
THE PEOPLE OF THE STATE OF NEW YORK

-vs-

**NOTICE OF MOTION
FOR THE APPOINTMENT
OF A SPECIAL PROSECUTOR**

GERALD STEVEN PIGEON,

Indictment No. 70921-21

Hon. Kevin M. Carter
Administrative Judge
Eighth Judicial District

Defendant.

PLEASE TAKE NOTICE, that upon the annexed affirmation of James Nobles, Esq., duly sworn counsel for Gerald Steven Pigeon, (“the Defendant,”) the attached exhibits and the accompanying memorandum of the law, the undersigned will move this Court before the Honorable Kevin M. Carter, in the Supreme Court, Erie County at 25 Delaware Avenue, Buffalo, New York, at date to be set by the Court as counsel may be heard, for the following Orders:

1. An Order pursuant to Uniform Rules of the New York State Trial Courts 22 NYCRR § 200.15 and County Law § 700 and § 701, disqualifying the District Attorney of Erie County from prosecuting the Defendant herein on the grounds that there exists an actual conflict of interest, and continued substantial risk thereof, between the District Attorney and the Defendant that has caused, and will continue to cause, actual prejudice to the Defendant;
2. An Order pursuant to Uniform Rules of the New York State Trial Courts 22 NYCRR § 200.15, County Law § 700 and County Law § 701, and *People v. Zimmer*, 51 N.Y. 2d 390, (1980), dismissing the within indictment on the ground that all proceedings leading to the indictment, and had since the return of the indictment, are tainted by these actual conflicts, a future substantial risk thereof, and an appearance of

impropriety on the part of John Flynn, Esq., District Attorney for Erie County and his Office.


3. The conflicts, which should preclude the Erie County District Attorney's Office are based on several factors including:
 - a. That the elected District Attorney, John Flynn, has an actual conflict with the Defendant based on a prolonged, antagonistic personal relationship with the Defendant wherein the Defendant blocked Flynn from getting several appointed or elected political positions and/or critical endorsements related to the same for more than a decade, between 2003 and 2015;
 - b. That the First Assistant District Attorney, Michael Keane, has an actual conflict with the Defendant wherein the Defendant blocked Mr. Keane and other members of his immediate family from getting several appointed, elected political positions or critical endorsements related to the same; and
 - c. That the Erie County District Attorneys Office created an additional actual conflict with the Defendant by investigating this case in house for at least the first six weeks of the investigation and assuming control of much of the investigation up to the present day, thereby making several members of the office witnesses; and
 - d. The actual prejudice and animosity is evidenced by a review of District Attorney Flynn's December 2, 2021 press conference, wherein he egregiously and repeatedly violated the Rules of Professional Conduct relating to pre-trial publicity in attempt to deprive the Defendant of a fair trial by repeatedly vouching for the credibility of the complainant and opining on the Defendant's guilt. This actual prejudice and conflict is further evidenced by the in house investigation, the total lack of discovery produced relative to that investigation and other actions by the District Attorney's Office.

4. In the alternative to summarily granting the relief requested above based on this motion, we would seek an Order directing appropriate discovery and a full fact-finding hearing in relation to the numerous bases for the recusal request;
5. An Order permitting the renewal of all motions; and
6. An Order granting such other and further relief as this Court deems just and proper.

In support of this of this motion, the Defendant submits the attached affirmation of James Nobles, Esq. and numerous exhibits. Pursuant to CPLR §2214, the Defendant has served this motion at least twelve days prior to the argument date, the Defendant respectfully demands that answering affidavits be served at least 7 days prior to any motion argument date so that a reply may be filed prior to that date.

Dated: March 20, 2023

Respectfully submitted,



James Nobles, Esq.
1507 Monroe Avenue
Rochester, NY 14618
(585) 546-1260

To: Cathleen Roemer, Esq., Assistant District Attorney
Erie County District Attorney's Office

Hon. Kevin M. Carter
Administrative Judge
Eighth Judicial District

Hon. M. William Boller
Supreme Court, Erie County
(Courtesy Copy)

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

GERALD STEVEN PIGEON,

Defendant

**AFFIRMATION FOR
SPECIAL DISTRICT
ATTORNEY**

Indictment No. 70921-21

JAMES NOBLES, ESQ., affirms the following under penalties of perjury:

1. I am an attorney admitted to practice in the State of New York and in that capacity represent the Defendant, Gerald Steven Pigeon (“the Defendant”).
2. I make this affirmation in support of Mr. Pigeon’s Motion for an Order removing the District Attorney of Erie County and appointing a Special Prosecutor for all further proceedings. In making this motion, the Defendant relies upon his right to due process, his right to a fair trial by impartial jury, and other rights safeguarded by the Fifth, Sixth, Eight and Fourteenth Amendments to the United States Constitution, Article I, §§ 1, 2, 5, 6, and 11 of the New York State Constitution, as well as his rights under the rules of evidence of New York and upon other authorities specifically discussed in the papers submitted in support of this motion pursuant to County Law § 700, § 701 and 22 NYCRR § 200.15.
3. This affirmation is based upon personal knowledge and information and belief. The sources of my information and grounds for my belief are my conversations with my prior counsel, a review of the pleadings and papers filed in this case, the discovery, a review of the applicable law, my independent investigation into this matter, my conversations with attorneys in New York and other jurisdictions experienced in trying complex criminal cases, a review of television reports and newspaper articles about this case, witness interviews, the District Attorney’s press conference on December 2, 2021, and other information from reliable sources.

4. We make this motion to this Court, and the Administrative Judge of the Eighth Judicial District, rather than the Court assigned to the trial of this matter, pursuant to 22 NYCRR § 200.15 which sets forth special procedural requirements for bringing a motion for a special District Attorney to be appointed pursuant to County Law § 701.
5. We make this motion on the ground that numerous actual conflicts exist between District Attorney Flynn and the Defendant. This actual conflict has been confirmed by a pattern of misconduct including numerous statements of prejudicial, pretrial publicity during Flynn's December 2, 2021 press conference. Also, that the investigation of this case was conducted within the District Attorney's office, without the support or intervention of law enforcement for at least the first six weeks, all the while knowing Flynn has a vendetta against, and legal conflict of interest, with the Defendant, to the extent that Pigeon's right to due process has been violated and will continued to be violated unless the Erie County District Attorney's Office is removed. Because Pigeon is now scheduled for trial on December 4, 2023, his only recourse is to seek the appointment of a Special Prosecutor who can evaluate the case anew and, if appropriate, conduct an investigation, indictment and trial in a constitutional permissible manner.

INTRODUCTION

6. The role of the District Attorney is unique among attorneys. Unlike other participants in the adversarial process, whose function it is to protect or advance the interests of one side, a District Attorney is more than a mere advocate. *People v. Zimmer*, 51 N.Y. 2d 390, 393 (1980); *People v. Grice*, 100 A.D 2d 419, 420 (4th Dept.,1984).
7. The District Attorney is considered a quasi-judicial officer and is expected to act impartially and solely in the interest of justice. *People v. Baker*, 99 A.D. 2d 656 (4th Dept., 1984). "He may prosecute with earnestness and vigor — indeed he should do so. But, while he may strike hard blows, he is not at liberty to take foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *People v. Mott*, 94 A.D. 2d 415, 418 (4th Dept., 1983)

(quoting *Berger v. United States*, 295 U.S. 78, 88 (1934)). “That responsibility is not a meaningless truism; it is a paramount value. It is embedded in our sense of due process and fair play.” *People v. Payne*, 187 A.D. 2d 245, 247 (4th Dept. 1993).

8. It is evident from the record of this case, particularly, the comments of Mr. Flynn in his press conference, the decision to investigate this case internally (much of which was done without law enforcement oversight), and the long-standing antagonistic personal and political relationships and rivalries between the Defendant, District Attorney Flynn and Deputy District Attorney Keane, that the Defendant has been denied the fundamental due process of an impartially motivated and disinterested prosecutor. Flynn’s actions and statements clearly substantiates his bias and conflict.

STATEMENT OF FACTS

9. On or about December 1, 2021, Gerald Steven Pigeon was indicted by an Erie County Grand Jury for two counts of Predatory Sexual Assault against a Child under Penal Law § 130.96; Rape in the First Degree under Penal Law § 130.35(03); Criminal Sex Act in the First Degree under Penal Law § 130.50(03); Sex Abuse in the First Degree under Penal Law § 130.65(03); and Endangering the Welfare of a Child under Penal Law § 260.10(1). Pigeon was subsequently arraigned on the charges and entered a plea of not guilty to each and every count.
10. However, long before the Indictment, this case allegedly began based on a disclosure by the complainant on Memorial Day Weekend, 2021. Instead of reporting these serious and heinous allegation of sexual assault and rape to law enforcement, the mother of the Complainant contacted their “family attorney.” Upon information and belief (from discovery turned over in this case), that “family attorney” was Steve Boyd. Mr. Boyd is actually District Attorney Flynn’s former law partner. A fact left out in District Attorney Flynn’s press conference. See Exhibit A, The Buffalo News article, (“*Erie County Democratic Leaders Back John Flynn for DA, Reject Michael Flaherty*,”) by Robert J. McCarthy, published February 13, 2016, page 5 of 9.

11. The Defendant, was represented by counsel, Paul Cambria and Justin Ginter from the time of the Indictment up until and through January 23, 2023. At which time, the representation of Pigeon was assumed by James Nobles, Esq., the author of this motion and affirmation.

HISTORY OF POLITICAL ANIMOSITY AND CONFLICT
BETWEEN FLYNN AND PIGEON

12. As outlined in Exhibit B, the Affidavit of Gary Parenti, and Exhibit C, The Niagara Reporter article, (“*Democrat Strategist Steve Pigeon Accused of Rape; DA says ‘It’s a Child’s Word Versus His Word,’*”) by Frank Parlato, published May 3, 2022, Steve Pigeon was a major player in Erie County, New York State and U.S. politics. His elected positions, numerous connections and considerable influence gave him the ability to make or break political aspirations in some instances, and have considerable influence in who would receive endorsements or appointed positions, not only in Erie County and New York State, but in some instances nationally. Exhibits B and C describe in detail Pigeon’s political career, history, background and connections to power brokers in local, state and national politics. Exhibit C goes on in some detail to connect the relevance of Pigeon’s history in politics to the conflicts in this case with both Flynn and Keane.
13. This history of the political conflicts between the Defendant and the District Attorney is outlined below:
 - a. Upon on information and belief, after serving several years as a JAG Officer in the Navy, John Flynn returned to Buffalo with lofty political ambitions in 2001 and served as an Assistant District Attorney for a brief two years. Thereafter, Flynn had several political allies closely aligned with Pigeon who were attempting to help Flynn get a political position. These supporters included Hormoz Mansouri, Judge Nelson Cosgrove (Flynn’s Uncle), the Keane Family, Kevin Brinkworth and others. See Exhibit B, the Affidavit of Gary Parenti.

- b. Shortly after Flynn left the District Attorney's Office there was a meeting with Pigeon, Flynn, in his Navy uniform, and Flynn's supporters where he inquired what positions might be open for an aspiring Democratic politician with his background. As a result of meeting, Pigeon helped Flynn become a Tonawanda Town Prosecutor, and later helped him become Town Justice. See Exhibit B, the Affidavit of Gary Parenti.
- c. In 2008 Flynn wanted to run for District Attorney. At the time, the current District Attorney, Frank Clark was retiring. In a very heated contest for the Democratic nomination, it appeared three individuals: John Flynn, Ken Case, and Frank Sedita, III were lining up to primary for the Democratic line. Although Flynn enjoyed significant support from the Executive Board of the Erie County Democratic Committee, Pigeon actually worked to block Flynn from being a viable choice to run. He did so by helping secure the Conservative and Independence endorsements for Sedita. This blocked Flynn's ability to run effectively and forced the Democratic Committee to back Sedita if they any had hope of keeping the office, see Exhibit C, The Niagara Reporter article. Without the minor party lines, any Democrat would likely lose to the Republican opponent in the general election if another Democrat as on the ballot, even just on a third party line. As a result, Flynn dropped out of the race. Although Pigeon had backed Flynn previously for town positions, he did not believe Flynn had the expertise, temperament or judgment to be the District Attorney, or any higher office. Over the course of the next several years, Flynn and Pigeon would see each other in the executive box of Hormoz Mansouri at Buffalo Sabres games, but their relationship was strained and they rarely if ever spoke. See Exhibits B, D, and E, the Affidavits of Gary Parenti, Hormoz Mansouri and Kristy Mazurek.
- d. During a significant rift in the Democratic Party, and trying to regain control of the Erie County Democratic Committee, Pigeon and his supporters put up Frank Max to

challenge Zellener for Erie County Democratic Chairman. Steve Pigeon and Mayor Brown wanted to remove Zellner and install Max. The race was close and Tonawanda held pivotal votes. Kristy Mazurek suggested to Pigeon and Brown that they should support Flynn for Deputy Election Commissioner to garner the Tonawanda votes.

Pigeon, Brown and their faction believed that this would help Max would likely be the winner, which was part of his plan in supporting Flynn.

Flynn failed to attend the convention and therefore lost the vote by forfeit. As a result the entire slate promoted by Pigeon and Mayor Brown (including Frank Max) lost the election and control of the party. Flynn's failure to appear dealt significant political damage to Pigeon and his faction of the party. This created further animosity between the two men. See Exhibit E, the Affidavits of Kristy Mazurek.

- e. Thereafter, John Flynn approached Steve Pigeon, and requested his support to become a Court of Claims Judge. Many in the local executive committee again supported Flynn for this position, but it was a position that Andrew Cuomo needed to approve by appointment. At that time, there was a very strong relationship between Pigeon and Cuomo, and Pigeon routinely advised Cuomo on political issues and appointments particularly in Western New York, see Exhibit C, The Niagara Reporter article. Pigeon opposed Flynn for a second time in his attempts to get a major position. Governor Cuomo left Judge Timothy Walker, a Republican, in place and bypassed Flynn. See Exhibits B and E, the Affidavits of Gary Parenti and Kristy Mazurek.
- f. In approximately 2014-2015, Hormoz Mansouri, a long time benefactor and supporter of Flynn and longtime friend of Pigeon, came to Pigeon, and asked him to support Flynn in seeking an appointment to become the Under Secretary of the Navy. Pigeon had been employed by the Clinton Administration during Bill Clinton's time as President. Pigeon worked with Hillary on the National Healthcare Reform Taskforce. He was also a major supporter of her run for U.S. Senate and was slated to play a major role in her bid in the 2016 Presidential race. Pigeon also helped Barack Obama

raise significant campaign funds by securing a \$1 million donation for the campaign from Tom Golisano (a longtime close Pigeon associate), as well as securing numerous other donations. See Exhibit C, The Niagara Reporter article. Mansouri asked Pigeon to have lunch with himself and Flynn. At that lunch, Flynn made a direct inquiry of Pigeon as to whether (with his prior close relationship with the Clinton White House and his current close relationship with the Obama White House) he might be able to get him the position of Under Secretary of the Navy. Pigeon responded by telling Flynn that he lacked the experience for that position. Pigeon offered to try to get Flynn an alternate position in the Navy, but that was clearly unacceptable to Flynn. Flynn responded, “you have killed my life dream” and stormed away. There was zero relationship between the two men other than animosity from Flynn towards Pigeon after this encounter. See Exhibits B, D, and E, the Affidavits of Gary Parenti, Hormoz Mansouri, and Kristy Mazurek.

