


[Sign In](#)


Try our [Advanced Search](#) for more refined results





- [Search Law360](#)
- [Search News Only](#)
- [Search Cases Only](#)
- [Search PTAB Only](#)
- [Search TTAB Only](#)
- [Advanced Search](#)

[Sign In](#)
[Close](#)

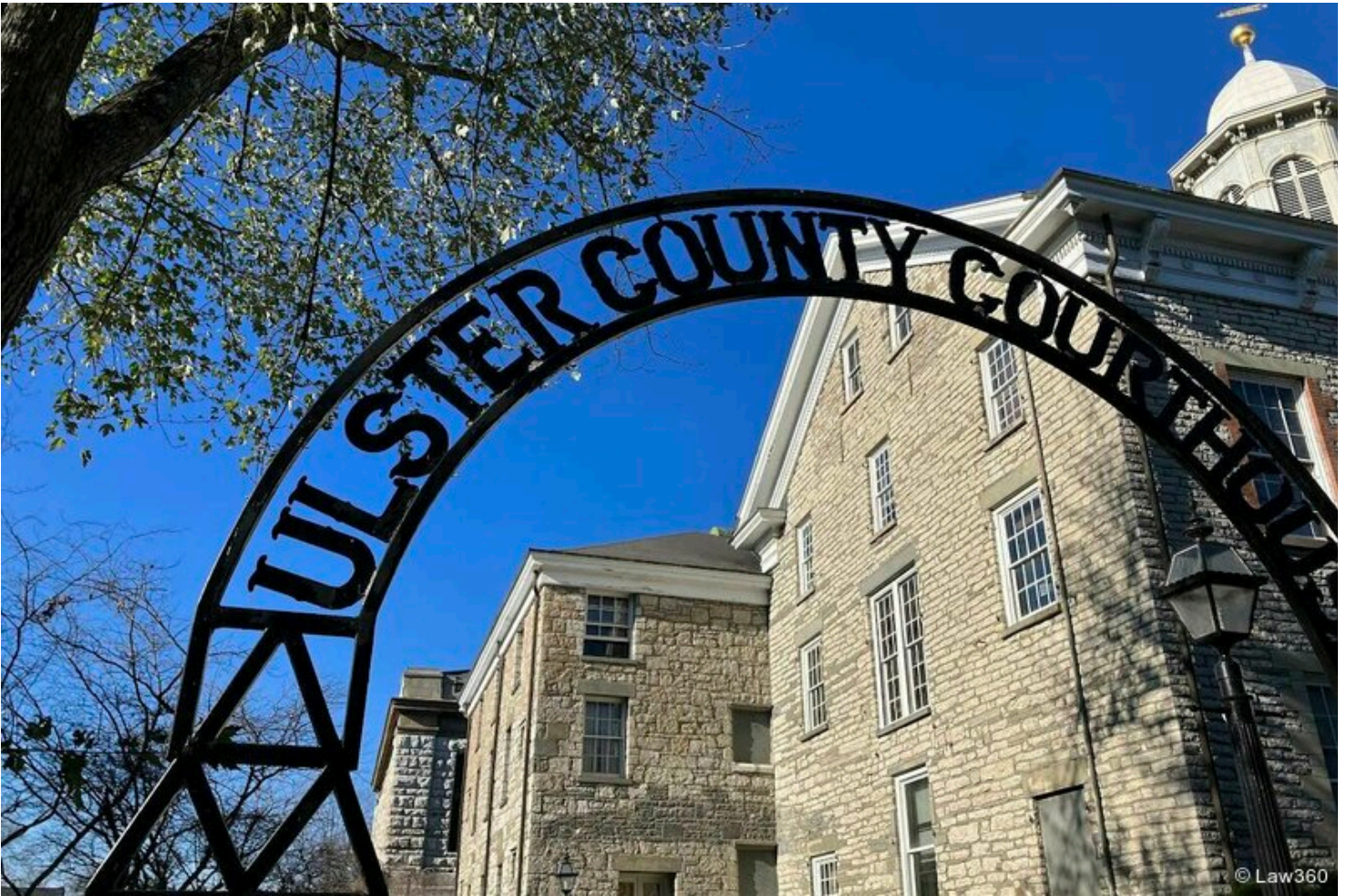
- Law360
- [Law360 UK](#)
- [Law360 Pulse](#)
- [Law360 Employment Authority](#)
- [Law360 Tax Authority](#)
- [Law360 Insurance Authority](#)
- [Law360 Real Estate Authority](#)
- [Law360 Healthcare Authority](#)
- [Law360 Bankruptcy Authority](#)
- Products
- [Lexis®](#)
- [Law360 In-Depth](#)
- [Law360 Podcasts](#)
- Rankings
- [Leaderboard Analytics](#)
- [Regional Powerhouses](#)
- [Law360's MVPs](#)
- [Women in Law Report](#)
- [Law360 400](#)
- [Diversity Snapshot](#)
- [Practice Groups of the Year](#)
- [Rising Stars](#)
- [Titans of the Plaintiffs Bar](#)
- Sections
- [Adv. Search & Platform Tools](#)
- [About all sections](#)
- [Browse all sections](#)
- [Banking](#)
- [Bankruptcy](#)
- [Class Action](#)
- [Competition](#)

