

Supreme Court of the State of New York
Appellate Division: Second Department

_____	x
	:
In the Matter of the Application of THE	:
INNOCENCE PROJECT, INC.,	:
	:
<i>Petitioner,</i>	:
	:
	Docket No. _____
For a Judgment Pursuant to Judiciary Law	:
§ 90(10) to Unseal an Attorney Disciplinary	:
Proceeding,	: <u>VERIFIED PETITION TO UNSEAL</u>
	: <u>DISCIPLINARY PROCEEDING</u>
	:
- against -	:
	:
GRIEVANCE COMMITTEE FOR THE TENTH	:
JUDICIAL DISTRICT, GLENN KURTZROCK,	:
	:
<i>Respondents.</i>	:
_____	x

Petitioner the Innocence Project, Inc. (“Innocence Project”), by its undersigned attorneys, petitions and alleges as follows:

Preliminary Statement

1. Petitioner brings this proceeding under Judiciary Law § 90(10) against the Grievance Committee for the Tenth Judicial District (“Grievance Committee”) and Glenn Kurtzrock (“Kurtzrock”) to unseal all records, papers and documents concerning the disciplinary proceeding against Kurtzrock.

2. Kurtzrock is a former Assistant District Attorney in the Suffolk County District Attorney’s Office who is currently practicing as a criminal defense lawyer in Suffolk County.

3. On May 3, 2017, during the murder trial of Messiah Booker—a trial in which Kurtzrock was the lead prosecutor—Booker’s attorney discovered that Kurtzrock had withheld certain materials that should have been disclosed under *Brady* and *Rosario*. The withheld materials were responsive to the defense attorney’s earlier *Brady* demands and included police notes implicating other suspects and detailing an interview with the prosecution’s chief eyewitness.

4. On May 9, 2017, Kurtzrock was replaced with another ADA who announced that the People had agreed to dismiss the murder charge, conceding that the record—which now included Kurtzrock’s *Brady* and *Rosario* violations—left the People unable to prove Booker’s guilt of murder beyond a reasonable doubt. Booker ultimately pled guilty to a burglary count. And the prosecution dropped the second-degree murder charges against his three co-defendants, as they also accepted plea deals for lesser charges.

5. Kurtzrock’s misconduct led to the end of his career as a Suffolk County ADA that same day. The Suffolk County District Attorney’s Office issued a statement calling Kurtzrock’s conduct “inexcusable.” District Attorney Thomas Spota immediately demanded Kurtzrock’s resignation. Kurtzrock resigned that evening.

6. Following Kurtzrock’s public resignation, the Suffolk County DA’s office commenced an unprecedented internal investigation to determine if he had also suppressed *Brady* material in his other cases. Although the internal investigation remains ongoing, the investigation has already helped uncover at least one other, unrelated murder case in which Kurtzrock obtained a wrongful conviction through the suppression of exculpatory evidence.

7. Over the course of December 2017 through February 2018, it was revealed that Kurtzrock, during the 2015 murder trial of Shawn Lawrence in which he was the lead trial

prosecutor, was party to the withholding of as many as 45 pieces of *Brady* material—material that tended to show that Lawrence was not the perpetrator, such as evidence showing that one of the victims who had not taken the stand had identified two other people as the perpetrator. Lawrence was wrongfully convicted and sentenced to 75 years to life in prison. He served six years behind bars due to the prosecutorial misconduct. He was ultimately exonerated in February 2018 after the trial court granted Lawrence’s unopposed motion to dismiss the indictment with the presiding judge citing the “absolutely stunning” *Brady* violations committed by Kurtzrock during Lawrence’s trial.

8. Upon information and belief, one or more complainants have filed complaints against Kurtzrock with the Grievance Committee based on his *Brady* and *Rosario* violations. Although it has been more than two years since Kurtzrock’s forced resignation due to prosecutorial misconduct—and more than 15 months since it was revealed that he had committed misconduct in at least one other case that had caused an innocent man to serve more than six years behind bars—the Grievance Committee has not taken any disciplinary action against him. Petitioner brings this petition seeking to unseal all records, documents and papers concerning Kurtzrock’s disciplinary proceeding before the Grievance Committee.

Parties

The Innocence Project

9. The Innocence Project is a 501(c)(3) national legal services and criminal justice reform organization based in New York.

10. Founded twenty-seven years ago by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law, the Innocence Project’s attorneys pioneered the litigation model that has, to date, led to the exoneration of 356 wrongly convicted persons in the United

States through post-conviction DNA testing. The Innocence Project’s attorneys have served as lead or co-counsel for more than 200 exonerated individuals nationwide.

11. The Innocence Project has also taken a leading role in redressing wrongful convictions involving serious prosecutorial error and misconduct nationwide, both to remedy the harms caused and to deter future misconduct.

12. The Innocence Project conceptualized and, along with the Legal Aid Society of New York, led a successful campaign to have New York State’s high court adopt a “standing *Brady* order” for all criminal courts statewide, to prevent prosecutorial misconduct and empower courts to directly sanction it when it occurs.¹

13. In addition, the Innocence Project served as lead counsel in the proceedings that led to the 2011 exoneration of Michael Morton of Texas, and the subsequent criminal prosecution and disbarment of Ken Anderson, the former prosecutor (and then judge) whose suppression of *Brady* material caused Michael Morton to wrongfully serve twenty-five years in prison. Ken Anderson remains, to this day, the only former prosecutor in the United States who has ever been convicted of criminal charges for conduct leading to a wrongful conviction.

