

# MANHATTAN DA RACE 2021

A VOTER GUIDE BY  
5 BORO DEFENDERS



## ABOUT 5BD

Five Boro Defenders (5BD) is an informal collective of public defenders, civil rights attorneys, and advocates fighting for the rights of indigent New Yorkers. Founded in 2006 by a group of CUNY Law students embarking upon careers in public defense and civil rights, 5BD has provided a forum for the public defender community to organize and strategize on issues impacting communities of color and low-income New Yorkers. We are proud to be one of the founding organizations of CourtWatchNYC alongside Brooklyn Community Bail Fund and VOCAL-NY in our collective call for greater courtroom accountability and transparency.

As adversaries of the District Attorney, our members have a deep understanding of the unbridled power of the prosecutor and are witnesses to the daily harms it inflicts. With this unique perspective, a working group of 5BD members created our first election guide for the Brooklyn District Attorney primary in 2017. This was followed by a guide for the Queens District Attorney primary in 2019. The current guide is a product of the Manhattan working group and is possible because of the work of our colleagues in Brooklyn and Queens. We also owe a great debt of thanks to Elydah Joyce, who created all of the graphics and web design for this guide.

## NOT AN ENDORSEMENT

As public defenders and students of abolition, we do not embrace any candidate for District Attorney. The role of the prosecutor, no matter how “progressive,” will always be harmful to the communities we represent because of our fundamental belief that prosecutors do not deliver justice. Justice comes from accountability within the community. Prosecutors do not make us safe; safety arises when a community that has its basic health, economic, housing, and educational needs met.

We witness daily the harm created by the racist and dangerously retributive policies of Manhattan District Attorney Cy Vance and his assistants in the name of the “People of New York” -- policies which reinforce and contribute to the continuing harm of racist policing and mass incarceration. The role of the prosecutor in our legal system, no matter who they are, is a role that harms individuals and communities. With this in mind, we recognize that some candidates are likely to cause more harm than others. The aim of this guide is to inform voters and would-be endorsers as to where we, as practitioners, believe candidates fall on a harm to community scale as compared to one another and to Vance.

Vance is responsible for caging the most New Yorkers on Rikers Island out of any citywide District Attorney. He pursues low-level offenses and refuses to hold police accountable, and has not addressed deep corruption within his office. He has notoriously served the wealthy and special interests, declining to pursue cases against campaign donors such as Harvey Weinstein and the Trump family until it was politically expedient, all while relentlessly incarcerating and targeting Black and brown New Yorkers for prosecution. True transformative change will require a DA that addresses the devastating legacy Vance will leave behind.

# 04

## WE WANT TO SHRINK THE POWER OF THE DA

The DA decides who to charge, what to charge, what kind of alternatives to incarceration to offer, and what length of sentence to seek. A position imbued with this much power and discretion is downright dangerous. While certainly a “progressive prosecutor” is a better alternative to a traditional law-and-order prosecutor, too often these self-styled “progressive” candidates want to maintain their discretion and power while simply reorganizing and redirecting it. We want to end it. No one politician should wield such extraordinary power. No one politician should control such a massive budget. Vance’s 2019 budget was the largest of all six city-wide offices, including the special narcotics prosecutor. Despite a decrease in crime, Vance has consistently increased the size of his largest-in-NYC staff, all while prosecuting the people of the third most populous borough.

We want to defund and shrink the power of the DA in service of our mission to abolish the DA, just as we fight to defund and abolish the police. We want to divest from the prison industrial complex and ensure that funding goes directly to support communities through community led initiatives like violence interrupters, safe injection sites, community and youth centers, public health sites, mental health resources, child care, public schools, and after-school programs--in short, resources that will make communities safer and ensure that communities thrive, free of jail and prison walls.

## GUIDE CREATION AND METHODOLOGY

This guide is not the opinion of 5BD as a whole, but of our working group, largely made up of practitioners in Manhattan criminal courts. Our evaluations are based on 90-minute interviews with the candidates that took place in November 2020, public statements, and information they have provided on websites and social media, synthesized and filtered through our experiences witnessing the racist and dangerously retributive policies of DA Vance and his assistants. We recognize that candidates continue to introduce new policy papers and even change positions as the race continues. We did our best to encapsulate the information we had access to at the close of 2020 in our analysis and evaluations. After publication of this guide, we will continue to monitor changes or inconsistencies in platforms or positions and provide updates via our Twitter account.

**This guide has a clear point of view:** we are adversaries of the prosecutor and students of abolition who want to shrink the power of the prosecutor until it is abolished. Our questions were designed to understand and evaluate which candidate's policies would focus on shrinking their power, not redirecting it. We sought to understand which candidates understood the racism that pervades every aspect of policing and prosecution and who has a plan to address and eradicate that harm. We also evaluated the candidates' ability to follow through on their proposals, their understanding of the intricacies of criminal law, and the inner workings of the Manhattan DA's office. We wanted to know if candidates had a plan to "clean house" and whether they had a team ready to implement their policies.

We organized our interview questions into distinct issue areas and provided those general topics, but not the specific questions, to the candidates before the interviews. While candidates were allotted 90 minutes for the interview, every candidate was asked to restrict their answers to our specific questions and we often found ourselves without sufficient time to allow a candidate to expand at great length upon an issue of particular interest to their campaign. Additionally, for every issue area, we finished with "commitment" questions to which we asked candidates to only answer yes or no. After the interviews, we further refined the topics into the issue areas discussed below. We considered the candidates' commitment to anti-racism in every issue area. It should be noted that some topics span many issue areas--for example, gang policing and prosecutions. When considering responses on gang policing and prosecutions, we mostly scored those answers in our "policing the police" issue area but also considered some aspects of candidate answers in the "support for decarceral outcomes and sentencing" issue area.

## OUR RUBRIC

Every member of the working group who took part in the evaluations participated in or watched every candidate interview and then worked in both small-group and large-group evaluations using a rubric we created together to rank each candidate's positions and policies (see below). We first ranked Vance based on our experiences as practitioners to get a baseline. We then ranked each candidate, keeping in mind Vance's scores and our score for the other candidates. We assessed candidates' interview answers, public platforms, known history, and public comments in specific focus areas and applied the rubric to answers from each area. We then broke down each rubric into numeric values for easy assignment and placed the candidates on a comparative scale ranging from most potential harm to least potential harm.

## OUR FOCUS AREAS

DEFUNDING THE DA AND PROSECUTORIAL  
ACCOUNTABILITY

COMBATTING SYSTEMIC RACISM

POLICING THE POLICE

ABOLISHING CASH BAIL AND PRETRIAL DETENTION

ENDING THE CRIMINALIZATION OF POVERTY,  
MENTAL ILLNESS, AND SUBSTANCE USE

SUPPORT FOR DECARCERAL OUTCOMES AND  
SENTENCING

COMMITMENT TO THE PRESUMPTION OF INNOCENCE

CORRECTING PAST HARMS

# 07

## DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Prosecutors wield vast power with little accountability and transparency to the people they are elected to represent. With this power they have fueled mass incarceration by measuring success through conviction rates and harsh sentences, destroying communities historically targeted by over-policing and rampant prosecutions. The newly elected district attorney should take significant steps to reverse the harm that has been done by the current office holder by relinquishing their own power and shrinking the size and scope of their office.

2020 began with calls to defund the police and reimagine public safety, and Manhattan's newly elected DA should heed those calls and take affirmative steps to defund their own office and redirect funding to support and improve the city's housing, health, and education infrastructure. The Manhattan DA's office is allocated ample and ever-increasing funding and resources while the city's "crime" rates continue a steady decline. Over the past five years roughly 40 to 50% of misdemeanor and 25 to 35% of felony arrests in New York County were ultimately dismissed.

The newly elected DA must disincentivize conviction rates as a measure of success and instead focus on decarceral outcomes that address harm without creating further harm through collateral consequences of conviction and incarceration. They must take affirmative steps to make public all internal policies and practices and be guided by community groups and those who have been directly impacted by the racist and overly-punitive practices of the office holders that came before. The newly elected prosecutor must have a plan to ensure current staff will carry out new policies. They must not tolerate any form of prosecutorial misconduct and take immediate action when it occurs.

## COMBATTING SYSTEMIC RACISM

The degree to which explicit or implicit racism drives, impacts, and undermines the asserted goals of criminal justice is incontrovertible. Black and brown communities are targeted by police by being stopped, questioned, and arrested at greater numbers than their white counterparts. For that reason, we chose not only to address the candidates' understanding of systemic racism as a whole, but also their ability to isolate and address the racial implications of every aspect of prosecutorial policy. We want a DA who not only promises policies that promote justice, equality, and fairness, but also someone who understands their role in a system entrenched in racism. The person elected as DA should track data on cases brought by the police especially in situations where their policy dictates declining to prosecute the charge. They should track the race of every person they prosecute and disparities in pretrial incarceration and case outcomes. Thorough data tracking in real time should be shared office-wide to ensure course correction when bias is demonstrated and should be shared regularly with the public.

The DA must not only support legislation that would allow persons with felony convictions to serve as jurors, but they must also commit to never using a peremptory strike on anyone from a jury pool so as to not deny the accused person the right to a jury of their peers. Too often prosecutors use peremptories to systematically exclude jurors based on race, and in Manhattan, this results in extremely white juries.

While explicit race-based exclusion is prohibited by law, Justice Thurgood Marshall wrote that the “decision [in Batson] will not end the racial discrimination that peremptories inject into the jury selection process. That goal can be accomplished only by eliminating peremptory challenges entirely.” *Batson v. Kentucky*, 476 US 79, 103 (1986).

The DA should end the use of the criminal enterprise statute and with it the practice of bringing conspiracy charges against young New Yorkers of color, which inevitably result in unjust dragnet prosecutions such as that of the Bronx 120.

They should denounce the use of the NYPD's Criminal Group Database, also known as the Gang Database. Over 99% of the people in the database are non-white. People need not be convicted of any crime to be included in the database, and people have no way to challenge the gang designations placed upon them. Criteria for designation includes: “living in a known gang area” and “association with gang members,” which disproportionately implicates Black and Latinx New Yorkers. About 30% of the people placed on the list are children, some as young as twelve. Unsurprisingly, the database is riddled with errors. The DA should support the abolition of the database and refuse to credit or use any information from it, including in bail, charging, and sentencing considerations. They should oppose the use of gang conspiracy charges, dragnet takedowns, raids that are often violent and abusive, and other common and harmful methods of gang policing.



## POLICING THE POLICE

What does it mean, as students of abolition, to demand that New York City police officers be held to account by an office we believe should shrink its power until it no longer exists? We can start with today's reality: Under Vance, the NYPD are simply not held accountable for racist and unconstitutional stops, fabrication of evidence, "testilying" under oath, physically brutal arrests, and the destructive executions of search warrants. In fiscal year 2019, the taxpayers of New York City paid out \$220.1 million in claims against the NYPD for false arrest or use of excessive force. Meanwhile, Vance has never been forthcoming about the specifics of prosecutions of NYPD, only offering in June of 2020 that his office has prosecuted "dozens of uniformed officers for official misconduct and violence since 2010." Instead of prosecuting cops who lied, beat, and terrorized Black and brown communities, Vance went in the other direction. Between 2016 and 2018, he empowered in-house NYPD lawyers to act as prosecutors for New Yorkers arrested at protests who demanded their constitutional right to trial. He stopped this arrangement only after NY state legislators sent a strongly worded letter demanding that he end it. In one case stemming from this arrangement, the judge at trial found that the officers were clearly lying on the stand and acquitted the woman who had participated in a Black Lives Matter protest; despite the judicial finding, Vance cleared the lying officers of perjury charges.

If we are to work toward a goal of abolition, we must first force the system to be held accountable to its own rules. The person elected to be Manhattan DA must act independently from the NYPD and hold the credibility of officers to an exacting standard. They must prosecute police misconduct to the fullest extent of the law and review all sentences and convictions based upon the word of officers who have since been found corrupt. The elected District Attorney must maintain an independent relationship with all police officers and train every assistant to test all evidence, testimonial and tangible, brought by NYPD officers from the earliest stage, before even filing initial charges. The DA must make it policy and practice to disclose to defense counsel all available records of past police misconduct, record all investigatory interviews with police, and make the recordings immediately available to the defense. The DA must publicly release names of officers they determine to be untrustworthy and never file charges based upon the word of such officers. The DA must track and release to the public the racial statistics of stops and arrests conducted by police in Manhattan, particularly when their office declines to prosecute certain NYPD arrests. Only by creating an independent, transparent, and vigorous practice in regards to the police will a prospective head prosecutor stem racist policing and arrests, testilying, and the complete lack of accountability for police misconduct, corruption, and brutal treatment of Black and brown communities.