- [Employment](#)
- [Energy](#)
- [Expert Analysis](#)
- [Insurance](#)
- [Intellectual Property](#)
- [Product Liability](#)
- [Securities](#)
  
- Beta Tools
- [Track docs](#)
- [Track attorneys](#)
- [Track judges](#)
  
- Site Menu
- [Join the Law360 team](#)
- [Search legal jobs](#)
- [Learn more about Law360](#)
- [Read testimonials](#)
- [Contact Law360](#)
- [Sign up for our newsletters](#)
- [Law360 Company](#)
- [About Law360 Authority](#)
- [Resource Library](#)
- [Site Map](#)
- [Help](#)

[Intellectual Property](#) [Securities](#) [Bankruptcy](#) [Competition](#) [Employment](#) [White Collar](#) [Legal Industry](#) [Access To Justice](#)  
[Law360 UK](#) [Pulse](#) || [See all sections](#) || [TAKE A FREE TRIAL](#)

# Atty's Secret Courtroom Meeting May Upend NY Murder Case

By **Marco Poggio** | October 13, 2023, 7:02 PM EDT · [Listen to article](#)



The Ulster County Courthouse in Kingston, New York, where a clandestine meeting between a local defense attorney and a court clerk is now casting doubt on the outcome of a trial that ended in a manslaughter conviction earlier this year. (Emma Whitford | Law360)

In February, weeks before Gregory Thayer went to trial in New York on charges that he killed a childhood friend in 2021, a clerk for Judge Bryan Rounds huddled with the defendant's local lawyer in an empty Ulster County courtroom to deliver a warning.

In that conversation, the law clerk, William Ghee, hinted to the attorney, Andrew Kossover, that Judge Rounds was unimpressed by the defense's theory that a combination of heavy drinking and Xanax had caused Thayer to black out, mistake his friend for a burglar, and shoot him to death.

The meeting, which Kossover said he kept secret from Thayer's lead attorney, Robert C. Gottlieb, at Ghee's request, was a turning point in the criminal case against Thayer, and it's one that is now embroiling Judge Rounds, Ghee and Kossover in an ethical quandary that could result in Thayer's manslaughter conviction being tossed.

When Kossover eventually came clean about the meeting after Thayer was convicted at a bench trial in May, Thayer and Gottlieb tapped Manhattan-based civil rights attorney Joel B. Rudin, who filed a motion in Ulster County Court in July seeking a new trial.

"This is a very serious violation of fundamental professional ethics covering lawyers as well as judges," Gottlieb told Law360 in a recent interview. "This is not an academic exercise, because the result of the disgraceful conduct that we have included in our motion had a terrible, unjustified impact on my client's right to a fair trial and to receive justice."

Rudin argued in his motion that Thayer had opted to waive his constitutional right to a jury trial without knowing that Judge Rounds had already negatively prejudged his defense before trial.

"Gregory Thayer's conviction resulted from a deprivation of some of the most fundamental constitutional protections governing the structure of a fair criminal trial," Rudin says in the motion. "Gregory was deprived of his constitutional right to an impartial tribunal and factfinder or, at the very least, the appearance of such impartiality."

