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COURT OF APPEALS

TIM ROSKE (3)

Attorneys **Allegra Glashausser**, left, and **Leila Hull**, urged the Court of Appeals Thursday to overturn a pre-arraignment interview program in Queens, while **Donna Aldea** argued the program should be preserved.

Skeptical Judges Grill Lawyer for Queens DA About Pre-Arraignment Interviews of Suspects

BY JOEL STASHENKO
ALBANY

MEMBERS of the state's highest court expressed doubts in an oral argument Thursday about the Queens District Attorney's Office practice of offering suspects a last chance to volunteer information on crimes before being arraigned.

Judges of the Court of Appeals conveyed reservations about the pre-arraignment interview program, ranging from whether a scripted statement read to suspects urging them to speak made Miranda warnings inadequate or confused suspects about the role of the prosecution.

The procedure in Queens, involving more than 15,000 cases since 2007, involves prosecutors telling suspects that if they have information, "you have to tell us" and that their statements will be investigated. The prosecutor is usually accompanied by police in the interviews.

"[Defendants' attorneys'] claim that there are statements in the preamble that are generously categorized as misleading, perhaps not-so-generously categorized as false," Judge Jenny Rivera said to attorney Donna Aldea, who defended the procedures Thursday. "What's your response to that?"

"None of them are misleading and none of them are false," Aldea said.

Judge Robert Smith suggested that "surely" prosecutors were attempting in the interviews to get suspects to waive their Miranda rights. Chief Judge Jonathan Lippman wondered why the scripted statements did not "dilute" the Miranda rights later given to suspects.

"Because, significantly, [suspects] don't speak at all until after they are clearly apprised of their rights," Aldea replied.

Judge Eugene Pigott Jr. questioned whether the interviewing process, which he referred to as a "dog-and-pony show with the court standing by next door" waiting to arraign suspects, reflected a failure of police to properly investigate cases before suspects headed to court.

"They're screwing up," Pigott said. "Somebody in the D.A.'s office says, 'We don't think the police did a good-enough investigation here,' and 'In our own office, we don't think we've done a good-enough investigation here. We're about to arraign somebody on a case that we could be flat-out wrong about. Not only do we think about it in this case, we think about it in every single case we have. That's how bad we are.'"

Aldea countered that the pre-arraignment interviews were introduced in response to the prosecution's desire to avoid wrongful convictions and to get as much information as possible about cases before arraigning suspects.

"I wouldn't characterize it as, 'You people are so bad, it's a failing,'" she said. "I would prefer to characterize it as, 'We're so careful.'"

Aldea said the Queens program has resulted in 132 suspects providing information that exonerated them. She urged the judges to consider the "totality" of the circumstances surrounding the pre-arraignment statements that defendants, in the three cases before the court, had given to prosecutors. And she argued that under that test, all three suspects were properly given their Miranda rights and understood them.

Aldea, a partner with Barket, Marion, Epstein & Kearon of Garden City, is a former assistant district attorney who represented the D.A. in the Appellate Division, Second Department, and is continuing on a pro bono basis.

The thrust of the questioning for Allegra Glashausser and Leila Hull—the two Appellate Advocates attorneys who argued against the pre-arraignment interviews—was over the wider effect

» Page 5

Interviews

« Continued from page 1

that invalidating the three convictions could have on others that were secured by statements made through the program.

Do you have any idea if we rule your way, how many more of these that we're going to get?" Smith asked.

"As far as I know, not many," Glashausser responded. "We haven't seen any more."

Hull later said that the majority of the convictions in the 15,000 cases were final, with many involving guilty pleas in which suspects agreed not to appeal.

"You are not going to have a flood," Hull assured the judges.

Asked by Lippman to say precisely what is objectionable about the preamble that is read to suspects, Glashausser said, "It's telling the defendant that, 'It's good for you to talk. That you'd better talk now and if you don't, you're not going to be able to.' That's presenting a real cost to the person for exercising their rights."

Rivera asked Glashausser whether a 1984 decision by the U.S. Court of Appeals for the Second Circuit (*United States v. Foley*, 735 F.2d 45) in which the court criticized a pre-arraignment interview program then conducted by the U.S. Attorney's Office for the Southern District was germane to the Queens' program.

Glashausser said the Queens interviews are "worse" because the one-time program in the Southern District did not entail the "misleading script" that she said is being used in Queens.

The court heard about 50 minutes of arguments Thursday in the three cases, *People v. Dunbar*, 169; *People v. Lloyd-Douglas*, 170, and *People v. Polhill*, 171.

Prosecutors are appealing an Appellate Division, Second Department, finding that the interviews undermined suspects' rights against self-incrimination and that defendants' statements must be suppressed (NYLJ, Jan. 21, 2013).

The New York Civil Liberties Union and the American Civil Liberties Union, the Legal Aid Society of New York City all filed amicus curiae briefs urging the Court of Appeals to uphold the Appellate Division's ruling (NYLJ, Sept. 17).

The court is expected to rule next month.

@ Joel Stashenko can be reached at jstashenko@alm.com. Twitter: @JoelStashenko