¹ 22 N.Y.C.R.R. §§ 200.16, 200.27 (Issuance of Order Confirming Disclosure and Notice Obligations); see Emmet G. Sullivan, *How New York Courts Are Keeping Prosecutors in Line*, The Wall Street Journal (Nov. 17, 2017, 6:09 PM), <https://www.wsj.com/articles/how-new-york-courts-are-keeping-prosecutors-in-line-1510953911> (observing rule effective January 1, 2018 in New York state courts issued by Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks requiring trial judges to issue *Brady* orders in all criminal proceedings); Janet DiFiore, *Preserving Due Process and Preventing Wrongful Convictions*, New York Law Journal (May 1, 2017, 12:00 AM), <https://www.law.com/newyorklawjournal/almID/1202784735555/Preserving-Due-Process-and-Preventing-Wrongful-Convictions/> (observing that “[i]ssuance of standing *Brady* orders will help create a culture of disclosure” and noting that “[e]ach time an innocent person is found guilty, a grave injustice is committed” and “public safety is compromised because the true perpetrator remains free to commit additional crimes”).

The Grievance Committee for the Tenth Judicial District

14. The Grievance Committee is a body created by the Appellate Division for the Second Judicial Department. See http://www.nycourts.gov/courts/ad2/attorney_matters_ComplaintAboutALawyer.shtml. It receives, investigates, and if necessary, prosecutes complaints of professional misconduct against lawyers in Nassau County and Suffolk County, New York. *Id.*

15. The stated purpose of the disciplinary system in the Appellate Division for the Second Judicial Department is to protect the public generally by enforcing the Rules of Professional Conduct (22 N.Y.C.R.R. part 1200), thereby helping to insure the honesty, integrity, and competence of the profession. *Id.*

Glenn Kurtzrock

16. Glenn Kurtzrock is an attorney who was admitted in the Appellate Division, Second Department on April 14, 1999. See New York State Unified Court System, Attorney Detail for Glenn Ross Kurtzrock (attached hereto as Ex. A). He is currently registered to practice law in New York. *Id.*

17. Kurtzrock was formerly a Suffolk County ADA, but was forced to resign on May 9, 2017 after the *Brady* and *Rosario* violations in the prosecution of Booker were uncovered. Andrew Smith, *Suffolk DA's office struggled to comply with key legal rule*, Newsday (May 14, 2017, 10:59 PM), <https://www.newsday.com/long-island/suffolk/suffolk-da-s-office-struggled-to-comply-with-key-legal-rule-1.13633786> (attached hereto as Ex. B).

18. Kurtzrock is currently practicing as a criminal defense attorney in Suffolk County. His website advertises his services by prominently touting his experience as a “former homicide prosecutor.” Law Office of Glenn Kurtzrock, <http://www.kurtzrocklaw.com/> (last visited Apr. 24, 2019) (attached hereto as Ex. C).

Venue and Jurisdiction

19. This Court has jurisdiction under the Judiciary Law § 90(10).
20. Venue is proper in the Appellate Division, Second Department.

Kurtzrock's Misconduct During his Prosecution of Messiah Booker

21. In November 2015, Booker and three co-defendants were arrested and charged with committing a home invasion and shooting in January 2013, resulting in the death of one man. Chau Lam, *Farmingdale man gets 5 years after murder charge dismissed*, Newsday (June 9, 2017, 7:59 PM), <https://www.newsday.com/long-island/crime/man-gets-5-years-after-murder-charge-dismissed-1.13725235> (attached hereto as Ex. D). Booker was charged with second degree felony murder and first degree burglary, and faced up to 25 years to life if convicted. Transcript of Hearing, *People v. Booker*, Case No. 2325A-2015 (Sup. Ct. Suffolk Cnty. May 9, 2017) (attached hereto as Ex. E) at 20:3-8, 96:23-97:11. Booker maintained his innocence of the murder and related charges. Tim Gannon, *Judge at sentencing: Hampton murder case was 'travesty of justice'*, Riverhead News-Review (June 9, 2017, 7:47 PM), <https://riverheadnewsreview.timesreview.com/2017/06/81350/judge-at-sentencing-hampton-murder-case-was-travesty-of-justice/> (attached hereto as Ex. F).

22. Booker's case went to trial in 2017. Prior to trial, Booker's defense attorney Brendan Ahern made repeated, written requests for disclosure of all *Brady* and *Rosario* materials possessed by the prosecution, including specific requests relating to information possessed by the People regarding the defense's known alternate suspects. Ex. E at 20:9-12; 22:3-5; 22:25-24:7.

23. On May 3, 2017, Kurtzrock called the prosecution's last witness, Detective Brendan O'Hara, who was the lead homicide detective. *Id.* at 3:16-20; 38:24-39:2.

But before Detective O'Hara took the stand, Ahern noticed that his notes “jumped from a point in 2013 to a point in 2015.” *Id.* at 38:18-39:3.

24. Ahern asked Kurtzrock for these missing pages. *Id.* at 3:24-4:9; 39:2-10. Kurtzrock responded that the missing materials were “not Rosario, because the People don't intend to have the lead homicide detective who presided over a four-year murder investigation testify about those years of his investigation.” *Id.* at 39:11-19. Justice John B. Collins “disagreed with [Kurtzrock's] position as an analysis of Rosario” and instructed Kurtzrock to turn over the requested materials. *Id.* at 4:13-18, 39:22-40:1.

25. Ahern also requested the notes of another detective who had not been called as a witness but was integral to the investigation, *id.* at 43:1-5, and “additional materials maintained by the DA's Office and the police...including Southampton PD paperwork, Suffolk PD paperwork, Phoenix PD paperwork, and paperwork pertaining to Detective Grosso who was involved in a concomitant investigation of the defendant having nothing to do with the home invasion that occurred...in January of '13,” *id.* at 5:18-6:2. The court allowed Ahern to procure and review these additional materials. *Id.* at 6:15-25.

26. On May 9, 2017 at 11:00 a.m., the court held a hearing concerning these previously withheld materials. *See id.* at 7:24-8:5. During the hearing, Ahern described in immense detail the pages that were withheld that should have been produced under *Brady* and *Rosario*.

27. Ahern had previously made *Brady* demands for, *inter alia*, (1) “[a]ny lead **regarding any other person**, other than the defendant,” (2) “[t]he complete content of any component of the investigation targeting any other person than that of the accused,” and (3) any information regarding the potential or actual involvement in these crimes of “**Jovan Creighton**,”

a person whom the defense believed may have had a role in the crimes. *Id.* at 23:9-24:7; 30:12-25 (emphases added).