In the motion, supported by an affirmation by Bruce A. Green, a well-known legal ethics scholar, Rudin argued that the communication with Kossover was "improper conduct." He also argued that Kossover provided ineffective counsel by violating his ethical duty to disclose the meeting to his client and co-counsel.

After Judge Rounds recused himself from deciding the motion, acting Albany County Supreme Court Justice Roger D. McDonough on Sept. 15 denied the defense's bid to set aside the verdict, but declined to take action on a separate request to vacate a judgment in the case, which can only occur after a sentence is imposed. Thayer is slated to be sentenced on Oct. 25.

Even as he, for now, rebuffed the motion, Justice McDonough acknowledged what he said was the "seriousness of the ethical and constitutional allegations" raised by Rudin.

In a statement included in the prosecution's reply to the motion in August, Ghee confirmed that the meeting took place. He pressed back, however, on claims that he'd been dispatched by Judge Rounds to speak with Kossover, and that he demanded Kossover keep their meeting a secret.

In a supplemental statement, Kossover, who is no longer part of Thayer's defense team, doubled down, saying the clerk made clear their discussion was to be kept confidential.

This is a very serious violation of fundamental professional ethics covering lawyers as well as judges.





Robert C. Gottlieb

[Robert C. Gottlieb & Associates](#)

"If you tell anyone about this conversation, I will deny that it ever happened," Kossover recalled Ghee saying.

Kossover, a representative from Judge Rounds' chambers, and a New York State court spokesperson all declined to comment when contacted by Law360.

If a court ultimately finds Rudin's arguments compelling, Judge Rounds, Kossover and Ghee all could end up serving as witnesses at a potential evidentiary hearing on the meeting.

Section 100.3(B)(6) of the New York Code of Judicial Conduct prohibits judges, in most cases, from initiating, allowing or considering "ex parte" communications or other forms of communications concerning a proceeding when parties or their lawyers are not present.

Meanwhile, Section 100.3(E)(1) of the same code says "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

Green, who directs the Louis Stein Center for Law and Ethics at [Fordham University School](#) of Law, said in his affirmation that both Judge Rounds and Ghee violated the New York Code of Judicial Conduct. He said Ghee's ex-parte chat with Kossover was "impermissible" under the law, and that that exchange of information warranted Judge Rounds' recusal from the case because it showed he had a bias.

"If it occurred as described, the law clerk's secret communication plainly violated the applicable rule of judicial conduct," Green said. "Even assuming that Ghee acted unilaterally, independently of Judge Ghee's knowledge or direction, his conduct and statements could (and, here, would) reasonably call Judge Rounds' impartiality into question."

Thayer was convicted for killing childhood friend Bruce Swierc with a single gunshot to the head from a close distance on the night of Sept. 28, 2021. According to court records, he later called his sister to tell her he had killed an intruder.

At the scene, cops found Swierc's corpse slumped in a chair in front of the kitchen table. Near the body was a half-drunk bottle of vodka and lines of white powder, later identified by police as Xanax, two of which looked faint as if they had been snorted. Empty beer bottles were scattered around.

"I just wanna know who the hell was in my house, and what happened," Thayer said during an interrogation. An officer told him he had killed "your best friend, Bruce."

Only circumstantial evidence tied Thayer to the Xanax powder. Police never tested his blood for drugs and alcohol despite having a warrant. The autopsy of Swierc, on the other hand, found evidence of alcohol but no drugs.

As Thayer went on to defend himself against murder charges over Swierc's death, a psychiatrist testified that mixing Xanax and alcohol had caused a "psychotic break" — a period of temporary insanity in which Thayer killed his friend and later failed to understand what he had done.

Prosecutors, meanwhile, argued that Thayer killed his friend in cold blood without elaborating on a motive.

During their secret chat in February, a month after Gottlieb informed Judge Rounds that he planned to waive Thayer's right to a jury trial, Ghee tried to persuade Kossover to change strategy. The clerk suggested in subtle terms that Thayer should opt for a defense focused on extreme emotional disturbance, which has a different legal standard. He also hinted to Kossover that Thayer's best chance for an acquittal would be to have a jury hear the case, according to the motion.

Ignorant of that information, however, Gottlieb pushed ahead with his original plan. In May, after deliberating for two days in his chambers, Judge Rounds acquitted Thayer of murder, but convicted him of manslaughter and criminal possession of a weapon based on extreme emotional disturbance, a theory that maintains responsibility for a crime.