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## ABOLISHING CASH BAIL & PRETRIAL DETENTION

When the prosecutor's office seeks cash bail, it perpetuates two systems of justice—one for the rich and one for the poor. Those who can't afford cash bail are detained pretrial for months or years, torn apart from their families and communities, jobs, and education and unable to meaningfully assist in their own defense. Vance's office requests substantial money bail for the indigent with no regard for their ability to pay, while pre-negotiating attainable amounts for Vance's friends and those with celebrity connections, and cash. Where Vance is prohibited from asking for bail under the law, he stubbornly requests pre-trial supervision for people who don't need it. Increasingly, jurisdictions throughout the country are acknowledging that wealth is not a fair or accurate predictor of one's ability to return to court, resulting in calls to end cash bail. Here in New York, hard-fought reforms that took effect January 1, 2020, have restricted district attorneys' ability to seek cash bail for misdemeanors and low-level felonies, resulting in a 40 percent reduction in NYC's pretrial jail population. But the Manhattan DA's office under Vance consistently fights against those reforms. Vance wants judges to have the power to detain people who they believe are dangerous, a surefire way to exacerbate racial disparities in a country with a long history of using dangerousness as a proxy for race. Vance's fixation on dangerousness would do nothing to address the criticisms that judges come to their decisions with biases and can never be neutral arbiters.

Even in the midst of a worldwide pandemic and Black Lives Matter protests, Vance called for more bail and pretrial detention rather than acknowledge that the reforms reduced jail populations with no proven connection to increased crime and with the additional advantage of slowing the spread of COVID in jails. As soon as the reforms went into effect, prosecutors, police officers, and sensational media outlets attributed as much crime as possible to the brand new reforms, despite evidence to the contrary. Unfortunately, the legislature gave into the fear-mongering and rolled back the reforms to expand prosecutors' and judges' ability to use cash bail, increasing pretrial jail populations during a pandemic.

The next Manhattan DA will take over an office that relies on bail to extort guilty pleas from clients desperate to get out of jail. They should follow the spirit and the law of the 2020 bail reform and must end cash bail and unnecessary pretrial supervision.

# 11

## ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

The criminal punishment system was designed to reinforce anti-Black and ableist values. Incarceration and police contact has so often meant death for people with disabilities, especially for Black people with disabilities. Manhattan must elect a District Attorney who is committed to addressing the enormous harm prosecution, policing, and incarceration have inflicted upon these groups and who seeks to end the state's control over them.

As of January 2021, 52 percent of the Rikers Island population were deemed to have symptoms of a mental illness, making this jail the largest mental health provider in NY State. Vance's office is the largest contributor to incarceration at Rikers and regularly interferes with treatment for those who need it, while imposing excessive monitoring without objective clinical support. His office embraces the myth that people with a mental illness are a threat to public safety, and before consenting to an alternative to incarceration, he requires that the accused person prove otherwise through invasive proffer sessions where the individual must admit guilt and disclose closely-held traumas to a stranger--a District Attorney who lacks any clinical training.

Vance's office challenges the findings of medical professionals hired by the courts to assess client/s competency to stand trial. His office regularly demands incarceration and monetary bail based on clients' histories of mental illness and blocks access to treatment courts. Vance requires clients to plead guilty upfront to the most serious crimes charged in order to be offered alternatives to

incarceration, and he seeks severe punishment, including jail, when clients are non-compliant as a result of their mental illness. Manhattan's newly-elected DA should divert their enormous budget away from incarceration toward community groups and supportive housing for people with mental illnesses, removing law enforcement and courts from interfering.

The criminalization of drugs similarly undermines public health and discriminates against Black and brown people. Drug prosecutions do nothing to help those who struggle with substance dependence; rather, they provide the police opportunities to surveil, search, and harm communities and selectively enforce drug laws. The Manhattan DA regularly prosecutes mere drug possession, indicts felony charges for small quantity sales, and seeks incarceration for folks who relapse during treatment. The office lacks a fundamental understanding of substance use disorder and ignores the recommendations of health experts. The newly-elected DA must decline to prosecute these cases and support the public health solutions that avoid court contact and punishment models. They must withdraw all Manhattan assistants currently assigned to the office of the Special Narcotics Prosecutor and support legislation that abolishes this office. The DA should advocate to decriminalize and legalize controlled substances, especially for personal use, and to rectify the harm upon Black and brown communities caused by the War on Drugs.

# 12

## SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

The DA's office has virtually unfettered discretion in its charging decisions. Serious consequences stem from the DA's decisions and often determine, among other consequences, whether someone can be deported, lose their right to public housing, be subject to a mandatory term of incarceration, or be violated on parole. While judges have some role in sentencing, the District Attorney's initial charging decision limits what sentence a judge can offer or impose.

In the race to replace Vance, many candidates cite diversion and alternatives to incarceration (ATI) programs as their solution to the traditional prosecution model. While these programs are an improvement, they should be viewed with caution and skepticism and have been soundly critiqued as a gateway to incarceration that fails to center the health needs of the people accused. These programs often require that a person plead guilty at the start of their enrollment, surrendering their rights to challenge the evidence against them and trapping them with an open criminal case, often with a significant prison sentence attached. Instead of simply dismissing the cases that the DA's office identifies as stemming from a person's struggle with mental illness, poverty, or substance use disorder, these programs ensure that a person remains trapped within the criminal justice system, sometimes for years.

Vance's office uses inflated charges and the threat of lengthy prison sentences, mandatory minimum sentences, and consecutive sentences to coerce pleas. Any DA candidate must take immediate steps to end these practices. They must refuse to use New York's "three strikes" law (mandatory and discretionary persistent sentencing), decline to indict cases in ways that expand (rather than limiting) plea bargaining, end sentencing enhancement (such as the predicate felony enhancement, which imposes high mandatory minimums for people who have been convicted of felonies in the preceding 10 years), and only pursue incarceration as a last resort and to the minimum extent allowed under the law. Candidates must refuse to indict "bump up" charges (where misdemeanor conduct is charged as a felony because of a person's prior criminal record), refuse to charge misdemeanor conduct as a felony simply because the law permits it (such as charging theft of a package from a building lobby as a burglary), and decline to prosecute the "broken windows" crimes that drive mass incarceration and criminalization and do nothing to address real harms in communities. Candidates must not only consider all collateral consequences of a conviction and sentence, such as immigration, parole, housing and custody, but also meaningfully engage in plea bargaining, charging, and sentencing decisions with the understanding that these consequences may be just as harmful as incarceration.

# 13

## COMMITMENT TO THE PRESUMPTION OF INNOCENCE

The criminal punishment system dehumanizes and inflicts trauma on individuals, overwhelmingly those from Black and brown and low-income communities, throughout every level of the process, starting at a person's arrest. The system begins imposing punishment long before a finding of guilt or innocence, undermining the supposed guarantee of the "presumption of innocence."

There are considerable burdens placed on people accused of crimes before a trial has even taken place. Even more so if their liberty is taken or restricted through remand to jail, unattainable bail conditions, or pre-trial supervision. If incarcerated, a person is likely to experience physical and mental traumas resulting from the racist and oppressive environment in jails, and disruption of such things as employment, housing, treatment, connections with loved ones, and education. If released, individuals still face mental and emotional stress due to racist and dehumanizing treatment in court, and their lives are disrupted when they are forced to come to multiple court appearances that can easily span years. This can lead to financial burdens, such as loss of income or employment, and childcare and transportation costs. These burdens not only affect the general well-being of accused people and their families, but also affect their legal decisions, as many plead guilty because doing so outweighs the hardships of fighting a case over a long period of time.

We demand that the DA's office view these burdens not as small inconveniences or deserved punishment, but instead as serious adverse and potentially long-lasting consequences in people's lives. Therefore, we ask that the DA maintain the presumption of innocence for all defendants, particularly by permitting their freedom during the pretrial phase, not requiring them come to court for non-essential appearances, and calling them by their names and proper pronouns in court, in front of juries, and in all court papers. The DA should provide early or at least timely discovery (evidence in support of the charges) and provide it in full.

# 14

## CORRECTING PAST HARMS

Manhattan’s newly-elected DA must affirmatively strive to repair the decades’ worth of damage inflicted by Vance and his predecessors. They must undertake a systematic and independent review of convictions that were wrongfully obtained as a result of constitutional violations, prosecutorial misconduct, and other errors, even for people who do not have strong claims of factual innocence. The DA must vacate convictions obtained as a result of militarized gang raids and broken window policing, felony convictions “bumped up” from misdemeanors, convictions resulting in enhanced sentences under predicate felony statutes, and charges that the office will no longer prosecute (including misdemeanors). The DA must also commit to a “second look” for people sentenced to long terms above the statutory minimum.

A “progressive” or decarceral DA must fundamentally change the strategy of the office’s Appeals Bureau and must end the practice of requiring appeal waivers in all plea cases and categorically opposing sentence reductions. The DA’s office should concede or join appellate arguments where the convicted person’s constitutional rights were violated, and where other factors—such as ineffective assistance of trial counsel, failure to turn over exculpatory Brady evidence, or the seating of biased jurors—might have reasonably affected the fairness of the proceedings. The DA should engage with such claims exclusively on the merits without raising technical bars to appellate review such as harmless error or lack of preservation (i.e., the defense’s failure to raise the issue in the lower court).

The newly elected DA must also use the bully pulpit of the office to push for much-needed systemic reform on issues that cannot be adequately addressed through case-by-case charging decisions alone. The DA should support legislative measures to promote parole justice, eliminate mandatory minimums and hate-crime sentencing enhancements, bar law enforcement from engaging in sweeping digital surveillance, and abolish fees and surcharges that criminalize poverty.

# 15

## TAHANIE ABOUSHI

Tahanie Aboushi is a civil rights attorney and has worked as a partner at her family's law firm since 2010. She has a unique understanding of the plight the criminal punishment system causes families and communities of color, as her own father was sentenced to 22 years in prison when she was 14 years old. Aboushi is a native New Yorker born into a Palestinian immigrant family and believes that the issues she is advocating for in this race are not encapsulated by the term "progressive," but more fundamentally about human rights and the quality of each human's life. She is running as a decarceral prosecutor intent on shrinking the footprint of the Manhattan DA's office, as well as its overreliance on prisons and jails. She is also one of the only candidates calling for a 50% reduction to NYPD's budget.

Aboushi plans to use the position to respond to society's failures with a holistic approach. She explained, "[A]ll past DAs have been copies of each other, with draconian, abusive, and racist policies." She will seek out like-minded individuals as members of her staff, promoting an idea that District Attorneys should be partners with the community and work to see them thrive. Aboushi plans to hire assistant district attorneys with various legal expertise and backgrounds, and hopes to bring in a diverse staff that is trained in other areas of the law that impact the Manhattan community, including immigration and civil rights lawyers, as opposed to those with strictly prosecutorial backgrounds.

Aboushi is a strong advocate of working collaboratively, yet during our interview she failed to appreciate that social workers, defense attorneys, and prosecutors all have different obligations and objectives based on their unique roles. Her unapologetic approach to transforming policing and uprooting the District Attorney's office was a breath of fresh air, but throughout the interview it was apparent that she lacked a plan to garner buy-in from the players in the system she will ultimately have to rely on in order to successfully transform the office.

Aboushi impressed us with the number of commitments made during our interview that were favorable to the communities we serve. She was attentive to our experiences as public defenders but needed explanation of important practices and issues specific to the Manhattan DA's office and the harms they cause. Aboushi's background as a civil practitioner is not a bar to this elected office, but it was clear that she had not put in sufficient effort to bridge gaps in her knowledge prior to or during her campaign.

It is notable that Aboushi's platform has further developed since our November interview and that she has been receptive to feedback from various groups. She is clearly dedicated to divesting from the criminal punishment system and investing in communities. Nonetheless, it is concerning that she frequently lacked a clear understanding or vision for accomplishing her decarceral objectives and has too often led from behind by adopting the policies of other candidates in the race.



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## DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Aboushi is calling for the complete overhaul of the Manhattan DA's office. Though she wants to prosecute certain crimes she believes have been underprosecuted by this office, such as white collar crimes, wage theft, housing violations, sex crimes, and abuses against immigrant communities, on day one she plans to orient the DA's office away from prosecution. Aboushi stated that she wants to get the prosecutor's office out of the way in order to reduce harm to the communities it serves. She will reduce the DA's budget, including reducing its yearly hiring, reinterview those currently employed, and disconnect the office from law enforcement agencies.

Aboushi wants to pave the way to abolish prosecution by utilizing social workers, public defenders, teachers, and civil rights attorneys as members of her team. She is critical of the lack of a holistic approach in the Early Case Assessment Bureau (ECAB), a place where charging decisions are quickly made after arrest. However, her solution of bringing in more social workers and specialists to assist in assessments would be inconsistent with constitutional principles, including the right against self-incrimination and the right to counsel. We have yet to see a plan for how this conflict will be addressed.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## COMBATTING SYSTEMIC RACISM

Aboushi believes her office must acknowledge the significant role that district attorneys play in systemic racism in every step of the criminal process. As District Attorney, she will no longer tolerate or enable discriminatory police practices. She values transparency and commits to releasing data relating to disparities in prosecution. Aboushi committed to never request no-knock warrants and will add increased scrutiny of all warrants her office seeks. Aboushi's strategy is often over-reliant on the use of services and programs for our clients, programs which often fail to add real value to their lives and only create additional hurdles and forms of surveillance upon Black and brown communities.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**



## POLICING THE POLICE

Aboushi plans to drastically change the close working relationship that currently exists between the Manhattan DA's office and the NYPD, citing her work suing the NYPD as a civil rights attorney as proof of her commitment. She believes her office can serve as a watchdog over the police. On her quest for accountability, she will examine law enforcement units in which the DA is deeply embedded and withdraw where necessary.

