

## **What Does it Take for a Rogue Prosecutor to be Disbarred?**

*In New York, prosecutorial misconduct that falsely incarcerates innocents rarely leads to disbarment due to a secretive, flawed disciplinary system that protects rogue prosecutors like Glenn Kurtzrock. Despite clear evidence of serious wrongdoing, disciplinary actions are minimal, delayed, and kept secret, allowing misconduct to go unpunished.*

By Gregory L. Diskant

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What does it take for a New York prosecutor to be disbarred for misconduct that puts innocent people in jail? We don't know the answer because, so far as we can tell, that never happens. The procedures for attorney discipline in New York are so deficient, deficient by "design and operation" according to NYU law professor Stephen Gillers, that discipline occurs largely in secret, takes many years, and often results in at most a slap on the wrist. (Stephen Gillers, *Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*, 17 N.Y.U. J. Legis. & Pub. Pol'y 485 (2014)) Worst of all, rogue prosecutors typically get a free pass.

Here's a case study—the well-documented and repeated prosecutorial misconduct of former Suffolk County assistant D.A. Glenn Kurtzrock. In 2017, Kurtzrock prosecuted murder charges against Messiah Booker, who had spent 18 months in jail awaiting trial. In the middle of trial, it was revealed that Kurtzrock had wrongly withheld significant Brady material from the defense, exculpatory material tending to prove Booker's innocence. The trial was stopped and all the charges were dismissed, with the presiding justice calling the proceeding "a travesty of justice." Kurtzrock was forced to resign.

The DA called his conduct "inexcusable" and sent the matter to the Grievance Committee of the Appellate Division for the Second Department for action. I've been following this matter since 2019 when, on behalf of the Innocence Project, we sought to open up the secret disciplinary proceedings for public scrutiny. Our motion was denied, and instead Kurtzrock received a secret trial (yes, a secret trial!), with the public and the press excluded and without even notice to the public that it was occurring. Finally in 2020, the Appellate Division suspended Kurtzrock's license for two years. The court did not disbar Kurtzrock, or impose a more significant punishment, because it said "there was no showing that [Kurtzrock] engaged in similar conduct in [any other case](#)."

But that turned out to be incorrect, seriously incorrect, and still nothing happened. After the *Booker* case was dismissed in 2017, the Suffolk County DA commendably commissioned a review of all of Kurtzrock's cases. It sought to test the Appellate Division's conclusion "that there was 'no showing that he engaged in any similar conduct in any other cases'" The DA's review was exhaustive and it was scathing. Reviewing the cases that Kurtzrock had prosecuted,

the DA found that Kurtzrock had in fact “engaged in other misconduct that is similar” to his misbehavior in the Booker case.

Most notably, the DA cited the case of Shawn Lawrence, whom Kurtzrock had prosecuted in 2015. After Lawrence had been in prison for several years serving a sentence of 75 years to life, the DA’s review discovered “voluminous” nondisclosed Brady material, “over 40 categories of documentation and information”. This included eyewitness testimony and statements exonerating Lawrence and identifying another man as the killer.

The DA found that Kurtzrock’s actions “result[ed] in a miscarriage of justice,” and joined with Lawrence in asking that the charges be dropped and that Lawrence be freed. In dismissing the case, the presiding judge called Kurtzrock’s misbehavior “absolutely stunning” and said the proceedings were a “travesty of justice. (Lawrence eventually received \$3.85 million from New York state for [his wrongful incarceration](#)).

The DA’s report also identified at least ten other cases in which Kurtzrock had engaged in misconduct, although of a less serious nature. The DA forwarded his report on Kurtzrock’s misconduct to the Appellate Division and the Grievance Committee for further consideration. That was in 2021, with misconduct going back to at least 2015, 11 years ago.

So, what did the Appellate Division do with the DA’s report? Not much. Last December, five years after receipt of the DA’s report and after another trial held entirely in secret, the Appellate Division in effect gave Kurtzrock a slap on the wrist—a public censure—not for the *Lawrence* debacle but for two less serious cases identified by the DA. This should leave Kurtzrock [free to practice law](#). But what about Lawrence, where the DA told the Appellate Division that Kurtzrock’s misconduct “had a devastating effect on the fairness of the proceedings” and where an innocent man sat in jail for years?

The Kurtzrock record is sealed (except for the two charges that were sustained), part of what the New York Times has called the “prosecutor-protection racket.” (Opinion | How Can You Destroy a Person’s Life and Only Get a Slap on the Wrist?—The New York Times) But we confirmed with Kurtzrock’s counsel that no misconduct charges were brought against him based on the *Lawrence* case. And because the record of the case where the charges were sustained is now public, we confirmed with the court that the record does not even contain a copy of the DA’s report. Even for a broken system, this boggles the mind.

The DA handed the *Lawrence* case to the court on a silver platter, along with judicial findings that Kurtzrock was guilty of “more than ‘exceptionally serious misconduct.’” Yet the Grievance Committee didn’t bring charges based on the Lawrence case; the special master trying the case didn’t learn of the *Lawrence* case; and neither did the Appellate Division in meting out its mild punishment. And all of this took an inexplicable five years.

In effect, the trial was conducted with blinders on, with the Appellate Division ignorant of the contents of the DA’s report and given no reason to revisit its conclusion that Kurtzrock’s

behavior was otherwise blameless. And since under New York law, the proceedings against Kurtzrock were conducted entirely in secret until they were over, no third party—not even the Suffolk County DA—had the opportunity to act as a friend of the court and describe the facts of the *Lawrence* case. Justice delayed and justice denied.

As this example sadly demonstrates, New York’s system of attorney discipline is hopelessly broken and it is near to worthless when it comes to disciplining rogue prosecutors. Meanwhile, its pervasive secrecy makes reform, or even public attention, difficult.

In 2018, our co-counsel Nina Morrison, then of the Innocence Project, now a federal judge, wrote about the Kurtzrock scandal in the New York Times.

But little has happened since. In 2024, over strong opposition from New York prosecutors and years of litigation, New York established a toothless Commission on Prosecutorial Conduct that lacks any power to discipline prosecutors. As of today, the Commission’s only action has been to recommend that the courts censure the District Attorney for Monroe County for failing to comply with a routine traffic stop. ([Commission on Prosecutorial Conduct | Commission on Prosecutorial Conduct](#)).

Meanwhile, on behalf of the Civil Rights Corp and a group of law professors, we brought a lawsuit to try to open up the New York process. The law professors filed complaints against 21 prosecutors in 2021, all based on judicial findings of prosecutorial misconduct. (Jonah Bromwich, *They Publicized Prosecutors’ Misconduct. The Blowback Was Swift.*, N.Y. Times ([Nov. 10, 2021](#)).

But there is no record of any public action taken against any of them even now, five years later. They are all members of the New York bar in good standing. In 2024, the federal court ruled in our case that disciplinary trials, such as occurred with Kurtzrock, should not be held in secret, but should be open and public, and that certain other disciplinary dispositions should be [public as well](#). The state of New York seemingly prefers secret trials for attorney misconduct and so it has appealed. The appeals court has yet to rule.

And so we wait. To be clear, most prosecutors are hard-working public servants and committed to fair play. But those who break the law and face few or no consequences are a stain on their colleagues—and the legal profession. A lawyer who diverts a few thousand dollars in client funds to his personal account will be disbarred. Why not a recidivist Brady violator whose actions put innocent victims behind bars for years?

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**Gregory L. Diskant** *is of counsel at Patterson Belknap Webb & Tyler.*

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