



SEASON 4 EPISODE 6

An Effort to Hold Prosecutors Accountable

A legal matrix that incentivizes criminal convictions can motivate unethical prosecutors to bend or break the rules. In New York, a group of law professors is trying to curb that by pushing the system to discipline its own. Reported by Nina Sparling.

Mitzi Miller: I'm Mitzi Miller, and this is 70 Million.

Prosecutors hold immense power in the criminal justice system. They decide who to charge with what crime, when to offer deals, what sentences to recommend, and much more. Aside from legal statutes, ethical and constitutional rules govern what prosecutors can and *cannot* do.

But a system that incentivizes bringing criminal cases to trial—and winning them—can motivate prosecutors to bend or break the rules to get a conviction. And all too often, when they cut corners or act unethically, their actions remain hidden.

Today, reporter Nina Sparling takes us to New York to look at the profound impact breaking the rules can have on families and communities, especially when it's done with impunity.

Nina Sparling: Lamy and Clinton Turner live on the 3rd floor of a low-rise, red brick apartment building in Kew Gardens Hills, Queens.

Lamy opens the door and their dog starts barking. I walk into a small apartment filled with decades worth of memorabilia.

Lamy's wrapping up her workday as an accountant and had just been helping her husband get dressed. Clinton had three strokes last year. So, Lamy takes care of Clinton as well as working...

Lamy: He's just getting up a little while ago.

Sparling: He lost some control over muscle function and needs help walking. He also can't swallow correctly.

They're both in their sixties, and live a quiet life now, with routines dictated by Clinton's care. But I'm here to talk to them about something that happened a long time ago, when life wasn't so quiet.

Lamy: It was just crazy. It was a crazy, confusing time.

Sparling: The couple met as teenagers growing up in this mostly residential neighborhood. They lived together on and off and had kids. This was in the 1980's, the height of the crack cocaine epidemic.

Lamy: Kew Garden hills at the time back then it was referred to as "the ghetto." Crack was rampant in the street. It was a crazy era. Everyone was using drugs that I know.

Sparling: Clinton got caught up, too. First he was just using, but that eventually turned into something more like selling.

Lamy: People would come up in the projects just to buy drugs and ask you to be a middleman for them.

Sparling: In 1987, he met a tall, white guy named William Clarke and became his middleman.

Lamy: Maybe a couple of times they got high together. After a while, William just wanted it to his self.

Sparling: Clinton says that at a certain point, William started taking the drugs without paying. So Clinton began to cut the crack with breadcrumbs or grits and keep some of it for himself. One night that October, William noticed, and the two got into an argument.

Lamy: I guess he wanted what he was paying for, and him needing it like he did, gave him fake drugs. So he got angry, he got mad.

Sparling: The morning after they fought, William called the police and told them he had just been robbed. When they came, he mentioned Clinton's nickname at the time, Screwgie. He eventually told the police two different stories about how Clinton had robbed him at knife point—neither of which was true.

The police brought Clinton in, and William picked him out of a lineup. Clinton was arrested, and the case went to trial.

Clinton and his attorney wanted to make sure the jury would get the full picture, so they asked the prosecution to disclose whether anyone they planned to call to testify had a criminal record. That included William.

Lamy: Clinton asked for his record immediately, because, you know, coming up and doing things like that, you know you have a record just as bad.

Sparling: Court documents show the prosecutor never answered the request, so William’s criminal record never entered the courtroom, and Clinton’s defense lawyer never got to review it.

Lamy: The prosecutor took him and made him look like someone just out there. He said he didn’t drink, he didn’t smoke—he was just in the nightclub, just watching somebody or visiting friends. But he just so happened to be in the neighborhood.

Sparling: The prosecutor in the case, Jesse Sligh, asked William in court if he’d ever been arrested or convicted of a crime. William responded “no” to both questions. He also testified at another point, that he had never used drugs, didn’t know Clinton, and had never been to Clinton’s building.

Lamy: But with Clinton, they had his record beforehand, because he had a lengthy record. He had little miscellaneous stuff, nothing really that bad. He had maybe a drug sale, because he had a drug habit, and so forth, to support his habit. You know, he had to do that. And they versus him against William, where you have a tall white guy who’s saying he doesn’t drink, he doesn’t smoke. He has a perfect record. Were you ever arrested? No. So that was the story.

Sparling: Clinton was honest about his criminal record and explained the two had gotten into an argument the night before. There were no eyewitnesses, alibi witnesses, or police lab results.

The jury believed William.

Clinton was convicted of both first-degree and third-degree robbery and grand larceny in the fourth degree.