Aboushi will refuse to work with police who have histories of misconduct. To ensure objectivity, she has committed to using an independent prosecutor when her office seeks to prosecute a police officer. She refuses to credit or use the gang database, and described it as a "warehouse for civil and constitutional violations." She plans to utilize cure violence programs to aid in crime prevention. In our interview, Aboushi committed to not using conspiracy charges against members of alleged gangs, and she recognized the harm these prosecutions have caused within her own community. However, at an earlier forum, she did not make this commitment. When asked what changed, she explained that she was previously using a broader definition of "gang," e.g., the "rich and powerful." Aboushi also stated that she may bring conspiracy charges to prosecute individuals accused of violent crimes beyond Manhattan's borders.

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**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## ABOLISHING CASH BAIL & PRETRIAL DETENTION

Aboushi pledges to end cash bail, but plans to use bail alternatives such as various forms of supervision and remand (pre-trial incarceration without possibility of bail) for charges involving violence or harm to a person. She will also take into account the wishes of the victim where relevant.

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Aboushi's views on bail often did not square with the presumption of innocence, and though she admits risk factors can be racist, she has not proposed a mechanism to remove bias when making determinations about supervision or remand.

Aboushi committed to offering the option of a preliminary hearing to detained individuals, and agreed not to ask for pre-trial supervision on people charged with misdemeanors.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

## ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Aboushi recognizes that substance use and mental illness are public health issues that should not be addressed by prosecutors. She supports the legalization of marijuana and the decriminalization of controlled substances. Though she supports safe injection sites, she believes there is an oversaturation in Harlem.

Aboushi emphasises services and believes that alternatives to incarceration should be the last resort rather than the most lenient option. However, we are concerned that her office would remain overly engaged with the community in lieu of simply not prosecuting. For instance, her "decline and diversion policy" recognizes the harms of prosecution, but still fails to remove DA discretion by creating a mere presumption to decline to prosecute instead of a firm commitment.

Aboushi puts forward a more cooperative model of prosecution that seems entirely foreign to the adversarial process of the criminal and supreme courts. Though Aboushi states that individuals won't be questioned without an attorney present, her diversion plan lacks logistical planning for how attorneys would be assigned prior to charging or how they would be able to prepare clients for such meetings.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Aboushi has committed to declining to prosecute a list of crimes, including crimes of poverty, crimes that do not harm other people, crimes manufactured by the police, drug possession, and sex work. However, as noted earlier, this list creates a presumption of declining to prosecute, but stops short of full decriminalization.

She commits to listening to the victim and seeking accountability while also attempting to avoid incarceration. She plans to prosecute sex crimes meaningfully where there is adequate evidence and investigation to support it. As for prosecuting youth, Aboushi supports raising the age of criminal prosecution to 23 and is open to including individuals up to 25 years old. She recognizes these matters are better handled in Family Court.

Though it is unclear in which circumstances her office will recommend a prison sentence, Aboushi doesn't believe in death by incarceration and has adopted a sentencing cap of 20 years for all crimes. She will fight to end mandatory minimums, and she supports certain forms of early release, including elder parole, for those who are incarcerated.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Aboushi believes that her “decline and diversion policy” will aid in reducing the day-to-day harm caused by the system by preventing it from the onset. She plans to respond to any “woeful conduct” by a prosecutor with termination and disclosure to the NY State Bar.

Aboushi also committed to never depriving an individual of their right to a jury trial when charged with misdemeanors, as has been the practice under Vance, and will support the repeal of Criminal Procedure Law 340.40(2), which permits bench trials on B misdemeanors in NYC. She also recognizes that there should be distinctions made between different types of warrants and commits to not seeking a warrant where the circumstance has nothing to do with the substance of crime, i.e. for a missed court date.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

### CORRECTING PAST HARMS

Aboushi did not hesitate to make commitments that will dramatically reduce the harm upon the communities most impacted by the Manhattan DA's office, though it appeared she was not always familiar with the issue or the reason we asked for the commitment, as she has primarily worked as a civil practitioner.

Aboushi plans to use a holistic approach within her conviction review unit, moving away from the perspective of the prosecutor and bringing in different voices. She committed to supporting all pending legislation aimed at ending mass incarceration and decreasing harm within the criminal punishment system.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

## 21

# ALVIN BRAGG

Alvin Bragg's reason for running for Manhattan DA is clear: it makes sense with his career choices, and it is fundamentally about righting wrongs within his community. Bragg is a prosecutor; he buys into the criminal punishment system and believes that prosecution is necessary to right wrongs. Nevertheless, he will dramatically change criminal court and decline to prosecute many "broken windows" and Quality of Life offenses. A native and life-long resident of Harlem and the son of a homeless shelter director, he understands that the criminal punishment system is not the place to address economic problems like homelessness. As the only Black man in this race and a lifelong resident of Harlem, Bragg weaves his personal experiences into every aspect of his policy propositions and his ideas for fundamental change within the Manhattan DA's office.

Bragg would not be entering the office as an advocate of the status quo. He seeks to make fundamental change and will not hesitate to fire current assistants and deputies. He wants to usher in a new era of accountability and transparency and would do this by compiling and publicly releasing data on racial disparities and other prosecutorial issues. As Bragg states, "when you're operating in an environment when you're dealing with people's liberty, there's not a margin for, 'oh, I got that wrong.' There are other jobs where you can go do that. You won't be able to do that in my office."

Bragg has also pledged to change the friendly, close relationship between the DA's office and the NYPD. He is proud to be the only candidate who has successfully prosecuted a law enforcement officer, and he is currently representing Eric Garner's family in their suit against the City. Bragg has direct experience with NYPD violence, as he has been racially profiled himself. He would use his personal and professional experiences to get "buy in" from his assistants.

While Bragg is keenly aware of problems within the criminal punishment system, his solutions do not lessen the DA's stranglehold on marginalized communities. Similar to the other former and current prosecutors in the race, Bragg would maintain much of the discretion and power that the DA's office currently holds. While he would not categorically put an end to many of the office's unjust practices, he would seek to make these practices the exception rather than the norm.

Bragg has the most progressive agenda of all the career prosecutors in this race, yet he is saddled by the time he spent under the leadership of Preet Bharara at the US Attorney's Office, where he played a role in perpetuating racist and oppressive law enforcement practices against young people of color, including undocumented immigrants. When asked about prosecuting illegal reentry cases, Bragg said, "I think [they] are bad cases, I did it because I was in the office, but I think we all have to be accountable for our conduct, and when I think about those cases, I wish I could have done that job without doing them."

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Bragg freely acknowledged that, like the other former prosecutors in the race, he “came up through the ranks that fuel mass incarceration.”

Bragg comes off as deeply thoughtful, personable, genuine, and eager to understand the reasoning behind some of the questions and commitments that we posed. This suggests that while he is a former prosecutor who is not committed to shrinking the power of the DA, he is open to input and change and would reduce the harm currently done to Black and brown communities.

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Bragg is serious about culture change and has a clear plan to keep his office accountable to the community. He will implement clear expectations for ethical prosecutorial practices via “top to bottom internal messaging,” hold supervisors and bureau chiefs responsible for improper conduct of line ADAs, standardize policies that are currently inconsistent across the various trial bureaus, and publicize internal memorandums. He appears unafraid to discipline or fire staff at any level who refuse to follow his policies, and he has a managerial track record of imposing discipline when necessary. He places a strong emphasis on the importance of collecting and publicly disseminating data on racial disparities in law enforcement and prosecution in order to drive progressive policy changes, something that Vance’s office does not do. He believes that prosecutors should be better attuned to the needs of the communities they purport to represent rather than insulated and out of touch.

Bragg stood with community groups calling for a \$1 billion reduction in the NYPD’s budget and dismantling the Quality of Life Unit and other problematic police units that focus on minor offenses. He supports a community budgeting process to determine how to spend civil asset forfeiture money and would prioritize putting those funds toward reentry, mental health and substance use programming, and educational and job support efforts.

Bragg committed to include defense attorneys on his transition team, to reduce his staff in accordance with falling crime rates, and to stop requesting more money for the DA’s budget every year. However, it is evident that he wishes to retain much of the DA’s existing discretionary power when it comes to charging and sentencing. Bragg believes that the Manhattan DA should focus on prosecuting those who perpetrate “real harm” or pose a “safety” risk to the community. He appears to believe that offenses such as gun trafficking, money laundering and other financial crimes (which he prosecuted in the federal system), as well as sexual offenses are under-prosecuted. This raises concerns that he will not significantly scale back the scope of the office but simply redirect its efforts.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

## 23

### COMBATting SYSTEMIC RACISM

Bragg states that “the racial disparities issue is a core reason why I worked on criminal issues for my entire career; it’s a big driver for me.” Bragg brought up systemic racism repeatedly and consistently throughout the entire 90-minute interview. Bragg himself has been subjected to racial profiling and stop-and-frisk encounters with police. Members of his family have been incarcerated. He understands that every step of the criminal punishment process is rife with racial discrimination. He intends to use real-time data gathering to rectify these disparities from the outset. He pledged to never seek a no-knock warrant, to never use peremptory challenges on black jurors, and to stop crediting the NYPD’s gang database. Bragg said “[the] NYPD gang database is “garbage in, garbage out. And the notion, this kind of goes back to transparency, that you can end up in this database for reasons we don’t understand, and you can never get out.”

Still, Bragg’s own role in perpetuating the racist criminal punishment system should not be discounted. As a former federal prosecutor under Preet Bharara, Bragg worked at an office that prosecuted huge numbers of drug, gang, and immigration cases primarily against Black and brown New Yorkers.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### POLICING THE POLICE

Bragg would hold police accountable to the community by establishing an independent unit (housed in a separate building) tasked with the investigation and prosecution of police officers for everything from excessive force to lying, and he would train ADAs to evaluate cases critically and carefully assess officer credibility throughout prosecutions. He believes perjury is not taken seriously enough and is proud of his track record for prosecuting officers for lying. He would also create a publicly accessible “no call” list of officers with credibility problems and would refuse to call these officers to testify in any case, consistent with his past actions as a prosecutor.

Bragg opposes the raids and militarized policing favored by NYPD’s gang unit and other problematic units and intends to scrutinize the cases they bring, but he stops short of categorically refusing to bring conspiracy charges.

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In light of this refusal, we again note that Bragg worked as an assistant US Attorney under Preet Bharara (who has also endorsed Bragg's candidacy). Though Bragg was not in this unit, Bharara infamously abused his power to use militarized raids to ensnare and bring\_gang\_indictments against young men of color who had no ties to gangs or charges of violence against them.

Bragg also did not commit to ceasing Vance's practice of using proffer sessions to gather information on people the office believes to be gang-affiliated, but he would make the practice more "thoughtful" and less "reflexive." And while he believes surveillance gadgets are overused by the DA's office, he still supports a wide range of surveillance tactics to address what he perceives to be "real harm." Bragg wants to divert funds from the police to community violence interruption initiatives such as CURE Violence and credible messengers to prevent crime before it happens.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### ABOLISHING CASH BAIL & PRETRIAL DETENTION

Bragg would abolish the use of cash bail. He would request supervised release and remand in cases involving a real risk of flight. In determining risk of flight, Bragg is acutely aware that "dangerousness is generally a proxy for race" and would make sure his assistants don't use these unlawful reasons to justify bail requests. He would only rarely request supervision for misdemeanors, but he would not commit to never requesting it in such cases. He characterizes proprietary risk assessment instruments as racist.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

### ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Bragg seeks to stop the criminalization of poverty and homelessness by radically changing the operations of criminal court. He plans to expand the use and quality of diversion programs for those struggling with addiction or mental health. He believes that medical professionals, not DAs, should be responsible for decisions related to mental health and drug treatment and he would not reflexively ask for jail sanctions when a person experiences relapse. Here too, Bragg touched on his personal experiences: "My dad struggled with addiction, and you can't do that around a court calendar."



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However, even with this emphasis on treatment as opposed to incarceration, he endorses the drug court model, which has been widely critiqued for increasing incarceration and not centering health needs.

Bragg supports the legalization of marijuana with an important racial justice caveat, “...marijuana is likely to be legalized in the next session, and that is fine with me so long as there are the social justice / equity principles they’re talking about. Marijuana has been legal for white people for like 50 years. I’m fine with it, but I do think that component, which is what held it up in the legislature last year is a critical component.”

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Bragg has released a list of “low-level” or “broken windows” offenses his office would decline to prosecute, including some NYPD-created offenses like resisting arrest where there is no probable cause to arrest and “lucky bag” cases (where officers plant a decoy bag and arrest the person who picks it up). However, his list is disappointingly limited and includes offenses that Vance already routinely declines to prosecute, such as marijuana possession, fare evasion, and loitering for the purposes of prostitution. And troublingly, Bragg would continue to prosecute some buy-and-busts (police-initiated drug sales) although he admits they are not a good use of police resources. He would continue to prosecute many “bump-ups” (misdemeanors prosecuted as felonies based solely on past convictions) on a case-by-case basis, including driving while intoxicated (DWI) charges, knife possession, forcible touching, and domestic violence cases. However, he would decline to continue charging bent Metrocards as felonies and lobby package theft as violent felonies.