- g. However, a fifth issue surfaced when Frank Sedita, III wanted to run for Judge and leave a vacancy in the District Attorney’s Office in 2016. It was widely known that Pigeon would again oppose Flynn for District Attorney, as he felt Flynn remained unqualified for the position. There was a final attempt by Pigeon to block Flynn, yet again, by obtaining the Conservative and Independent endorsements for someone else in the 2016 race. Pigeon openly supporting Michael Flaherty in that race. In 2015, Pigeon invited Flaherty to two large political events at his waterfront loft in downtown Buffalo. The first was a high donor event for Congressman Hakeem Jefferies. Numerous local and State business people and donors attended. Pigeon had given Flaherty a free ticket to attend for the sole purpose of connecting him with high level donors for his upcoming District Attorney campaign. The second event was a party honoring New York State Speaker Carl Heastie. Pigeon invited 100 top business and political leaders in Western New York to attend. He again invited Flaherty to attend so he could meet potential donors and influencers for his campaign. However,

just days after the second event, Pigeon's loft was raided and his other legal problems sidelined him as a political influencer. With Pigeon out of the way, Flynn finally got the endorsements he had been seeking for years, See Exhibit B, C and E, the Affidavit of Gary Parenti and the Affidavit of Kristy Mazurek, and Exhibit C, the Niagara Reporter article.

- h. As it relates to the First Deputy District Attorney Michael Keane, whom is slated to run for District Attorney in the next cycle, the Defendant has a prior political relationship, as well. Pigeon's relationship with the Keane family varied, starting off strong and ending very poorly. The most notable controversy relates to the First Deputy himself, and dates back to 1999 when Mr. Keane wanted to be the Buffalo Comptroller. At the time, Pigeon was the Chairman of the Erie County Democratic Party and had already chosen to back Anthony Nanula for that same position. The Keane family made a hard core press on Pigeon to support Michael and had a meeting where several members of the family came to meet with Pigeon and discuss their long standing relationship. In attendance were Pigeon's college roommate Dick Keane, Jr., Michael Keane, their father Dick Keane, Sr., (New York State Assemblyman) and others. Despite his longstanding ties with the family, Pigeon could not be swayed from backing Nanula for the position. The family was incensed. There were also other conflicts with the Keane family, including when Pigeon decided to back Steve Gorski, as opposed to Michael's uncle, Jimmy Keane, in the run for Erie County Executive. Michael Keane later went as far as to engineer a coup against Pigeon in the early 2000's as Democratic Party Chair, and wrote a public letter calling for Pigeon to resign. The animosity between the two has carried on to this day. See Exhibit B, the Affidavit of Gary Parenti and Exhibit C, The Niagara Reporter article.

ACTUAL PREJUDICIAL FROM DISTRICT ATTORNEY FLYNN'S MISCONDUCT

14. The prejudice from these conflicts is actual, not theoretical. This prejudice is obvious from District Attorney Flynn's prejudicial and unethical comments in his December 2, 2021 press conference, and that Flynn chose to conduct this investigation in-house for the first six weeks shielded from the objective view of law enforcement, and caused his investigators, advocates and prosecutors to become potential witnesses.
15. On December 2, 2021, John Flynn, held a press conference regarding Pigeon's case. At that press conference, Flynn violated several New York State Rules of Professional Conduct which govern the behavior of lawyers. Most particularly, Rule 3.6 regarding trial publicity. Under Rule 3.6:
 - a. A lawyer who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
 - b. A statement ordinarily is likely to prejudice materially an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration, and the statement relates to:
 - (i) the character, **credibility**, reputation or criminal record of a party, suspect in a criminal investigation or **witness**, or the identity of a witness or the **expected testimony of a party or witness, (emphasis added)**;
 - (ii) in a criminal matter that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

- (iii) the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (iv) **any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration, (emphasis added);**
- (v) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (vi) **the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is mainly an accusation and that the Defendant is presumed innocent until and unless proven guilty. (Emphasis added).**

16. At that press conference, a transcript is attached as Exhibit F, District Attorney Flynn makes numerous inflammatory and unethical statements that violate Rule 3.6, including some examples outlined here, however this is not an exhaustive list of violations:
- a. Exhibit F, Page 3, Lines 13-16 “I do not believe that Pigeon should be out of jail. I believe he should be in jail for the rest of his life quite frankly. And we are going to proceed forward to that.” **This statement can only be read one way: that John Flynn believes Steve Pigeon is unequivocally guilty.**
 - b. Exhibit F, Page 4, Lines 12-18 “And on top of that we have information that Pigeon, over the course of the past few months, suspected that something was going on. And, therefore allegedly, went to the home of the victim here and also had a friend of his go to the home of the victim as well. So when you put all those things together, on top of the fact he’s facing life in prison.” **This statement infers consciousness of**

guilt on the Defendant by John Flynn and is impermissible, unethical and directly violates Rule 3.6.

- c. Exhibit F, Page 6, Lines 20 - 23, “This matter was’t even brought to my attention by anyone from law enforcement agency. This matter was brought to my attention by the mother of the victim’s family lawyer.”
- Page 7, Lines 7-15, “ The mother didn’t know who to call. The mother happened to have a family lawyer who did some civil matters for her previously, and called that lawyer and told that lawyer what her child had told her and wanted to know who to call and who to reach out to. And the lawyer called me. I then gave it to *my* investigators and gave it *my* attorneys and they went from there. And they’re the ones who brought in — *my people* are the ones who brought in the State Police.” **(Emphasis added). What Flynn fails to mention is that this “family lawyer” is his former law partner, Steve Boyd. Additionally, his repeated reference to “my” investigators and attorneys shows this case was treated differently from the start by being kept in house by an office who routinely claims they do not have the resources to do their own investigations.** See Exhibit G, The Buffalo News article, (“*Hundreds of Cases Dropped as DA’s Office Struggles with Discovery Rules, Workload*”), published by Sandra Tan, issued December 2, 2021, the same day as the Flynn press conference. This article clearly raises questions as to why Flynn chose to use his office’s resources to investigate this case in house. During this same period his office overall was woefully understaffed having hundreds of cases dismissed and facing a large backlog of felony cases headed to trial. Yet, despite these overwhelming challenges, Flynn chose to keep the case of his longtime political rival in house as opposed to letting it be handled by law enforcement, all the while the his office did not have the resources to handle the cases they already had.
- d. As it relates to Flynn having a conflict in this case: The following transcript excerpts are relevant:

- i) Exhibit F, Page 9, Lines 24 - 25, Audience Member “Does that give you a conflict?”
- ii) Exhibit F, Page 10, Lines 1-7, “No. No conflict with me at all. I know him, obviously. I would - I would categorize our relationship as business acquaintances. Since our business is political, that I would — I guess I would categorize it business/political acquaintance. I do not believe that I have seen him or speak to him — spoke to him in the past six years.” ...
- iii) Exhibit F, Page 10 Line 17-19, “I had lunch with him and other person on two occasions maybe ten years ago; just a social matter.”
- iv) Exhibit F, Page 10, Lines 20 - 23 “ So, yeah, I. — I am definitely an acquaintance of his, but, again, I’ve probably seen him five times my whole life and haven’t seen him in the past six years. So, again, that gives me no pause at all.”

Based on the Exhibits, news articles and affidavits incorporated into this motion, those statements by District Attorney Flynn are disingenuous and untrue. He is clearly trying to cover up his obvious conflict with the Defendant, but his animosity is transparent through his words and actions.

- e. Exhibit F, Page 12, Lines 12 - 18, “In child sex abuse cases, the majority of the time, quite frankly, if you talk to experts on this, they will tell you that there is delayed reporting. They will tell you that sometimes it takes years and years before the child tells someone or reports it. Okay? That’s very common. **These comments vouch for the credibility of the complainant and opinine on the Defendant’s guilt.**

- f. **Flynn continues vouching for the complainant over and over:**
- i) Exhibit F, Page 18, Lines 10-11, “I’m going to make sure that —that this child gets justice.”... **(Assuming guilt of Defendant and vouching for the complainants credibility);**
 - ii) Exhibit F, Page 18, Lines 16-17, “And I believe the child. I’m standing with the child. And I’m going to give the child justice.”... **(Vouching for the credibility of complainant and assuming guilt of Defendant),**
 - iii) Exhibit F, Page 18, Line 22 - 23, “I’m not going to talk about any other evidence. But I have — but I have her word, though. I have her word.” **(Again vouching for credibility of complainant).**
- g. Exhibit F, Page 19, Lines 6 - 10, Audience Member: “The people who allegedly went to the house, do possibly (inaudible)?
- Flynn: “That’s something more right there. That — that— that to me shows — shows consciousness of guilt.” **(Assuming guilt of Defendant and referencing facts that would likely be inadmissible at trial and exposing explicit testimony of a witnesses.)**

17. Beyond the press conference, District Attorney Flynn has shown actual prejudice against the Defendant by choosing to keep this investigation in the District Attorney’s Office despite their limited resources, where he would have ultimate control over the investigation. This included the initial review of the case, interviews with witnesses and a forensic interview of the complainant, all without law enforcement oversight. In fact, law enforcement was only brought in after the case was largely developed, for the purpose of attempting a controlled call to the Defendant. Upon information and belief, the District Attorney controlled this investigation from its inception until at least the first formal meeting with law enforcement on July 27, 2021. The District Attorney continued essential control over the

investigation obtaining depositions from witnesses directly as recent as May of 2022 without the presence of law enforcement. See Exhibits H and I, the Affidavits of Sandra Smith and Kathleen Vasile.

18. Additionally, the in-house investigation was conducted for at least six, if not a full eight weeks. Despite this extensive period of time and numerous actions taken by the District Attorney's through "his" investigators and attorneys. The office has provided a complete lack of discovery regarding this period of time or the investigative steps taken during the same. Through Assistant District Attorney Cathleen Roemer, the District Attorney's office claimed on the record — in Court on March 1, 2023 — that there were no discoverable internal notes, memos, reports or any other materials regarding the investigation done solely by the District Attorney's Office. At best, this would seem impossible and at worst disingenuous.
19. As final indications of the prejudice exhibited toward the Defendant by the District Attorney, his office failed to give the Defendant an opportunity to be heard by the Grand Jury and failed to even attempt to interview him, all the while knowing he was being represented by counsel, Paul Cambria and Justin Ginter, on two other criminal matters.

DISMISSAL OF INDICTMENT

20. Given the relationship and strong animosity between District Attorney Flynn and the Defendant, it would appear as though, from all of the actions in this case including: the statements outlined from the December 2, 2021 press conference and the fact that the Erie County District Attorney's Office kept this investigation in house for a significant period, Pigeon has already been prejudiced by the conflict that exists between himself and the current District Attorney's Office. Therefore, the Defense requests, in addition to the recusal of the District Attorney and his office, that the Indictment be dismissed without prejudice so that the newly assigned Special District Attorney can independently investigate this case, determine if a new indictment is warranted and how to proceed with the investigation from its inception, rather than being burdened and saddled by what had already been done by this District Attorney's Office that has a clear conflict with, and animosity towards, the Defendant.

LEGAL ANALYSIS

21. The position of the District Attorney carries with it such panoply of powers and duties, especially with relation to the Grand Jury, that the District Attorney's obligation to remain impartial, both in fact and in appearance, plays a central role in maintaining public confidence in our system of Criminal Justice. As noted in *People v. DeFalco*, 44 N.Y. 2d 482 (1978):

“...the District Attorney is the prosecutorial office with the responsibility to conduct all prosecutions for crimes and offenses cognizable by the courts in the county in which he serves (County Law § 701, subd. 1). The District Attorney has broad discretion in determining when and in what manner to prosecute a suspended offender (citations omitted).During the actual [Grand Jury] proceedings, the legal adviser to the Grand Jury is the District Attorney and legal advice from any other source is improper (citations omitted). The District Attorney determines the competency of witnesses to testify (citations omitted), and must instruct the Grand Jury on the legal significance of the evidence (citations omitted). He, in effect determines what witnesses to present to that body and who should be excluded. These duties and powers, bestowed upon the District Attorney by law, vest that official with substantial control over the Grand Jury proceedings, requiring the exercise of completely impartial judgment and discretion.”

DeFalco, supra at 486-487.

22. That the District Attorney should be “completely impartial” and therefore avoid even the appearance of impropriety, is well accepted. The *American Bar Association Standards to the Protection Function, Standard 3-1.2*, prescribes that a prosecutor should avoid even the appearance of a conflict of interest with respect to official duties. The commentary to this Standard states: **“It is of the utmost importance that the prosecutor avoid participation in a case in circumstances where any implication of partiality may cast a shadow over the integrity of the office.” (Emphasis added)**. Flynn should be well aware of this standard as the current President of the District Attorney's Association of the State of New York.
23. In a similar situation in Erie County, the United States Attorney for the Western District of New York, Trini Ross, had indicated she would recuse herself at even the appearance of impropriety, her comments relate to the probe at Buffalo City Hall. Ross apparently had made small contributions to Byron Browns campaign in the past years. Attached is Exhibit J, The Buffalo News article, (“*U.S. Attorney Contributed to Byron Brown's Campaign, May*

Recuse Herself from City Hall Probe”), by Charlie Specht, published December 12, 2021, regarding this. If donating a total of \$260.00 over a decade ago is enough for the U.S. Attorney for the Western District of New York State to recuse herself, surely the extensive history and animosity between Pigeon and Flynn should summarily disqualify Flynn and his office.

24. In dealing with issue of District Attorney disqualifications, it has been emphasized by the Court of Appeals that the District Attorney is a quasi-judicial officer when he “represents the public in bringing those accused of crime to justice.” *Matter of Schumer v. Holtzman*, 60 NY 2d. 46, 51 (1983). Thus, many of the same concerns that confront the judiciary with a conflict issue, are equally present for the District Attorney.
25. The leading case on this issue is *Matter of Schumer v. Holtzman, supra*, in which former Kings County District Attorney Holtzman sought to remove herself from the investigation of former political rival Charles Schumer by appointing a Special Assistant District Attorney to investigate and, if warranted, prosecute Schumer. Holtzman, however, did not proceed in accordance with County Law § 701 (1), which provides in pertinent part that:

“[w]henver the district attorney of any county... is disqualified from acting in a particular case to discharge his duties... a superior criminal court in the county wherein the action is triable may, by order appoint some attorney at law having an office in or residing in the county to act as special district attorney... during the The special district attorney so appointed shall possess the powers and discharge the duties of the district attorney during the period for which he shall be appointed.”

26. Instead of applying to the Court for a Special District Attorney, Holtzman entered into a Memorandum of Agreement with an attorney who was to act independently of the District Attorney. In that agreement Holtzman delegated “extensive discretionary power to who, whether and how to prosecute in the Schumer matter” to the Special Assistant District Attorney. *Matter of Holtzman, supra*, at 52. Stressing that the District Attorney’s powers are defined by statute, the Court struck down the arrangement, holding that the District Attorney,

“...may delegate duties to her assistants but she may not transfer the fundamental responsibilities of the office to them. Such a transfer may be

accompanied only by executive or court order.” (See Executive Law, § 63, subd.2; County Law § 701)

Matter of Holtzman, supra, at 53.

27. The central role played in our Criminal Justice system by the District Attorney and the implicant requirement of **total impartiality**, were also stressed by the Court in *People v. Zimmer*, 51 NY 2d 390 (1980). In *Zimmer*, the Court of Appeals held that it was improper for the District Attorney of Hamilton County to play any role in the prosecution of defendant because the District Attorney had been both counsel to the corporation that the defendant defrauded, and a shareholder in that corporation. *Zimmer*, supra, at 392.
28. While the *Zimmer* Court did not stress that the District Attorney was a victim of defendants offense, it is an obvious implication of the facts presented by *Zimmer* that the District Attorney, as a defrauded stockholder, would have a bias against the defendant that created a clear conflict of interest and an appearance of impropriety that the District Attorney should not have overlooked. **Because the conflict was present when the case was being investigated and presented to the grand jury by the District Attorney, and because the conflict persisted throughout the trial, the Court dismissed the indictment. The same should be true in this case.**
29. In Pigeon’s case the disqualification of the District Attorney stems not from a conflict of interest stemming from his prior legal representation of a client, but rather from long standing rivalry and animosity between the District Attorney, the Deputy District Attorney, and the Defendant. This animosity and actual conflict is evidenced by the prejudicial pretrial publicity, the fact the District Attorney’s Office kept the investigation in-house for weeks shielded from the eyes of law enforcement and creating numerous witnesses within the District Attorney’s Office, but yet, they also claim that they created no discoverable documents during the investigation. The initial investigation of the case by the District Attorney’s Office (a decision made by the District Attorney), and his December 2, 2021 press conference, has created “actual prejudice” to Pigeon’s ability to receive due process of law.