The judge or the law clerk should not have been initiating a substantive conversation with the defense counsel, and defense counsel shouldn't have had such a conversation. Period.



Ronald C. Minkoff

### [Frankfurt Kurnit](#)

After hearing about Kossover's meeting with Ghee in the wake of the verdict, Gottlieb said he was galled.

"Anger does not come close to expressing how I feel about what happened here," he told Law360. "I have never been witness to such gross violations of ethics."

Kossover, a respected criminal defense attorney who has also served as the president of the New York State Association of Criminal Defense Lawyers, said in an affirmation accompanying the motion that he understood the impropriety of Ghee's alleged request to keep their "off the record" conversation a secret. He also appeared to take responsibility for his role in the incident.

"All this made me very uncomfortable," he said. "I should have set aside my wish to maintain the confidence uncomfortably imposed upon me by Mr. Ghee, and immediately informed Gregory Thayer and Mr. Gottlieb of the issues raised by Mr. Ghee."

But the ethical muddle thickened with a conflict of interest involving Ghee, according to the motion.

In addition to allegedly requesting secrecy from Kossover, Ghee also failed to disclose that, over the first eight months of Thayer's criminal case, he was a prosecutor at the district attorney's office that was pursuing the charges, and he worked with the prosecutor assigned to the case, the motion said.

"If I had known that the judge's law clerk had had an improper private conversation with my lawyer, or been aware of the contents of that conversation, or known of Mr. Ghee's former role at the district attorney's office, I would have been strongly inclined not to agree to a bench trial before Judge Rounds," Thayer said in his own statement included as part of the motion to vacate his conviction.

Other legal ethics experts expressed concern about the allegations at the heart of the case.

Stephen Gillers, a prominent legal ethics scholar at [New York University School of Law](#), told Law360 in an email that, assuming the allegations were true, "the backdoor and secret communication was improper." He also said Kossover should have disclosed it so that Gottlieb could take appropriate action to protect his client, including by seeking a jury and moving to have Judge Rounds recuse himself from the case.

"Rounds should not have privately telegraphed his views on a potential defense to Kossover. Seeking to conceal the contact from Gottlieb was also improper," said Gillers, who noted he has been a friend of Rudin's for decades. "Having secretly expressed his views on a potential defense and doing so in the way he did, Rounds was disqualified from presiding at a trial, especially as he was the trier of fact, and should have recused himself."

But Richard M. Maltz, an attorney at Frankfurt Kurnit Klein & Selz PC and New York legal ethics expert who served for 12 years in the Supreme Court, Appellate Division's disciplinary committee that investigates allegations against attorneys in Manhattan and the Bronx, said that although the ex parte communication violated the rules of conduct, it is not clear that Judge Rounds has prejudged the case to the point of deciding the matter with finality before Thayer's trial.

The judge's intention might have been more nuanced than that, he said. For example, Ghee might have simply wanted to motivate counsel to initiate plea negotiations or compel the defendant to request a jury trial.

"I understand that there was discussion about the Judge Rounds prejudging the case by the comments of the law secretary," Maltz said. "But I do not believe that the judge's intent was definitively established by the evidence from the motion practice."

Rule 1.4 of the New York Rules of Professional Conduct says that an attorney should "reasonably consult with the client about the means by which the client's objectives are to be accomplished." That ethical duty derives from a lawyer's fiduciary duty to communicate information about a case that the client needs to make an informed decision.

Ronald C. Minkoff, a partner at Frankfurt Kurnit Klein & Selz PC and a leading New York practitioner in lawyer ethics and professional responsibility, said that if Kossover knew something about the judge's thought process that could have influenced Thayer's decision whether to waive the right to a jury, Kossover was bound to share that information with him and Gottlieb.

"The judge or the law clerk should not have been initiating a substantive conversation with the defense counsel, and defense counsel shouldn't have had such a conversation. Period. And if he had such a conversation, he had a duty to report it to his client," Minkoff told Law360. "Is there a potential for somebody getting into trouble if all these allegations prove out? Yes, that potential



exists."

--Editing by Alyssa Miller.

*Have a story idea for Access to Justice? Reach us at [accesstojustice@law360.com](mailto:accesstojustice@law360.com).*

**Hello! I'm Law360's automated support bot.**

How can I help you today?