For many offenses that Bragg believes are currently over-prosecuted, such as conspiracy and obstruction of governmental administration, he would still retain the ability to bring such charges in “unique” or “significant” cases. For example, although he will not use conspiracy charges “to establish guilt by mere association” as Vance does, he will “follow the money” and “follow the contraband,” wielding these laws against actors he regards as “highly culpable” or influential such as politicians and drug kingpins. Bragg often invoked extreme or outlier cases as justification for his refusal to make categorical commitments not to charge certain offenses, playing into popular fears about “brutal violence” related to drugs and gangs.

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Bragg indicated that he would generally respect the wishes of complainants, particularly in domestic violence cases, when they no longer want to proceed with a case, unless he felt they were being coerced. However, he would not commit to declining to prosecute all police officer-witness-only forcible touching (e.g., subway groping) where the complainant does not know or allege that anything happened, alluding to a few highly-publicized “horrific” incidents. He would, however, end the Vance policy of not making plea bargain offers on these cases.

Bragg would offer pre-arraignment diversion to “virtually all DAT-eligible cases” to allow cases to be dismissed without the accused ever having to come to court provided they participate in some kind of programming. While a step in the right direction, this does not truly shrink the scope of the office and assumes each charge is indicative of guilt and each person in need of programming.

Bragg would use the minimum sentence as the “default” in any case, with supervisor approval required to exceed it.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Bragg has a personal understanding of how the process of being charged with a crime and hauled into court amounts to punishment in and of itself, and he would support practices to lessen the burden on people accused of crimes. Bragg said, “I think one of the worst things about the system that doesn’t actually involve someone being detained is the number of times people have to go to court.” Refreshingly, Bragg clearly understands the adversarial nature of the criminal legal system and does not seek to overstep his role as a prosecutor when discussing diversion programming or restorative justice models. He also demonstrated a high level understanding of “proffer sessions” and a realistic approach to using them. Proffer sessions are broadly abused by Vance; the current iteration requires a detailed admission of guilt to be made and assessed for intricate truthfulness by multiple assistant DAs and supervisors before a favorable plea bargain offer is made. Bragg didn’t discount the use of a proffer session, especially if requested by the person accused of the crime, but said any proffer should be thoughtful and not simply “reflexive” and should serve the overall objective of the prosecutor, not act as a gatekeeping mechanism. He also talked about his experience with offering “reverse proffers,” where the prosecutor spells out the evidence gathered against a person before trial.

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Were he to direct his assistants to engage in this practice it would indeed be a first for low-income people accused of crimes accustomed to an office that hid all evidence until the last legally required moment.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

### CORRECTING PAST HARMS

Bragg seeks to create a robust post-conviction unit that is independent, objective, and composed of non-prosecutors. He offered valid criticism for the current unit saying: “Barry Sheck wrote an article in the Ohio State Law Journal which lays out how to do this, and it would be based on having full sharing with objective independent people, people not in the office. I know the Manhattan DA’s office is NOT doing that. I know they have people from the actual case in the room driving the conversation and that’s just terrible. We know how to do this, and it’s been set up in other places, there’s been a book written on it, and I would follow the book.”

When it comes to appeals, he would not categorically decline to raise the ‘harmless error’ doctrine (i.e., argue that a legal error does not entitle a defendant to a new trial because it did not affect the conviction), but he believes it is overused, and he would only invoke it where the issue in question is “truly inconsequential.” He would concede appeals that raise serious structural or due process errors such as claims of ineffective assistance of counsel. He also supports reforms that would permit appellate courts to review grand jury errors and would improve the transparency of the grand jury process.

Bragg committed to supporting all pending legislation aimed at ending mass incarceration and decreasing harm within the criminal punishment system. He would support the introduction of legislation repealing mandatory minimums as well as the state’s mandatory persistent sentencing scheme. Bragg cites supporting larger legislative reforms as one of the reasons he is running to be top prosecutor. He will use his enormous discretion as the District Attorney to stop charging a wide swath of crimes, the cessation of which he believes will contribute to the safety of communities in Manhattan. Then, armed with that data, he can use his bully pulpit to shape public opinion and inform new legislation that would remove certain crimes from the books, which would in turn remove the prosecution of such crimes from the discretion of any future District Attorney. He understands how impactful systematic change in Manhattan can be used as a model for the rest of the state and country.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the “progressive prosecutor”**

## 28

# LIZ CROTTY

Liz Crotty, born and raised in Manhattan, is a former Manhattan prosecutor under Robert Morgenthau and founded her own criminal defense firm twelve years ago. She is also the only candidate who doesn't self-identify as a progressive or decarceral prosecutor. Instead, Crotty frames herself as the moderate candidate and the best candidate based on her experience as a practitioner on both sides of the aisle.

Her experience as a practitioner was evident in her plan for "day one" actions if elected as Manhattan DA. She criticized practices under Cy Vance that we as practitioners agree are problematic, such as unscrutinized certificates of readiness for trial, automatic challenges to a doctor's finding that the accused is unfit to stand trial, and orders of protection used against the accused as a "sword, not a shield". At the same time, Crotty was surprisingly unaware of several of the Manhattan DA's most problematic practices. Crotty said that she had never heard of the list of police officers with credibility issues, even though it was widely covered by the media and has gained momentum citywide. She thought that waivers of appeal were rare when they are required for almost all felony pleas; she did not believe that consecutive sentencing was ever used; and she did not think that Vance's office still prosecuted simple drug possession.

Crotty believes that a prosecutor does not contribute to racism in the criminal punishment system. She blames racism on the police that make arrests. Her view is misguided and ignorant, since racial disparities pervade all stages of criminal prosecution, including requests for cash bail/pretrial detention or sentencing. She failed to acknowledge that it is the DA's role to decline to prosecute cases that they believe are the result of racist policing. She reduces well-documented structural problems with the NYPD to a few "bad apples," and stated that she believes "it's a little unfair what's happened to the police, you know, these are people and these are jobs and there's all different kinds of people doing these jobs, just like prosecutors, just like defense attorneys, just like anyone, there's really good ones and then there's really bad ones and I think you have to root out the bad ones. But to say all police do misconduct and every case has police misconduct, I think is a little bit false."

Not only did Crotty appear out of touch in a way that belied her resume, but she also appeared to be the candidate most comfortable with business as usual. She would continue to use the ineffective conviction integrity unit, which many other candidates and community groups have characterized as a sham.

Crotty is direct, blunt, and not masquerading as a reformer or progressive prosecutor. We expect that, should Crotty be elected as the next Manhattan DA, she would, at best, maintain the status quo or even create policies and practices falling below the already low standards set by Vance, and would continue to perpetuate harm on low-income Black and brown individuals and communities.

## 29

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Crotty's experience as both a prosecutor and defense attorney was evident in this section. She didn't skip a beat when rattling off the specific changes she would make on day one to hold her office accountable. She is critical of prosecutors improperly using their discretion ("just because you can doesn't mean you should") and cited prosecutors seeking orders of protection even where there is no benefit to public safety. She acknowledged that "bad felonies don't make good misdemeanors" and emphasized that some cases just needed to be dismissed.

Despite this understanding, Crotty would not relinquish any of the prosecutor's power or reduce its budget. She is opposed to prosecutors acting as legislators and deciding what laws they will and will not enforce. Crotty would continue to prosecute all felonies and would not pledge to even end "broken windows" prosecutions, which disproportionately target Black and brown New Yorkers. She does not support dismantling the Special Narcotics Prosecutor.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### COMBATTING SYSTEMIC RACISM

When asked to elaborate on the ways that the Manhattan DA contributes to systemic racism, Crotty refuted the premise of the question and instead insisted that racial disparity comes from policing. Distinctly, she presented no plan to combat racism within the NYPD and very much excused many of its problematic practices. Besides this willful blindness to the DA's role in perpetuating racism, the only plan she presented includes flipping the script to "treat all defendants like they're white and rich." History has taught us that this colorblind approach is hollow and ineffective to account for the systemic racism that exists in this city and country. Additionally, Crotty seems to believe that racism in the criminal justice system can be explained away by an accused's socioeconomic status, but still believes in cash bail and prosecuting "broken windows" offenses.

Crotty stated that she would largely move away from using no-knock warrants, but she would not commit to ending the practice. She would continue to use peremptory challenges, a legal tactic often used by prosecutors to exclude jurors based on race, to prevent an accused person from being tried by a jury of their peers.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

# 30

## POLICING THE POLICE

Although Crotty also said that police are responsible for racial disparities in the criminal punishment system, she maintains that like any other profession, policing just consists of some “bad apples.” She does not support defunding the police and in fact made arguments that their salaries should be increased, stating that half of NYPD are people of color. This was merely one example of Crotty’s simplistic view of racism.

Crotty will not oppose the use of the overinclusive and racist gang database. She was the only candidate who had never heard of the “bad cop” list. She will continue to rely on officers on this list “depending on the case.” While Crotty took issue with the practices of the “Vandal Squad,” she went on to endorse the resurrection of the widely criticized “Anti Crime” squad. Crotty believes that “a lot of gun problems can be solved with anti-crime coming back. “I know that there [were] problems with anti-crime and their roles within the community, but the anti-crime was tasked with getting guns off the street and I think we’ve seen a surge in gun violence since this has happened.”

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## ABOLISHING CASH BAIL & PRETRIAL DETENTION

Crotty identifies as an “old school bail person” and does not see the problem with monetary bail or requiring an accused person buy their freedom. She supported the reactionary rollbacks of bail reform which were based on scare tactics and exaggerations by the NYPD, current DAs, and right-wing media. She thinks that cash bail should be set if someone is a flight risk. Most troublingly, she suggested that a DA should consider more than just the likelihood of returning to court in determining bail, a view that disregards the constitutional presumption of innocence: “The biggest question in bail reform that people aren’t asking, the first lexicon, is did they do it?” This shocking statement from a current defense attorney made clear that Vance’s current practice of seeking cash bail whenever he can would continue under Crotty’s leadership.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

# 31

## ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Crotty largely supports the status quo for prosecuting people with mental illnesses and substance use disorders. She would prevent access to ATI based on the severity of the charges, a person's criminal record, or their likelihood to recidivate. She would still require a guilty plea for access to ATI courts. However, she does believe that a clinical assessment for access to ATI should be done independently of the DAs office, a notable change from current practice.

When asked to evaluate drug court, Crotty said that the problem with drug court is that too many people in drug court do not have a drug problem. However, she ignored the extremely long mandates, "one size fits all" approach to treatment, lack of effective programs, and jail time to respond to relapse, etc. Her incomprehension was disappointing given her experience as a practitioner and who has dealt with addiction in her own family.

Even when she disagrees with current Manhattan DA practices, Crotty is resistant to give up prosecutorial discretion or enact change. For example, she believes that "relapsing is a part of the recovery process," but she would not commit to a decarceral response in instances of relapse.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

If Crotty were DA, there might be minor improvements in cases where people are accused of resisting arrest, domestic violence offenses, and bump ups, cases that could be charged as felonies or misdemeanors. For example, she expressed support for prosecutors listening to uncooperative complaining witnesses in domestic violence cases and respecting their agency when determining whether they would proceed with a case. Crotty also said that she would not prosecute resisting arrest or obstruction of governmental administration. She explained her rationale, "Minus the 1%, that is always a clear sign to me that nothing has occurred when it is resisting arrest and OGA or resisting arrest and disorderly conduct." In an op-ed, she criticized the "Right of Way" law that authorizes criminal penalties for drivers who fail to yield to pedestrians without requiring proof of criminal intent.



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Here too, Crotty prefers to retain discretion rather than institute office-wide policies that support decarceral outcomes. She would not support a sentencing cap. She generally does not believe the role of the prosecutor is to change legislation.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Crotty is not committed to the presumption of innocence. She thinks that bail should be about guilt or innocence “at the first instance,” meaning that she doesn’t value the constitutional rights that protect people from being deprived of their liberty. When asked what she would do to reduce the impact that an open criminal case has on people’s lives, she answered, “listen, the police had made the arrest.” Her answer shows a failure to understand that arrests say little about the strength of the government’s case and often result from the over-policing of Black and brown communities.

She agreed to consent to jury trials on B misdemeanors but would not go further by supporting a change in the law to make jury trials on B misdemeanors the usual practice in New York City. Crotty wants to wash her hands of responsibility in supporting changes that are beyond the DA’s direct control, even where the DA could be influential.

It does seem like Crotty has learned some lessons from COVID that would be beneficial to people accused of crimes. For example, she is interested in exploring the idea of having a courtroom open in the evenings.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### CORRECTING PAST HARMS

Crotty’s plan for correcting past harms is to retain current structures and possibly make them a little better. For example, she would continue to use Vance’s conviction integrity unit, which many of the other candidates criticized as being ineffective, and she would tweak it by increasing defense attorney participation.



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But she has no interest in taking bold stances or in giving up any power. When asked whether her office would concede appeals where there were major errors, she declined. Instead, she would look at the individual case and ask, “Would this be in the best interest of the office / is this the kind of law we want to make?” While we are doubtful that prosecutors can ever really know what communities want and need, it is troubling that Crotty’s tendency is to not even ask that question. Crotty only committed to office-wide policies when she didn’t think the issue would come up very often. She committed to not opposing appellate challenges to prosecutors improperly striking potential jurors based on race and to ending the practice of requiring waivers of appeals for pleas, but in the same breath, she opined that both issues rarely arise (which we know to be false).