28. The withheld materials discussed Jovan Creighton’s potential connection to the incident and also contained numerous pages that implicated other suspects. For example, Kurtzrock provided page 1 of Detective O’Hara’s notes beginning in January 29, 2013, but withheld, among others, pages 2, 7, and 11 through 16. Page 2 described Detective O’Hara’s conversation with an ADA regarding an attorney who had implicated another individual for the crimes. *Id.* at 51:20-52:20. Page 2 also indicated that a family member of “DeShawn” shot the decedent, and identified the name of the intended target. *Id.* Pages 11 through 16 stated that “DeShawn and his family member committed the burglary and murder.” *Id.* at 57:9-16.

29. Page 7 described an interview with individuals who stated that the eyewitness in the case had informed him that “she believed that [the perpetrators] didn’t want [the victim], they just wanted the money from Jovan.” *Id.* at 53:8-24. The page further indicated that the eyewitness was “holding money given by an associate of Jovan Creighton.” *Id.* at 55:3-6.

30. Ahern also described how the withheld documents violated *Rosario*. The most egregious example was that Kurtzrock withheld nine pages of police notes from an interview of the eyewitness in the case, whom the prosecution had already called to the stand. *Id.* at 85:24-87:10. On hearing this evidence, Justice Collins commented that these nine pages of notes should have been provided to the defense “a long time ago” and that it was “obviously a Rosario problem.” *Id.* at 87:11-16.

31. When the court recessed for lunch, ADA Janet Albertson replaced Kurtzrock. *See id.* 94:14-22.

32. After the lunch recess, the parties announced that they had entered into a plea deal. *See id.* at 94:10- 96:5. Albertson dismissed the murder count against Booker, and admitted that “it would appear based upon the record that we will be unable to prove that count beyond a reasonable doubt.” *Id.* at 96:18-97:7. In exchange, Booker pled guilty to second-degree attempted burglary, instead of the first degree burglary count with which he was charged. *Id.* at 97:8-17, 122:20-123:8. Booker received a sentence of 5 years of incarceration and 5 years of post-release supervision, greatly reducing his prior exposure of up to 25 years to life. *Id.* The prosecution also dropped the second-degree murder charges against Booker’s co-defendants—Michael Parrish, Danielle Hall, and Corry Wallace—and they also accepted plea deals for lesser charges. Andrew Smith, *Suffolk DA Timothy Sini to issue new protocols to avoid ethical failures*, Newsday (Mar. 7, 2018 10:55 PM) (attached hereto as Ex. G); Andrew Smith, *Misconduct results in lesser prison terms for Flanders killing*, Newsday (Nov. 1, 2017 7:35 PM), <https://www.newsday.com/long-island/crime/hampton-killing-misconduct-1.14715589> (attached hereto as Ex. H).

33. Justice Collins noted that, given the evidence presented during the hearing “and the likely resulting sanctions from that hearing[,] . . . the probability of a conviction on the [murder] count in the indictment ha[d] been severely diminished.” Ex. E at 101:10-18. And at Booker’s sentencing, Justice Collins declared the end result “a travesty of justice.” Tim Gannon, *Judge at sentencing: Hampton murder case was ‘travesty of justice’*, Riverhead News-Review (Jun. 9, 2017 7:47 PM) <https://riverheadnewsreview.timesreview.com/2017/06/81350/judge-at-sentencing-hampton-murder-case-was-travesty-of-justice/> (attached hereto as Ex. F).

34. DA Spota immediately demanded Kurtzrock’s resignation. Kurtzrock resigned that same evening, on May 9, 2017. Ex. B. Robert Clifford, a spokesman for DA

Spota, issued a statement calling Kurtzrock's conduct "inexcusable." Grant Parpan, *Trial in Demitri Hampton murder abruptly ends as defendant accepts plea deal*, Riverhead News-Review (May 9, 2017, 4:55 PM), <https://riverheadnewsreview.timesreview.com/2017/05/80587/trial-in-demitri-hampton-murder-abruptly-ends-as-suspect-accepts-plea-deal/> (attached hereto as Ex. I).

35. Kurtzrock's misconduct and forced resignation received vast news coverage. *See, e.g.*, Exs. B, D, F-I.

36. The Suffolk County DA's Office then began an unprecedented internal review of all of Kurtzrock's cases. Ex. D. That review began under then-DA Spota, and has continued under his successor in office, Tim Sini.

Kurtzrock's Misconduct During his Conviction of Shawn Lawrence

37. After commencing its internal review of Kurtzrock's cases, the District Attorney's Office learned that Kurtzrock had also committed *Brady* violations in his prosecution of Shawn Lawrence.

38. In May 2015, Shawn Lawrence was convicted of one count of murder and two counts of attempted murder for a 2010 shooting in Amityville, Suffolk County. Kurtzrock was the trial prosecutor. Andrew Smith, *Judge dismisses Shawn Lawrence's murder case over misconduct*, Newsday (Feb. 15, 2018), <https://www.newsday.com/long-island/suffolk/judge-dismisses-shawn-lawrence-s-murder-case-over-prosecutorial-misconduct-1.16788521> (attached hereto as Ex. J).

39. The shooting arose from an argument between one of the victims, David Hodges, and Allen McGhee, a five-foot-five, 22-year old Bloods gang member. Verified Claim

for Damages with Exhibits, *Lawrence v. New York* (Ct. of Claims Mar. 19, 2019) (attached hereto as Ex. K) ¶ 25.

40. Witnesses and surveillance video established that the shooters were four young black males of similar height. *Id.* ¶ 26. Among the several leads the police had were leads to two individuals connected to the guns used during the shooting. *Id.* ¶ 30. But the police failed to investigate either individual. *Id.* And McGhee ultimately pled guilty to manslaughter in the first degree and two counts of assault in the first degree. Order Dismissing Indictment, *People v. Lawrence*, Case No. 1095B-2012 (Sup. Ct. Suffolk Cnty. Feb. 15, 2018) (attached hereto as Ex. L) at 1.