Lamy: They offered Clinton a cop out. And I was like, “No, because you didn’t do this.” That’s a serious charge. We knew what happened.

Sparling: He was sentenced to 10 to 20 years for a crime he didn’t commit.

When prosecutor Jesse Sligh didn’t respond to Clinton’s lawyer’s request for William’s record, he broke what’s called the Brady Rule, which dates back to a really important Supreme Court case from 1963 called Brady v. Maryland. In that case, the court ruled that prosecutors had to turn over any evidence that could help the defense—like the criminal record of a key witness, DNA evidence, or police reports.

Brady violations are one of the most common ways that prosecutors break the rules. Violations like this have been a factor in almost half of all wrongful convictions involving official misconduct in the United States.

Joel Rudin: Mistakes do happen, innocent people get convicted, and they tend to be convicted most often when evidence is concealed from the jury..

Sparling: That's Joel Rudin, a criminal defense attorney who focuses on cases involving a wrongful conviction. I meet him at the end of the work day at his office in a midtown skyscraper. The doorman directs me to the eighth floor. Rudin, a middle-aged man with a precise and measured demeanor has made uncovering prosecutorial misconduct something of a specialty.

Rudin: The problem is that prosecutors sometimes want to play judge, jury and executioner. But if prosecutors of all people don't play by the rules, then how can they expect everyone else in society to play by the rules?

Sparling: Like police officers, prosecutors are often assumed to be telling the truth and abiding by the law. And because of the power they hold, when prosecutors make mistakes or deliberately break the rules, it can have catastrophic consequences on people's lives.

A 2020 review of national data found that prosecutors committed misconduct in thirty percent of wrongful convictions and that the rate of misconduct overall was higher in the most serious cases. Still...

Rudin: Almost never does anything happen to them. There have been a handful of cases, of truly extreme cases, where something has happened, but 98% of the time, nothing happens.

Sparling: I couldn't verify that 98% number, but through court discovery, Rudin found a pattern where DAs offices in New York had rarely, if ever, disciplined or reprimanded prosecutors for their actions.

In some cases ... prosecutors who commit misconduct actually rise through the ranks at the office. Reporting from Gothamist found that 14 Queens prosecutors got promoted or kept high-ranking positions despite court findings of misconduct. That's what happened with Jesse Sligh. Before he retired in 2020, he worked as the Executive Assistant District Attorney, one of the highest ranks in the DA's office.

There is a process to make sure attorneys are following the rules.

Rudin: The disciplinary system established by the courts in New York state—there's a grievance committee, or disciplinary committee of each of the four judicial departments in New York state.

Sparling: The committees are part of the appellate court. They're made up of both paid staff attorneys and volunteers who review and investigate complaints. And they're empowered to enact consequences, from privately reprimanding a lawyer to petitioning the court to suspend their law license or disbar them.

Rudin: They review the behavior of lawyers, including prosecutors, and they have a history of

disciplining prosecutors extremely rarely. And that's a major cause of concern as well, because prosecutors know not only that they won't be disciplined by their own office but they won't be disciplined by the courts.

Sparling: There are eight attorney grievance committees in New York state, and most of their work happens behind closed doors. In fact, unless the committee decides to pursue public discipline, the records of complaints and their outcomes are sealed and confidential.

It's pretty rare for anyone to file a complaint against a prosecutor. And Joel Rudin says criminal defense attorneys don't file formal complaints because they have to face off against prosecutors in court or negotiate plea bargains, and they fear retribution for the people they represent.

Rudin: If you're going to the district attorney's office trying to get a good deal for your client, and they won't talk to you because you filed a complaint against one of their colleagues, then you're not going to be very effective. And it becomes hard to function as a defense attorney.

Sparling: Rudin says the disincentive to file complaints and the opaqueness of the process create a system that lets prosecutors get away with breaking the rules.

Rudin: Prosecutors, district attorneys in the county where they hold their office have a great deal of power, and the grievance committees don't want to get on the wrong side of them. And basically defer to them.

Nicole Smith Futrell:

For far too long, it's kind of been an open secret within the legal community that, you know, prosecutors can wield their power, can commit acts of misconduct, and not be held to account for it.

Sparling: That's Nicole Smith Futrell, co-director of the defenders' clinic at the City University of New York's law school.

Futrell: What we see in this system is that prosecutors have such an enormous amount of power. You know, the way that they wield that power often impacts black people, brown people, immigrants, low-income communities, very often of color.

Sparling: Futrell is part of a group of law professors and activists who are trying to push the criminal justice system to hold prosecutors accountable for their role in creating that inequality.

Futrell and her colleagues — they call themselves Accountability New York — have filed twenty-one complaints about prosecutors from the Queens District Attorney's office. And they picked Queens for a reason.