See *Holtzman and Zimmer, supra*. This unique history evidences a conflict stemming from District Attorney Flynn's professional and personal investment in this investigation and prosecution, which is really nothing more than a chance to settle the score with a long time political adversary of his, his First Deputy District Attorney (who is slated to run for District Attorney at the next election) and their political associates.

30. Although deferring on ruling on the basis for disqualification, the *Schumer* court noted as potential reasons for disqualification:

“The embarrassment of respondent [District Attorney] or the fact that he may be accused of a vendetta because of prior political differences are considerations which he must weigh in either proceeding with the matter himself or moving for the judicial appointment of a special prosecutor.”

Schumer, 55-6

The same is true here. The facts are particularly similar to our case, but with the addition of political vendetta with the First Deputy, the prejudicial pretrial statements, the actual conflict created by the in-house investigation, failure to provide discovery of the same, and the failure to give the Defendant the opportunity to be interviewed or testify before the Grand Jury. All of these facts individually suggest a Special Prosecutor should be appointed, but taken in their totality should require such an appointment and dismissal of the indictment.

31. The fact that District Attorney Flynn has not voluntarily sought to cede prosecutorial authority, his denial of the political history and animosity between himself and the defendant, and that the case was presented to Flynn by his former law partner further illustrate the actual prejudice against the Defendant.

ALTERNATIVE RELIEF

32. Should this Court deny the Defendant's request to disqualify District Attorney Flynn and his Office based solely on this Motion, the Defense would request a period of discovery related to the conflict issues alleged herein and to schedule and hold a fact finding hearing regarding the facts surrounding the numerous conflicts. It would be the intent of the Defense to request to be allowed to examine District Attorney Flynn and First District Attorney Michael Keane

regarding their past history, experiences and associations with the Defendant, to call witness to determine why this investigation was kept from the eyes of law enforcement for 6-8 weeks, the effects that may have had on the investigation and how many members of the District Attorney's Office are potential witnesses in this case, including Patrick Swanson, Lynn Reda, Nicole Hoffman and others.

RENEWAL OF MOTIONS

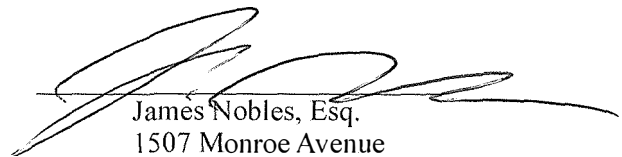
33. Your deponent further requests that any order upon these motions contain a direction that these motions be renewable if portions of the same produce, or the District Attorney on his own divulges, information which was not previously known to your deponent and which information consequently necessitates further hearings or requests.

CONCLUSION

WHEREFORE we respectfully request that the court preclude that the Erie County District Attorney's Office from continuing the prosecution of Mr. Pigeon, dismiss the Indictment and assign a Special Prosecutor. Or in the alternative, that the Court allow an appropriate period of discovery to be completed providing documents of the Erie County District Attorney's Office for their internal investigation, and order a fact finding hearing to be conducted.

Dated: March 20, 2023

Respectfully submitted,



James Nobles, Esq.
1507 Monroe Avenue
Rochester, NY 14618
(585) 546-1260

To: Cathleen Roemer, Esq., Assistant District Attorney
Erie County District Attorney's Office

Hon. Kevin M. Carter
Erie County Supreme Court

Hon. M. William Boller
Supreme Court, Erie County
(Courtesy Copy)

EXHIBIT A

THE BUFFALO NEWS
By Robert J. McCarthy Feb 13, 2016

Erie County Democratic leaders back John Flynn for DA, reject Michael Flaherty



Erie County District Attorney candidate John Flynn addresses the media following his endorsement by the Erie County Democrats at The Grapevine in Depew, Saturday, Feb. 13, 2016. (Derek Gee/Buffalo News)

By Robert J. McCarthy

In a clear and emphatic break from the legacy of former District Attorney Frank A. Sedita III, Erie County Democrats on Saturday rejected his former top assistant and unanimously endorsed John J. Flynn Jr. of the Town of Tonawanda for the post.

Michael J. Flaherty Jr., the acting district attorney, was nominated but received no second. Now Flynn and Flaherty will wage a primary contest, with an expected third candidate — former Assistant District Attorney Mark A. Sacha — also expected in the battle.

Chairman Jeremy J. Zellner made it clear that despite the party's support for Sedita for district attorney and Supreme Court justice in past years, the party now seeks a "new direction."

"The legacy that Mike Flaherty will continue in that office is a legacy of not prosecuting tough crimes and a legacy of doing things politically," Zellner said. "It's hard for me to believe things are going to change when you're first deputy and been there for 7 or 8 years and telling the community all kinds of things they want to hear.

"Today shows an overwhelming amount of support from throughout this community that wants to see that office changed," he added.

And though Flaherty sought the endorsement, his campaign was quick to chart a course independent of the party.

"Michael Flaherty is a career prosecutor who always puts the people's interests first — which is why he is pushing for a bold set of ethics reforms to crack down on corruption and take government back for the people it serves," spokeswoman Maggie McKeon said. "It's not surprising that party bosses would prefer a perennial candidate to try to preserve their hold on power."

Flynn, 49, has been a formal or informal candidate for a number of Democratic offices over the years. But the strong backing he gained from party leaders Saturday indicates he will enjoy the organization's support in the expected three-way race.

"The first thing that I will try to do is instill confidence back in that office," Flynn said, questioning some of Flaherty's efforts to separate himself from Sedita, such as establishing a new unit to prosecute public corruption.

"It's easy to establish a public corruption unit after you've been deputy for eight years and done nothing," he said. "That was a politically expedient move on his part."

Flynn also said he believes the current relationship between the District Attorney's Office and the area law enforcement community is at its lowest point in years, and that it is "begging for change."

In addition, he promised to banish politics from the office and to hire more minorities.

A former assistant district attorney, Tonawanda councilman and town justice, Flynn now serves as town attorney and is in private practice with Steve Boyd Attorneys. He is a commander in the United States National Reserve, and while on active duty was attached to the Judge Advocate General's Corps as an officer-in-charge legal counsel at the United States Naval Academy, where he also taught ethics and military law.

Flynn earned his law degree from University at Buffalo Law School and teaches courses on legal issues in the political science department of SUNY Buffalo State. He also is the nephew of former District Attorney Edward C. Cosgrove.

"Is there anything I haven't done?" he jokingly asked his party supporters Saturday.

A vigorous campaign is now expected in the September Democratic primary and November general election.

Republicans have established a search committee headed by former State Attorney General Dennis C. Vacco that hopes to lure one of their own into the race, though any member of the GOP will be handed a tough assignment when turnout in overwhelmingly Democratic Erie County is expected to be strong this presidential election year.

Erie County Republican Chairman Nicholas A. Langworthy has indicated "everything is on the table" regarding the possibility of GOP support for a Democrat. Republicans supported Democrat Sedita in 2012.

Zellner said that while Flynn will seek backing from the Conservatives and other minor parties, he will not ask for Republican support.

Flaherty, meanwhile, has also distanced himself from his predecessor by establishing a Public Integrity Unit to probe corruption after Sedita was accused of ignoring election law violations and similar crimes.

The Buffalo News also reported that Flaherty will reopen the 2013 hit-and-run death of Evans handyman Barry T. Moss after Sedita declined to prosecute suspect identified by police.

Still, Flaherty enters the race with an "incumbency" advantage after essentially running the District Attorney's Office since Sedita was elected to the bench in November. He has almost \$300,000 on hand and will rely on a seasoned group of political strategists in Buffalo and New York City with close ties to the State Democratic Committee.

email: rmccarthy@buffnews.com

EXHIBIT B

AFFIDAVIT

GARY PARENTI, being duly sworn, deposes and says:

1. That, my date of birth is November 16, 1965, and I reside at 955 Harrison Avenue, Niagara Falls, NY 14305. I have been friends with Steve Pigeon for nearly 40 years. I worked with Steve daily for the majority of that time. I first met Steve in the 1980's when he was an Erie County Legislator, and Vice-Chairman of the Erie County Democratic Committee. I worked with Steve on numerous political campaigns over the years including the 1992 Clinton campaign. I was on his staff when he was the Chairman of the Erie County Democratic Party. I worked with him on fundraising, I ran his schedule, drove him to events and was present for numerous meetings and phone calls. I was involved in everything he did on a daily basis. For meetings I was not a present for, Steve would fill in on what happened so I would be aware of all the moving pieces of the political strategies we were trying to implement. I also worked with him daily in the State Senate where he was the Senate Counsel, and I was the Regional Director for Sheldon Silver. I even shared an apartment with Steve in Albany when we were working for the Senate.

2. In 2004, when Steve and I left the Senate, he hired me at his law firm Underberg & Kessler. We continued to work there daily. We also started our own political consulting and lobbying business which was run out of Steve's loft apartment. I continued to organize Steve's calendar including calls, meetings, political activities and events. I accompanied him to almost all meetings and events.

3. As a result of all the time we spent together, and all the meetings I was in, I have deep personal knowledge of his political relationships. I also knew of the animosity with the current District Attorney, John Flynn. When Flynn first came to town, there was a meeting with him and his supporters. Flynn arrived in his Navy uniform, and wanted to know what positions were available to run for or be appointed to. Steve had suggested Alderman or County Legislator. Flynn wanted to run for County Executive. Steve and I later laughed about that, as he was totally unqualified for the position. Steve put him forward for consideration to be the Tonawanda Town Attorney, which Flynn became, and later Steve supported him for Town Justice.

4. While Flynn was the Town Judge, I received a speeding ticket and I contacted Flynn. As he knew I was Steve's close friend, Flynn dropped the ticket to a parking violation. I believe I received another ticket that I called him on as well, the same thing happened. Both times he told me to make sure I told Steve that he had taken care of it.

5. I know of several instances when John Flynn, had approached Steve to be put up for consideration for different positions or races. One instance would have been in the last two-year term of Barack Obama's presidency when Hillary Clinton was preparing to run for President. I would say sometime around 2014 - 2015. Steve had worked closely with Hillary, was slated to work on her Presidential campaign, and would be very influential if she won. He was also responsible for bringing in a major underwriter to fund the Clinton Global Initiative at the end of Bill Clinton's Presidency, Tom Golisano, for about \$30 Million total.

6. Flynn told Steve that he wanted to be the Under Secretary of the Navy and considered himself to be qualified for it because he had been a JAG Attorney. Steve flat-out told Flynn he was completely unqualified and he would not be making that recommendation. Flynn told Steve that he broke his heart as that was the only position that he wanted, it was his life's dream. Immediately after the meeting, Steve told me exactly what had happened, as he was shocked by Flynn's boldness and lack of self-awareness about his qualifications.

7. In his addition to his ties to Erie County politics and national politics through the Clinton's and Obama, Steve became very close to Andrew Cuomo. I first met Cuomo in 2002, and was introduced to him by Steve. Steve was one of the first Democratic Chairman Statewide to support his first bid for Governor, which he lost. The two remained very close since that first campaign. Cuomo became Governor in 2010. Steve was an informal advisor to Cuomo on political policy and appointments after he became Governor, particularly as it pertained to Western New York. They often discussed political positions and appointments. Steve's opinions were heavily weighed by the Governor. Between 2002-2015, I attended many meetings between the two of them and scheduled many, many more. I also heard Steve on the phone with Cuomo regularly, and saw them together dozens of times.

8. I was aware that John Flynn and his supporters were positioning Flynn to try to get a position as a Judge in the Court of Claims. I was aware of a meeting where former Assemblyman Sam Hoyt (who was supporting Flynn), Pigeon and Cuomo met to discuss the same. I know that despite Flynn and his supporters desires, Steve did not make the recommendation to Cuomo to install

Flynn, but rather opined that the Governor should follow the precedent of leaving the current Judge in place if they had been doing a good job. The seat was currently held by Timothy Walker, a Republican, whom Steve thought was doing a good job. Cuomo left Walker in place, denying Flynn an appointment to the Court of Claims. It was public knowledge that Flynn was very angry about Steve failing to support him.

9. Flynn had previously been interested in Steve backing him for District Attorney of Erie County in 2008, which Steve declined to do, backing a different candidate, Frank Sedita, III. In the 2008 race for District Attorney, Steve thought Flynn was out of his league and did not have the qualifications to hold such a position. Steve chose to back Sedita instead. I was at Steve's loft when Judge Sedita (the candidate's father), Billy Delmont (a major player in the conservative party) and Steve had a meeting. The purpose of that meeting was to craft a strategy to get the third party lines (Conservative and Independence) for Sedita, thereby blocking Flynn. Steve persuaded Delmont to deliver the Conservative endorsement and Steve was able to secure the Independence Party endorsement through his close ties to Tom Golisano, who was the founder of the party. It was very well known in the community, and by Flynn, that Steve helped block Flynn's ability to run for District Attorney by delivering these party lines to another Democrat.

10. I recall a few occasions when Steve and I went to the Buffalo Sabres games and sat in Hormoz Mansouri's private box when Flynn was also there. I thought it a little strange that Flynn would be in the box of a businessman from Tonawanda when he was a Judge. Flynn and Steve did not interact at those games — as there was a lot of animosity between them about what had

transpired. In fact, I always went out of my way to try to talk to Flynn and try to make peace between him and Steve

11. Leading up to the 2016 election, after Steve had failed to support Flynn for County Executive, District Attorney in 2008, Court of Claims, and the Under Secretary of the Navy, Flynn intended to run for the Erie County District Attorney again. Steve still would not back Flynn, as he considered him unqualified, and based on the open animosity between them. Steve backed another candidate, Michael Flaherty, whom he invited to two event's at his (Steve's) waterfront loft apartment in 2015. These fundraisers were attended by many influential people and donors from all over the state. He invited Flaherty for the purpose of introducing him to these influential politicians, business people and donors, in hopes of raising funds for Flaherty's campaign. A few days later, the FBI raided Steve's home and he was out of the political scene after that. With Steve out of the way, Flynn finally won the necessary endorsements, then the election, and became the District Attorney.

12. I also know of the relationship between Steve and Michael Keane, the First Assistant District Attorney in Erie County. Steve was roommates with Dick Keane, Jr. at Buffalo State and often frequented the Keane household during college. He met Dick Keane, Sr., who was a New York State Assemblyman at the time, and his other son Michael Keane. Around 1988, Jimmy Keane (Dick Sr.'s brother), wanted to run for Erie County Executive. Steve had already become an active lobbyist for the Democratic Party locally and had significant influence. The Keane's called a meeting with Steve in an attempt in to secure support, but Steve backed Dennis Gorski, who won the election. A feud ensued between Steve and the Keane's. Although Dick Sr. and Jimmy got over their

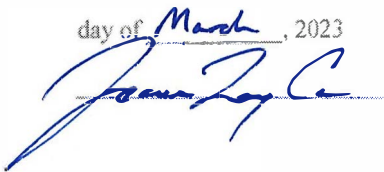
disagreement with Pigeon, for a time, Michael and his brothers held a grudge from then on. When Michael Keane graduated from Law School, he and his family approached Steve because they wanted Michael to run for Comptroller of Buffalo. He and his family tried to use their family ties with Steve to get the endorsement. However, Steve was already backing Anthony Nanula. Steve said he could support Michael to be a councilman at large, but Michael refused, and was very angry with Steve as a result. I was at the meeting where these discussions took place. From then forward Michael Keane and the Keane's worked to oust Steve as the Democratic Chairman; they even went as far as starting "The Committee to Renew the Erie County Democratic Party," the sole focus of that organization was to remove Steve Pigeon as Chairman. Michael even wrote a public letter calling for Steve's resignation as Erie County Democratic Chairman.