41. Seventeen days after the shooting, Hodges, while a patient at the hospital, identified two people other than Lawrence as the shooter. Ex. K ¶ 31. But the police failed to investigate either person. *Id.* Further, the hospital videotape identifying the individuals was never provided to the defense. *Id.*

42. Despite all of this evidence implicating other individuals in the shooting, the police arrested Lawrence—a six-foot-four, 38-year old with no connection to any street gang and with a credible alibi. *Id.* ¶¶ 27, 33-34.

43. During Lawrence's trial, the prosecution relied heavily on the false testimony of two witnesses made two years after the shooting: Ralph Council, another victim, and James Jones. *Id.* ¶¶ 40-42.

44. Council—who after two years of denying Lawrence's role in the shooting—implicated Lawrence as one of the shooters in a signed statement that was written by the police and prosecution. *Id.* ¶ 41. But in an interview with Lawrence's attorney before trial,

Council recanted and said that he was being coerced by Kurtzrock and a detective to implicate him. *Id.*

45. After Jones implicated Lawrence, the Suffolk County DA's office paid Jones \$4,000 to relocate. *Id.* ¶ 42. Not only was the defense unaware of the deal, but Jones later alleged in multiple sworn statements that he could not identify the shooters. *Id.*

46. After Lawrence was convicted in May 2015 and later sentenced to 75 years to life in prison, he immediately appealed. *Id.* ¶¶ 44-45.

47. In May 2017, the Suffolk County DA's office re-examined its investigation files and Lawrence's prosecution following Kurtzrock's resignation. *Id.* ¶ 46. This re-examination helped uncover 45 pieces of *Brady* material that Kurtzrock withheld from the defense. *Id.*

48. In December 2017, the Second Department reversed Lawrence's conviction and granted him a new trial due to defense counsel's conflict of interest. *People v. Lawrence*, 156 A.D.3d 652 (2d Dep't 2017). Lawrence was released from prison that same month. Ex. J.

49. One month later, the Suffolk County DA's office admitted that it lacked any basis to re-prosecute Lawrence. Ex. K ¶ 49. On February 15, 2018, Justice William J. Condon granted Lawrence's unopposed motion to dismiss the indictment, observing that there were "absolutely stunning" *Brady* violations and that "[c]learly, there ha[d] been more than 'exceptionally serious misconduct' on the part of the prosecution in general, and the Suffolk District Attorney's Office in particular in this matter." Ex. L at 4. At the hearing where he dismissed the indictment, Justice Condon observed the withheld evidence pertained to "witnesses [that were] paid off, witnesses [that were] relocated, memo book pages [that] basically . . .

indicat[ed] that there were other individuals responsible for the murder and the two . . . charges of attempted murder.” Transcript of Dismissal Hearing, *People v. Lawrence*, Case No. 1095B-2012 (Sup. Ct. Suffolk Cnty. Feb. 15, 2018) (attached hereto as Ex. M) at 7:22-8:2. Further, Justice Condon observed that that hospital surveillance footage that showed the two people who Hodges identified as the shooters was never turned over to the defense and had disappeared. *Id.* at 8:2-8.

50. Kurtzrock’s misconduct and Lawrence’s exoneration received vast news coverage. *See, e.g.*, Ex. J; Ex. G; The Editorial Board, *Albany should balance scales of criminal justice*, AM New York (Mar. 28, 2018 6:56 PM), <https://www.amny.com/opinion/editorial/albany-should-balance-scales-of-criminal-justice-1.17727138> (attached hereto as Ex. N).

Grievance Committee Proceeding Against Kurtzrock

51. Upon information and belief, one or more complainants have filed complaints against Kurtzrock with the Grievance Committee based on his *Brady* and *Rosario* violations.

52. The exact status of this disciplinary proceeding is unknown given the confidential nature of the grievance proceedings. It appears, however, that the disciplinary proceeding has not yet concluded or resulted in any disciplinary actions.

53. There continues to be public interest in Kurtzrock’s conduct and the activities of the Grievance Committee. For example, in November 2018, a Law360 article discussed Kurtzrock in the broader debate over statewide accountability for and regulation of prosecutors. Andrew Strickler, *NY Plan To Police Prosecutors Enters Unchartered Territory*, Law360 (Nov. 4, 2018 8:02 PM), <https://www.law360.com/articles/1097343/print?section=access-to-justice> (attached hereto as Ex. O); *see also* Nina Morrison, *What Happens When*

Prosecutors Break the Law?, The New York Times (June 18, 2018), <https://www.nytimes.com/2018/06/18/opinion/kurtzrock-suffolk-county-prosecutor.html> (attached hereto as Ex. P).

Request for Relief

WHEREFORE, Petitioner prays for a judgement and decree:

- (1) unsealing all records, papers and documents concerning the disciplinary proceeding against Kurtzrock, commenced against him for the *Brady* and *Rosario* violations that he committed as a Suffolk County ADA;
- (2) opening all future hearings of the disciplinary proceeding against Kurtzrock, commenced against him for the *Brady* and *Rosario* violations that he committed as a Suffolk County ADA; and
- (3) granting any further relief as the Court may deem necessary and proper.

Dated: New York, New York
May 22, 2019



Gregory L. Diskant
Esther Kim
Jeffrey Skinner
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036-6710
(212) 336-2000

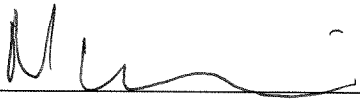
Attorneys for Petitioner

VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF New York)

Nina Morrison, being duly sworn, deposes and says that she is an attorney for the Innocence Project, Petitioner in the above-captioned matter, that she has read the foregoing petition; and that it is true to her own knowledge, except as to matters therein stated on information and belief and as to those matters she believes to be true. The sources of the information and the bases for her beliefs are the exhibits attached hereto.