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

# 34

## DIANA FLORENCE

Diana Florence is a career prosecutor with a strong vision to redirect the District Attorney's priorities to focus on crimes committed by the powerful, monied and elite such as wage theft, landlord violations, and crimes of sexual violence. Florence worked for the Manhattan District Attorney for 25 years and eventually became the head of the Construction Fraud Task Force. She elaborates on her experience at the office, saying, "I was an outsider and I used the criminal law in innovative ways to go after what I call crimes of power." Florence believes in re-directing, but not decreasing, the power of the District Attorney's office. It is also impossible to discuss her candidacy without addressing her early 2020 resignation subsequent to a failure to disclose Brady evidence during a major prosecution.

Despite her career in the office, Florence claimed a limited understanding of current practices within the trial bureaus in the District Attorney's office, particularly those practices that cause the most harm to low-income and Black and brown communities, thereby raising concerns as to whether she truly understands the steps needed to achieve her goals. She supports only modest reforms, such as expanding alternatives to incarceration programs, internal restructuring, and diversion for simple drug possession. Florence seems open to considering changes in the prosecution of more serious charges, but only on a case-by-case basis rather than through systemic reform. This is especially troubling because her lack of recent experience with the trial bureaus and controversial resignation may make it easier for prosecutors to defy her vision, a common problem for reform-minded prosecutors.

We find Florence's commitment to pursuing labor violations and similar crimes genuine and backed by a proven track record. However, we strongly disagree with her belief that the criminal punishment system is a solution to public health problems such as substance use or mental health conditions. While highlighting her past work prosecuting crimes affecting working class immigrants, Florence also said she would continue to prosecute gang conspiracies, request incarceration on misdemeanor cases, and continue to prosecute low-level drug sales. In this sense, her positions reflect the general worldview of a typical prosecutor.

Although her positions are marginally less harmful than Vance's, we find it unlikely her office would take meaningfully bold or transformative stances.

## 35

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Florence would not commit to reducing the office's staff or budget. While she initially said she would prefer to not cut the office's budget and instead divert extra money to community programs, she later said it made more sense to delegate this task to the city or an independent body.

Florence committed to dismantling the Quality of Life Unit but not the Office of the Special Narcotics Prosecutor. This reflects her commitment to very limited reforms that do not decrease the overall power or reach of the office.

In addressing her resignation, Florence contends her Brady violation was due to a lack of support for her work within Vance's office. She says that understaffing led to an oversight and her failure to turn over evidence to defense counsel. Florence explains that she will use her experience to ensure that no Assistant District Attorneys are put in a similar position. However, her experience may make her less inclined to reprimand prosecutors for unintentional, but nevertheless illegal, misconduct.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### COMBATTING SYSTEMIC RACISM

Florence started this section stating, "I think for too long we've been very defensive and closed to the idea that there is a problem. I think that's a general problem beyond the DA's office with white people." But throughout the remainder of the interview she offered troublingly little reflection on race and racism. Her primary plan to combat prosecutorial racism centered on changing hiring practices at the DA's office, primarily by increasing hiring assistant district attorneys from CUNY School of Law to recruit "diversity of thought." More diversity in hiring will not combat the systemic racism perpetuated by prosecutors, and her proposal betrays a lack of insight into a deeply rooted problem.

As was the pattern in our interview, Florence committed to embracing limited reforms, such as not requesting a no-knock warrant and supporting legislation to allow people with felony convictions to serve on juries, but refused more systemic reforms such as declining to use peremptory strikes, which are often used to exclude Black jurors. Rubric Category:

**Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## 36

### POLICING THE POLICE

Florence says both, “The police are a necessary part of the law enforcement structure. They’re not our partners and they’re not our adversaries,” and, “We need to treat police officers as we would treat any other witness.” While this attitude is certainly a significant improvement over Vance’s cozy, symbiotic relationship with the NYPD, we are concerned that Florence does not see the depth or breadth of the problems within the NYPD.

Florence will not work with officers with credibility issues and will prosecute criminal behavior by the police. However, she did not commit to recording conversations with police witnesses and turning them over to the defense, an important measure for ensuring accountability outside of the courtroom. While Florence agreed that the gang database needs to be dismantled, she still intends to prosecute gang-related charges and to use alleged gang affiliations in pretrial supervision requests and sentencing recommendations.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ABOLISHING CASH BAIL & PRETRIAL DETENTION

Florence came out strongly against cash bail, saying, “I believe we need to abolish cash bail in all cases,” but she is not committed to ending pretrial detention and supervision. While she repeatedly and emphatically stated that bail is to ensure a person’s return to court, she would not commit to preliminary hearings (an early test of evidence in felony cases) or to never requesting bail or supervision on misdemeanors.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Florence understands that the criminal system penalizes people with a mental illness or substance use disorder, saying “We need to be recognizing once and for all that mental health is not a crime.”

However, her solution is not to remove people with mental health issues from the criminal punishment system, but rather to expand services, diversion programs, court based-treatment, and other alternatives to incarceration.

## 37

Florence specifically cites low-level drug possession as a case where she would prefer a program over “3 days on Rikers.” While preferable to incarceration, diversion is an expansion of law enforcement reach and operates with the ever-looming threat of incarceration and criminal prosecution. Florence’s understanding and stated intentions surrounding substance use and mental illness would be a significant improvement over Vance, but her proposals, if implemented, would likely increase the number of people ensnared in the criminal punishment system.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Throughout our interview, Florence maintained the philosophy that she “does not believe in one size fits all” when discussing charging and sentencing. While this seems reasonable, it simply means that people charged with crimes will remain at the mercy of whatever individual Assistant DAs believe is appropriate, again highlighting that Florence will not commit to meaningful structural change.

Florence said “nothing should be lifetime” when discussing the sex offender registry, but she does not agree to combating life sentences by embracing a sentencing cap or ending the use of New York’s “three strikes” lifetime sentencing enhancements. While she agreed to support legislation to raise the maximum age for mandatory criminal prosecution to 21, she would not commit to always allowing children under the age of 18 to have their cases heard in family court. Florence agreed that people have an “amazing capacity to change” but would not agree to support legislation to end predicate sentencing, which enhances penalties based on a person’s criminal history.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

During our interview, Florence seemed open to collaboration with the defense bar to alleviate the inherent punishment that is part of the criminal punishment system prior to conviction. However, it was clear she does not have a strong vision of her own and has not given this area significant consideration. When discussing specific proposals, Florence seemed focused on creating increased efficiency in the courtroom through changed logistics and procedures.

## 38

While we were pleased Florence committed to ending the “trial tax,” her history as a career prosecutor leaves us skeptical as to whether she would undertake any meaningful reform without the aggressive advocacy of the defense bar.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### CORRECTING PAST HARMS

Once again, Florence committed to limited changes within the District Attorney’s office without conceding any of its structural power. She pledged to reorganize the existing Conviction Integrity Unit and include attorneys who have never worked with the DA’s office. She also envisions expanding the scope of the Unit to include more robust review of convictions upon request, including misdemeanor convictions. Florence supports a variety of pending criminal justice reform bills.

Despite this, Florence would not categorically end some of Vance’s most destructive practices. Amongst areas of concern, she would not end the blanket requirement that people waive their right to appeal at the time of a plea, and would continue to oppose defense counsel’s arguments about excessive sentencing and racial bias in jury pools.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## 39

# LUCY LANG

Lucy Lang is a career prosecutor who worked for twelve years in the Manhattan DA's office as both an Assistant District Attorney and the Executive Director of the Manhattan DA Academy before moving in 2018 to direct the Institute for Innovation in Prosecution at John Jay College. At John Jay, Lang was tasked with developing "the next generation of ideas and thought leaders in the field of prosecution," and she worked with prosecutors, academics, law enforcement officials, and community leaders. Her former boss, Cy Vance, as well as another member of his executive team in the DA's office, serve as co-chairs of the Institute's advisory board.

Despite Lang's time at John Jay where she heard from incarcerated individuals directly impacted by overzealous prosecution, her plans fail to cede the power of the office she seeks. Lang operates from the position that the DA's office and the criminal punishment system are the right tools to solve social issues. With this worldview, she does not plan to reduce the office's staff or its enormous budget, or eliminate units that have been publicly criticized as unnecessary and problematic. Instead, her plans merely repackage the current practices with new language and partnerships that will only expand the reach of her office. Unlike other candidates, she does not have a list of crimes that she would decline to prosecute, opting to make those considerations on a case-by-case basis; her position fails to acknowledge the harmful impact of over-policing in Black and brown communities and does little to reduce it.

Lang is eager to use new tools and expand her power in ways that place Black and brown families in danger. In a recent op-ed, Lang claims that though domestic violence incidents are often unreported, advocacy groups and survivor hotlines have been flooded with calls during the pandemic. Her analysis fails to acknowledge that women, specifically women of color, do not report incidents to prosecutors because the criminal punishment system does not protect them or offer the services and outcomes they often seek. Furthermore, throughout the interview, Lang rarely discussed the role of racism within the system or the experiences of low-income people of color who are arrested and accused of crimes. She instead focused on her plans to use "human-centric language" and address accused people by their names, moving away from dehumanizing labels like "defendant." While this is an improvement to the current practice, it does not address race-based stops, systemic prosecutorial racism, or the countless collateral consequences experienced by Black and brown communities. Using someone's name as you endorse their racially-motivated arrest and pursue their racially-disproportionate prosecution is certainly not transformative change and would be "progressive" in name only.

Lang does not believe that incarceration should be the default, but many of her proposals funnel people through the criminal punishment system to force services upon them.

## 40

She fails to recognize the enormous harm that police contact and a pending criminal case wreaks in a person's life, especially if the the DA concludes that they have "failed" a program. We find it troubling that Lang uses progressive language to disguise continued carceral actions, and that she professed ignorance of many practices of the Manhattan DA's office even though she is only two years removed from her career there. Lang's own website describes her as a criminal justice reform leader, but she struggled to acknowledge her own role in fueling mass incarceration as a career prosecutor. Throughout our interview, she distanced herself from the very office where she climbed through the ranks for twelve years. As a former high ranking member of Vance's office and someone with close ties to him, it is clear that Lang is reaping the benefits of his institutional support while also trying to maintain public distance to avoid the critiques that come with that association.

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Lang stated that she wants to transform the DA's office so that prosecution is not the default; however, she did not actually commit to reducing the budget or staff or dismantling problematic units. She missed the mark on calls to defund the office, and instead cites waste in overtime for support staff. Instead of reducing the scope of her office, Lang wants it to play a larger role in connecting people to social services. Lang believes the Manhattan DA should continue to prosecute "violent" crimes, homicides, ongoing domestic violence, and major economic crimes, ensuring that a large portion of the office will continue to function as it does now.

Lang did recognize that some changes are necessary, and she identified adjustments to office culture as a top priority. She will work to disincentivize using trial wins, indictments, and conviction rates as markers of success. Instead, she will define success as compliance with discovery obligations, thorough investigation, working closely with defense counsel, and undertaking projects to engage directly with the community. To ensure her staff is aligned with this viewpoint, she will re-interview all senior staff and take disciplinary action when any staff member engages in misconduct.

Lang plans to create a "mission aligned diverse workforce," and wants to implement anti-bias training for all staff, to promote the shared goal of ending mass incarceration.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**



# 41

## COMBATTING SYSTEMIC RACISM

When discussing racism and racial disparities, Lang appears to understand the issues on a superficial level, but she was unable to identify the inherent racist nature of the criminal punishment system or propose a plan to address it. She acknowledged that in Manhattan the largest racial disparity exists between who is indicted and who is not. She will prioritize addressing this pre-indictment disparity but was not explicit in how she would accomplish this. Similarly, she wants to eliminate the arbitrariness of outcome for the same charges between different trial bureaus, but she did not provide a plan for doing so.

Lang committed to compiling and releasing data regarding racial disparities in all facets of policing and prosecution. However, she would not commit to ceasing the use of peremptory strikes, or to at least create a policy of never using a peremptory challenge to remove Black jurors.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## POLICING THE POLICE

In our discussion of the police, Lang once again relied on superficial fixes without addressing the inherent, deeply ingrained problems of the system. Lang did not identify specific police units she believed should be dismantled, and she plans to maintain a working relationship with the police. She believes anti-bias training is sufficient to end the use of dehumanizing language by members of the NYPD. She will instruct her assistant district attorneys to cease practices that create public distrust, including calling officers to court on their days off so that the officer is paid overtime.

While she will maintain a list of police officers with misconduct issues, she had not thought about whether she would prosecute such cases or whether an independent prosecutor was appropriate. This lack of analysis is particularly alarming, not only because this topic has gained a national platform in recent years, but also because Lang has branded herself as a leader in prosecutorial reform work during her last two years at John Jay College.

Lang believes that there is merit to using conspiracy charges for trafficking cases and violent crimes, but would not use it to “scoop up young people based on Facebook posts.” Despite this statement, she did not commit to dismantle (or cease to credit) the NYPD’s Criminal Group Database, also known as the Gang Database.

## 42

Shockingly, Lang claimed ignorance of the database entirely, stating “there are numerous databases” and that she didn’t believe this one existed two years ago when she left the office (however, it significantly predates her departure from the office).