Dated: March 16, 2023


GARY PARENTI

Sworn to before me this 16th

day of March, 2023



Jeanne Tracy Cass
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CA6348242
Qualified in Monroe County
My Commission expires 09-26-2024

EXHIBIT C



THE NIAGARA REPORTER

MAY 3, 2022
BY NIAGARA
REPORTER-

Democrat Strategist Steve Pigeon Accused of Rape; DA Says 'It's a Child's Word Versus His Word'

I am Steve Pigeon's friend. We have been friends for more than 20 years. He recruited me as a PR consultant for NXIVM in 2007. Even though NXIVM tried to target me, Pigeon remained my friend throughout this time. When I accelerated my attack on NXIVM and its founder Keith Raniere in 2017, Pigeon helped me. Raniere is now serving a prison sentence of 120 years.

BUFFALO, NY: On December 2, 2021, G. Steven Pigeon's life changed.

The Erie County District Attorney charged Pigeon, 61, with rape and sexual assault of a child. The charges stemmed from a single incident that allegedly took place five years earlier.

The District Attorney did not disclose the child's name, age, or gender. However, the charges state the child was under 11 when the alleged incident occurred. The indictment alleges the incident happened between November and December 2016.

The local media reported the child is a girl. The prosecution revealed at Pigeon's bail hearing that she was a family member. Pigeon does not have any children.

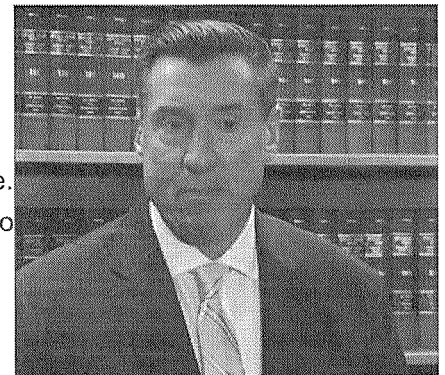
There is no allegation that Pigeon repeated or tried to repeat the charged offenses before or after the alleged one-time incident.

The Erie County District Attorney charged Pigeon with two counts of sexual assault against a child, one count of rape, one count of criminal sexual act, one count of sexual abuse, and one count of endangering the welfare of a child.

Pigeon could be sentenced to life in prison if convicted of all charges against him.

District Attorney John J. Flynn, Jr. said, "This is big boy stuff here. OK? This is rape; this isn't child molestation. This is rape, and so when we're talking at that level, all right, we're talking life in prison."

Based on Flynn's statements at a press conference, there seems to be no physical evidence, no DNA, no rape kit, no hospital records, no mandated reporter, and no



Erie County District Attorney John Flynn

confirmation from another witness.

WGRZ TV reporter Dave McKinley asked Flynn, "Do you have anything more than the word and allegation of a child?"



Steve Pigeon surrendered to the police on December 2, 2021.

Flynn replied, "I'm not going to talk about any other evidence, but I have her word, though."

According to Flynn, a lack of corroborating evidence is not unusual in child rape cases. It can be hard to find evidence to support the child's story.

"What all these cases come down to [is] a child's going to say something," Flynn told the press. "I presume he's going to say something: 'it didn't happen.' All right. At the

end of the day, it's a child's word versus his word, and I believe the child. I'm standing with the child, and I'm going to get the child justice." Pigeon has no previous accusations of sex-related or violent crimes. However, he has two felony convictions related to his role as a political consultant and lawyer. Because of these convictions, New York State revoked his license to practice law.

Investigation

According to Flynn, the girl, now a teen, told her mother about the alleged incident four and a half years after it allegedly occurred.

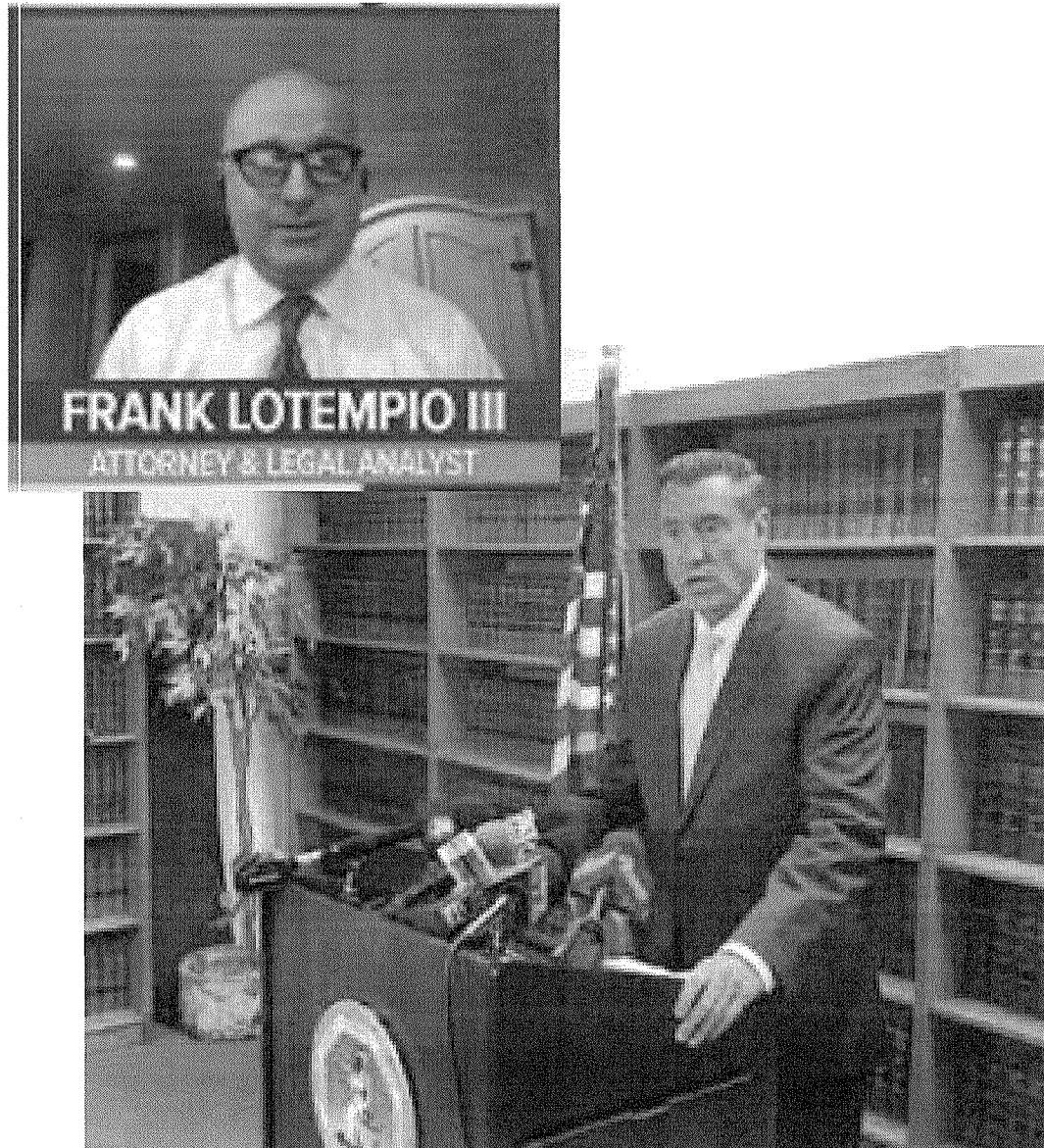
Her mother told her lawyer, who in turn called him.

"After the lawyer called me," Flynn said, "I then gave it to my investigators and gave it to my attorneys, and they went from there."

A several-month investigation followed. The investigators did not interview Pigeon. Delayed Reporting Defense

Frank LoTempio III, an attorney from Buffalo, said the case against Pigeon might be challenging to prosecute. LoTempio is not representing Pigeon in the case.

"I've defended these cases," LoTempio told WGRZ, "and any time you have somebody – that claim is five years old



– it’s a big deal... It’s the first thing the defense attorney is going to start to question... Why didn’t this come out earlier? How come it just came out? Who was the outcry witness? Did the outcry witness then make her suggest that more happened than actually did happen? It’s a big deal.”

The District Attorney took a different viewpoint on delayed reporting.

Flynn explained, “It’s not unusual in our child sex abuse cases. The majority of the time, quite frankly, if you talk to experts on this, they will tell you that there is delayed reporting. They will tell you that sometimes it takes years and years before the child tells someone or reports it okay.

“That’s very common that you, I mean again, you look, you look at all the child, all the clergy cases, and all the, you know, all the other Boy Scout, Girl Scout, all the other, you know, youth cases that you’ve seen over the course of the past five years, and there’s obviously been

a lot of them, okay. You will see, if not the majority, a great number of them. The victim does not tell anyone, and they hold it in for years and years. Like that's very common."

Other Evidence

During his WGRZ TV appearance, Attorney LoTempio said he believed the prosecutors would need more evidence beyond the alleged victim's word.

"There has to be some documentation, some witnesses, a confession," he said, "though not to a police agency, but even to the mother or the father of the child. That's what I would assume."

At his press conference, Flynn was asked again if he had more evidence than the word of a child.

A reporter asked, "Okay, do you have anything more than that? I'm not asking what you have, but I mean you must to bring a charge like this."

Flynn said, "The people who allegedly went to the house. That's some more right there. That to me shows consciousness of guilt."

Flynn named three incidents:

"There was a text message from Mr. Pigeon to an individual in the orbit of the victim saying that allegedly, 'Someone needs to contact me; someone needs to reach out to me. What's going on?'. ...

"There was a time when he allegedly came to the home of the victim, and then it was a third time where allegedly two of his friends without him came to the home of the victim... I don't want to make it like they came there to intimidate anyone. I think it was more of going there to say, "Hey, what's going on?"



ADA Patrick Swanson discussed a text message in court while arguing against bail for Pigeon.

Assistant DA Patrick Swanson amplified Flynn's comments at Pigeon's bail hearing.

Swanson told the court that Pigeon texted "one of the victim's family members, who the defendant is close with, to inquire about what was going on and why no one was returning calls. And he stated specifically, and I quote, 'Why won't you call? I am ready to do something drastic.' And 'You have to talk to me.'"

When he didn't get a reply, Pigeon "showed up at the victim's residence, uninvited and unannounced, where the defendant was banging on the front door, desiring to speak to the victim and the victim's mother," Swanson told the court.

Swanson said two of Pigeon's friends came to the house a few days later, which led to a 911 call from the alleged victim's mother to local police.

Pigeon's lawyer, Paul Cambria, denied his client tried to speak to the alleged victim. He also said the text was not suspicious. Cambria added that the alleged victim's mother is a close relative of Pigeon.

"There was never any intention to contact the person involved in the indictment," Cambria said.

"He sent a text message to several members of his family, a general message... it had nothing specifically to do with the subject of this indictment."



Steve Pigeon with his lawyer Paul Cambria



Gary Parenti went to the alleged victim's house

Gary Parenti was one of the two friends who went to the mother's house.

"We just wanted to find out why his family stopped communicating with Steve and would not respond to his texts," Parenti said. "They were close and in contact regularly. Then, they suddenly stopped communicating, with no response to texts. It had never happened before. I thought the family

might be in trouble."

Parenti said he'd known the family for 30 years and had been to the house many times.

A reporter asked Flynn, "Do you think [Pigeon and his friends] had been tipped off that there was some sort of investigation, or [do] you think that they potentially just got nervous because this family stopped having communications with him?"

Flynn replied, "We believe that he thought or knew that something was going on because the victim's, let's call it, 'orbit of area,' was not responding to his calls and texts."

Pigeon Makes Bail

Pigeon was held at the Erie County Holding Center for four days pending a bail hearing.

While Pigeon was in custody, Flynn said, "I do not believe that Mr. Pigeon should be out of jail. I believe he should be in jail for the rest of his life."

Judge William Boller set bail for Pigeon at \$750,000. Pigeon made bail.

After his release, Cambria told the media his client "vehemently denies these charges. We have indicated that, and we will move forward and let the courts decide."

Pigeon's Aunt Speaks

Rita Gralike, 90, is a relative of the alleged victim, her mother, and Pigeon. She is Pigeon's maternal aunt. Gralike has known Pigeon and the alleged victim's mother all their lives. Pigeon grew up with Gralike's children in St. Louis.



"First and foremost, this is completely out of character for Steven," Gralike said. "He does not act this way, never has. He is not the type of person, and it doesn't work that way. You never have just one accusation of child molestation. Never before and never again." Gralike, the mother of four sons, grandmother, and great-grandmother, was head of staff at the St. Louis office of former Missouri governor Joseph Teasdale.

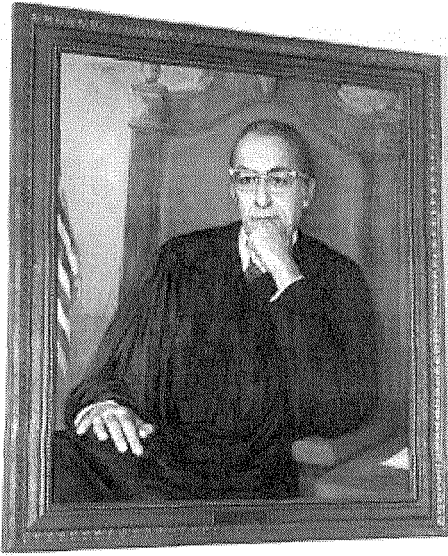


Rita and Donald Gralike

Gralike's late husband, Donald, served in the Missouri House of Representatives for ten years and in the state Senate for four years. Donald was president of the International Brotherhood of Electrical Workers.

Joseph Simeone, Gralike's late brother, was chief judge of the Missouri Court of Appeals and justice of the Missouri Supreme Court.

According to the St. Louis Dispatch, Judge Simeone "helped bring the Missouri judiciary into the modern age." His portrait hangs in the state capitol.



"I would like to say that a family like ours would not absolve anyone guilty of molestation," Gralike said.

She said she did not believe the child's story was true, and expressed concern that her mother influenced her. Gralike said her mother had made many accusations against others in the past.

"The mother has a history of instability. If you look at the number of times she called the police, it tells you a lot. She even called the police on her own father," Gralike said of the alleged victim's mother.

"I suspect there was some jealousy. She was resentful of Steve," Gralike said. "The commonsense thing to do, and what most people would do is go to the family member and ask for their reaction to this kind of accusation! Stable people don't throw nasty accusations into a public arena without giving the accused at least the chance to discuss it sensibly.

"Why would they give credibility to a child after having known Steve all their lives? Why would they even give any credence to this child like that?"

When asked why the child would make such an allegation, Gralike said, "If this child were indeed molested, I would suspect someone else in the family was responsible. Something may have happened to her with someone else, and Steve is the scapegoat. That's what I would be looking for if I was on the jury."

When asked if she would trust Pigeon with children, Gralike replied, "I would trust him with any of my great- grandchildren. I'm trying to get Steve to move to St. Louis. So, he could be close to our kids."

Gralike added, "I am the last of my birth family. So, I am the matriarch of this family. And I don't want to go to my grave seeing this false accusation brought against my nephew. I know it's not true."

Gralike Text Sent to Family

Gralike shared a text she wrote to family members of the alleged victim.

It read: "Steve has always been good to all of you. You evidently had sufficient trust in him to allow Steve to take [another child in the family, name redacted] with him on any number of occasions. And not once was there any reason to think he was nothing more than a very devoted Uncle.

"In the time you and the rest of you have known and been close to Steve, have any of

you had any reason to believe he could have done such a thing?... I am extremely disappointed in the actions taken against a good man.

Even when he is proven innocent of these charges, people will always look at him and wonder... He'll never be free of the scandal. And did the mother stop to think of the Pandora's box she has opened for the rest of the family? During this trial, that little girl is going to have to take the stand and answer questions that will scar her psyche for the rest of her days....

