

John Kennedy O'Hara's Voting Fraud Convictions Overturned After 18 Year Fight

On January 12, 2017 John Kennedy O'Hara's 1999 voting fraud related convictions [were overturned](#) in Kings County, New York.

John O'Hara was an attorney in Brooklyn who in the early-to-mid-1990s was an active political opponent of Kings County District Attorney Charles Hynes. In the 1990s O'Hara ran five times against Hynes allies — twice for City Council and three times for Assembly — and he backed candidates who tried to unseat Hynes as DA.

In 1996 Hynes' office obtained a seven-count indictment against the 35-year-old O'Hara: five counts of illegal voting; and one count each of offering a false instrument for filing and false voter registration.

O'Hara's prosecution was based on his voter registration on November 2, 1992 that

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oned. Bean discovered she had been driven from her home by her husband's harsh treatment, and that he had divorced her. Consequently, she didn't commit adultery, and the district attorney and the judge had erroneously been misled that she was a woman of immoral character. The Middlesex County District Attorney recommended the pardoning of Gadbois. On October 1, 1884 Gov. Robinson granted Louise Gadbois a full pardon and she was released from prison.

Daniel Callahan was convicted on July 17, 1884 of larceny in Lowell, Massachusetts. Callahan was sentenced to one year in prison. After he was imprisoned a police officer investigated Callahan's case and determined he had been misidentified. Based on the new evidence Callahan's trial judge recommended his pardon. On October 22, 1884 Daniel Callahan was granted a full pardon by Gov. Robinson, and he was released from prison.

The Innocents Database includes 4,276 cases of persons exonerated in the United States, and more than 900 of those exonerations were before 1989. The database is online at, www.forejustice.org/exonerations.htm.



John Kennedy O'Hara in courtroom when his conviction was overturned on January 12, 2017 (Jesse Ward, NY Daily News)

because it was uninhabitable. O'Hara used that address to vote five times from November 1992 to November 1993.

After a jury trial O'Hara was convicted on July May 13, 1997. He was sentenced to five years of probation, payment of a \$20,000 fine, and performing 1,500 hours of community service.

O'Hara appealed his conviction.

On November 10, 1997 the Appellate Division of the Supreme Court of New York ordered the 36-year-old O'Hara's immediate disbarment and his name was struck from the roll of attorneys and counselors-at-law.

On August 31, 1998 O'Hara's convictions were reversed and a new trial was ordered by the Appellate Division of the New York Supreme Court, Second Department. The Court's [ruling noted that](#) the "The trial court, over defense counsel's objections, granted the People's request for a missing witness charge with respect to Ms. Magaly Lucas, ... former girlfriend of the defendant." The prosecution contended that O'Hara didn't subpoena Lucas although he knew where she was and she had material evidence. The appeals court ruled the [judge prejudicially erred](#) by granting the "missing witness" charge, because there was no evidence O'Hara knew where his ex-girlfriend was, and "There was no evidence ... that Lucas had any knowledge concerning whether the defendant falsely used the 47th Street address to vote during the period of November 1992 to November 1993."

O'Hara's retrial in May 1999 ended in a mistrial after the jury couldn't reach a verdict.

O'Hara's third trial was in July 1999. The jury convicted him of all seven felonies. Kings County Supreme Court Judge Abraham Gerges sentenced O'Hara to three

years probation, 1,500 hours of community service, a fine of \$6,000, restitution of \$9,192, and payment of a \$5,000 civil penalty to the New York City Campaign Finance Board. (In 2002 the \$5,000 civil penalty was vacated in *People v. O'Hara*, 297 A.D.2d 768.)

In 2000 the Supreme Court Appellate Division affirmed O'Hara's convictions and sentence. O'Hara was granted leave to appeal that ruling.

On June 14, 2001 the New York Court of Appeals affirmed O'Hara's convictions in a majority 5 to 2 ruling. A dissenter argued that the address O'Hara used qualified as his residence under New York's civil Election Law, and noted that O'Hara was the only person known to have ever been convicted of violating New York's voter registration law.

O'Hara then filed a post-conviction motion based on ineffective assistance of counsel, which Judge Gerges denied in 2002. After that ruling [was affirmed](#) on appeal, O'Hara filed a federal habeas petition that was denied.

In 2005 O'Hara filed a selective prosecution motion that Judge Gerges denied.

O'Hara subsequently filed a motion for reinstatement as an attorney. Following a hearing concerning his motion, an investigating subcommittee of the Committee on Character and Fitness for the New York Supreme Court Appellate Division, Second Department, [issued its](#) Report on June 1, 2009. The Report expressed the opinion that O'Hara's prosecution was politically motivated: "Mr. O'Hara, accurately it appears, claims that the [Hynes's political] machine was gunning for him and pounced on his change of residency calling it election fraud." The Report concluded: "Although the committee has grave doubts that Mr. O'Hara did anything that justified his criminal prosecution, even if Mr. O'Hara was guilty of the offense for which he was convicted, we believe that Mr. O'Hara now has the requisite character and fitness to be reinstated as a member of the bar." (*In the Matter of John Kennedy O'Hara*, No. 1997-06257, slip op. (2d Dept., Committee on Character and Fitness, June 1, 2009, 2 and 6)

Based on the committee's report, O'Hara was reinstated to the New York bar on October 6, 2009. After his reinstatement [O'Hara told the](#) *Brooklyn Paper*, "Starting over at

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48 feels great. Great, great, it feels great.”