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ABOLISHING CASH BAIL & PRE-TRIAL DETENTION

Lang has pledged to end cash bail. She believes there are two myths about bail in NY State. First, that NY has cash bail at all. She pointed to the practice of District Attorneys asking for high cash bail rather than “having the guts” to request remand when the intent behind those requests is indefinite pre-trial detention. Second, that prosecutors and judges do not consider the person accused’s purported “dangerousness” in bail determinations: in reality, they merely dress up dangerousness in any discussion of a person’s likelihood of returning to court.

Lang stated that in contrast to these practices, she would not be afraid to request remand when she finds it appropriate. Lang did not provide much detail on when she would request remand and did not have a clear answer on whether she would support using risk assessments, saying only that she would follow the recommendation of academics. She is not opposed to electronic monitoring or other forms of pretrial supervision. She would continue the practice of requesting supervision on misdemeanor charges. Her answers on this topic seemed to indicate that her pledge to end cash bail is not in the service of low-income communities who cannot afford to buy their freedom, but rather in the service of assuming more power to supervise and jail legally innocent people.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS & SUBSTANCE USE

While Lang believes that alternatives to incarceration (ATI) should be the default in prosecutions against people with a mental illness or a substance use disorder, she wants these programs to remain under the control of the District Attorney’s office.

## 43

Lang believes serious drug charges must be funneled through the DA's office to ensure compliance with social services programming. Similarly, in cases where accused people have mental health issues, Lang expressed that it would be irresponsible to simply decline to prosecute because these individuals need mental health treatment and her office must ensure they receive it.

In a step away from her former boss, Vance, Lang committed to not require a guilty plea in order to access ATI programs. She would also use an independent assessment to determine eligibility for treatment courts. She did not commit to end the practice of opposing findings of unfitness, and would also not commit to decline to prosecute cases that would ordinarily qualify for ATI.

Lang hopes to "build towards" a model similar to the Portuguese approach and supports the legalization of all drugs for personal use. She committed to not indict officer-only-observed sales of small amounts, and she supports safe injection sites. Lang understands that relapse is often a part of drug treatment and does not consider it to be a failure. She would not seek prison for relapse, drug addiction, or any non-compliance resulting from mental illness or addiction.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

With regards to charging decisions, Lang was open to changing course but failed to make firm commitments. She disagreed with categorically declining to prosecute certain offenses, but did recognize the harm in the continued prosecution of "broken windows" offenses and would work to vacate these convictions.

Lang also recognized that it is unnecessary to prosecute the majority of manufactured and victimless crimes. She agreed that "bump up" charges (misdemeanor conduct charged as felonies) are not a necessary practice, but she will continue to use them in cases where repeated domestic violence is alleged.

Lang supports ending mandatory minimums and reducing maximums, as well as repealing the predicate sentencing statute, which enhances penalties based on a person's criminal history. But when asked about a sentencing cap, an issue that has been discussed nationally and by other candidates in the race, Lang did not have a number in mind.

## 44

Lang plans to create a specialty part for handling gun cases and hopes that trauma-informed judges will oversee those cases. She recognizes that much of the work of ending gun violence must take place within the communities that are impacted by it. Nevertheless, she put forth an aggressive plan that would increase police contact with Black and brown communities and expand opportunities for police to execute search warrants in people's homes in hopes of finding guns.

**Rubric Category: Harmful approach: will maintain scope of power but redirect prosecutions, e.g., the "progressive prosecutor"**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

While Lang committed to making some changes to daily courtroom practice, including referring to our clients by their names and proper pronouns and dismissing summonses that are more than a year old, she refused to make many of the changes that impact the fundamental fairness of proceedings. For example, Lang would continue the practice of seeking to cross-examine the accused person about prior bad acts unrelated to the current charges, a practice which impedes the accused person's ability to exercise their right to testify to the charges against them.

Additionally, Lang attributed the regular practice of reducing an A misdemeanor charge (the highest level) to a B misdemeanor on the eve of trial (which, in NYC, eliminates the right to trial by jury and enables a judge to determine guilt) to a "resources issue," rather than the obvious aim of depriving the accused person of a jury of their peers and putting the case before a prosecutor-friendly judge.

Finally, Lang has developed an "equal access plan" meant to prevent the wealthy or powerful from having unequal access to the elected DA, seemingly responding to a common criticism of Cy Vance's office.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### CORRECTING PAST HARMS

Though Lang stated that she was open to investigating appellate issues further with her transition team, she will not deviate significantly from current harmful practices.

## 45

Lang will continue to raise technical bars to appellate review such as harmless error or lack of preservation on a case-by-case basis, though this avoids consideration of the issue on the merits. Additionally, she would not agree to support or at least not oppose excessive sentence arguments.

Lang did agree to not oppose defense arguments concerning Batson, which allege that a prosecutor excluded jurors of a specific race. Lang supports hate crime legislation and the message it sends, but is open to alternatives such as restorative justice or educational programs in lieu of sentencing enhancements. While Lang supported many of the legislative initiatives aimed at increasing fairness in the criminal process, she does not support the Juvenile Interrogation Bill, which would require juveniles under 18 years old to consult with a defense attorney prior to any waiver of their rights.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

## 46

# ELIZA ORLINS

Eliza Orlins, a native Manhattanite, has been a public defender at The Legal Aid Society in Manhattan for 10 years, where she had a reputation for being a zealous advocate for her clients and a skilled trial lawyer who was unwilling to back down from a fight. As the only public defender in the race, this perspective gives her a clear understanding of the harmful policies and practices that she now seeks to undo as the next Manhattan DA. Orlins hopes to break the inevitable relationship between prosecution and incarceration, ending incarceration as the default response and instead using the power of the prosecutor to offer people the help and services they need in a non-coercive way, without the looming threat of incarceration. At the same time, she advocates for a smaller DA's office and is one of the only candidates calling for a 50% reduction to the NYPD budget. She believes that the DA's office should not be "overly involved in the supervision of human beings," such as through intervention courts or mandating unnecessary services, or be in control of the disbursement of forfeiture funds. While it is clear her goals are decarceral, as her campaign unfolds we hope to see more concrete plans as to how she would shrink the size of the DA's office while still allowing it to be a conduit for social services.

Orlins has a deep understanding of the damage mass incarceration has caused to Black and brown communities from her years as a public defender, stating, for example, that "today's client is tomorrow's victim." Throughout our interview she not only highlighted racism within the criminal punishment system, but also how the system should not be used to solve major social and community problems. She does not seem to draw on strong relationships with community organizers or organizations but she recently announced that she has raised more than 95% of campaign funds from individuals who donated \$100 or less, suggesting that her campaign is resonating with everyday New Yorkers and proving that hers is a grassroots funded campaign. If elected, she plans to almost completely revamp the current staffing of the office. She is unafraid to fire people who don't share her vision, and from her years of work, she already knows who they are. She is also thoughtful about how to get "buy-in" from staff who may stay on and will prioritize hiring formerly incarcerated people, people committed to decarceration and restorative justice, and former public defenders to bring her vision for the office to fruition.

Orlins has a vision for the DA's office that is centered in decarceration. She would end cash bail on day one and require assistant DAs to bring a request to office leadership anytime they seek pre-trial detention such as remand. She would not rely on risk assessment instruments, which she understands are built on racist assumptions. She would end the insidious practice of the "trial tax," the waiver of the right to appeal in order to accept a felony plea, and pledged to never use peremptory strikes which tend to racially discriminate against potential jurors.

## 47

She would use the bully pulpit of her office to advocate for legislative change, including raising the age for criminal prosecutions to 25 years old, in line with neurological development science. Her years as a public defender allowed her to share some of the most concrete approaches for implementing change among the candidates in this race, such as how to protect immigrants accused of crimes and to protect people who suffer from the trauma of abuse from being unfairly punished. Orlins would be a DA who supports legalization of all drugs and the immediate closure of Rikers Island.

Throughout her nearly two hour interview, Orlins was fiercely passionate about the injustices in the criminal punishment system, detailed and thorough in her plan to create real structural change, and never without an anecdote from a real case to explain the problem with the status quo. Orlins acknowledged that she would face resistance as she seeks to fundamentally change the DA's office, but she appears confident and unwavering in her vision. She has never backed away from these decarceral positions in public comments or debates and has in fact continued to develop her platform to include more plans to dismantle a system designed to create harm.

We believe that, among the candidates, her vision to dismantle the machinery of the DA's office, coupled with her deep understanding of the courts and prosecutors in Manhattan, would do the least amount of harm to Black and brown low-income communities.

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Orlins committed to re-interviewing every bureau chief to ensure that they are aligned with her vision and policies. She will also take advantage of knowing "what they've done" over the years. She is not afraid to "clean house" and fire higher-ups who engage in misconduct or refuse to comply with her new policies.

The central tenet of Orlins's candidacy is reducing the scope and budget of the office, decreasing staff and "handing over money" to community groups to use for restorative justice practices, drug treatment, and mental health services. She is committed to reducing and ultimately ending the role of the DA's office in directing treatment courts, diversion programs, or other mandates that are ultimately carceral in nature. This separates her from many other candidates who identify as progressive but whose plans rely on an expansion of court-mandated treatment and services. She will use an independent body to determine disbursements from the forfeiture fund. She believes that reparations should be made to Black and brown New Yorkers, especially with regard to marijuana prosecutions.

## 48

Orlins believes the criminal punishment system is rigged in favor of the wealthy and powerful. She stated in her interview that she does not believe the solution is to punish the wealthy more severely. Rather, her solution to this inequity is to decarcerate Black and brown communities and give low-income people the same benefit of the doubt and presumption of innocence that the wealthy enjoy--in other words, leveling up versus leveling down. However, Orlins' rhetoric in the media has at times differed from her stance in the interview--she has frequently criticized Vance for his perceived leniency toward the Trump family, Harvey Weinstein, Jeffrey Epstein, and other prominent figures. When asked about this seeming contradiction directly, Orlins responded with thoughtful reflection. She discussed her view that social media conversations did not capture the complexity of her sentiments. She has been vocal in her criticism of high profile individuals because she knows from experience that the rights of low-income, BIPOC individuals are never shown such deference. She is running for DA to bring this level of respect and understanding to all involved in the criminal punishment system.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### COMBATTING SYSTEMIC RACISM

Throughout her interview, Orlins repeatedly emphasized that the criminal punishment system disproportionately and intentionally punishes and marginalizes Black, brown, and low-income New Yorkers, and her policies would seek to diminish this.

When asked whether she would agree to a policy of never using a peremptory strike during jury selection, she reflected on the idea, agreed to it, and later tweeted out her commitment. She plans to collect and release data on prosecutorial outcomes by race, including cases where the office declined to prosecute, and break this information down by race and precinct. She would never request a no-knock warrant, noting that judges are "complicit" and simply "rubber-stamp" warrants rather than demand an evidentiary basis for the requested search or seizure.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**



# 49

## POLICING THE POLICE

Orlins believes that police officers must be held accountable for “not only physical violence in the streets, but perjury in the courthouse.” She knows from experience that police officers frequently lie on the stand, rarely face accountability, and in many instances continue to be called as the only witness in criminal cases. She is supportive of publicizing police misconduct and refusing to allow them to testify when they have lied or otherwise demonstrated misconduct. Her criticism of the NYPD was broad and unequivocal. Based on her career as a public defender and already high media profile, she seems particularly well-situated to withstand criticism from the NYPD, police unions, and police-friendly media such as the NY Post. She was the only candidate to criticize NYPD’s practice of using unlawful arrests to justify hours of overtime charged to the taxpayer. She plans to call this behavior out publicly and not stand for it.

Orlins is extremely critical of gang conspiracy cases and believes that they allow people to be “prosecuted for conduct that they themselves have not committed.” Orlins also pointed out that the database fails to actually help those at risk of violent crime. Instead, she would invest in resources that are proven to work, including community-based resources such as credible messengers, conflict transformation, public health programs, and restorative justice. Orlins She would immediately stop the use of the controversial data mining company, Palantir.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## ABOLISHING CASH BAIL & PRETRIAL DETENTION

Orlins wants to end cash bail within her first hundred days as DA. She is cognizant of the overuse of remand by progressive prosecutors and jurisdictions, and will require any ADA seeking pretrial detention to get approval from Orlins herself or a high-level supervisor. No other candidate made such a proposal. She is clear that release will be the default, but recognizes that pretrial detention may be necessary in very limited circumstances such as for the wealthy and well-connected who may be a flight risk. Her focus is centered on ending pretrial detention, not simply replacing cash bail with remand or extensive pre-trial supervision. Orlins recognizes that risk assessments are racist and will not use them.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

# 50

## ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Orlins supports the legalization of all drugs, not only marijuana. She also supports safe injection sites. Additionally, Orlins expressed that “our neighbors who are suffering from mental health issues should not have to be locked up in order to receive the treatment they need.” She would continue to prosecute some drug offenses such as selling prescriptions and trafficking large amounts of fentanyl or heroin.

Orlins’ platform calls for moving treatment services out of the criminal punishment system and into the community, echoing the calls to divest from policing and prosecution and invest in community services. As a result, she has less specific plans for treatment through the District Attorney’s office than some other candidates. While we support the goal of shrinking the criminal punishment system completely, we would want additional information as to how Orlins would use diversion and treatment as she shrinks the system.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Orlins doesn’t believe in “death by incarceration under any circumstances.” She believes that, in an ideal world, prisons and jails would not exist, and intends to use incarceration as an absolute last resort. ADAs seeking more than the minimum incarceratory sentence must receive special permission. She supports dismantling mandatory minimums and predicate sentencing enhancements. She believes in a sentencing cap of 20 years for crimes such as homicide, and a lower cap for other crimes.