"This is a travesty. I am forced to question [the] mother's emotional stability to have cut all ties to her flesh and blood and accuse this kind man who has done nothing but help all of his family all their lives..."

Politics Not Involved

Steve Pigeon is a well-known and controversial figure in Western New York politics.

A reporter asked DA Flynn if Pigeon "ever worked for you, and does that give you a conflict?"

"I know him obviously," Flynn said. "I would categorize our relationship as business acquaintances. Since our business was/is political... I would categorize [it as] a business/political acquaintance. I do not believe that I have seen him or... spoke to him in the past six years."

"So, he never worked for your campaign?" the reporter asked.

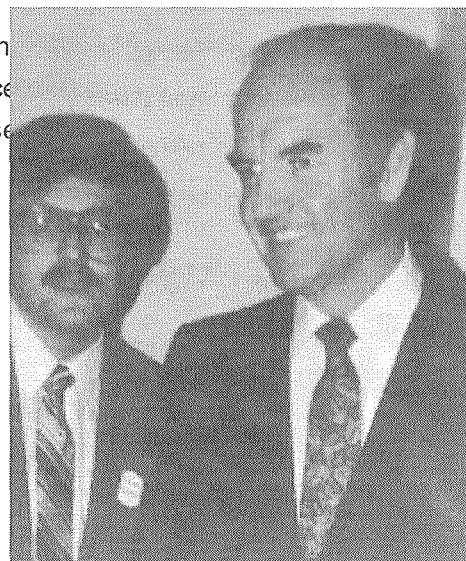
Flynn said, "I definitely did not see him at all or speak to him at all when I was running [for DA] in 2016, and then, since I've taken over, I can't remember if I've ever seen him or been in his presence in the past five years. So, I don't believe that I've ever seen him or spoken to him in six years. Before that, I was probably in his company, maybe five to ten times total.

"I had lunch with him and another person on two occasions on a social matter. So, yeah, I am definitely an acquaintance. I probably seen him five times my whole life and haven't seen him in six years, so that, again, that gives me no pause at all."

Pigeon's Political Career

Pigeon has had a long career as a lawyer, consultant, manager, and fundraiser. He worked for presidential candidates from 1972 to 2012, starting as a volunteer for George McGovern's campaign in Buffalo.

In 1980, Pigeon worked on Ted Kennedy's New Hampshire primary effort. Afterward, he returned to Buffalo to help him in the primary there.



Steve Pigeon and George McGovern

L-r: Ted Kennedy, Steve Pigeon, his late mother Barbara Pigeon, and Caroline Kennedy, the daughter of John F Kennedy.



Steve Pigeon and Ted Kennedy



Steve Pigeon with Jimmy Carter

When Kennedy ended his campaign, Pigeon worked on Carter's presidential campaign. He served in Gary Hart's presidential campaign in 1984. Voters elected Pigeon to the Erie County



Gary Hart and Steve Pigeon



Steve Pigeon with friends. The late Chris Walsh, who Pigeon described as a "second father," Carl Paladino, one of his oldest friends, and the late Buffalo Councilmember David Rutecki, another long-term close friend. Pigeon maintained friendships with Paladino and his arch rival Andrew Cuomo.

Legislature in 1988 and re-elected him in 1990.

He served in Clinton's presidential campaign in 1991. He was executive assistant to



Donna Shalala, the US Secretary of Health and Human Services for the Clinton administration, in 1993.



Steve Pigeon with Hillary and Bill Clinton

He also served on the Task Force on National Health Care Reform, headed by Hillary Clinton.

Steve Pigeon with Donna Shalala

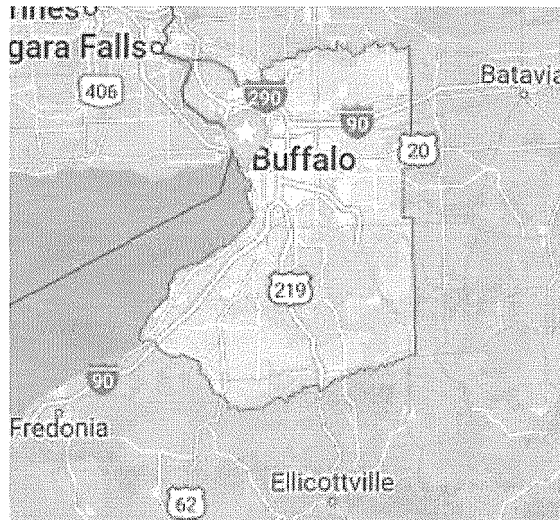
In 1996, the elected committee members elected Pigeon as the Democratic Chairman of Erie County.

He was one of the only county chairmen in New York

Erie County in Western NY is located on the eastern shores of Lake Erie and has a population of 918,702

State to endorse Charles Schumer for US Senate over the mainstream party's choice, Geraldine Ferraro.

He also endorsed another longshot, Eliot Spitzer, for NYS Attorney General in 1998. Both candidates won office.



His leadership style as a party boss earned him friends and enemies, including Michael Pietruszka. The source of hostility is that Pigeon endorsed Eugene Fahey over Pietruszka for the New York State Supreme Court, when both were judges at Buffalo City Court.

Due to Pigeon's support, Fahey was elected to the NY State Supreme Court and later appointed to the New York State Court of Appeals. Pietruszka had to settle for a judgeship in Erie County.



Steve Pigeon with Charles Schumer, Erie County Executive Dennis Gorski, and Elliot Spitzer

A coalition of Democrats, the Task Force to Renew the Democratic Party, was organized in 2000 to oust Pigeon as party chairman. One of the coalition leaders was Michael Keane. He had sought Pigeon's endorsement for Buffalo Comptroller but Pigeon endorsed another candidate instead. Keane is the current Deputy District Attorney, the second in command under Flynn, and is expected to run for DA in 2024.

Pigeon survived the coup attempt, and in a controversial vote, committee members again reelected Pigeon as their

party chairman.



Pigeon started working with Andrew Cuomo during the administration of his late father, Mario Cuomo.

He was one of the only county chairmen to support Andrew Cuomo's unsuccessful gubernatorial primary bid in 2002.

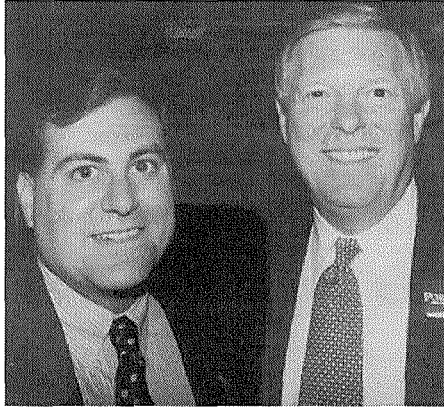
The coalition to oust Pigeon came back in full force in 2002, and Pigeon decided not to run for re-election.

After retiring as party boss, Pigeon became an enemy of the local Democratic Party. He supported candidates to run against endorsed Democrats in primaries. Sometimes, he supported Republicans in general elections.

In 2003, Pigeon helped B. Thomas Golisano, the billionaire founder of Paychex Corp, one of his friends and business associates, rescue the NHL hockey team, the Buffalo Sabres, from bankruptcy. Golisano's purchase of the Sabres prevented the franchise from moving outside Western NY.

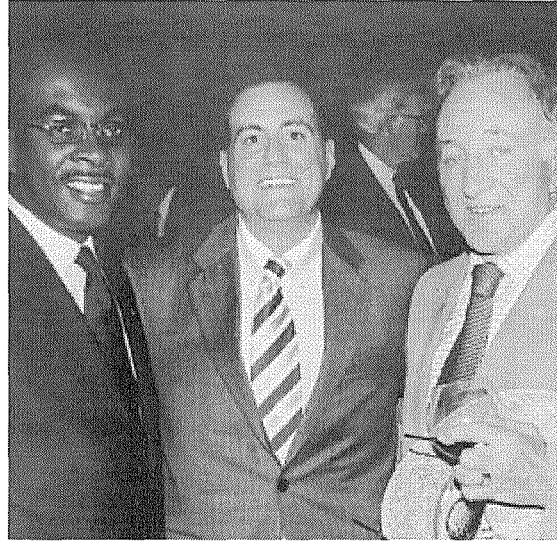


Pigeon worked as a senior member of longtime family friend, Dick Gephardt's presidential campaign in 2004.



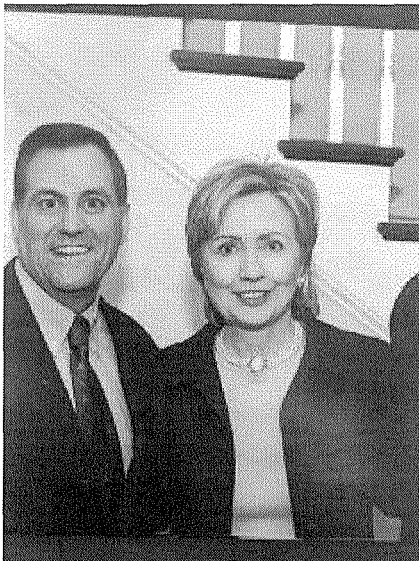
Buffalo's current mayor.

He was one of the early supporters of Byron Brown,



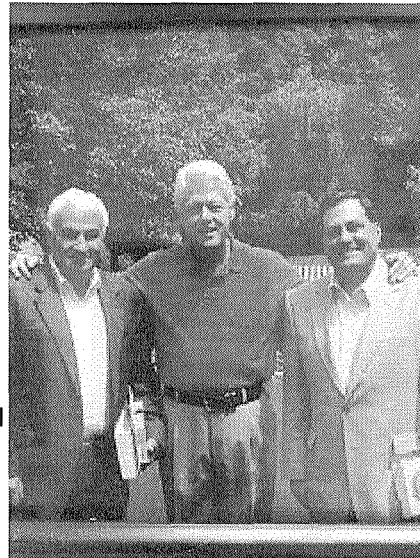
Pigeon is with his predecessor as party chairman Vince Sorrentino [r] and Bryon Brown [l]

He was one of the nation's top fundraisers for Hillary Clinton's 2008 presidential campaign.



Steve Pigeon with Hillary Clinton at her DC home.

Over the years, he helped raise millions for the Clinton campaigns and their foundation, the Clinton Global Initiative. Billionaire Golisano was one of the founding donors.



B. Thomas Golisano, Bill Clinton and Steve Pigeon at Clinton's home in New York.

Pigeon raised money for Obama's presidential run after he defeated Hillary Clinton in the 2008 primary. In addition, he helped secure a donation of \$1 million for the 2008 Democratic National Convention.



Steve Pigeon and Barack Obama

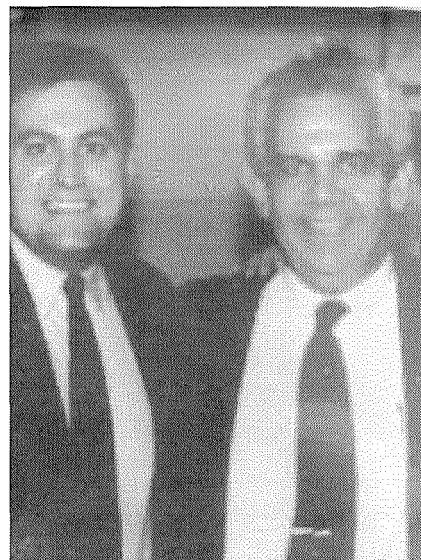
Pigeon Opposed Flynn in 2008

Although Pigeon never worked for the DA John Flynn on his campaigns, Pigeon worked against him when Flynn first sought office in 2008.

Flynn was the front-runner. Pigeon supported another Democrat, Frank Sedita III. Using his connections with the Conservative and Independence parties, Pigeon helped Sedita secure

their support.

Pigeon blocked Flynn's endorsement by the Erie County Democratic Party Executive Committee, a group primarily made up of anti-Pigeon Democrats. It was a dilemma for Democrats opposed to Pigeon. Sedita would run against Flynn in the Democratic primary if the Party endorsed Flynn. If Flynn defeated Sedita in the primary, Sedita would still be on the Conservative and Independence lines ballot. Minor party lines can account for 10-15 percent of the votes in the general election. A three-way race could hand the election to the Republican, Diane LaVallee.



Steve Pigeon with Judge Frank Sedita II. Pigeon worked to get his son elected District Attorney.

Flynn stepped aside as a candidate for DA. The Erie County Democratic Party Executive Committee endorsed Sedita, who won the general election and defeated LaVallee.

Handing Republicans Victory

In 2009, Pigeon helped engineer the majority control of the Erie County legislature, from a Democrat majority to a coalition of Republicans and Pigeon-friendly Democrats. The power shift was especially galling to Democrats, as the party holds a two-to-one plurality over Republicans in the county.

Statewide, Pigeon helped engineer victories for Democratic candidates in the State Senate by raising more than \$4 million for their campaigns. The money came primarily from billionaire Golisano. The condition for support was that Democrats would pay more attention to upstate New York instead of its usual lopsided New York City-centric governance.

For the first time in four decades, Democrats won control of the State Senate.

After winning control, Pigeon and Golisano felt the New York City Democrats were not

Republican State Senator George Maziarz and Steve Pigeon

honoring their deal to consider upstate New York as little more than their fiefdom.



Pigeon shocked the Democrats when he arranged the “coup” of 2009, wresting control of the Senate from Democrats to a coalition of Republicans and a few Democrats.

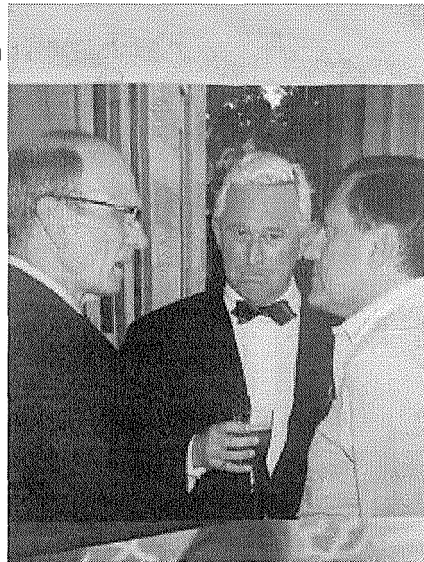
One of the casualties was then State Senator Eric Schneiderman, from Manhattan, who was to be deputy leader.

State Sen. Ruben Diaz Sr. recalled, “In 2009 when the coup... happened, the head behind it

was Steve Pigeon. Eric Schneiderman was one of the shining stars in the Senate Democratic conference, and from that time, there has been bad blood.”

The following year, Schneiderman quit the Senate and ran for attorney general. Pigeon worked against him and supported Kathleen Rice, who narrowly lost to Schneiderman.

In 2010, Pigeon again supported Andrew Cuomo as governor of New York State. The campaign was successful.



The late Dennis Gorski, Roger Stone, and Steve Pigeon



Steve Pigeon, General Wesley Clark, and Gary Parenti



Steve Pigeon with union leader Mike Fitzpatrick

Pigeon's star was on the rise over the next few years. He ventured into international politics and did business in Uganda, Kenya, Somalia, Ukraine, and Rumania. He worked with nationally known figures such as Roger Stone and Wesley Clark.

In 2013, Pigeon urged Gov. Cuomo to replace various state Republican appointees with Democrats. As a result, Diane LoVallee, Sedita's Republican opponent for DA, lost her job at the Department of Tax and Finance.

She became a prosecutor for Pigeon's enemy, NYS Attorney General Schneiderman.

It was not hard to get investigations launched

with many local enemies and an attorney general with undisguised resentment.

A joint task force of state and federal investigators was formed to investigate Pigeon. They sought violations of election laws, such as conspiring to exceed contributions limits, concealing donors, and making false filings.

In 2015, state and federal law enforcement officers raided Pigeon's penthouse. Judge Pietruszka, who failed to get Pigeon's endorsement 15 years earlier, signed the search warrant.

Flynn Runs Again for DA; Pigeon Opposes Him

In 2016, eight years after being thwarted by Pigeon, Flynn entered the race again as a Democratic candidate for the Erie County DA.