Futrell: Queens has sort of developed a reputation over the years as being particularly

egregious when it comes to misconduct and not just sort of on an individual level, but on a more office-wide or systemic level.

Sparling: One target of these complaints was the prosecutor in Clinton Turner's case, Jesse Sligh.

Futrell: We don't know any of the prosecutors personally, we haven't been personally involved in any of the cases, but you can just go in and research in terms of judicial decisions where there has been a finding by a court that a prosecutor has done something that amounts to misconduct.

Sparling: This is true of Clinton's case: A judge in federal court found that because Sligh never provided William Clarke's criminal record, he committed a harmful violation of the constitution.

Accountability New York partnered with the non-profit Civil Rights Corps to comb through court decisions and to find these kinds of cases.

Futrell: It is very clear cut, right, this is a court that has analyzed all of the facts and how things occurred, and made a finding that there was misconduct that happened.

Sparling: Despite these explicit findings, none of those prosecutors Accountability New York has filed complaints against has faced any public discipline for their actions. And because so much of the accountability process happens in secret, it's difficult to say whether or not they were disciplined privately.

Futrell: That sort of allows the process to keep happening, where people are, you know, committing misconduct, doing things that they know to be wrong, that have a really negative impact on a person's criminal case, and to, you know, basically get away with it without any consequence.

Sparling: But there are *significant* consequences for the people on the other end, like Clinton and Lamy Turner, and their family.

Lamy: I don't know, we've been through this. It's like, I never left him inside. I always loved him. I went there to see him. I kept him there to their dismay. No kids want to go to jail. Like, you know, going up there initially, I told them their father was at school because, you know. And so, you know, they know what it was eventually. They figured it out.

Sparling: Clinton started his prison sentence at Elmira State Prison in western New York, a four-hour drive from Kew Gardens Hills. He stopped using inside and started fighting his conviction.

Lamy: Once he got his head clear, and the drugs out of his system, it was on.

Sparling: After Clinton started his incarceration, the couple thought they had a way out: Lamy ran

into William Clarke in Queens. She told William that Clinton was in prison for the robbery he'd never committed. When William learned that, he said he'd try to help.

Lamy: He told me his record. He was like, "Yes, I do have a record."

Sparling: William told Lamy about his prior arrests, and then...

Lamy: He went and signed an affidavit for me. And then I took him and told him ... What did that affidavit say? That you never robbed? That you never robbed him, right?

Clinton: *Yeah.*

Lamy: And that, you know, it was all drug-related.

Sparling: Clinton and Lamy hoped the affidavit would be enough to build a case to overturn his conviction. But it wasn't. They tried for years to get his conviction vacated, but their motions failed.

So Clinton stayed in prison until being released on parole in 1997. When he returned home to Queens he tried once again to clear his name in federal court. Finally, a judge decided to pursue the case. And for the first time, the courts forced the DA to turn over William Clarke's criminal record.

In 2004, more than fifteen years after his incarceration, Clinton's name was cleared.

Exactly why Jesse Sligh didn't provide William Clarke's criminal record isn't a question we can answer. We reached out to him through an intermediary, and he was not available for an interview before this episode went to publication. Requests for a written statement also went unanswered.

The Queens DA's office also declined requests for an interview or statement.

But I was able to talk to a man who used to work there ...

RECEPTIONIST: *You here for Jeff?*

NINA SPARLING: *I am.*

RECEPTIONIST: *Jeff, you have someone here*

JEFF SCHWARTZ: *Oh okay, coming!*

Jeff Schwartz: *Jeff Schwartz, or Jeffrey T. Schwartz if you want to be formal. I'm an attorney, my office is in Manhattan. I started practicing in 1987. And my first job out of law school was the Queens DA's office.*

Sparling: Now, Schwartz works as a criminal defense attorney. He's affable and enthusiastic, the

kind of personality that fills up a room. After law school, he knew he wanted to be a trial lawyer. So before he went into private practice, he worked at the Queens DA's office for six years. His first year on the job was the same year William accused Clinton of robbing him.

Schwartz: Once I went to my first homicide call, I got hooked on the subject. It was like *Law & Order* up close and personal, you know, and it was what they thought was a mob shooting in a barber shop in Queens, and it was like something right out of *The Godfather*.

And then, I was a young kid, I grew up in a very sheltered Orthodox Jewish Home. For me, it was like *whoa*, like blew my mind. It was like nothing I had ever seen before other than on TV.

Sparling: Schwartz says he felt like he was doing good in his role as a prosecutor—like the work was an act of public service. He wanted to be a prosecutor so he could get experience trying cases in court, and Queens was the place to do that.