For example, you can type:

- I forgot my password
- I took a free trial but didn't get a verification email
- How do I sign up for a newsletter?

Ask a question!

Ask a question!

© 2025, Portfolio Media, Inc.

© 2025, Portfolio Media, Inc. | [About](#) | [Contact Us](#) | [Advertise with Law360](#) | [Careers at Law360](#) | [Terms](#) | [Privacy Policy](#) | [Cookie Settings](#) | [Processing Notice](#) | [Ad Choices](#) | [Help](#) | [Site Map](#) | [Resource Library](#) | [Law360 Company](#) | [Testimonials](#)

×

Already have access? [Click here to login](#)

**Get instant access to the one-stop news source for business lawyers**

[Register Now!](#)

**Sign up now for free access to this content**

Email (NOTE: Free email domains not supported)

First Name

Last Name

Job Title

Password (at least 8 characters required)

Confirm Password

Select at least one primary interest:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Access To Justice   | <input type="checkbox"/> Aerospace & Defense | <input type="checkbox"/> Appellate               |
| <input type="checkbox"/> Banking             | <input type="checkbox"/> Bankruptcy          | <input type="checkbox"/> Benefits                |
| <input type="checkbox"/> California          | <input type="checkbox"/> Cannabis            | <input type="checkbox"/> Capital Markets         |
| <input type="checkbox"/> Class Action        | <input type="checkbox"/> Colorado            | <input type="checkbox"/> Commercial Contracts    |
| <input type="checkbox"/> Competition         | <input type="checkbox"/> Compliance          | <input type="checkbox"/> Connecticut             |
| <input type="checkbox"/> Consumer Protection | <input type="checkbox"/> Corporate           | <input type="checkbox"/> Cybersecurity & Privacy |

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Delaware            | <input type="checkbox"/> Employment                            | <input type="checkbox"/> Energy                    |
| <input type="checkbox"/> Environmental       | <input type="checkbox"/> Fintech                               | <input type="checkbox"/> Florida                   |
| <input type="checkbox"/> Food & Beverage     | <input type="checkbox"/> Georgia                               | <input type="checkbox"/> Government Contracts      |
| <input type="checkbox"/> Health              | <input type="checkbox"/> Illinois                              | <input type="checkbox"/> Immigration               |
| <input type="checkbox"/> Insurance           | <input type="checkbox"/> Intellectual Property                 | <input type="checkbox"/> International Arbitration |
| <input type="checkbox"/> International Trade | <input type="checkbox"/> Legal Ethics                          | <input type="checkbox"/> Life Sciences             |
| <input type="checkbox"/> Massachusetts       | <input type="checkbox"/> Media & Entertainment                 | <input type="checkbox"/> Mergers & Acquisitions    |
| <input type="checkbox"/> Michigan            | <input type="checkbox"/> Native American                       | <input type="checkbox"/> New Jersey                |
| <input type="checkbox"/> New York            | <input type="checkbox"/> North Carolina                        | <input type="checkbox"/> Ohio                      |
| <input type="checkbox"/> Pennsylvania        | <input type="checkbox"/> Personal Injury & Medical Malpractice | <input type="checkbox"/> Private Equity            |
| <input type="checkbox"/> Public Policy       | <input type="checkbox"/> Securities                            | <input type="checkbox"/> Product Liability         |
| <input type="checkbox"/> Technology          | <input type="checkbox"/> Telecommunications                    | <input type="checkbox"/> Sports & Betting          |
| <input type="checkbox"/> Transportation      | <input type="checkbox"/> Trials                                | <input type="checkbox"/> Texas                     |
| <input type="checkbox"/> White Collar        |  | <input type="checkbox"/> Washington                |

Law360 may contact you in your professional capacity with information about our other products, services and events that we believe may be of interest.

You'll be able to update your communication preferences via the unsubscribe link provided within our communications.

We take your privacy seriously. Please see our [Privacy Policy](#).

[Register](#)



## Sign up for our Access to Justice newsletter

### You must correct or enter the following before you can sign up:

Please provide a professional email:

[Select more newsletters to receive for free](#)

Law360 takes your privacy seriously. Please see our [Privacy Policy](#).

[Sign up now](#)

**Thank You!**