As a longtime public defender, Orlins understands the tools she can implement to protect immigrants from suffering disproportionately from criminal justice contact. She is supportive of raising the age for adult prosecutions from 18 to 25 and will not oppose parole requests.

Orlins would not commit to never asking for jail on a case that originated as a misdemeanor, citing “extreme” cases. Orlins stated that she will follow complainants’ wishes if they do not want to pursue prosecution or orders of protection, and will work with them to pursue alternatives if they want incarceration.

# 51

She plans to focus prosecutions on people or entities that perpetuate “real harms,” including stealing from workers, exploiting immigrants, or preying on the powerless; this would include landlords or companies that send workers into dangerous sites.

We would have liked to see more of Orlins’ plan for how she’d handle offenses that the average Manhattanite considers serious, such as homicides. Since she has never held public office, we can’t rely on an existing track record of sticking to her vision despite public criticisms, but we do know that she has not wavered from her decarceral pledges in any of the candidate debates or candidate interviews published by local news outlets.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Orlins committed to never imposing a trial or hearing tax, meaning that she would not recommend a more punitive sentence because an individual accused of a crime exercised their constitutional right to a hearing or trial. She will consent to jury trials for B misdemeanors even though a law allows for bench trials (judges instead of juries as the decision maker) for these cases in NYC. Orlins believes that the DA’s office failed to curb the worst effects of COVID-19 by failing to engage in large-scale decarceration.

Orlins understands that an open criminal case is disruptive to someone accused of a crime and often has the effect of coercing pleas: people are punished merely for exercising their legal rights to fight their case and assert their innocence. She is supportive of trying to allow routine court appearances to be done virtually even after the pandemic subsides. That way, people accused of crimes do not have to miss work, find child care, etc.

Orlins’ experience as the only public defender in the crowded field makes her uniquely positioned to understand how prosecutors and judges dehumanize and devalue people in the system. She emphatically committed to using “person-first” language (e.g., names and proper pronouns rather than “defendants”), never cross-examining defendants on prior crimes if they testify at trial, and ending the office’s practice of indefinitely confiscating property like money and phones from people simply because they have been arrested.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## 52

### CORRECTING PAST HARMS

Orlins committed to direct her prosecutors to allow pleas without waivers of appeals. She plans for her office to consent to appeals where there are major structural errors below.

Orlins plans to have a conviction integrity unit that would examine convictions after trials or pleas, including for misdemeanors and our clients who do not have a claim of factual innocence. Orlins mentioned that she is already working with a criminologist to develop this unit and plans to include public defenders and DNA experts as well. She presented a more in-depth look at what that unit would entail just before this guide was complete, and it would certainly be the most robust unit from this field of candidates. To ensure the independence of the unit, Orlins would hire outside expert analysts, and, most innovatively, use the unit to not simply review past convictions but also to monitor current cases, policies and practices by tracking them as they unfold, looking for net effect on the community and screening for implicit bias or racially disparate results.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

**\*\* Eliza Orlins is a former member of 5 Borough Defenders, but she voluntarily left the group when she announced her candidacy for DA. Additionally many members of this working group worked with her at the Legal Aid Society in Manhattan. In order to remove all possible bias, the group that interviewed her were not former LAS colleagues, with the exception of one person who had recently transferred to the office and worked on a different floor. There were no LAS colleagues among the small group assigned to present an initial analysis to the working group. \*\***

## 53

# DAN QUART

Dan Quart, a life-long New Yorker who grew up in Washington Heights, has represented the 73rd district in the NY State Assembly for the past ten years. While his district is predominantly white and socioeconomically homogeneous, he became a leading voice for reforms in the criminal punishment system. He championed bail and discovery reform, the repeal of the gravity knife statute and served on the Committee on Correction. Consistent with his legislative record, he has made decarceration the central tenant of his campaign. Quart has represented low-income clients in Midtown Community Court and in parole revocation hearings. These experiences have shaped his worldview, resulting in a platform that centers a reduction in both prosecution and incarceration as it seeks to redefine public safety.

Quart's detailed knowledge of the interplay between the power of the legislature to change statutory schemes, the funding power of the city government in regards to police and prosecutions, and the broad discretionary power of the District Attorney is unique among the candidates. As District Attorney, he would use his platform to continue to advocate for reforms, guided by his experience as a legislator and knowledge of funding streams and the politics behind them, and to redefine public safety and reverse the harms of mass incarceration.

In our interview, Quart came prepared with statistics and plans on how he would divert cases out of criminal court and provide support and services to those in need. During his interview, he often expanded upon the decarceral premises of our questions, citing a plan that went steps further, and he defined success as "decarceration and [by] reducing the footprint both of the office and our footprint over and above mostly [of the] Black and brown men who by the numbers are in our courtrooms." Quart wove an analysis of disproportionate racial impact into almost every answer and consistently demonstrated a commitment to eradicate prosecutions stemming from race-based stops. He understood the adversarial nature of the system, and raised constitutional and moral concerns about surveillance tactics and the rights of the accused. He is deeply critical of Vance and, despite being an outsider, seems to have a detailed blueprint for how to revamp the office, redefine public safety, and reduce the harm caused by the current system. He demonstrated an understanding of the power and limits of the office and presented a viable plan to implement his decarceral goals while remaining transparent and accountable to Manhattan residents, particularly those who have been most adversely affected by Vance.

We believe that, among the candidates, his vision for this borough and proven decarceral track record in the State Assembly, is one that would do the least amount of harm to Black and brown low-income communities.

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## DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Dan Quart describes the current culture of Vance's office in one word: hubris. To take on that culture he will staff his office with personnel that share his vision. Quart is running a campaign where his positions for reform are clear; to him, depriving a person of their liberty is the most awesome power of the government, and if assistants are not following protocols and not doing their jobs, they will be terminated.

If elected he hopes to redefine public safety and measures his success by decarceration of county jails and state correctional facilities rather than by conviction rates. A strong believer in tracking data and making it available to the public, he is committed to changing tactics if his policies are not reducing incarceration. Quart's legislative record on bail reform, gravity knife legislation, sex work decriminalization, and surveillance demonstrates his long-standing commitment to decarceration.

He also hopes to shrink the DA's footprint by reducing the volume of cases and declining to prosecute cases that have no bearing on public safety. He has committed to not requesting more money from the city council. While he has not committed to a specific budget reduction, he suspects that he does not need a budget over \$100 million (the current budget is \$169 million) or the current staffing levels. He has been publicly critical of Vance for asking for more money to implement discovery reforms.

While Quart has committed to a reduction in certain prosecutions, he does call for an increase in prosecutions of sex crimes, vehicular violence, cyber crimes, and white collar crimes. It must be noted that this has the potential to increase incarceration, and in regards to vehicular crimes, to criminalize accidental conduct. Quart seems to recognize this inconsistency and has said that his office would "embrace and work to expand restorative justice initiatives, such as the Center of Court Innovation's Driver Accountability Program."

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## COMBATTING SYSTEMIC RACISM

Quart unequivocally believes that the prosecutor's office exacerbates the existing racially disproportionate arrest practices of the NYPD. He has committed to declining to prosecute these cases in hopes of combating the racism that exists in the criminal punishment system.

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He cited many examples of racial disparities in policing and prosecution, including Vance's gravity knife prosecutions. The data and stories of those prosecutions motivated Quart to lead the Assembly in removal of the gravity knife statute so abused by Vance. Quart will no doubt continue to employ statistics as he has planned, not to affirm his policies, but to continuously evaluate whether they are resulting in decarceration and ending race-based policing and prosecution.

Quart has been critical of Vance's use of conspiracy charges against Black and Brown men in NYCHA housing. He has been an outspoken critic of the NYPD gang database, calling it nothing more than "Stop and Frisk" by a different name, and would continue to discredit and disavow it upon his election as DA. Quart is also critical of other surveillance technology including Palantir, a big data firm that works with police and Vance's office, to surveil communities and mine social media accounts and other digital information in order to cobble together gang conspiracy charges. Quart pledged never to prosecute based on association, but only on alleged criminal conduct supported by actual evidence, and to immediately end Vance's contract with Palantir.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### POLICING THE POLICE

Quart has never shied away from holding the NYPD accountable. He led the charge to force Vance to end his insidious practice of empowering in-house NYPD lawyers to act as prosecutors in cases of mass arrest during protests and marches.

Quart supports calls to defund the police and believes that a reduction in the NYPD's bloated, militarized budget is appropriate and necessary. He would use his platform to create a coalition with council members to reduce the budget with more oversight and accountability. While he understands the limits and role of the DA's office, he is confident that he can help to build and support a movement that would make meaningful cuts.

Quart believes the NYPD should not be treated as a protected class of people, and he will hold them accountable by prosecuting them for criminal conduct. While he would not have a separate specialized unit to prosecute police, his office will maintain an independent relationship with police that allows for vigorous prosecution when necessary. Quart recognizes the prevalence of "testilying" and would refuse to use untrustworthy officers as witnesses. He would also call for their termination from the force.

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He would reform the Early Case Assessment Bureau (ECAB), where complaints are first written, by ensuring that officer allegations are properly vetted, by immediately demanding and reviewing body camera footage, and by video-recording officer interviews to give to defense counsel. By revamping this unit, Quart hopes to ferret out officers engaging in bad practices and precincts that are making race-based, unconstitutional stops. While he acknowledged that suppression hearings should ideally serve as a check on law enforcement, he recognizes that because so few are held, they are not a good measure for accountability. As an additional check, he would use his power to decline to prosecute and would release decline-to-prosecute data to the public.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### ABOLISHING CASH BAIL & PRETRIAL DETENTION

Dan Quart has been at the legislative forefront of ending cash bail in New York State and has made it a centerpiece of his campaign for District Attorney. His Day 1 action would be to end cash bail. He believes that cash bail is immoral, if not unconstitutional, and that access to wealth should not determine access to liberty. He has publicly denounced Mayor DeBlasio and the NYPD for using fear mongering to roll back bail reform. As an assembly member, he voted against the rollbacks, and as District Attorney, he would use only risk of flight and physical threat to another person as factors to consider in release determinations. He does not agree with the use of risk assessments, understanding their fundamental racial inequities. He would expand the recent reintroduction of preliminary hearings (a COVID-19 adaptation that is always available under our laws), offering an early opportunity for someone accused and incarcerated to test the evidence against them.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Quart is committed to providing people appropriate services so that they ultimately never return to court. He would use early intervention strategies involving existing nonprofits to provide social services and then decline to prosecute the arrest charges. He believes in removing cases that are a product of poverty, mental illness, or drug use, from the criminal punishment system.



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He would not require a guilty plea in order for the person accused to access services. Quart would work to reduce the number of court appearances during treatment so as not to break continuity of care, and he would not seek prison sentences for relapse, new drug use, or non-compliance stemming from mental illness or substance use. While he would not commit to declining to prosecute all felonies where the accused has a mental health diagnosis, his approach is still a significant improvement from Vance's office.

Similarly, Quart would remove cases involving drug use from the courtroom. He co-sponsored legislation to legalize marijuana, is open to further legalization efforts, and supports safe injection sites. He would decline to prosecute simple possession of drugs and cease the practice of indicting police-observed sales of small amounts of drugs, instead charging that conduct as a misdemeanor. He supports legislation to dismantle the office of the Special Narcotics Prosecutor (SNP), and he will recall the 57 District Attorneys from Manhattan assigned to that office.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Unlike Vance, Quart will not charge misdemeanor conduct as a felony and when appropriate will avoid felony indictment if the charge would trigger the imposition of mandatory minimum sentences. He will employ serious, early scrutiny to police allegations of assault on an officer or resisting arrest. He will decline to prosecute when a resisting arrest allegation stems from an alleged offense he has committed to never prosecute.

Quart would allow people charged with crimes to access ATI's without requiring a plea up front and will not have a categorical bar to ATIs based on charge alone. This would include gun possession prosecutions, as Quart seeks to expand opportunities for non-carceral outcomes. He would take adverse immigration consequences into account during all plea negotiations, and if ultimately seeking incarceration, he would recommend the minimum sentence as mandated by law. He is interested in using restorative justice models in specific situations with community buy-in, but is mindful of the need to guard against the risk of self-incrimination in the restorative justice process.

He believes that the goal of prosecution and punishment should be to reacclimate people to society as early as possible.

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He supports legislative action to repeal the predicate sentencing statutes (including mandatory and discretionary persistent statutes, New York’s “three strikes” equivalent) and mandatory minimums. He also supports legislative action to reduce maximums on sentences as currently allowed under the sentencing scheme. Quart does find value in designating and charging an alleged crime as a hate crime when the evidence supports doing so. He believes it is important to make clear that the government regards as especially abhorrent conduct motivated by a desire to reinforce systemic oppression. However, he would not pursue the sentencing enhancements that accompany hate crime legislation. He does not believe in life sentences and would promote a sentencing cap of 20 years, no matter the charge.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Quart acknowledges that the sheer act of coming to court can be a burden for a person accused of a crime. He wants to address this burden by evaluating cases thoroughly and expeditiously in order to reduce the time that allegations are pending against a person and the number of times they must appear before a judge. He also believes in the fundamental principle of complete and early disclosure of all evidence gathered in support of a charge.