Schwartz: It was a tough office. It was a very prosecution and trial-oriented office, which was something that I loved, because I wanted to do a lot of trial work.

Sparling: *What do you mean by that, that it was prosecution and trial focus, like how was that different than elsewhere?*

Schwartz: Your merit in the office, in a big way, was based on your productivity, and how many cases you tried, especially if you were in a trial division. I was in an investigative division as well, but they wanted you to try cases, they wanted you to put bad people away. They wanted you to try to get as much time as you could for repeat offenders, for chronic offenders, for violent criminals, for gun possession cases.

Sparling: A few years into Schwartz' tenure at the office, a former judge named Richard Brown became the district attorney in Queens. Brown came into office in 1991 and was aggressive in pursuing low-level offenses like marijuana possession and turnstile jumping. He went on to be the DA for nearly 30 years, with a "tough-on-crime" reputation. Many of the cases of prosecutorial misconduct the Accountability New York team has underscored happened on his watch. Despite that climate, Schwartz says at the time he thought Queens ran a pretty clean shop.

Schwartz: You know, what we're finding out now that has been going on, honestly, there was no culture in Queens to withhold evidence or to not disclose evidence, I don't think. But then again, I just worked on my cases.

Sparling: Schwartz seems bemused by what Accountability New York is doing.

Schwartz: I, for one, would not judge someone from their worst moment. You know, it, you do one screw up. It's not your whole career. And it might not have even been a screw up at the time

Sparling: Many of the people the complaints reference are former colleagues. And he counts Jesse Sligh, the prosecutor in Clinton Turner's case, as a close friend.

Schwartz: I know him well. He's a personal friend. He's a man of God. He's an activist in the community. He is the last guy on the planet that would ever knowingly do something improper or withhold evidence. He's the last guy.

Sparling: Intentional or not, failing to disclose evidence and other kinds of misconduct means that innocent people can end up in prison.

Accountability New York has focused its efforts on the Queens DA so far, but there's also been action at the state level. NBC 4 covered the initial effort back in 2015 ...

NEWS4NY:

This year, the New York State Legislature is considering a bill to create a Commission on prosecutorial conduct. The 11 member body would publicly reprimand problem prosecutors or even have them suspended. When we have a system...

Sparling: This is when the New York State legislature started talking about creating the first Commission on Prosecutorial Conduct in the country.

Despite opposition from district attorneys across the state, including Queens DA Richard Brown, former governor Andrew Cuomo signed the bill to create it in 2018. Shortly after, the New York State District Attorney's Association sued, arguing it was unconstitutional. They won their case and a judge struck down the law that would have created the Commission.

Lawmakers rewrote the bill and it moved through the legislature again and it passed in 2021, but state representatives who supported the initial bill say it's useless in its current iteration as a purely advisory body with no independent power. Here's Assemblymember Erik Dilan, who represents parts of Brooklyn, speaking at the state assembly:

NEWS4NY:

In light of all the wrongful convictions that have happened, that this panel was very much needed and very important. I believe it's been watered down to a point where its effectiveness would be very minimal.

Sparling: In the thick of the state-level fight over creating a commission on prosecutorial conduct, things changed back in Queens ...

NEWS4NY:

After nearly 30 years behind this desk, the Queens District Attorney, known as the judge, will not seek reelection because of his battle with Parkinson's disease.

Sparling: Not long after that announcement, former Queens DA Richard Brown passed away.

After a tight primary election, Melinda Katz won the first competitive DA's race in the county in decades. She's the first woman to hold the seat, and ran on a campaign of reform.

Melinda Katz: A career prosecutor is exactly why we are all sitting here today, because if you're a career prosecutor, you're a part of the problem that has caused mass incarceration, the destabilization of communities. What I believe the Queen's district attorney needs is someone who can effectuate the change necessary for criminal justice reform.

Sparling: One of the first steps Katz took was to create a Conviction Integrity Unit to review past cases and determine if anyone had been wrongfully convicted. So far they've already vacated at least eight convictions. There's still been no public indication that any of the prosecutors have been disciplined. Both Katz and the director of the unit declined interview requests. But here's Katz in her inauguration speech in January 2020:

Katz: Every wrongful conviction is more than a wrongful act against an individual. It's an injustice to an entire family who will suffer the loss of a spouse, a parent, a provider, a son or daughter, due—by the way—to someone else's action. And that's really the key words: to someone else's action.

Sparling: The toll incarceration takes on a family is something Lamy and Clinton know well. When he was released, Clinton came back to a changed home.

Lamy: My sons were incarcerated. It was my first time both of them was incarcerated when he came home.