Sworn to before me this
20th day of May, 2019



Nina Morrison



Notary Public

MARITZA MEDINA
NOTARY PUBLIC STATE OF NEW YORK
KINGS COUNTY
LIC. # 01ME6345054
COMM. EXP. 7/18/2020

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

In the Matter of the Application of THE
INNOCENCE PROJECT, INC.,

Docket No.:

Petitioner,

For a Judgment Pursuant to Judiciary Law § 90(10)
to Unseal an Attorney Disciplinary Proceeding,

- against -

GRIEVANCE COMMITTEE FOR THE TENTH
JUDICIAL DISTRICT, GLENN KURTZROCK,

Respondents.

PETITIONER'S BRIEF

Gregory L. Diskant
Esther Kim
Jeffrey Skinner
PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Tel: (212) 336-2000
Fax: (212) 336-2222
gldiskant@pbwt.com
ekim@pbwt.com
jskinner@pbwt.com

Attorneys for Petitioner

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
QUESTION PRESENTED	5
STATEMENT OF FACTS	5
ARGUMENT	7
I. There is good cause under Judiciary Law § 90(10) to unseal Kurtzrock’s disciplinary proceeding.	7
A. Good cause for disclosure exists when confidentiality does not further the two purposes of Judiciary Law § 90(10) or when a countervailing interest in disclosure outweighs any privacy interests of the complainant or the investigated attorney.....	7
B. Good cause for disclosure exists here because the matters in the complaint(s) are already public.	8
C. Good cause for disclosure exists here because there is no concern that Kurtzrock’s reputation would be irreparably harmed by unfounded accusations.	11
D. Good cause for disclosure exists here because the Petitioner and the public have a strong interest in the disclosure of Kurtzrock’s disciplinary proceedings.....	14
CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Matter of Aretakis,</i> 16 A.D.3d 899 (3d Dep’t 2005)	8
<i>Matter of Johnson Newspaper Corp. v. Melino,</i> 77 N.Y.2d 1 (1990)	8, 11
<i>In re N.Y. News, Inc.,</i> 113 A.D.2d 92 (1st Dep’t 1985)	8, 14, 16
Statutes	
Judiciary Law § 90(10)	7, 8, 11, 14

PRELIMINARY STATEMENT

Petitioner requests that this Court unseal all papers, records and documents concerning the disciplinary proceeding in the Grievance Committee for the Tenth Judicial District (the “Grievance Committee”) against Glenn Kurtzrock, a former Suffolk County Assistant District Attorney.

In May 2017, it was discovered that Kurtzrock had committed severe *Brady* and *Rosario* violations in prosecuting murder charges against four defendants (one of whom was in the middle of a trial, and the other three of whom were his co-defendants). On May 9, 2017, the Suffolk County District Attorney demanded Kurtzrock’s resignation for prosecutorial misconduct. All murder charges against these four defendants were dismissed, with presiding Justice Collins declaring the end result “a travesty of justice.” Less than a year later, another murder case was uncovered in which Kurtzrock had wrongly withheld an array of *Brady* material—an “absolutely stunning” series of violations, according to presiding Justice Condon. That defendant—already wrongly incarcerated for a murder he did not commit—was exonerated and freed from prison once the evidence suppressed by Kurtzrock came to light.

Upon information and belief, one or more complainants have filed complaints against Kurtzrock with the Grievance Committee based on his *Brady* and *Rosario* violations. More than two years after Kurtzrock’s resignation,

however, Kurtzrock remains a licensed attorney and is practicing as a criminal defense attorney in Suffolk County. He even continues to solicit clients by prominently advertising his experience as a “former homicide prosecutor.” It appears that no disciplinary action has been taken against Kurtzrock even though two courts and his own former employer long ago concluded that he has committed repeated *Brady* and *Rosario* violations, which have thus far led to the dismissal of five murder charges and compromised the New York State justice system.

There are three reasons why there is good cause to unseal Kurtzrock’s disciplinary proceeding.

First, the privacy and confidentiality interests of the complainant(s) do not exist here. Ordinarily, grievance proceedings are kept confidential, in part, because disclosure of sensitive information may deter a complainant from filing a complaint. There is no such information here. The victims and nature of Kurtzrock’s *Brady* and *Rosario* violations have already been made public through multiple hearing transcripts and news coverage. These public documents not only state that Kurtzrock has committed *Brady* and *Rosario* violations and identify the defendants whose right were violated, but painstakingly describe the nature of the evidence that Kurtzrock withheld. The privacy rights of the victims of the attorney’s misconduct are not implicated here.

Second, there is no concern that Kurtzrock's reputation would be irreparably harmed by unfounded accusations. Courts and the Suffolk County District Attorney's Office have already publicly denounced Kurtzrock's misconduct. After Kurtzrock's prosecutorial misconduct came to light, the Suffolk County DA's Office demanded Kurtzrock's resignation and subsequently opened an internal investigation into all of his cases. The revelation of his misconduct further led to the dismissal of murder charges against five defendants, including the complete exoneration of a man who was wrongfully convicted and had already served six years behind bars. And New York State courts have stated on the record that Kurtzrock knowingly withheld *Rosario* materials and that he committed "stunning" *Brady* violations. Moreover, as Kurtzrock's reputation has already been (quite appropriately) affected by numerous news articles that have highlighted his egregious misconduct, disclosure of the disciplinary committee records is unlikely to cause any new harm to his reputation. Consequently, the privacy and confidentiality interests of the investigated attorney that ordinarily exist in disciplinary proceedings do not exist here.

Third, Petitioner the Innocence Project and indeed the general public have a strong interest in disclosure of the disciplinary proceeding records. The Innocence Project is a national legal services and criminal justice reform organization that not only works to exonerate wrongfully convicted persons, but also campaigns for

measures that deter future misconduct. Recently, the Innocence Project helped lead a successful campaign that resulted in the New York Court of Appeals adoption of a “standing Brady order” for all criminal courts in New York State. Accordingly, the Innocence Project has great interest in ensuring that prosecutors who have committed known and egregious *Brady* and *Rosario* conduct are justly and timely investigated and disciplined.