Pigeon supported Flynn's opponent, Michael Flaherty. In the Democratic primary. A third candidate in the race, Mark Sacha, tied Pigeon to Flaherty.

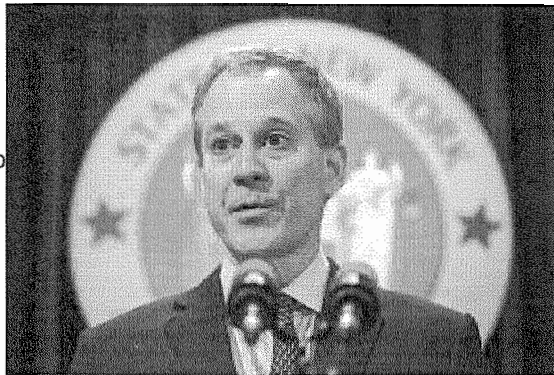
Pigeon became a distraction, and some said liability for Flaherty. Flynn won the Democratic primary and the general election.

After a one-year investigation, Attorney General Eric Schneiderman announced a nine-count indictment against Pigeon on bribery and extortion charges.

Diane LoVallee, who lost her job at the Department of Taxation and Finance by Pigeon's political maneuvering, was assigned by Pigeon-enemy Schneiderman as one of two prosecutors on the case.

As a lawyer, Pigeon had two clients with cases before former State Supreme Court Judge John Michalek when he gave the judge and his wife four Buffalo Sabres hockey tickets and a \$1000 free ticket to a political fundraiser he hosted.

The judge, who had known Pigeon since he was a teenager, actively sought Pigeon's help with getting his son a job and his wife an appointment to an unpaid committee. Pigeon sent resumes to some of his contacts. Neither the son nor the wife got the positions they sought. Pigeon's clients did not win their cases.



Former NY State Attorney General Eric Schneiderman

In addition to the state charges, the U.S. Attorney's Office for the Western District of New York charged Pigeon with soliciting an illegal donation for Gov. Andrew Cuomo's 2014 re-election bid. The feds alleged Pigeon helped the Canadian owner of an online gambling company buy a ticket to a \$25,000 per person Cuomo fundraiser. Federal election law prohibits foreign nationals from donating to political campaigns.

In 2018, Pigeon pleaded guilty to both federal and state charges. His convictions have a maximum sentence of one year in prison.

Sentencing Delayed

On December 14, 2021, Pigeon was to be sentenced for his federal charges and in January 2022, for the state charges.

Pigeon's sentencing dates were adjourned after the child's rape charge. The trial is unlikely to start until 2023.

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 **TWEET**

EXHIBIT D

Affidavit

I am Hormoz Mansouri, DOB 5/24/54, residing at 43 Rolling Meadow, East Amherst, NY. I have owned E.I Team Firm since 1997 and our office is in Tonowanda, NY. Around 2005 or 2006 I met John Flynn through his cousin Charlie Flynn who was the Independence Party Chairman in Erie County. We became friendly and had mutual interests in the Erie County political scene. We would have breakfast about once a month and discuss the current political environment at the time. I was a large contributor to all of the political parties, but more to the Democratic Party, and John was aware of my affiliations.

I had a private box at the Buffalo Sabres games in my name. Occasionally I had invited John Flynn to my box. I have researched my emails and found three dates that I know specifically John Flynn was there: 5/08/07, 3/26/10, and 5/4/10. I know that I had also had Steve Pigeon at several games, however, I cannot confirm they were there together, but it's possible.

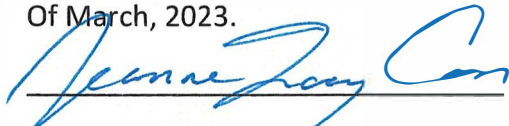
In one of the breakfasts that we had together, John Flynn expressed his desire to me to become the undersecretary of the Navy, as he was a JAG officer at the time. A few days later I passed this information to Steve Pigeon and suggested a lunch to bring us all together. I knew John Flynn already knew Steve through past dealings so it was not a new introduction. Steve had a large influence in the National Democratic Party through his work on the National presidential campaigns. I set up the lunch and had to leave early as the two of them were both late for the lunch. I had told Steve before the lunch about Flynn's desire to be the Undersecretary of the Navy and that is why we were having lunch. The two of them began discussing the national and local political scenes and I excused myself to leave. The next time I spoke with John he thanked me for setting up the meeting. When I spoke with Steve next he indicated to me that Flynn had expressed his desire for the position, and Steve indicated that it was a big ask, but we had no further discussions about it and it never came be.



Hormoz Mansouri

Sworn before me on the 1st day

Of March, 2023.



Jeanne Tracy Cass

Jeanne Tracy Cass NOTARY PUBLIC, STATE OF NEW YORK No. 01CA6348242 Qualified in Monroe County My Commission expires 09-26-2026
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EXHIBIT E

AFFIDAVIT

Kristy Mazurek, being duly sworn, deposes and says:

1. My date of birth is December 26, 1970. I have known Steve Pigeon since I was young, as he worked with my father, Henry Mazurek, as an Erie County Legislator. I was also a lobbyist in Erie County politics for several years. I worked closely with Steve on numerous political campaigns and in his political consulting business. Steve was also a frequent guest on my political debate TV show, "2 Sides," which aired on WGRZ.

2. I know of a few occasions in which John Flynn, the current Erie County District Attorney, and Steve were in a conflict over nominations put forth by the Democratic Committee in Erie County, as Flynn wanted the endorsement for certain positions. Steve blocked his endorsement time and time again.

3. At one point, there was a major divide in the Erie County Democratic Party. Zellner and his supporters were on one side, and Pigeon and his supporters were on the other. Pigeon, in an attempt to regain control of the party, was supporting Frank Max for Chairman. We held a strategy meeting at Steve's loft. In attendance were myself, Steve, Gary Parenti, Mayor Brown, Frank Max, and others. It looked like it would be a tight vote and that the votes from Tonawanda would likely control the outcome. I suggested to Steve, and he agreed that we should offer to support John Flynn for Deputy Election Commissioner as a part of our slate of candidates. We believed this would secure

Tonawanda votes as Flynn was highly supported by the Tonawanda delegates as he had been a Town Prosecutor and Town Justice there. Flynn agreed to run for the position. However, Flynn failed to appear on the night of the convention, and as a result, the whole plan fell apart. Zellner took the Chairmanship. Steve and his faction were defeated. This furthered the animosity between Flynn and Steve.

4. Having worked with Steve for so long, he confided in me often. He was very close with Andrew Cuomo. While Governor, Cuomo relied heavily on Steve's opinion on who should and should not receive nominations and appointments. In 2010, Flynn made it very well known that he wanted a particular Court of Claims appointment. Steve and I had several conversations about it, and he said he would not give Flynn's name to Cuomo. Cuomo did not appoint Flynn to the seat but instead chose to keep Timothy Walker in the seat, a Republican. Flynn was furious with Pigeon as he obviously did not encourage Cuomo to put Flynn in the position.

5. Sometime in the 2014-2015 time frame, I talked to Steve about a lunch meeting he was going to with Flynn and Hormoz Mansouri. Flynn wanted to be nominated for Under Secretary of the Navy. After the lunch meeting, I spoke with Steve again. He thought it was a preposterous request from Flynn as he was utterly unqualified for the position. Although Flynn had been in the JAG Corp in the Navy, he only prosecuted low-level crimes, and had not built his resume enough since leaving the Navy to even be considered for the position. Steve said he told Flynn that he could see if there were other

positions open for him in the Navy, but Flynn told him this was the only job he was interested in. Flynn specially told Steve that he had broken his heart and that he would never forgive him. Thereafter, I saw Flynn and Steve at some of the Buffalo Sabres games in Hormoz Monsouri's box, and they would not even speak to each other. The animosity was obvious.

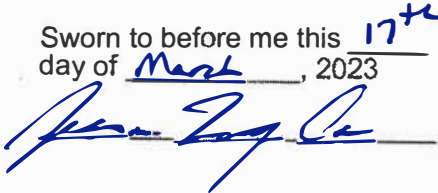
6. In 2015 there was another race for District Attorney in Erie County. Flynn entered the race and was looking for the endorsement from the Democratic Committee, where he had strong support. However, Steve supported Flynn's opponent Micheal Flaherty for the nomination. Steve actually worked to connect Flaherty with high level donors and specifically invited Flaherty to fundraisers at Steve's home, which I helped with and attended. Coincidentally, right after the last fundraiser, the FBI raided Steve's political influence and ability to block Flynn again.

Dated:

3/16/2023


KRISTY MAZUREK

Sworn to before me this 17th
day of March, 2023



Jeanne Tracy Cass
NOTARY PUBLIC, STATE OF NEW YORK
No.01CA6348242
Qualified in Monroe County
My Commission expires 09-26-2024

EXHIBIT F

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ERIE COUNTY DISTRICT ATTORNEY JOHN FLYNN'S
REGARDING THE INDICTMENT OF G. STEVEN PIGEON

December 2, 2021

FROM:

<https://m.facebook.com/ErieCountyDistrictAttorney/videos/erie-county-da-john-flynn-discusses-the-indictment-against-gerald-steven-pigeon-/884998322164097/>

Transcribed by: Pamela J. Alexander

1 MR. FLYNN: This morning, 61-year-old Steve Pigeon
2 was indicted and arraigned on the indictment on numerous
3 charges relating to a single incident that occurred some
4 time between Thanksgiving and Christmas back in 2016.

5 He was arraigned by Judge Burns of two counts of
6 predatory sexual assault against a child. Those are both
7 Class A felonies. He was charged with one count of rape in
8 the first degree, a Class B felony. He was charged with one
9 count of criminal sexual act in the first degree, again, a
10 Class B felony, as well as one count of sexual abuse in the
11 first degree, a Class D felony, and one count of endangering
12 the welfare of a child, a Class A misdemeanor.

13 As I alluded to, these allegations stem from one
14 evening. There were actually two separate events that
15 occurred this evening, allegedly, that resulted in these
16 charges. The two counts of predatory sexual assault against
17 a child are two different alleged sex acts that occurred. I
18 am not going to elaborate on that or get into detail as to
19 what that was, but they were two separate sexual acts that
20 occurred in that -- in that evening, in that time frame.

21 The reason why it is a Class A felony, which
22 carries life imprisonment, is because the victim was under
23 the age of 13 and the perpetrator was over the age of 18.
24 And that's what makes it a Class A felony.

25 The one count of rape in the first degree, it is

1 first degree because the victim was under the age of 11. So
2 even though the predatory sexual assault is a higher charge,
3 it actually has a higher cutoff threshold on the -- on the
4 age. The rape charge has a cutoff, has a threshold of under
5 11 years old. And it just so happens that the victim was
6 under 11 as well.

7 The same with the criminal sex act in the first
8 degree. Again, that is a Class B felony. It's a first
9 degree due to the fact that, again, the victim was under the
10 age of 11.

11 I -- as you know, we asked for a remand here, no
12 bail. We got that from the Judge. I am very grateful for
13 that. I do not believe that Mr. Pigeon should be out of
14 jail. I believe that he should be in jail for the rest of
15 his life, quite frankly. And so we are going to proceed
16 forward to that.

17 The next court date will be when a Judge is
18 assigned. Judge Burns was just filling in as a Special Term
19 Judge today. There will be a Judge who will be assigned to
20 the case and I anticipate the very first proceeding that
21 will take place will be another bail hearing where the
22 defense will argue that the victim -- that the Defendant
23 here is not a flight risk, that Defendant does have ties to
24 the community, and, therefore, the Defendant should be let
25 out on bail.

1 We will argue that that, quite frankly, is not
2 true. We will argue that the Defendant doesn't have any
3 ties to the community anymore; that he really has no
4 permanent address. From what we can gather, he is staying
5 down in Florida half the time, he's got a buddy who lives in
6 Niagara Falls, he hangs out with him once in a while, and he
7 doesn't have any kind of permanent home here in Buffalo.

8 In addition to that, he's -- as you all know, he is
9 facing felony charges and other State charges by the
10 Attorney General's Office that he has not been sentenced on
11 yet. And so he's facing two other jurisdictions, two other
12 court proceedings. And on top of that, we have information
13 that Mr. Pigeon, over the course of the past few months,
14 suspected that something was going on. And, therefore,
15 allegedly, went to the home of the victim here and also had
16 a friend of his go to the home of the victim as well.

17 So when you put all those things together, on top
18 of the fact he's facing life in prison, this isn't some, you
19 know, misdemeanor charge they have in Federal Court, or
20 another misdemeanor charge they have at the Attorney
21 General's Office. And I'm not -- I'm not minimizing those
22 charges, obviously, you know, this is -- this is big boy
23 stuff here. Okay? This is rape. This isn't child
24 molestation. Okay? This is rape. And so when we're
25 talking at that level, all right, we're talking life

1 imprisonment here, he needs to be treated like every other
2 defendant who walks through these courthouse doors who is
3 facing life imprisonment.

4 And the only people really who are facing life
5 imprisonment are people charged with homicides. And,
6 therefore, everyone who's walked through this door in my
7 five years here, I'd be shocked if anyone who's facing life
8 imprisonment wasn't remanded.

9 So those are the arguments that we'll make when
10 that ~~is~~ when that bail hearing comes. And I anticipate that
11 will come as soon as possible because I anticipate they're
12 going to try to want to get him out of jail as soon as
13 possible.

14 So that's on a bail matter. Before I take any
15 questions, let me just address some of the information that
16 came out recently. Let me also just reiterate that any time
17 that -- you know, I'll remind anyone out there who's got a
18 big mouth, and obviously some did have a big mouth, that any
19 time there's a sealed indictment out there and you talk
20 before the indictment is unsealed in a court of law, in an
21 arraignment, that's a crime. And obviously someone talked
22 and gave information out there, and the information that has
23 been put out there now also needs to be corrected,
24 especially information that allegedly came out of his mouth,
25 which is that this must be somehow related to child

1 pornography or something on my computer or something on my
2 phone, or some guy in the FBI wants to, you know, get back
3 at me for something. I can tell you that all of that is
4 utter nonsense. I can tell you that this case right here
5 has absolutely nothing to do with any of his previous
6 charges. It has nothing to do with anything the FBI was
7 looking at. It has nothing to do with anything the Attorney
8 General is looking at.

9 Quite frankly, I wasn't even in that loop, and I'm
10 not in that loop. I really have no idea what he's facing
11 federally. I really have no idea what he's facing in the
12 Attorney General's Office. I was not involved in that, I
13 had nothing to do with that, and I was not brought in the
14 loop on that at all.

15 So any -- any allegation or any innuendo that this
16 somehow must be tangentially related to what I was doing
17 with the FBI or what I was doing with the Attorney General's
18 Office is utter nonsense. It has nothing to do with it at
19 all.

20 This matter wasn't even brought to my attention by
21 anyone from any law enforcement agency. This matter was
22 brought to my attention by the mother of the victim's family
23 lawyer. The victim told his or her mother -- and, again,
24 I'm not going to -- I'm not going to confirm or deny, I'm
25 not even going -- I'm not even going to go -- going to

1 allude to anything that could identify this victim at all.

2 So, again, any question you may ask me in a minute
3 or two here, you're probably not going to get answers to
4 because, again, I am going to do whatever I can to protect
5 the identity of the victim.

6 So the victim told his or her mother what happened.
7 The mother didn't know who to call. The mother happened to
8 have a family lawyer who did some civil matters for her
9 previously, and called that lawyer and told that lawyer what
10 her child had told her and wanted to know who to call and
11 who to reach out to. And the lawyer called me.

