textsuperscript{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.\textsuperscript{366} Thus, it was up to his chosen successor, Eric Gonzalez, to truly make the Brooklyn DA’s Office, a “progressive” office.

\textsuperscript{363} Ibid.
\textsuperscript{364} Nicols, “Ken Thompson Proved That Prosecutors Can Be Criminal-Justice Reformers.”
\textsuperscript{366} Feuer, “Despite Ken Thompson’s Short Stint as Brooklyn Prosecutor, Agenda May Endure.”
Eric Gonzalez (2016-present)

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.


\(^{369}\) Ibid.

\(^{370}\) Ibid.

\(^{371}\) Ibid.

\(^{372}\) Ibid.
Gonzalez chief counsel and, then in October, he promoted him to first assistant. As Thompson’s first assistant, Gonzalez oversaw the day-to-day goings-on of the Office, including helping to re-create the CRU. 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 attorney 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. During the election, Gonzalez promised to “make sure we lead the most progressive D.A.’s office in the country.” Gonzalez won the Democratic primary by beating five other former Brooklyn prosecutors, including Anne Swern, Hynes’s former first assistant. During the campaign, it was clear that movement for prosecutorial reform was there to stay in Brooklyn and that Gonzalez was its political successor.

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373 Ibid.
375 Feuer, “Despite Ken Thompson’s Short Stint as Brooklyn Prosecutor, Agenda May Endure.”
377 Ibid.
378 Feuer, “Eric Gonzalez Wins Primary Election for Brooklyn District Attorney.”
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.” After Gonzalez ran un-opposed in the general, he became the first Latinx DA in Brooklyn history.

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. 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. 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. 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.

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381 Interview with Mina Malik (03/05/2021)
382 Ibid.
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?” In Spring 2019, he released the Justice 2020 plan which aimed to “[establish] a national model of a progressive prosecutor’s Office.” 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.” Therefore, it 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.

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

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. 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.” 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)
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 cities\(^\text{392}\) 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.\(^\text{393}\) Only three of the prosecutors involved received any form of discipline and none of them were fired.\(^\text{394}\) Kim Foxx, who ran as the progressive candidate in Chicago, campaigned and won on righting wrongful convictions.\(^\text{395}\) The Philadelphia DA’s Office, before DA Krasner was elected, had

\(\text{\textsuperscript{392}}\) 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.
\(\text{\textsuperscript{394}}\) Ibid.
serious problems with prosecutorial misconduct\footnote{Vaughn, Joshua. “The Successes and Shortcomings of Larry Krasner’s Trailblazing First Term.” The Appeal, March 22, 2021. \url{https://theappeal.org/the-successes-and-shortcomings-of-larry-krasners-trailblazing-first-term/}.} which Krasner campaigned on.\footnote{Larry Krasner for Philadelphia District Attorney. “Platform.” Accessed March 27, 2021. \url{https://krasnerforpa.com/platform}.} Since his election in 2017, 19 individuals have been exonerated.\footnote{Philadelphia District Attorney’s Office. “Exonerations.” PhilaDAO Data Dashboard. Accessed March 27, 2021. \url{https://data.philadao.com/Exonerations.html}.} 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.”
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