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# Close Family Ties Between Queens Judges, Prosecutors, Raise Appearance Concerns

The Queens tradition of judges and ADAs coming from the same family—unique in its scale among New York's boroughs—has created a perception in the defense bar that its members are on the outside of an insular courthouse community.

By Colby Hamilton | August 07, 2018

It was local Criminal Court Judge John Zoll's recent first state Supreme Court jury trial. A local defense attorney, who provided details on the episode to the New York Law Journal on the condition of anonymity, was facing off against Assistant District Attorney Nicole Aloise. As the defense attorney proceeded in her closing arguments, she would later

***Queens District Attorney's Office. Photo Credit: Queens DA's Office***

learn from people in attendance that Aloise's father, Justice Michael Aloise, had taken a seat in the spectators' area.

The defense attorney said Zoll overruled her objections when ADA Aloise told jurors during her summations that the defense attorney had "made things up" during the trial.

It was a very serious case and a long trial, but, from the perspective of the DA's Office and the bench, one that proceeded typically, without cause for professional concern. But for the defense attorney, it raised questions about the possibility of undue influence of a senior colleague, during a prosecution run by his daughter, on Zoll's actions on the bench. The judge declined to comment for this story.

This is an example of a perception among the defense bar about the insular network connecting judges and prosecutors, and the potential impact it has on court proceedings. It's a system that has built up over time. Each individual connection isn't in and of itself cause for concern, but, taken as a whole, questions are raised over the role personal relationships play in decisions and case outcomes.

A separate case that concluded in the middle of 2018 provides another example. A different defense attorney, appearing this time before Supreme Court Justice Gregory Lasak, had another encounter with ADA Aloise.

As part of a suppression motion following a pretrial hearing, the attorney said she filed a memorandum of law supporting her client's position in October. After asking for additional time to respond to the memorandum of law, which included issues around testimony and key video surveillance that the government hadn't introduced into evidence, ADA Aloise opted not to submit a response.

To the defense attorney's surprise, Lasak announced in January that he wanted to reopen the hearing, instructing ADA Aloise to call an additional witness, and that she should introduce the surveillance video into evidence. Despite the defense

attorney's objections to the prosecution getting a second chance, the defense attorney was told by the judge he was exercising his discretion "sua sponte."

In the defense attorney's mind, she believed the daughter of a sitting state Supreme Court justice was being assisted in her job by a fellow member of the bench.

The presence of Aloise, who did not respond to a request for comment, in both anecdotes is just by chance, as defense attorneys said it could have been any of the prosecutors in the office with close family ties to members of the Queens judiciary in those courtrooms. There is no evidence that Aloise or any of the judges engaged in any impropriety in either of these instances. But they are examples, from the defense bar's perspective, of a larger issue concerning the relationship between the judiciary and the office of Queens District Attorney Richard Brown, which is unique among New York City DAs for having a large number of prosecutors with close family ties to judges who sit at the Supreme Court level.

The result is a long-standing concern in the defense bar that the culture in county court tilts the scales of justice away from their clients by allowing the appearance of potential conflict, even if it's unconscious or unintentional.

The Queens DA's Office cast the defense bar's concerns as themselves corrosive to the administration of justice in the borough. In a statement, Executive Assistant District Attorney Robert Masters called the accusations unfortunate and damaging.

"As prosecutors, we are ethically bound to rely only upon facts and the law before we level an accusation against anyone," he said. "Sadly, the insinuations that defendants are being treated unfairly because a handful of prosecutors enjoy an untoward advantage; that some of the county's judges are without the integrity and courage to rule based upon the law; that defense counsel apparently shrink from their responsibility to zealously represent the interests of their clients and that the quality of justice in a county of two and a quarter million people is, as a result,

suspect—are ones that will never find a forum to be aired and disproven. Unfortunately, all of us who practice in this community must endure this reputational harm."

