



Sandy Judge Knows the Law

May 10, 2007

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When Jill Konviser, the state judge who is hearing the Michael J. Sandy homicide case, rules on how the Brooklyn district attorney is using the state hate crimes law against the three defendants, she will not just be deciding a point of law. Konviser will be ruling on a statute that she helped enact when she worked for Governor George E. Pataki.

"She was the person that was the main contact for the coalition groups and the advocacy groups that were dealing with governor's office," said Howie Katz, the former leader of the Hate Crimes Bill Coalition, a group of roughly 100 organizations and elected officials that sought to pass the law beginning in 1990.

The Brooklyn district attorney has charged John Fox, Anthony Fortunato, and Ilya Shurov, each 20 years old, with second-degree murder, attempted robbery in the first degree, manslaughter, and assault, all as hate crimes.

The district attorney is alleging that when the three selected Sandy, a gay African American, thinking a gay man would be easier to rob, the crime fell within the definition of the hate crime law. No evidence suggests that the three acted out of anti-gay bias when they attempted to rob Sandy on October 8 at the Plumb Beach rest stop. Trying to escape, Sandy fled onto the Belt Parkway where he was struck by a car. He died five days later at age 29.

Defense attorneys charge that the prosecutor is misusing the statute and improperly exposing their clients to the increased minimum sentences under the law. They are also concerned that the hate crime label will prejudice the jury should the case go to trial. Konviser scheduled oral arguments on the issue for May 30. She will certainly know the law well.

"She was part of the governor's counsel team that we would negotiate with on both the substance and the politics of the bill," said Matt Foreman, executive director of the National Gay and Lesbian Task Force. "I can't imagine who would know the language and the bill's intent better than she would."

Foreman headed the Empire State Pride Agenda, New York's statewide gay lobbying group, during two periods from 1997 to 2003 and lobbied elected officials on the bill until it passed in 2000.

Konviser served as Pataki's senior assistant counsel on criminal justice issues for roughly five years ending in 2002. Pataki appointed her to the state Court of Claims in 2005 and the State Commission on Judicial Conduct in 2006.

Foreman estimated he met with Konviser 10 times on the bill and Katz said his contacts with her were "a minimum of a few times each year and then other conversations on the phone."

There were two versions of the bill, one written by Assembly Democrats and the other by the Pataki administration. The governor's version was enacted and the language was drafted in 1996 before Konviser joined the Pataki administration, Katz said.

Katz and Foreman said Konviser never expressed an opinion about the bill, but, as a political appointee, she was an effective proponent of Pataki's views.

"I have no idea what her personal feelings were," Foreman said. "Since she worked for the governor she was an advocate of the governor's bill. We felt, the Pride Agenda felt, that it was a better bill than the Assembly bill."

Monroe H. Freedman, a professor at Hofstra University's School of Law and an expert on judicial ethics, said Konviser could rule on the law.

"We cannot and would not want to put people on the bench whose background is a blank," he said. "We want people who have experience that will be relevant to their work as a judge."

Freedman said the "rules relating to judicial disqualification are purposely drafted broadly" and while some might question Konviser's impartiality, she did not write the legislation.

"It would not be appropriate to say that she was the creator, the originator, of this legislation," he said.

As Pataki's counsel, she was advocating his position and not necessarily her own. Had she drafted the law, she might have to recuse herself.

"The line has to be drawn, however, where the judge is passing on the very validity of legislation that he or she was instrumental in developing, drafting, and in getting passed," Freedman said. "The judge should not be in the position of passing on the validity of her own work product."

Responding through her law clerk, Konviser declined to comment as did the Brooklyn district attorney and defense attorneys.