While he would not commit to a total ban on the use of “Molineaux” evidence (evidence of prior bad acts unrelated to the charges) when cross-examining a person accused should they choose to testify, he does have a deep understanding of why such practice may be problematic. Similarly, he did not commit to a ban on the practice of using “Sandoval” evidence--that is, cross-examining an accused person on their prior convictions should they testify on their own behalf at trial.

Quart is aware and critical of the wide disparities among Vance’s trial bureaus which yield vastly different and tragic outcomes, and would address these disparities upon taking office. He challenged Vance’s use of scientifically unreliable evidence such as bite marks and Vance’s practice of requesting reverse search warrants (judge-approved orders demanding that tech firms provide all the information on users in a certain geographic area at a certain time).

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He does not believe in a “trial tax” and therefore would not request a longer sentence after trial than he would have offered if the person had pled guilty.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

### CORRECTING PAST HARMS

Dan Quart envisions an independent, well-resourced conviction integrity unit that would not be staffed with career prosecutors and would not only review past convictions by judge or jury but also review sentences resulting from guilty pleas. He would review convictions and sentences for offenses that his office no longer prosecutes and for alleged “gang” prosecutions.

He has long been an advocate for early release from parole and co-sponsored the Elder Parole Act, Less is More NY, and Fair and Timely Parole Bills. He supports clemency for people incarcerated for the oft-criticized felony murder statute, and would advocate for legislation that would repeal the statute. He would use his platform as Manhattan District Attorney to advocate for a rehaul of parole and probation, including advocating for reduced terms.

Quart committed to not requiring waivers of appeal as a condition of a plea agreement, and he would not oppose excessive sentencing arguments on appeal. He also committed to not raising the issue of preservation to block appellate review of any issue that could reasonably have affected the fairness of the proceeding in the lower court, including prosecutorial misconduct. He would, however, continue to raise harmless error, a technical argument that enables appellate judges to affirm convictions where they find that a legal error could not have affected the jury’s determination of guilt.

**Rubric Category: Least harmful approach: will shrink the power and reach of the office**

## 60

# TALI FARHADIAN WEINSTEIN

Tali Farhadian Weinstein is a self-styled “progressive prosecutor,” a claim easily contradicted by her track record and her campaign proposals. She has amassed a resume of well-regarded, elite positions in public service, resulting in a campaign supported by wealthy donors and peppered with famous endorsements. In her campaign materials, she holds herself out to be a “national expert on the transformation of local prosecution happening around the country today,” but in our interview professed absolute comfort with the status quo, to the extent she understood it. We have significant concerns about her propensity to cause harm to Black and brown communities in Manhattan.

Farhadian Weinstein clerked for Sandra Day O’Connor and Merrick Garland, was counsel to former Attorney General Eric Holder, worked as a federal prosecutor, and, most recently, was an executive in the office of Brooklyn District Attorney Eric Gonzalez. Much of Farhadian Weinstein’s experience is in the federal system rather than in state prosecutions and this was clear throughout her interview. For a national expert she lacked a practical understanding of the impact of local prosecutions on communities most impacted by the policies and practices of Vance’s office. She also claimed to not be familiar with many of those well-known policies and practices because she had never practiced in Manhattan. Whatever the reason, it was clear she had significant gaps in her understanding, a troubling oversight for a person running on a promise to reform the office. Her plans would make her a carceral prosecutor steeped in regressive policies from sentencing to bail, to her potential expansion of the DA’s personnel and budget to support the “expensive” reforms she plans to implement.

Farhadian Weinstein seeks to incorporate many of the most insidious tools of mass incarceration and criminalization in her prosecutorial approach. She would borrow sentencing policies from her federal practice that amount to a trial tax, has a willingness to prosecute cases despite the wishes of a victim, and would continue to prosecute crimes stemming from poverty, mental illness, and substance use. Although she touts reform initiatives that she worked on in Brooklyn, the reality of these programs -- such as the gun part and its associated alternative to incarceration programs -- too often further entangle people in the criminal punishment system. During our interview, she generally refused to make categorical commitments which we presented as solutions for systemic change and made clear a desire to maintain the discretionary ability to prosecute low-level offenses. Unlike most other candidates, she does not have a list of charges she will decline to prosecute.

One particular area of concern was Farhadian Weinstein’s positions on race and policing. Her approach to racism seems academic; while she does agree that racism in the criminal punishment system exists, as evidenced by data, she would not dismantle any of the systemic mechanisms that perpetrate racism in state prosecutions.

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She indicated that her office would continue to use the NYPD's widely-discredited rogue Gang Database as an investigatory tool and potential basis for bail enhancements and voiced support for current gang policing practices, which are abusive and racist in application. She would continue to use conspiracy charges against young New Yorkers, which would inevitably result in unjust dragnet prosecutions such as that of the Bronx 120. Throughout the interview, we noted several other red flags regarding her attitude towards the NYPD. Despite the disbanding of the Anti-Crime Unit in June 2020, public calls to disband the Vice Unit, and rigorous critique of the Strategic Response Group, Farhadian Weinstein could not name a single unit within the NYPD that was problematic. Farhadian Weinstein made clear that she does not believe the criminal punishment system is fundamentally and irreparably broken, but rather that it simply needs ethical prosecutors operating within it -- a model that has repeatedly failed to bring the sort of transformative change so desperately needed. She is clearly knowledgeable about the critiques of the criminal punishment system and current national reform trends, but makes no commitments to how she would implement any actual changes at the local level. She lacks basic familiarity with fundamental aspects of this office, such as the DA's relationship with the pro-carceral District Attorney Association of New York or current policies and practices under Vance's leadership that are publicly criticized. Her proposed reforms amount to tinkering around the edges of the Manhattan DA's functions without fundamentally changing the scope or abusive day-to-day operations of the office.

She will neither decrease the power of the District Attorney's office nor the number of people trapped in its scope. She has considerable propensity to inflict significant harm on Black and brown communities.

### DEFUNDING THE DA & PROSECUTORIAL ACCOUNTABILITY

Farhadian Weinstein would not commit to reducing staff or declining funding from the City Council as crime rates decrease, and she characterized this idea as "reductive." She even indicated that the DA's already outsized budget may actually increase because her reforms may be costly. While she believes there is a need for cultural change and reform, she seeks to achieve this through staffing decisions rather than systemic changes. She did agree that conviction rates are not a good metric for success and would evaluate staff based on respect, constitutional obligations, discovery compliance, quality writing, and conduct in negotiations.

She would commit to sharing office policies and memos for the sake of transparency and accountability.

Farhadian Weinstein would increase prosecutions for what she calls gender-based violence, sexual assault, domestic violence, gender-based hate crimes, gun violence, and white collar crimes. Increasing prosecutions with an eye towards a carceral approach only exacerbates social inequities.

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Addressing “gender-based” violence through this lens too often harms poor women of color in a system that is historically hostile to them, making them less safe.

Protecting women and other marginalized communities should be accomplished by diverting resources away from prosecutions that seek to only reinforce mass incarceration, and toward community resources that center the needs of anyone who has experienced violence or harm.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### COMBATTING SYSTEMIC RACISM

Farhadian Weinstein agrees the criminal punishment system is racist and as a supporter of a data-driven approach to accountability she would compile and release data on racial disparities stemming from policing and prosecutions. However, the only specific instance of disproportionate prosecution she named was for marijuana charges. She noted the use of artificial intelligence in San Francisco to eliminate racial bias in charging decisions, however she did not commit to employing it, instead commenting that it was an interesting strategy that might cost money.

Tellingly, when asked if she would commit to not using peremptory challenges, which systematically exclude Black jurors, Farhadian Weinstein was shocked at the request. She simply believed that assistant district attorneys should not be conducting themselves in a racist manner.

She would continue to prosecute and reinforce racist “gang” policing and prosecutions that systematically target and incarcerate Black and brown men. She would continue to employ surveillance tools, which she acknowledges can be abused, but maintains that the solution is to have ethical prosecutors at the helm. This is representative of her prosecutorial attitude where retaining power with the “right” people will cure the ills of the criminal punishment system without any understanding that personal behaviors do not undo rooted, systemic racist policies.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

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### POLICING THE POLICE

Farhadian Weinstein commits to prosecuting police not only for violence but also perjury and touts the Brooklyn “do not call” list as being the first office to release such a list. It is worth noting that at its inception, this list only included seven names and excluded many notoriously problematic officers. She supported the repeal of 50-A (a statute that kept police misconduct records from the public) and believes in the ethical obligation to evaluate police credibility at each stage of the case. She does not believe an independent unit to prosecute officers is necessary because according to her, officers are not as embedded in the office as they are in smaller jurisdictions. Despite public outcry about the abusive and violent actions of the NYPD, she could not identify a single NYPD unit as troubling.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ABOLISHING CASH BAIL & PRETRIAL DETENTION

Regarding bail and pretrial detention, Farhadian Weinstein identifies systemic issues with cash bail, but once again refuses to take steps beyond what is required by law to rectify those problems, saying, “I don’t think I’ve pledged to never use cash bail, so much as to say I pledge to support legislation that ends cash bail.” She suggests that she would support replacing cash bail with a risk assessment tool, and despite agreeing that risk assessments have human bias, she hopes we can one day transcend such bias. She would not commit to offering preliminary hearings but did commit to evaluating their potential benefits as they have been used during the pandemic in Brooklyn when it was not safe to convene grand juries.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### ENDING THE CRIMINALIZATION OF POVERTY, MENTAL ILLNESS, & SUBSTANCE USE

Farhadian Weinstein refuses to commit to even the most rudimentary steps to remove people with a mental illness, substance use disorder, or living in poverty from the criminal punishment system. While saying, “if you don’t address mental health, you aren’t addressing public safety,” she indicated she would continue challenging findings of incompetency, prosecuting minor drug possession, and punishing a person for relapse with incarceration.



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While she repeatedly indicated that she would evaluate all of these situations on a case-by-case basis, the fact that Farhadian Weinstein could not agree to the most basic of progressive policies, like declining to prosecute simple drug possession, suggests that she will not be progressive on a case-by-case basis either. While she does support safe-injection sites, she does not support the legalization of any other drug besides marijuana, and does not support the Treatment Not Jails Act.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### SUPPORT FOR DECARCERAL OUTCOMES & SENTENCING

Farhadian Weinstein said her guiding principle is parsimony and wants people to go to prison for as short as absolutely necessary to fulfill the goals of the criminal punishment system. She does not expand upon what those goals are, how they are assessed, and seems to presume that incarceration is necessary. Interestingly, she acknowledges that sentences are often too long and harsh and identified sentencing as the “next frontier for criminal justice reform.” She offers no solution to reduce sentences on the front end, but would rather rely on excessive sentence claims made post-sentencing. She is unwilling to commit to implementing such reforms through the power of the office, including declining to use New York’s version of the 3-strikes law. She will continue to pursue jail sentences on some misdemeanor charges, and request consecutive sentencing because the law allows it.

She expressed support for the concept of restorative justice and said she was interested in using it. She also held up the Brooklyn gun court as a model for diversion programs she intends to bring to Manhattan. Unfortunately, practitioners in Brooklyn have found the requirements of this diversion program so rigid and demanding that it is virtually impossible for a young person to successfully graduate. Participants are required to plead guilty upfront to a state prison term, so this “diversion” court becomes another driver of incarceration and not its alternative. Throughout our interview, we asked Ms. Farhadian Weinstein about various charging and sentencing practices of Vance’s office. She avoided commenting on these policies by saying that she was “unfamiliar” with them as she has not practiced in Manhattan. When contextualized, she frequently stated she would avoid blanket policies and evaluate on a case-by-case basis. She would take into account adverse immigration consequences when offering plea negotiations. Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**



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### COMMITMENT TO THE PRESUMPTION OF INNOCENCE

Farhadian Weinstein agrees that the “process shouldn’t be a punishment.” She hopes that the court system has learned from the pandemic how to reduce the impact of the criminal legal process on people who are accused of crimes. She has a strong commitment to keeping ICE out of the courthouse and has in fact, sued ICE in the past. She is committed to the spirit of open file discovery and not just the letter of the law.

Despite these positive positions, perhaps the most regressive of all of Farhadian Weinstein’s comments came in response to a question about the trial tax, (seeking an increased sentence after a guilty verdict,) when she stated, “Coming from federal there can be some difference. As an ethical framework there is room for some discount for accepting responsibility.” Any prosecutor who is comfortable utilizing the trial tax fundamentally lacks a commitment to the presumption of innocence, and sees value in punishing a person for exercising their constitutional right to trial. Further, this deeply antiquated and unconstitutional view shows that Farhadian Weinstein is at her core, a prosecutor fervently committed to carceral punishment disguised in progressive clothing.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**

### CORRECTING PAST HARMS

Farhadian Weinstein once again shows her allegiance to maintaining the criminal punishment system with limited reforms, this time through the appellate process. While she presents her conviction integrity unit as a wide-ranging solution seeking unit, she also will continue to use numerous technical arguments, such as preservation and harmless error, to block review by a higher court. She will also continue to use appeal waivers to deny people access to justice at the appellate level. She would support applications for reduced sentencing, but she wants the power to decide who is worthy of their freedom.

**Rubric Category: Most harmful approach: will continue to wield power and unfettered scope of the office with little change from current practice**