It is not unheard of for there to be a familial relationship between a judge and a prosecutor in the borough in which he or she sits. Acting Supreme Court Justice Gregory Carro's daughter Marissa Carro is an assistant district attorney in Manhattan, the same borough he sits in. Brooklyn Administrative Judge Matthew D'Emic's son at one point worked for the district attorney's office in the borough. Staten Island DA Michael McMahon's wife was the supervising judge in the borough when he was elected in 2015, before a scandal resulted in her transfer to Manhattan.

The potential for conflicts has been addressed by the state court system, according to Office of Court Administration spokesman Lucian Chalfen. In an email response to questions, Chalfen pointed to ethics rules and opinions issued by the Advisory Committee on Judicial Ethics that bar judges from allowing family members to influence them. Should a family connection "within the fourth degree"—which includes grandparents, first cousins, and children—be involved in a proceeding, a judge is supposed to disqualify him or herself from the case.

Chalfen said the office does not track where family members of sitting Judges are employed, and whether or not they are practicing attorneys in New York state.

As a spokeswoman in the Manhattan DA's Office also noted, prosecutors are bound by the office's own personnel policies, as well as state rules of professional conduct for attorneys. As such, the spokeswoman noted, ADA Carro is assigned to a trial bureau that doesn't have cases before her father, and she is prohibited from working on any matters before her father.

These precautions may be enough to allay concerns where instances of family ties between prosecutors and judges occur relatively few and far between. The situation in Queens, however, appears to have strained the limits of professional deference

and the benefit of the doubt normally given by the defense bar.

The Queens DA's Office confirmed that six judges practicing in the state courts there have children currently working as prosecutors. Justices Aloise and Lasak are joined by Justices Richard Buchter and Robert Kohm in the criminal side, while Justices Joseph Esposito and Darrell Gavrin, who sit on the civil court side, all have offspring employed by the Queens DA's Office. ADA Aloise is also married to another ADA in the office, Barry Frankenstein, adding a son-in-law into the mix.

Buchter told the Law Journal that the fact his daughter practices in the Queens DA's Office has no effect on his behavior from the bench.

"I just try and be the best judge I can," he said, adding that attorneys that practice before him "will tell you that it's not really an issue."

"I'm very careful not to touch anything she's handled in any way," Buchter said, noting work on grand juries or indictments. "That's a complete separation that I maintain."

The other Supreme Court justices with offspring working in the DA's Office did not respond to a request for comment.

Tim Rountree, the head of the Legal Aid Society's office in Queens, discussing the dynamics in the borough's courts, said the concern isn't over the kind of overt conflict addressed by the state's ethics or judicial conduct rules. He said the description of the defense attorneys' experience with ADA Aloise was, for him, a typical manifestation of the spectral nature of this concern. Was it her father's presence in the courtroom that caused the objections to be overruled? Did the knowledge of her father's position, and maybe her position as a colleague to another judge's son or daughter, lead to inappropriate help from the bench however subconsciously or unintentionally? Is there anyway to know for sure?

The uncertainty about these potential influences is at the heart of the issue, according to Rountree. The concern extends to the presence of a judge's offspring at an interrogation or in front of a grand jury proceeding that becomes part of a case before another judge familiar with the connection.

"There had to be occasions where a family member's handprint was on a case before that judge," Rountree said. "They tell us and assure our clients and their family members that there is no influence, but there is no way to know."

UCLA School of Law professor Scott Cummings said he agreed with the concerns of the defense bar, while acknowledging that, even while plausible, the concerns existed beyond ethics enforcement and nearly impossible to prove.

"Clearly there's all sorts of implicit biases that can't be managed by the formal, official ethics rules," he said, adding: "The perception of judicial unfairness and bias is really important."

The Queens DA's Office, for its part, said it has embraced its close-knit nature as one ensuring consistency and stability by bringing people into the fold from close to home.

Executive Assistant District Attorney Masters joined the DA's office just one year before DA Brown took over nearly three decades ago, when George H.W. Bush was president and the Soviet Union was still intact. In a phone conversation, Masters told the Law Journal that the office did, at one point in time, pursue new recruits from across the country.