The public has a stake in an evenhanded justice system, and the integrity of the prosecutorial office of New York State. The public also has an interest in knowing the status of the disciplinary proceeding against Kurtzrock, who has committed some of the most objectionable and well-documented prosecutorial misconduct in the recent history of New York State. This is a matter not just of justice, but also of public safety. For as the murder cases irreparably tainted by the “travesty” of Kurtzrock’s actions demonstrate, prosecutorial misconduct does not only risk the incarceration of an innocent person, but may also prevent law enforcement from identifying and prosecuting the real assailant(s).¹

Based on the foregoing, Petitioner asks this Court to exercise its discretion and permit disclosure of all papers, records and documents concerning the

¹ The Innocence Project did not represent Messiah Booker and has no independent basis to evaluate whether he is innocent (as he maintained) or guilty of the murder in question. But in either case, Kurtzrock’s misconduct plainly compromised the State’s ability to successfully identify and prosecute the true perpetrator(s) of the murder with which Booker and his co-defendants were charged.

disciplinary proceeding against Kurtzrock arising from what the courts and the District Attorney have already found to be his substantial and egregious *Brady* and *Rosario* violations.

QUESTION PRESENTED

1. Is there good cause to unseal all records, papers and documents concerning the disciplinary proceeding against Glenn Kurtzrock?

STATEMENT OF FACTS

The Innocence Project's mission is to free the unacceptable number of innocent people who remain incarcerated, and to bring reform to the system responsible for their unjust imprisonment. Verified Petition (hereinafter "Pet.") ¶¶ 10-11. Part of that reform is assuring that public prosecutors comply with their *Brady* and *Rosario* disclosure obligations. Compliance is assured, in part, by the knowledge that there are public sanctions and consequences for non-compliance.

On May 9, 2017, Kurtzrock resigned as a Suffolk County ADA after it came to light that he withheld evidence from the defense in the murder trial against Messiah Booker for a home invasion and shooting that led to the death of one man. Pet. ¶¶ 21-35. Kurtzrock improperly withheld pages of police notes that implicated other suspects as the perpetrators of the murder, and police notes from an interview of an eyewitness who had already taken the stand during the trial. *Id.* ¶¶ 28-30. The District Attorney's office promptly dismissed all murder charges against

Booker and his three co-defendants. *Id.* ¶ 32. And the judge declared the end result “a travesty of justice.” *Id.* ¶ 33. Kurtzrock’s misconduct and resignation were widely reported. *Id.* ¶ 35.

The Suffolk County DA’s Office subsequently conducted an internal investigation into Kurtzrock’s cases. *Id.* ¶ 36. The internal investigation helped uncover more *Brady* violations in another murder case. *Id.* ¶ 37. Kurtzrock contributed to the withholding of at least 45 pieces of *Brady* material in a 2015 case that led to the wrongful conviction of Shawn Lawrence. *Id.* ¶¶ 38, 47. When those *Brady* violations were revealed, Lawrence was exonerated after already spending six years behind bars for crimes that he did not commit. *Id.* ¶ 49. The judge called Kurtzrock’s violations “absolutely stunning.” *Id.* ¶ 49. This exoneration and Kurtzrock’s misconduct was again widely reported. *Id.* ¶ 50.

Upon information and belief, one or more complainants have filed a complaint against Kurtzrock with the Grievance Committee for the Tenth Judicial District. *Id.* ¶ 51. The status of this disciplinary proceeding is unknown. *Id.* ¶ 52. It is known, however, that although it has been more than two years since Kurtzrock was publicly forced to resign from the Suffolk County DA’s Office for “inexcusable” prosecutorial misconduct, he is still a registered New York lawyer and is practicing law as a private criminal defense attorney. *Id.* ¶ 18.

ARGUMENT

I. There is good cause under Judiciary Law § 90(10) to unseal Kurtzrock's disciplinary proceeding.

There are three reasons why there is good cause to unseal Kurtzrock's disciplinary proceeding. *First*, the privacy and confidentiality interests of the complainant(s) that exist in the mine run of disciplinary proceedings do not exist here. *Second*, there is no concern that Kurtzrock's reputation would be irreparably harmed by unfounded accusations. *Third*, Petitioner and the general public have a strong interest in the disclosure of the disciplinary proceeding records.

A. Good cause for disclosure exists when confidentiality does not further the two purposes of Judiciary Law § 90(10) or when a countervailing interest in disclosure outweighs any privacy interests of the complainant or the investigated attorney.

Judiciary Law § 90(10) provides in relevant part that "all papers, records and documents upon . . . any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney . . . shall be sealed and be deemed private and confidential" except that "*upon good cause being shown*, the justices of the appellate division are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents." N.Y. Judiciary Law § 90(10) (emphasis added).

The confidentiality provisions of Judiciary Law § 90(10) serve two purposes. First, it "serves the purpose of safeguarding information that a potential

complainant may regard as private or confidential and thereby removes a possible disincentive to the filing of complaints of professional misconduct.” *Matter of Johnson Newspaper Corp. v. Melino*, 77 N.Y.2d 1, 10-11 (1990) (“*Johnson Newspaper*”). Second, it “evinces a sensitivity to the possibility of irreparable harm to a professional’s reputation resulting from unfounded accusations.” *Id.* Good cause for disclosure is found when confidentiality will not further these two purposes, *Matter of Aretakis*, 16 A.D.3d 899, 899-901 (3d Dep’t 2005), or when a countervailing interest in disclosure outweighs any privacy interests of the complainant or the investigated attorney. *In re N.Y. News, Inc.*, 113 A.D.2d 92, 93 (1st Dep’t 1985) (“*N.Y. News*”).

B. Good cause for disclosure exists here because the matters in the complaint(s) are already public.

There is no concern that unsealing the disciplinary proceedings against Kurtzrock will divulge information that a complainant may view as private or confidential.