In January 2014 Kenneth Thompson took office as the new Kings County DA after defeating Hynes in the November 2013 general election. Hynes had been DA since 1990.

On January 6, 2015 O'Hara's attorney Joel B. Rudin [filed a](#) Notice of Motion to vacate O'Hara's judgement of conviction. The motion detailed that O'Hara's convicted conduct wasn't considered a violation under New York's civil law, and that since the denial of his 2005 selective prosecution motion new evidence had been discovered that numerous “prominent figures,” particularly in Brooklyn, had committed similar acts but they hadn't been prosecuted by DA Hynes. The motion included evidence that Hynes himself violated the law because around the time of O'Hara's indictment, Hynes' “permanent” home address for his voting registration was a municipal office building. Rudin emphasized the importance of that new evidence because in 2005 Judge Gerges expressed approval of O'Hara's prosecution because of his “prominence in the community, his notoriety or his public status.”

The motion also cited a June 2014 New York City Department of Investigation report, “Findings Regarding Misconduct by Former Kings County District Attorney Charles J. Hynes, Justice Barry Kamins and Others.”

Upon taking office, Thompson invigorated the Kings County Conviction Integrity Unit (CIU) that Hynes established in 2011. Under Hynes the CIU had not contributed to the exoneration of a single person in three years.

The CIU began investigating O'Hara's case. The CIU interviewed the landlord of the apartment O'Hara listed as the address for his 1992 voter registration. During his trial she provided key prosecution testimony the apartment was uninhabitable, but she told Thompson's investigators it was not only fit to live in, but it had been renovated recently before he starting residing there. The landlord's recantation of her trial testimony undermined the credibility of the evidence the jury relied on to convict O'Hara.

Thompson was 50 when he died from cancer in October 2016. During Thompson's two years and nine months as DA, 21 wrongfully convicted people were exonerated



Kings County DA Kenneth Thompson
(Kings County DA website)

after a CIU investigation, and the charges against them were dismissed.

Based on the new evidence provided by the landlord, acting Kings County District Attorney Eric Gonzalez did not oppose O'Hara's motion.

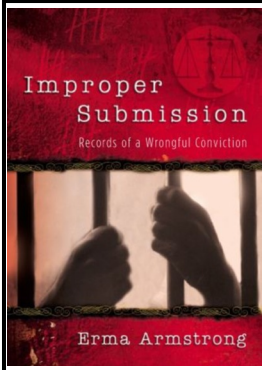
On January 12, 2017 a Supreme Court judge set-aside O'Hara's convictions. He was the 22nd innocent person whose conviction Thompson was responsible for overturning.

While celebrating his exoneration with a chicken quesadilla and a beer, [O'Hara told](#) a *Brooklyn Paper* reporter: “I feel great after 20 years. Three trials, a dozen appeals — it's over!” He acknowledged the important role the *Brooklyn Paper* played in publishing stories that keep his case in the public eye, “Without the *Brooklyn Paper*, I wouldn't have been exonerated today.”

O'Hara's lawyer Dennis Kelly [told the](#) *Brooklyn Paper* that Thompson kept his promise to investigate O'Hara's case when he was elected: “[Thompson] saw that it was a political hit ... that Hynes gave to John for somehow crossing the establishment of the Democratic Party that Hynes ran. We were in his office right after he was elected and he said, ‘Yes John, we're going to get justice for you.’” Kelly also said O'Hara [will file a](#) lawsuit over his more than two decade ordeal: “It was a political witch-hunt [by Hynes] that caused this prosecution of John and we're going to hold them accountable in the very near future. A civil rights, malicious prosecution case will be filed shortly.”

O'Hara is the only person known to have been convicted in New York state court of illegally registering and voting. In 1873 Susan B. Anthony was convicted in federal court in New York of violating the federal voting Enforcement Act (1870). Her crime was illegally voting as a woman for a member of Congress on November 5, 1872.

The Kings County DA's CIU is the largest in the country. Its structure and operation is a model for other prosecutor's offices to emulate. The CIU's website is, www.brooklynda.org/conviction-review-unit.



This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer. She witnessed him commit a murder and she is currently serving two life sentences in Oregon for that crime. *Improper Submission* by Erma Armstrong documents:

- The way the killer's psychotic bragging was used by the prosecution against Karlyn.
- The way exculpatory and witness impeachment evidence was hidden from the defense.
- The way erroneous assertions by the prosecution were used by the media, judges reviewing the case, and even by her own lawyers to avoid looking at the record that reveals her innocence.

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