"They didn't stay," Masters said. "They ultimately returned back to where they were raised."

This, according to Masters, became an issue given the office's "vertical prosecution" policy and other management systems put in place that favored "stability in the ranks" over time.

“We wanted people that we felt were going to be there for awhile,” he said.

In this, the office appears to have been successful. Masters said about half of all the prosecutors in the office have been there for at least a decade. Roughly a third have been there for two decades. The local law school at St. John’s University has become the office’s de facto feeder program, with Masters estimating more than 20 percent of the office having graduated from there.

“They’re people with Queens’ roots,” he said.

That some of these hires are also the sons and daughters of judges is of no import, Masters insists. The office doesn’t reject quality applicants simply because of who their parents are, he said. Nor does it lead to an automatic hire, as the office has not hired “a good number” of applicants with parents on the bench. But beyond this, Masters continued, a look at their work history before being hired and their time since coming on board validates the DA’s decision to hire them in the first place.

“Not one of them have you ever had the story of, ‘Do you know who I am, do you know who my father is?’” Masters said. “They’re here 20 years because they’re good prosecutors.”

The small-town aesthetic of the DA’s Office in the nation’s 10th most populous county, for Rountree, however, is indicative of a culture that—even if innocent enough—has led to a loss of faith in the integrity of the justice system in the borough. Things “morphed over time,” he believes, away from more structured separation between family members, such as keeping the offspring practicing in local Criminal Court if his or her parent was a judge at the Supreme Court level.

Over time things have “definitely become normalized,” Rountree said, “where people say, ‘Well what are you trying to imply?’” if the relationships are questioned.

New York Law School professor Rebecca Roiphe, a former prosecutor in the Manhattan DA’s Office, saw the dynamic in Queens raise wider concerns about the relationship between judges and prosecutors’ offices. Roiphe said all too often there

is the appearance of “a coziness, an alliance” between them. An obvious and common aspect of this is the regular elevation of prosecutors to the bench. In Queens, all four of the Supreme Court justices at issue sitting on the criminal side previously served in the DA’s Office.

Roiphe shared similar concerns expressed by Cummings of UCLA about these deeper issues exacerbating the one being raised by the defense bar in Queens. Having a “balanced bench” that included former defense attorneys, academics and others without histories as prosecutors could go a long way towards resolving this and other issues, she said.

“How do we get a judiciary that is really willing to approach these cases in an impartial way? That’s the goal,” she said. “If you had that, then I would see this as a complete nonissue.”

Instead, “a symbol staring you in the face” is what defense attorneys see when they deal with judges with family ties to the DA’s Office, Roiphe said. This symbol is easy to fixate on among defense attorneys who already feel as if the deck is so often stacked against them and their clients.

Roiphe said she believed that judges could absolutely put aside the presence of family relations in their courtrooms. Yet the alliance she sees between the bench and prosecutors leaves a sense that judges are inevitably more lenient with prosecutors’ mistakes, while prosecutors are focused on convictions as a synonym for justice.

“There’s so much suspicion and warranted mistrust, it looks like a manifestation of a rot that’s all throughout the criminal justice system,” she said.

Queens Executive ADA Masters said, in the end, the dynamic in Queens articulated by defense attorneys represented a no-win argument of proving the absence of bias or preference, even unconscious.

“It’s impossible to defend—how is anybody going to defend themselves against such an accusation,” he asked.

If these were legitimate issues, Masters contended, the system provides for ways to deal with it. First, if there’s a legitimate and identifiable procedural issue, he said he expected it to be raised on appeal.

“You would think it would find its way onto the record somewhere, somehow,” he said. “That it doesn’t, I kind of take that as the point. It can never really be a responsibly articulated objection or motion.”

Additionally, if there was an ethics issue, “that’s why there’s 45 Monroe Place,” Masters said. Anything else was like “whispering about an umpire.”

“Embedded in there is some sort of sense that really is an unfair questioning of the integrity of a judge,” Masters said. “It’s a pretty damning accusation.”