12 And after the lawyer called me, I then gave it to
13 my investigators and gave it to my attorneys and they went
14 from there. And they're the ones who brought in -- my
15 people are the ones who brought in the State Police. We
16 didn't talk to the F -- we didn't call the FBI, we didn't
17 tell the FBI. We didn't tell the Feds anything. We chose
18 the State Police because we wanted a law enforcement agency
19 that had multiple jurisdictions. We weren't sure exactly
20 how many times it may have happened, where it may have
21 happened, you know, where the Defendant was living at the
22 time. And so we wanted a law enforcement agency that had
23 multiple jurisdictions, and the State Police obviously have
24 that. They can cover the whole state.

25 So we're the ones who called the State Police and

1 brought them in on this investigation, to do the
2 investigation. So, again, it had nothing, zero to do with
3 anything else he was facing or anything else related to that
4 matter at all. This is a completely separate matter, a
5 completely separate allegation. And, again, it's obviously
6 much more serious than what he's facing now.

7 AUDIENCE MEMBER: Yes, sir. Could I ask you then,
8 you mentioned this is regarding an incident on or about
9 Thanksgiving, on Thanksgiving 2016?

10 MR. FLYNN: No. Between Thanksgiving and
11 Christmas --

12 AUDIENCE MEMBER: 2016.

13 MR. FLYNN: -- of 2016.

14 AUDIENCE MEMBER: And then -- so my question is,
15 when were you alerted to this?

16 MR. FLYNN: Two months ago.

17 AUDIENCE MEMBER: Okay. So the investigation into
18 these allegations has been going on for two months?

19 MR. FLYNN: Yes.

20 AUDIENCE MEMBER: And the other thing I wanted to
21 ask you, because he is -- was so steeped in politics, worked
22 on so many campaigns, did you ever have a concern that maybe
23 he couldn't be tried here in Erie County because of perhaps
24 conflicts with judges he may have worked for for their
25 campaigns and things like that, or recusals after recusals?

1 MR. FLYNN: Yeah. That -- that'll have to be
2 addressed going forward, obviously.

3 So what's going to happen is that, you know, this
4 case will be assigned to a judge. If that judge feels that
5 they cannot properly handle this matter, that judge will
6 recuse him or herself. And then we'll have to bring in --
7 then we'll have to keep going. And then, listen here,
8 we'll -- if we have to, we'll bring in a judge from
9 Syracuse; we'll bring someone from out of town.

10 AUDIENCE MEMBER: Is that what happened this
11 morning?

12 MR. FLYNN: No. Oh, Judge Burns is from here?
13 What do you mean?

14 AUDIENCE MEMBER: Well, Judge Case was
15 originally --

16 AUDIENCE MEMBER: Right. Well, Judge Case was
17 originally --

18 MR. FLYNN: Oh. Yeah, yeah, yeah. I don't know.

19 AUDIENCE MEMBER: Is that what happened?

20 MR. FLYNN: Yeah, I don't know.

21 AUDIENCE MEMBER: Has he ever -- has he ever worked
22 for you?

23 MR. FLYNN: Who? Steve? No.

24 AUDIENCE MEMBER: And does that give you a
25 conflict?

1 MR. FLYNN: No. No conflict with me at all. I
2 know him, obviously. I would -- I would categorize our
3 relationship as business acquaintances. Since our business
4 is political, that I would -- I guess I would categorize it
5 business/political acquaintance. I do not believe that I
6 have seen him or speak to him -- spoke to him in the past
7 six years.

8 AUDIENCE MEMBER: So he never worked for your
9 campaign of any sort?

10 MR. FLYNN: No. Never worked for my campaign. I
11 definitely did not see him at all or speak to him at all
12 when I was running in 2016. And then since I've taken over,
13 I can't remember if I've even seen him or been in his
14 presence in the past five years. So I -- I don't believe
15 that I've even seen him or spoke to him in six years.

16 Before that, I was probably in his company maybe
17 five to ten times totally. I had lunch with him and other
18 person on two occasions maybe ten years ago; just a social
19 matter.

20 So, yeah, I -- I am definitely an acquaintance of
21 his, but, again, I've probably seen him five times my whole
22 life and haven't seen him in the past six years. So, again,
23 that gives me no pause at all.

24 AUDIENCE MEMBER: But would that make you have to
25 comb through contributions that he may have given these

1 campaigns for judges or ---

2 MR. FLYNN: Well, that's --- that's up to the judge.
3 For me, it's not going to be a point because when I -- when
4 I accepted -- when I ran in 2016, I operated under a blind
5 campaign system. So I never knew who gave me money. Now,
6 obviously, if you come to my party, I see you -- I see you
7 there. Okay? So I'm not going to -- you know, obviously I
8 see you at a party of mine, all right? But I have -- but I
9 have no idea how much money anyone gave me. I don't -- I
10 don't look at the records at all, and I never have in six
11 years.

12 I've only had -- so I don't believe that I saw him
13 at any party of mine in 2016 when I ran for DA. So I can't
14 remember ever seeing him at any party, so I don't believe he
15 gave me money. If he did, I don't know about it, put it
16 that way.

17 And I only had -- since I've been DA, I've only had
18 one fundraiser in five years because I didn't have an
19 opponent last year. So I've only had one fundraiser and I
20 definitely did not see him there. So I don't believe he's
21 ever given me money, but, again, I wouldn't know it anyway.

22 And judges operate in the same way. Judges -- I
23 don't have to operate under that premise, but I do because I
24 did it when I ran for judge. Judges have the -- judges have
25 that rule in place, though. Judges are -- are not

1 authorized to know who gave them money. That's actually
2 written in the statute, okay? For me, it's not, but for
3 judges it's in their ethics rules, that they -- they're not
4 allowed to know who gave them money.

5 So, again, whatever judge gets this case will have
6 to -- you know, him or her will have to evaluate that as
7 they go forward. That's not my concern.

8 AUDIENCE MEMBER: Do you know why there was so much
9 of a lapse of time between 2016 and -- and two months ago
10 when you learned about this, that the child didn't come
11 forward sooner?

12 MR. FLYNN: No. But it's not -- that's not
13 unusual. In child sex abuse cases, the majority of the
14 time, quite frankly, if you talk to experts on this, they
15 will tell you that there is delayed reporting. They will
16 tell you that sometimes it takes years and years before the
17 child tells someone or reports it. Okay? That's very
18 common. Again, if you look at all the child -- all the
19 clergy cases and all the -- you know, all the other Boy
20 Scout, Girl Scout, all the other, you know, youth cases that
21 you've seen over the course of the past five years, and
22 there's obviously been a lot of them, okay, you will see, if
23 not the majority, a great number of them, the victim does
24 not tell anyone, they hold it in for years and years. So
25 that's very common.

1 AUDIENCE MEMBER: What is the timeline for the bail
2 application now? Could that happen --

3 MR. FLYNN: It's up to the defense lawyers. So
4 they -- they can move, like, right away. They can make --
5 they can make a motion, like, right now if they wanted to.
6 But, again, it's all going to depend, though, on how fast
7 they assign a judge to the case. So they got to -- so the
8 way the -- the court clerk downstairs, they got a wheel, not
9 literally a wheel, but they call it a wheel, they got a
10 wheel and then they'll put the case in the wheel and then a
11 judge will get assigned to it. And then -- so they got to
12 wait till that judge gets assigned. Then as soon as they
13 find out, I anticipate they'll make a motion.

14 AUDIENCE MEMBER: John, I know --

15 MR. FLYNN: Today -- well, again, I don't know how
16 fast it takes the wheel downstairs.

17 AUDIENCE MEMBER: When -- I'm sorry. You were
18 finishing up.

19 MR. FLYNN: Go ahead.

20 AUDIENCE MEMBER: When he was ordered to report and
21 surrender to State Police, do you know when that occurred
22 and where he was at the time?

23 MR. FLYNN: I don't know where he was. We -- the
24 sealed indictment was reported out yesterday. And when the
25 indictment is -- the John Doe indictment, okay? When the

1 John Doe indictment was opened up in court yesterday, the
2 we knew, obviously, that he had a lawyer, okay, in the
3 previous cases. Okay? That he's represented by counsel.
4 So whenever that happens, we called his attorney up and said
5 basically you got 24 hours to turn him in or we'll come and
6 get him. So that phone call was made yesterday and he was
7 brought in today, within 24 hours.

8 AUDIENCE MEMBER: Okay. But you don't know where
9 he was within -- at that time?

10 MR. FLYNN: No, I don't know where -- yeah, no,
11 yeah, I don't know that.

12 AUDIENCE MEMBER: Can you tell me as well -- and
13 this was brought up in court as well, the incident from
14 earlier, the going over there and contacting the alleged
15 victims, pounding on the door, the friends of his showing
16 up, was that what occurred in the summer just after your
17 investigation began?

18 MR. FLYNN: Yes. It occurred -- that has occurred
19 within the past -- allegedly, within the past two months.

20 AUDIENCE MEMBER: Did you say earlier, I'm not sure
21 if I heard it, did you say it started two months ago or a
22 few months ago?

23 MR. FLYNN: A few months ago. A few months ago.
24 So they called -- the lawyer called me, I believe, in either
25 July or August.

1 AUDIENCE MEMBER: Okay. In court your ADA
2 referenced a text message that Pigeon allegedly sent, and
3 then -- and then -- I'm just trying to find out if I'm
4 understanding it right, he said separately in another
5 another instance he went to the house by himself and then
6 separately two other guys went to the house?

7 MR. FLYNN: Yes. Allegedly.

8 AUDIENCE MEMBER: John, what -- on that, do you
9 think, just listening to what the attorney said in court,
10 that they had been tipped off that there was some sort of
11 investigation or you think that they potentially just got
12 nervous because this family stopped having communication
13 with Steve Pigeon?

14 MR. FLYNN: Well, I don't want to -- I don't want
15 to confirm that -- that family part you threw in here, okay?
16 I don't -- I'm not going to confirm or deny that there's
17 family, quote/unquote, involved here. Because that -- that
18 may identify who the victim is. Okay? So I'm not -- I'm
19 not going to go down that path right there.

20 I'll just say that we believe that he thought or
21 knew that something was going on because the vic -- because
22 the victim's, let's call it orbit of area was not responding
23 to him. Leave it at that.

24 AUDIENCE MEMBER: Is it correct to say -- I think
25 in court the ADA said that the mother -- when the two guys

1 showed up, the mother called 911 and the Hamburg police
2 showed up. So is that -- could we say it happened in
3 Hamburg?

4 MR. FLYNN: I'm not going to confirm that. I mean,
5 my lawyer said that in court, but I'm not going to -- I'm
6 not going to confirm or deny that the victim lives in
7 Hamburg. Again, I don't -- I mean, if it was said in court,
8 you can, you know, quote my lawyer, obviously, but I'm not
9 -- I'm not going to quote it -- I'm not -- I'm not going to
10 quote that because, again, I just don't want to do anything
11 that, you know, where people can put two and two together
12 and whittle down and figure out who the victim is here.

13 AUDIENCE MEMBER: John, I know you said this wasn't
14 connected to other cases, but just because of the time, I'd
15 ask you to speak directly to -- you know, when this came out
16 yesterday, people said, oh, Steve Casey [sic] just, you
17 know, finished his -- got his sentence yesterday and then
18 this comes out.

19 MR. FLYNN: Yeah.

20 AUDIENCE MEMBER: These were not connected at all?

21 MR. FLYNN: No, not at all. I -- I didn't know
22 that until I read in the Buffalo News. Yeah, I didn't know
23 that he even got -- he even got sentenced yesterday. Yeah.
24 No. It's just coincidence. I mean it has -- it has, I'm
25 telling you, literally zero to do with anything that he's

1 facing down the street or, you know, in the AG's office.
2 That's totally -- that's totally separate. And obviously
3 it's -- like I said, it's much more serious.

4 (Inaudible-multiple speakers.)

5 AUDIENCE MEMBER: A lot of stuff crosses your desk,
6 and, you know, you try to keep it to the legality of it, and
7 that's your job.

8 But can you just characterize what -- what your
9 thought process is here when you heard about this case and
10 the details of it?

11 MR. FLYNN: Well, my thought process was, was that
12 I have an individual who was -- who allegedly committed one
13 of my top three crimes. Listen here, we all have our own
14 moral compass. My moral compass happens to be homicide,
15 rape, child sex acts. Those are my big three. And so when
16 it came across my desk that an individual allegedly
17 committed that with a child under the age of 11, it's -- it
18 registered as this is serious.

19 Listen here, obviously when I found out who the
20 alleged perpetrator was, you know, it's -- it's not Joe
21 Smith. We're all human, okay? It's not Joe Smith, you
22 know, it's -- it's allegedly Steve Pigeon, who obviously has
23 some name recognition in the community and has, you know,
24 like I said, various troubles of his own that's out there
25 and has a various history that's out there. He has a

1 history in the same circles that I used to travel in. You
2 know, I -- I don't really travel in those circles anymore
3 because, one, I didn't have a re-election last year; and,
4 two, I'm not running again three years from now. So I've
5 kind of distanced myself from those circles, quite frankly.
6 And so, you know -- but he did travel in those circles. And
7 so obviously that registered too.

8 And, you know, I can't just dismiss that, but at
9 the same time, that's not a factor and at the same time,
10 I'm -- I'm going to make sure that -- that this child gets
11 justice. And at the end of the day -- listen here, at the
12 end of the day what's -- what's going -- what's -- all these
13 cases come down to a child's going to say something, I
14 presume he is going to say something, it didn't happen, all
15 right? At the end of the day, it's a child's word versus
16 his word. And I believe the child. I'm standing with the
17 child. And I'm going to give the child justice.

18 AUDIENCE MEMBER: Well, I won't ask what it is
19 because I know you wouldn't tell me, but I do need to ask
20 you, do you have anything more than the word, an allegation
21 of a child?

22 MR. FLYNN: That -- I'm not going to talk about any
23 other evidence. But I have -- but I have her word, though.
24 I gave her word.

25 AUDIENCE MEMBER: Do you have anything more than

1 that? I'm not asking what you have ---

2 MR. FLYNN: Yeah. Yeah.

3 AUDIENCE MEMBER: --- but, I mean, you must to bring
4 a charge like this, no?

5 MR. FLYNN: True. Yeah. Yes.

6 AUDIENCE MEMBER: The people who allegedly went to
7 the house, do they possibly (inaudible)?

8 MR. FLYNN: That's something more right there.
9 That -- that -- that to me shows -- shows consciousness of
10 guilt.

11 AUDIENCE MEMBER: And those people who did that ---

12 MR. FLYNN: That's one example.

13 AUDIENCE MEMBER: But the two guys who allegedly
14 weren't Pigeon who allegedly did that, will they, you know,
15 face criminal liability?

16 MR. FLYNN: No. No. Nothing was --- nothing was
17 done for -- crossing the harassment level.

18 AUDIENCE MEMBER: Will you walk us through those
19 details? Again, I know it was -- it was quick in court, but
20 the details within the past couple of months that occurred,
21 the text messages --

22 MR. FLYNN: Yeah. I don't know the exact dates
23 when it happened, okay, but I can tell you that there
24 were -- that there were allegedly three separate things, for
25 lack of a better word, that happened. All right? There was

1 a text message from Mr. Pigeon to an individual in the orbit
2 of the victim saying that, allegedly, someone needs to
3 contact me, someone needs to reach out to me, what's going
4 on, something to that effect.

5 There was a time when he allegedly came to the home
6 of the victim.

7 And then there was a third time where allegedly two
8 of his friends, without him, came to the home of the victim,
9 presumably to just -- again, I'm going to -- I'm going to --
10 I'm not going to -- I don't want to make it -- make it like
11 they came there to intimidate anyone. I think it was more
12 of going there to say, hey, what's -- what's going on kind
13 of thing.

14 But, again, who I am to speculate?

15 AUDIENCE MEMBER: One of the two men who allegedly
16 did that was named in court. Do you know who the other guy
17 was?

18 MR. FLYNN: I don't -- I don't off the top of my
19 head, but my people probably do.

20 Anything else?

21 AUDIENCE MEMBER: Any other questions?

22 MR. FLYNN: Okay. Good to go.

23 AUDIENCE MEMBER: Thank you.

24 * * *

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CERTIFICATION

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I, Pamela J. Alexander, hereby certify that the above transcript was transcribed by me and is a true and accurate transcript of the video, to the best of my ability.