Sparling: Lamy's talking about their two oldest sons, the ones who were born before Clinton's wrongful conviction. They both went to prison as teenagers.

Clinton found resuming a normal life was challenging. Although he had earned an associate's degree and nearly finished his bachelor's while inside, he struggled to find work when he came home. And the emotional burden of all of that...

Lamy: He had a drinking problem, I guess, just to deal with all of this. He came out, he was drinking.

Sparling: Clinton and Lamy were still looking for justice for what happened to them, to their family. They sued the city and the state of New York—but they couldn't sue Jesse Sligh himself because in most cases, prosecutors have immunity from civil lawsuits. Clinton received some compensation from the city in 2007, and in 2015, he won damages in the New York Court of Claims.

Sparling: What does justice look like at this point for you?

Lamy: It doesn't look like anything, it's that there could be no compensation, even with the way

they were treated.

Would you go in and stay a day? You couldn't get through a day, more or less in central booking, more or less upstate. People die up there. Everybody I know, when I used to go visit my sons and him, on the floor, you see most of the guys with scar slices on their face. None of them had it, so they emerged strong. But nevertheless, emotionally, who knows? Who knows why my husband had three strokes. Who knows.

Sparling: Lamy and Clinton hope the work Accountability New York is doing might help prevent other people from being wrongfully convicted by pushing the system to discipline its own.

Lamy: These are people's lives, and you don't know how many lives you're affecting. And it just goes on down and down and down.

Sparling: Here's law professor Nicole Smith Futrell again.

Futrell: When you see clients—many of them Black and Brown, many of them poor, who have been

through the system, who've really suffered under the weight of the system—are there because of some misconduct that a prosecutor is responsible for, it's disappointing. Disheartening isn't even the word.

How can you tell someone who spent so many years of their life in prison, or whose family has been so negatively impacted by their criminal conviction, that accountability means one thing for you. And it means something else for other folks, especially if you're a prosecutor.

Sparling: Futrell and her colleagues at Accountability New York haven't released information about the official response to their complaints. The Office of Court Administration in New York said in a written statement that "Filing a complaint and then publicizing the unsubstantiated allegation just reflects the tenor of the times." And a spokesperson discouraged the use of quote "publicity stunts" in a statement to WNYC.

The Queens DA declined to comment on the complaints for this story.

Futrell and her colleagues acknowledge the work they're doing is just one approach to changing how prosecutors do their jobs. Really, what they'd like to see is the approach to prosecution shift altogether.

Futrell: Our system is designed in such a way where prosecutors are so far removed from the people that they are accusing of these offenses that they have really no idea the impact that their little, you know, loose statement on summation or their, you know, very intentional action of withholding a piece of evidence—they just, they have no real connection to what impact that will have on somebody's life.

Sparling: Accountability for misconduct is part of that, but they'd also like to see DAs offices

recognize that a tough-on-crime attitude isn't necessarily the best way to build safer communities.

Futrell: They are charged with getting convictions, locking people up, or making sure that people are punished. That very design in and of itself, I think, just lends itself to creating instances of misconduct. So-I would love to imagine a different kind of world or system where that's not how we operate and that's not where we come from. I just don't think there's any easy answer to say, "Okay, yeah, if we just train people more, show them some of these judicial decisions, so they know what somebody else did, so they won't do that." I don't think that goes far enough.

Sparling: Futrell and her colleagues are keeping that big goal in mind for the long term. In the meantime, they'll keep pushing for more accountability, in New York City first, and eventually, across the state.

Miller: Thanks to Nina Sparling for that story.

[Music transition.]

For more information, toolkits, and to download the annotated transcript for this episode, visit 70millionpod.com. *70 Million* is an open-source podcast, because we believe we are all part of the solution. We encourage you to use our episodes and supporting materials in your classrooms, organizations, and anywhere they can make an impact. You may rebroadcast parts of or entire episodes of our four seasons without permission. Just please drop us a line so we can keep track.

70 Million is made possible by a grant from the Safety and Justice Challenge at the MacArthur Foundation and is produced by [LWC Studios](#).

Jen Chien edited this episode. Elizabeth Nakano is our sound designer. Emma Forbes is our staff writer, and Michelle Baker is our photo editor. Mark Betancourt is our lead fact-checker. Cedric Wilson is our lead producer. Juleyka Lantigua is the creator and executive producer. I'm Mitzi Miller. Thank you for listening.

CITATION:

Sparling, Nina. "An Effort to Hold Prosecutors Accountable." *70 Million Podcast*, LWC Studios, October 18, 2021. 70millionpod.com.

Produced by