Where information has already been made public, it no longer requires protection. *Aretakis*, 16 A.D.3d at 901. In *Aretakis*, an attorney who was the subject of a disciplinary proceeding had disclosed the complainants’ complaints against him in a newspaper before obtaining prior approval from an appellate court. *Id.* The Grievance Committee filed a lawsuit against him, claiming that he violated Judiciary Law § 90(10). *Id.* The attorney subsequently moved, *inter alia*,

for an order *nunc pro tunc* permitting him to divulge the contents of the complaints against himself. *Id.* The court granted the motion for an order *nunc pro tunc* and noted that, as far as the complainants' interests in privacy and confidentiality was concerned, "the matters referred to in their complaints had to do with public statements already made by respondent and, thus, were already part of the public domain." *Id.*

Here, the names of the victims of Kurtzrock's misconduct and the information that forms the basis of the disciplinary proceeding against Kurtzrock for his material *Brady* and *Rosario* violations have long been made public and are "already part of the public domain." Publicly available court documents, such as hearing transcripts, describe in extensive detail the specific *Brady* and *Rosario* materials that Kurtzrock has improperly withheld from Booker and Lawrence.

The May 9, 2017 hearing transcript in *Booker* describes how Kurtzrock had withheld materials that were responsive to Booker's *Brady* demand, thus interfering with Booker's right to a fair trial. Pet. ¶¶ 21-33. Most egregiously, Kurtzrock cherry-picked pages from police notes to conceal the fact that the police were informed that another individual named "DeShawn" and his family was likely responsible for the murder for which Booker was on trial. *See id.* ¶ 28. Kurtzrock also withheld pages indicating that the prosecution's eyewitness believed an individual named "Jovan Creighton" may have had some connection to the

incident, even though Booker had earlier made a specific *Brady* request for all materials that show any potential involvement of Jovan Creighton in the crimes. *See id.* ¶¶ 28-29. Kurtzrock also failed to provide nine pages of police notes concerning a police interview of the prosecution’s eyewitness to Booker’s counsel. *Id.* ¶ 30. The court stated on the record that the nine pages of notes was “obviously a Rosario problem” and that the notes should have been provided “a long time ago.” *Id.* As the public record reflects, this misconduct impacted not only Booker’s rights, but also the rights of the three other co-defendants—Michael Parrish, Danielle Hall, and Corry Wallace. *Id.* ¶ 32.

Likewise, the February 15, 2018 hearing transcript in *Lawrence* made public Kurtzrock’s *Brady* violations in prosecuting Lawrence. During that hearing, the court observed that Kurtzrock improperly withheld as many as 45 pieces of *Brady* material. *Id.* ¶¶ 47, 49. Specifically, the court stated on the record that the improperly withheld evidence pertained to “witnesses [that were] paid off, witnesses [that were] relocated, memo book pages [that] basically . . . indicat[ed] that there were other individuals responsible for the murder and the two . . . charges of attempted murder,” and videotape showing two individuals that one of the victims identified as the shooters. *Id.* ¶ 49.

Additionally, numerous news articles have been published concerning Kurtzrock’s *Brady* and *Rosario* violations. The dismissal of murder charges

against Booker, his three co-defendants, and Lawrence have all been publicized as due to Kurtzrock's prosecutorial misconduct. *Id.* ¶ 35. A March 7, 2018 Newsday article also prominently highlighted the *Lawrence* and *Booker* cases as examples of the Suffolk County DA's Office's "[f]ailures to follow [the] *Brady* rule." Pet. Ex. G.

Accordingly, any privacy or confidentiality interests that either the victims or the lawyer may normally have in the information presented to the Grievance Committee for an attorney disciplinary proceeding are altogether absent here. While we do not know the identity of the person or persons who filed the complaints against Kurtzrock, there is no obvious privacy interest that any third party would have in lodging complaints about such public misconduct.

C. Good cause for disclosure exists here because there is no concern that Kurtzrock's reputation would be irreparably harmed by unfounded accusations.

There is also no concern here that unfounded accusations will tarnish Kurtzrock's reputation. *C.f. Johnson Newspaper*, 77 N.Y.2d at 10-11 (noting that Judiciary Law § 90(10) "evinces a sensitivity to the possibility of irreparable harm to a professional's reputation resulting from unfounded accusations."). Although the Grievance Committee has not yet concluded its review of Kurtzrock's conduct as a Suffolk ADA or taken any disciplinary action, several New York State courts and the Suffolk County DA's Office have already concluded that Kurtzrock

committed *Brady* and *Rosario* violations that were so egregious as to warrant serious consequences—including the dismissal of at least five defendants’ murder charges and Kurtzrock’s forced resignation.

During the May 9, 2017 hearing in Booker, Justice Collins noted that there was a “*Rosario* problem” in the materials Kurtzrock had withheld, and that the evidence presented by Booker’s lawyer would have likely resulted in sanctions. Pet. ¶ 30. He declared the result “a travesty of justice.” *Id.* ¶ 33.

At the February 15, 2018 hearing in *Lawrence*, Justice Condon described Kurtzrock’s *Brady* violations as “absolutely stunning,” and on the basis of those violations, dismissed all charges against Lawrence—reversing the wrongful conviction obtained by Kurtzrock’s prosecutorial misconduct. *Id.* ¶ 49.

The Suffolk County DA’s Office denounced Kurtzrock’s conduct as “inexcusable.” Pet. ¶ 34. Immediately after the materials Kurtzrock withheld from Booker’s attorney came to light, Kurtzrock was replaced with another ADA who admitted that in light of suppressed evidence, the People could no longer prove Booker’s guilt of murder beyond a reasonable doubt. *Id.* ¶¶31-32. In making this admission, the Suffolk County DA’s Office effectively acknowledged that the evidence suppressed by Kurtzrock was so significant and exculpatory as to preclude a conviction for murder. And Suffolk County DA Thomas Spota forced Kurtzrock to resign that same day. *Id.* ¶ 34.

The Suffolk County DA's Office further conceded that Lawrence had been wrongfully convicted by Kurtzrock. After an internal investigation into Kurtzrock's cases uncovered that Kurtzrock contributed to the withholding of 45 pieces of *Brady* materials in prosecuting Lawrence, the Suffolk County DA's Office "chose to...not oppose [Lawrence's] motion to dismiss" and decided "they could no longer prove their case." Pet. Ex. M 6:21-7:5.

