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Hynes's Choice of Words Elicits Talk of Violation

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Defense lawyers are criticizing the Brooklyn district attorney, Charles Hynes, saying that the prosecutor may have violated court rules on pretrial publicity by referring to men accused of killing Officer Russel Timoshenko as "scum" and one of them as a "mutt."

"If these scum are convicted, I hope, I really hope, they rot, rot in jail," Mr. Hynes told the New York Post's Steve Dunleavy in an interview published yesterday. The interview followed a news conference in which Mr. Hynes announced new charges against three men accused of roles in the shooting of the uniformed officer earlier this month.

Mr. Dunleavy's column describes the three defendants as "cockroaches" and "lice." But prosecutors rarely use such pejoratives when publicly speaking of defendants.

During the long windup to trial, prosecutors generally choose their descriptions carefully, in order to avoid accusations they are trying to prejudice the members of the public who may serve as jury. At news conferences, prosecutors generally refer to a defendant by a last name, or simply as "the defendant."

"I was surprised that District Attorney Hynes was as intemperate as he was quoted as being," the president of the New York State Association of Criminal Defense Lawyers, Daniel Arshack, said. "Nobody knows better than District Attorney Hynes the prohibition that lawyers operate under about referring to the character or credibility of someone accused of a crime."

Prosecutors and defense attorneys are barred from making statements that are likely to be publicized and "will have a substantial likelihood of materially prejudicing" a trial, according to the state's lawyer's Code of Professional Responsibility. That prohibition includes statements about "the character, credibility, reputation or criminal record" of a defendant.

The lawyer for the man police say fired the two bullets that killed Timoshenko said he might seek a gag order against Mr. Hynes.

"Poisoning the jury pool, by engaging in hyperbole to make the defendants appear less than a human being, prevents them from getting fair treatment under the law," Edward Wilford, who represents defendant Dexter Bostic, said. "We may have to ask that the district attorney and his office be ordered to cease and desist from engaging in these types of tactics."

An attorney for another of the defendants said he was not concerned by Mr. Hynes's comments and hadn't seen them in the morning's paper, having stopped reading after the first paragraph of Mr. Dunleavy's column.

"Coming out of Hynes — he often uses colorful language," the attorney, Patrick Megaro, who represents Lee Woods, said yesterday.

Through a spokesman, Mr. Hynes declined an interview, but did issue a statement offering a more sober description of the defendants.

"He says that he is looking forward to prosecuting these gentlemen," the spokesman, Jerry Schmetterer, said.

Mr. Schmetterer confirmed the accuracy of the quotes in the Post column. He said he disagreed with the assessment of some that Mr. Hynes's statements violated the lawyer's Code of Professional Responsibility.

Lawyers say that it is unlikely that the comments would prompt defense attorneys to tell a judge that they need a change of venue in order to ensure a fair trial from an unprejudiced jury.

"I think our prospects are better in Brooklyn than in Albany," Mr. Megaro said.

The family of the slain officer and the Patrolmen's Benevolent Association have asked Mr. Hynes to hand the case over to U.S. attorney's office in Brooklyn to allow for prosecutors to seek the death penalty. Those pressures may have prompted Mr. Hynes's insults, Mr. Wilford, the defense attorney, said.

"There are a whole lot of political agendas at stake here, and I know Mr. Hynes wants to keep jurisdiction, while the P.B.A. wants it to go to federal court," Mr. Wilford said. "So he may be attempting to appease that constituency."

The nature of the crime— the murder of a police officer—might also be responsible for Mr. Hynes's decision to stray from a prosecutor's standard script.

"It's a very extreme statement," a New York defense attorney who is unconnected to the case, Edward Hayes, said. "But it's a very extreme case."

