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'You're Insulting Me': Lawyer and Judge Spar Under Public Gaze in High-Profile Case

"There are no higher litigation stakes anywhere in America than the state's invoking the machinery of death as punishment for crime," said H. Scott Fingerhut, a judicial ethics expert at Florida International University College of Law.

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Legal Ethics and Attorney Discipline



Michael A. Mora

What You Need to Know

- Broward Public Defender Melisa McNeill intended to call 80 witnesses but abruptly ended the trial on Wednesday after calling only 25 witnesses.
- Apparently surprised, Broward Circuit Judge Elizabeth Scherer engaged in a heated exchange with McNeill, the attorney for Florida school shooter Nikolas Cruz.
- While one ethics expert expressed shock at the outburst, a second said the decision by the public defender not to put on any further testimony is a judgment call trial lawyers make regularly.

A heated exchange between a Broward County public defender for Florida school shooter Nikolas Cruz and the presiding trial judge, who accused the attorney of a lack of professionalism, left at least one legal ethics expert "stunned" by their response to the pressure of the high-profile case.

Melisa McNeill, the chief assistant public defender in the major crimes division, told prosecutors and Broward Circuit Judge Elizabeth Scherer that she intended to call 80 witnesses for Cruz, who faces the death penalty.

However, McNeill rested Cruz's case on Wednesday after calling only 25 witnesses.

"We're not playing chess," Scherer said to McNeill moments after the judge stopped the 12 jurors and 10 alternates from entering the courtroom. "I just want to say this is the most uncalled for, unprofessional way to try the case."

Scherer said the surprise decision to rest the case wasted the jury's time and the court's, since the prosecution did not prepare to provide a rebuttal for an additional 11 days.

When McNeill said she had been "practicing in this county for 22 years," the judge replied that she did not want to hear it.

"Well, judge, you're insulting me on the record in front of my client, and I believe that I should be able to defend myself," McNeill said.

"You can do that later. You can make your record later, but you've been insulting me the entire trial," Scherer said. "Blatantly taking your headphones off, arguing with me, storming out, coming late intentionally if you don't like my rulings. So quite frankly, this has been long overdue."

'And so this friction ...'

Brian Tannebaum, counsel at Bast Amron and a past president of the Florida Association of Criminal Defense Lawyers, said among the reasons he was stunned was that in a typical trial, a judge would confer with lawyers regarding their scheduling. That would include which witnesses they intend to have on the stand.

"That clearly didn't happen here," said Tannebaum, who is not involved in the matter. "And anytime you have a trial, you will have heated exchanges, but this exchange went beyond the norm. The lawyer must consider that the judge has serious issues with her. The entire scene sets up various issues for appeal. The lawyer didn't officially say, 'Judge, I object to your comments,' but she kind of did."

Procedurally, a death sentence is automatically appealed to the Florida Supreme Court. It would require jury members to unanimously recommend a death sentence, and for the trial judge to follow the recommendation.

In the meantime, McNeill has 20 days to potentially move to recuse the judge.

Former Florida Gov. [Rick Scott](#) appointed [Scherer](#) to the state court bench in 2012, with then about a decade of experience as an attorney. She has presided over the Parkland School shooting case since 2018.

McNeill has highlighted Cruz's mother's heavy use of alcohol during her pregnancy, and the implications on Cruz's brain development, as mitigating factors in Cruz's murder of 17 students and staff at Marjory Stoneman Douglas High School in Parkland, Florida. She argued that Cruz, who has pleaded guilty, deserved a life prison term because of his physical, mental and emotional instability.

Ethics expert Andrew Scott Berman, a partner at Young, Berman, Karpf & Karpf in Miami who is not involved with the case, said there was simmering animosity between judge and lawyer throughout the trial. But the defense lawyer's decision to put on no further testimony is the type of judgment call that trial lawyers make daily.

"Trying cases is an art, not a science," Berman said. "Sometimes, after sleeping on it, a lawyer can wake up and decide she has put on enough testimony. We may never know whether the timing here was coincidental or deliberate."

H. Scott Fingerhut, a judicial ethics expert at Florida International University College of Law, said, "There are no higher litigation stakes anywhere in America than the state's invoking the machinery of death as punishment for crime." As a result, the balancing act to keep a death penalty case on course is not an easy task for a judge, while as liberty's last champion, the defense counsel's ultimate fidelity is to the client, he suggested.

"And so this friction—between lawyer as zealous advocate, officer of the court, and seeker to improve their profession and accord fuller cups of justice—will continue to play out, as it did in Broward," Fingerhut added. "Sometimes roughly, as it shall be: as long as there are disputes to resolve and human beings to resolve them."

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