Accordingly, any claim that Kurtzrock has committed material *Brady* and *Rosario* violations is not unfounded. Rather, it is supported by a plethora of evidence, and has been acknowledged as true by New York State courts and the Suffolk County DA's Office.

It is also unlikely that divulging disciplinary proceeding documents, papers and records would tarnish Kurtzrock's reputation more than it has already been tarnished. Kurtzrock is already the face of some of the most egregious *Brady* violations that have been uncovered in New York State in recent years. Several news articles have detailed Kurtzrock's humiliating resignation. And the Suffolk County DA's Office launched an internal investigation into all of the cases that he had prosecuted. Because the disciplinary proceeding that Petitioner seeks to unseal concerns the same misconduct that has already tarnished his reputation, further divulgence of information concerning that misconduct is unlikely to cause any new harm to his reputation.

D. Good cause for disclosure exists here because the Petitioner and the public have a strong interest in the disclosure of Kurtzrock's disciplinary proceedings.

In contrast with Kurtzrock's and the complainant(s)'s lack of privacy interests, the Petitioner and the public in general have an outsized stake in unsealing and opening Kurtzrock's disciplinary proceedings.

Another appellate court has previously found good cause to unseal a disciplinary proceeding where the integrity of the justice system has been called into question. *N.Y. News*, 113 A.D.2d at 93. In *N.Y. News*, two news organizations brought an application pursuant to Judiciary Law § 90(10) "directing the disclosure of all records in the disciplinary proceeding pending before [the Appellate Division, First Department] against Roy M. Cohn." *Id.* at 92. During the pendency of a disciplinary proceeding against Cohn, Cohn had publically disparaged the grievance committee and accused them of being "constituted of incompetents who prosecuted him for a political purpose, upon meritless charges, with the intent of 'smearing him.'" *Id.* at 95. The First Department found that there was "good cause to disclose the record of [Cohn's] disciplinary proceeding." *Id.* at 95. In reaching this conclusion, the First Department noted that "the public has a stake" in the grievance committee's "good reputation for integrity and competence" which allows the committee to properly conduct "its work as this court's prosecutorial nominee." *Id.* at 93.

Here, Petitioner and the public have a stake in ensuring a well-functioning justice system that appropriately handles material *Brady* and *Rosario* violations that have been widely acknowledged and publicly undisputed. In particular, they have an interest in encouraging prosecutors to comply with their legal disclosure requirements, which is furthered by the knowledge that prompt and severe sanctions are available for violations. And to the extent that the records of the Grievance Committee’s handling of the complaints against Kurtzrock reveal defects in its existing procedures or a lack of competency to handle claims of ethical violations by prosecutors, that is important information for the public to know, and for the courts and legislators to address.²

The Innocence Project is a national legal services and criminal justice reform organization that has helped exonerate 356 wrongly convicted persons and strives to enact measures that will deter future prosecutorial misconduct. Pet. ¶¶ 10-11. Legal disclosure requirements and prosecutorial compliance with those requirements helps minimize the risk of wrongful convictions and thus is a particular interest of the Innocence Project. Within the last year, the Innocence Project, along with the Legal Aid Society of New York, has led a successful campaign that has resulted in the New York Court of Appeals’ adoption of a “standing *Brady* order” for all criminal courts statewide, to prevent prosecutorial

² Pet. at 4 n.1.

misconduct and empower courts to directly sanction it when it occurs. *Id.* ¶ 12. In Texas, the Innocence Project successfully served as lead counsel in the criminal prosecution and disbarment of a former Texas prosecutor (and then judge) whose suppression of *Brady* material caused an innocent man wrongfully to serve twenty-five years in prison. *Id.* ¶ 13.

In light of the work that the Innocence Project has done in New York and nationwide to ensure that prosecutorial misconduct is prevented and properly publicized and sanctioned, it has great interest in ensuring that the Grievance Committee is appropriately investigating Kurtzrock. Specifically, the Innocence Project has an interest in understanding why the undisputed allegations that Kurtzrock has committed *Brady* and *Rosario* violations have not led to any disciplinary actions more than two years after Kurtzrock was forced to resign for some of these violations, and more than a year after it was revealed that his misconduct also caused the wrongful conviction and imprisonment of another, factually innocent man. It also has an interest in the public education that could come from removing the veil of secrecy from the proceedings involving Kurtzrock.

The public also has an interest in the operation of an evenhanded justice system, and thus has an interest in learning about the grievance proceeding against Kurtzrock. *See N.Y. News*, 113 A.D.2d at 95 (granting disclosure of the disciplinary proceeding records against Cohn to two news organizations because

the *public* has a stake in that information). While Kurtzrock's misconduct in *Booker* and *Lawrence* has been appropriately dealt with in the context of those cases, no action has yet been taken against him as a licensed and practicing attorney. Indeed, Kurtzrock is still a registered lawyer in New York, and maintains a public website as a criminal defense attorney. Pet. ¶¶ 17-18. He flaunts on his public website that he is a former homicide prosecutor—never mind that he had caused the wrongful conviction of Lawrence and committed flagrant misconduct that compelled the People to dismiss murder charges against four other defendants during his stint as a Suffolk County ADA. *Id.* ¶ 18.

CONCLUSION

For the reasons stated above, this Court should unseal all records, papers and documents concerning the disciplinary proceeding against Glenn Kurtzrock.

DATED: New York, New York
May 22, 2019

Respectfully Submitted,



Gregory L. Diskant
Esther Kim
Jeffrey Skinner
PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Tel: (212) 336-2000
Fax: (212) 336-2222
gldiskant@pbwt.com
ekim@pbwt.com
jskinner@pbwt.com

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

The foregoing brief was prepared on a computer. A proportionally spaced typeface was, used as follows:

Name of typeface: Times New Roman

Point Size: 14 (12 pt. for footnotes)

Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules, regulations, etc., is 3,720 words.