Dated: February 14, 2023



PAMELA J. ALEXANDER

EXHIBIT G

Hundreds of cases dropped as DA's Office struggles with discovery rules, workload

Sandra Tan
Dec 2, 2021 Updated Dec 2, 2021



Erie County District Attorney John J. Flynn says he's had to hire more staff to deal with the backlog of cases and new state discovery laws.
John Mickey/Newsfile photo

In any given year, about a quarter of the misdemeanor cases in Erie County are either dismissed by the District Attorney's Office or adjourned in contemplation

of dismissal, meaning the charges will be dropped if the arrested person stays out of trouble. These are typically low-level, nonviolent offenses like possession of small amounts of illegal drugs or criminal mischief. District Attorney John Flynn can live with that.

What he can't abide is what has happened in 2021, when he said his office dropped hundreds more misdemeanor cases than usual because a new state mandate and a Covid-related backlog that he said made it impossible for prosecutors to keep up.

"We were slammed," Flynn said.

That's why Flynn's office has become the fastest-growing county office since 2019 and why the Erie County Legislature is expected to approve even more full-time jobs for the office when it passes a 2022 budget Thursday.

The DA's Office has seen one of the biggest expansions of new jobs even after nine positions were temporarily left vacant last year to save the county money. Compared with 2020, the increase in District Attorney's Office positions is expected to grow by more than \$4 million — 26% — in additional pay and benefits by next year. Flynn noted the state has provided the county \$3.8 million to assist with discovery-related costs.

His office employs 95 assistant district attorneys, and with the additional budgeted positions, would grow to a team of 103 lawyers, plus additional support staff, Flynn said.

County officials have generally supported Flynn's staffing requests, sympathetic to the burden placed on his office by the state and concerned about criminal cases getting dumped because of a lack of resources to prosecute them.

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County officials have generally supported Flynn's staffing requests, sympathetic to the burden placed on his office by the state and concerned about criminal cases getting dropped because of a lack of resources to prosecute them.

Of the roughly 1,500 misdemeanor cases dismissed so far this year, roughly half were dropped because of new state discovery rules requiring all evidence to be handed over to defense lawyers more quickly. Court shutdowns due to Covid-19 also added to an unwieldy pile up of cases that had to be resolved.

Flynn has argued that compared with Westchester, Nassau and Suffolk counties, all of which have dozens more assistant district attorneys, his office is understaffed. All those counties are larger than Erie County, but they have similar-size caseloads.

But will all the additional full-time hires result in fewer criminal cases being dismissed next year?

"I don't know," Flynn said. "Hopefully, it will be less."

Impact of discovery rules

The new discovery laws require both prosecutors and defense attorneys to hand over relevant case evidence to the other side within 15 to 45 days. That burden typically falls on prosecutors, who can extend the discovery period to 90 days before jeopardizing a case because of a defendant's right to a speedy trial, Flynn said.

The law reforms the old system that said prosecutors could wait until the day of trial or jury selection to hand over case evidence, putting defense lawyers at a disadvantage. In many cases, Flynn said, cases resulted in plea deals without any meaningful exchange of evidence beforehand.

Kevin Stadelmaier, chief attorney of the Legal Aid's Criminal Defense Unit, recalled many times when he walked into court to argue over cases without any idea about the strength of the prosecution's evidence, resulting in plea deals that were worse for the defendant than they would have otherwise been had the defense been better informed.

At the start of the year, the Legal Aid Bureau of Buffalo moved to have many cases dismissed based on the new state discovery laws, Stadelmaier said.

In February and March, Flynn also agreed to have 777 misdemeanor cases dismissed, both because the cases would normally fit the DA's standards for dismissal and because the state's new evidence mandates made it impossible for his office to prosecute.

Flynn said that he believes discovery reform is a good thing overall. But both he and Stadelmaier agree that the burden and costs of meeting the new requirements – for both sides – has been high.

"Like everything else we do in this world, you go from one extreme – dumping on a lawyer at jury selection – to 15 days," Flynn said.

"There's no common sense middle ground. That's the problem."

Time-consuming work

The law outlines the many different types of evidence that must be handed over prior to a case moving forward. But of all the types of evidence, police body camera footage is the biggest burden, by far, Flynn said. Not only does his staff need to review hundreds of hours of footage, but they are also expected to edit videos to safeguard the identities of children, witnesses and confidential informants prior to sharing it.

"You can't imagine how time-consuming that is," Flynn said.

Two years ago, Flynn successfully argued for the addition of 16 full-time support staff in the 2020 budget, an abnormally high number. More than half of them were hired to process body camera footage and other discovery paperwork, he said.

Since last year, Flynn gained six assistant DAs, evenly divided between Buffalo City Court and suburban courts to handle misdemeanors.

The Legal Aid Bureau also had to add two full-time staffers to process the incoming flow of discovery materials and ensure that defense lawyers are provided all that's required by law. Public defenders then have an added burden of reviewing all new material provided for each case, when in the past, far less – if any – information might be provided.

"We never received that stuff in the past, and if we did get it, we had to work really hard to get it," Stadelmaier said.

Despite the costly and time-consuming burden to both Erie County and defense teams, both sides agree that those facing criminal penalties benefit from the new rules.

Prosecutors can no longer tell the court that they are prepared to proceed with a case unless they can legally attest that they have turned over all the evidence they are legally required to provide to the defense.

"It's an overwhelming positive to get the material that we're getting now, to know what we're dealing with up front," Stadelmaier said, "to have legitimate, intelligent conversations with our clients about what the district attorneys have, close to when the incident occurred."

Looking ahead to next year, Flynn said he's focusing on beefing up lawyers handling felony cases and trials.

While felony lawyers have a longer time frame to turn over discovery materials – up to six months, according to Flynn – the new rules still require evidence to be turned over to a defendant's legal representatives several days in advance of any trial or plea deal.

Flynn said his felony lawyers need more trial preparation time even though cases are down dramatically this year. Normally, the DA's Office would handle 8,000 felonies a year. For the first six months of this year, he said, the office received only 2,300 cases.

The county is still playing catch-up with trials from the last couple of years that were delayed due to Covid shutdowns, Flynn said.

"The homicides and sex crimes are going first, to get rid of that backlog," Flynn said. "And then we'll take care of the other stuff."



By Sandra Tan

Reporter

I use the Erie County government beat to find issues and stories that tell us something important about how we live. An alumna of the Columbia Journalism School and Buffalo News staff reporter since 2000, I can be reached at stan@buffnews.com

EXHIBIT H

Page 1

ERIE COUNTY DISTRICT ATTORNEY OFFICE STATEMENT



State of New York)
County of Erie)
CDV of Hamburg

Date: 05/19/22

Name: SANDRA SMITH Age/DOB: 09/12/62
Residence: 2095 Lakeview Rd Lakeview N.Y. 14085
Phone #: 716-627-5390
716-480-7446

This person being duly sworn, deposes and makes the following sworn statement:

~~THE DISTRICT ATTORNEY'S OFFICE IS INVESTIGATING AN INCIDENT INVOLVING~~

~~_____~~ CAN YOU TELL ME IN YOUR OWN WORDS IF ANY ACTUALLY CHANGES TO BEHAVIOR YOU OBSERVED WHILE _____ WAS OBSERVED AT _____

_____ started using inappropriate language with her friends in 'out' before/after school program. She was using the word penis and drawing pictures of them. She shared them with her friends. I talked with _____ many times about not using that language in our classroom. When it continued I then spoke to mom _____ about her inappropriateness. Mom said she probably learned it from her brother.

Parents of other children in _____ class started complaining that their children were coming home and telling them that _____ was using these words.

sd

After talking with [redacted] and her mom many times, she still continued.

I was left with no choice to let her go from the program.

Too many parents were upset.

She was asked to leave at the end of April 2017.

Do you recall when TAPS REHABILITATION SERVICES approximately this started in March 2017.

~~Handwritten mark~~

SL

[Large area of lined paper crossed out with diagonal lines]

SL

False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the New York State Penal Law.

Subscribed and sworn to before me
this 19 day of May, 2022

Sandra Smith
Signature
Sandra Smith
Name (Printed)

[Signature]
Commissioner of Deeds in and for
The City of Buffalo, New York
My commission expires on 12/31/22

[Signature]
Witness

EXHIBIT I

1

ERIE COUNTY DISTRICT ATTORNEY OFFICE STATEMENT



State of New York)
County of Erie)
C/DV of Domestic Violence

Name: Kathy Lipscomb Date: 05/19/22
Age/DOB: 06/29/56
Residence: 6509 Lakeshore Rd Lakewood N.Y 14085
Phone #: 716-328-6630

This person being duly sworn, deposes and makes the following sworn statement:

~~THE DISTRICT ATTORNEY'S OFFICE IS~~
~~INVESTIGATING AN INCIDENT INVOLVING~~
~~_____~~ Can you tell me in your
own words any noteworthy details of
~~_____~~ behavior while she was
attending Lakewood Children's World
During the fall of 2016 - spring of
2017 I did notice some behaviors
that were not age appropriate by
~~_____~~ She started to say
and do things were beyond her age -
I recall her saying some words she
the class in the better school room.
When I asked what she was doing
she began rocking back and forth
saying she had stamps because she
had her period. After speaking to her
about not being the time or place to
talk about that - I asked Mom -
she did not have her period. She
was also ~~_____~~ saying she would
be able to have a baby once she
had her period - she was at a young
age -
On another occasion I observed

KV

KV

[redacted] playing with the Barbie dolls. She had the box on top of the sink - naked. I asked her why she was doing that. She said nothing, should should I asked her to please play inside here, else.

I also ~~asked~~ observed her drawing a picture on the dry erase board - it was called to much attention by her teacher. It was obviously a porn. I asked her what she drew - like draw me a smile. I said its a smiling face - looked at me and drew eyes on it. She said another drawing home with another child - the parent talked to me about being upset and said [redacted] had explained in detail to her daughter about sex. Several other parents complained of the information (sexual) [redacted] was giving their children. I tried to talk with [redacted] and her Mom - things didn't improve. [redacted] continued to say I exhibit ~~sexual~~ ^{KV} sexual behaviors not appropriate for her age. Some of our parents were threatened to ^{with} ~~pull~~ ^{pull} children because of [redacted] exposing them to the ~~sexual~~ ^{KV} explicit sexual words. She was asked to leave the program.

KV

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KV

[Large area of horizontal lines, mostly crossed out with diagonal lines.]

KV

False statement made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the New York State Penal Law.

Subscribed and sworn to before me
this 19 day of May, 2022

Kathleen Vasile
Signature
Kathleen Vasile
Name (Printed)

Commissioner of Deeds in and for
The City of Buffalo, New York
My commission expires on 12/31/22

[Signature]
Witness

EXHIBIT J

U.S. attorney contributed to Byron Brown's campaign, may recuse herself from City Hall probe

Charlie Specht Dec 13, 2021 Updated Jan 23, 2022



Trini Ross, the new U.S. Attorney in the Western District of New York, in her office on Delaware Avenue in Buffalo on Nov. 29, 2021. Shazza Coaklin

Charlie Specht

New U.S. Attorney Trini E. Ross may recuse herself from one of the highest-profile federal investigations she inherited: the political corruption probe that included a 2019 raid of Buffalo City Hall.

When asked about political contributions she made years ago to Mayor Byron W. Brown and other Democrats, Ross said she would consider recusal at even the appearance of a conflict of interest.

"I don't want the public to be concerned that any political contributions I've given to any party or any particular individual will affect what I do here in this job," she told The Buffalo News in a recent interview. "The public confidence of what I do in this role is very important. The public will not have confidence in me in this role if I did not recuse myself or somehow undertake any appearance or actual appearance of impropriety."

Years before she became U.S. attorney, Ross contributed to the campaigns of Brown, who serves as chairman of the city agency whose offices were raided by federal agents. She's also given money to a handful of other Democrats over the last 14 years.

As is standard policy for federal prosecutors, she would not speak about nor even confirm the existence of the FBI probe.

When asked specifically about the City Hall probe — which has not resulted in any charges against Brown or members of his administration — she mapped out her philosophy on recusals.

"I'm saying generally, if there comes a point in time where I need to look at that, I understand my obligation to do so and that's what I'll do," she said.



New U.S. Attorney Tird Ross answers questions on political contributions she has made, and whether she would recuse herself from the federal investigation of Mayor Byron W. Brown's administration.
Sharon Gartin/Box

Ross was mentored by one of Buffalo's political icons: the late Common Council President George K. Arthur, who was Ross' uncle.

From 2007 to 2020, Ross contributed \$1,658 to five Erie County Democrats --including Brown -- as well as the Erie County Democratic Committee.

She gave \$500 to State Supreme Court Justice Amy C. Martoche; \$349 to Assemblywoman Monica Wallace, who is a former clerk at the federal courthouse in Buffalo; \$260 to Brown; \$250 to State Sen. Sean M. Ryan, who was an assemblyman at the time of the donations; \$174 to the Erie County Democratic Committee; and \$125 to the late James P. Keane, who was running for county executive at the time.

Ross' donations to Brown's campaign occurred between 2008 and 2013.

In a written statement, Brown said, "I'm not aware of contributions made, but I do know Ms. Ross is the first African American woman to hold the position of US Attorney in Western New York and that is what should be recognized and celebrated. Throughout her career Ms. Ross has demonstrated the highest professional ethics and integrity. We are fortunate to have a person with Ms. Ross' legal experience and character as the top federal prosecutor in the Western District."

Ross said she has contributed to candidates' campaigns because she supported their public policies.

"As a public citizen, I'm concerned about the government and who's governing," Ross said. "When you see the country going in a direction that maybe you don't agree with, and you have to do something, you do what you can."

Ross noted that as U.S. attorney, she is bound by the Hatch Act, which limits the political activities of federal employees.

The probe

The FBI investigation of Brown's administration appears to be aimed at uncovering public corruption.

In May 2017, agents raided the homes and offices of three political operatives in the Buffalo area, including political consultant G. Steven Pigeon and Brown's former deputy mayor, Steven M. Casey, who was intimately familiar with City Hall operations and the mayor's campaigns.

In June 2017, agents raided the home and office of Maurice Garner, a political confidant of Brown, and two political organizations closely associated with Garner and the mayor. A month later, agents showed up at City Hall with a court order and took thousands of pages of documents related to the Brown administration's dealings with seven companies that did business with the city.

The FBI in 2019 also began investigating the Community Action Organization, an anti-poverty nonprofit closely associated with City Hall.

That November, federal agents raided the City Hall offices of the Buffalo Urban Renewal Agency, though they have not charged anyone as a result of the raid.



Federal agents executing a search warrant receive evidence from Buffalo Urban Renewal Agency at Buffalo City Hall on Wednesday, Nov. 8, 2019. Mark Mahille

Before her confirmation as the first Black woman to serve as the chief federal prosecutor in Western New York, Ross told the Senate Judiciary Committee that she had never held a position or played a role in a political campaign.

When asked how she would handle potential conflicts of interest, she stated that she consulted with the Justice Department's ethics office to identify any potential conflicts.

In a questionnaire she submitted to senators, Ross also wrote that she entered into an ethics agreement with the department's designated ethics official.

"If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required," Ross wrote.

Other U.S. attorneys contributed

Ross isn't the first U.S. attorney in Western New York who made political contributions before taking the job.

Terrance P. Flynn contributed \$646 in contributions to political campaigns, mostly Republican, prior to his appointment as U.S. attorney in 2006.

William J. Hochul Jr., who served from 2009 to 2016, made no contributions prior to his appointment, state board of election records show. The only contribution he made as U.S. attorney was a \$50 contribution in 2014 to the campaign of his wife, Gov. Kathy Hochul, who was running for lieutenant governor at the time.

James P. Kennedy Jr. — Ross' immediate predecessor — did not make any political contributions, records show.



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