

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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July 1, 2016

TO: The 62 District Attorneys of the 62 Counties of New York State

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: "How Many D.A.s Does It Take to Confront Evidence & Abide by Ethical Rules?"

Next week the District Attorneys Association of the State of New York (DAASNY) will be holding its annual meeting. The current round of district attorney salary increases resulting from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation must be on its agenda – and the enclosed June 29, 2016 letter to DAASNY President Rockland County District Attorney Thomas Zugibe – already sent to President-Elect Oneida County District Attorney Scott McNamara – explains why.

All district attorneys are indicted recipients of the letter. However, to those who are beneficiaries of the current round of salary increases arising from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and of the prior round of salary increases arising from the August 29, 2011 report of the Commission on Judicial Compensation – the letter (at p. 3) expressly gives notice that "those two reports are each false instruments, violating a succession of penal law provisions". And it states:

...it is the duty of each district attorney, upon verifying the facts and evidence...to apprise his/her county attorney, county legislative board, and county executive officer, that he/she is disavowing the salary increases arising from those reports, and to advise them to secure a judicial declaration to void the reports... For any district attorney to do otherwise and claim, let alone even accept, the salary increases, in face of prima facie proof that they are fraudulent and lawless, would make him/her complicit in the very penal law violations that are his/her duty to prosecute." (at p. 4, underlining in the original).

The letter identifies that the documentary evidence establishing the penal law violations is all posted and accessible from CJA's website, www.judgewatch.org. As further stated:

"should ANY of the district attorney beneficiaries of the August 29, 2011 and December 24, 2015 reports believe that [the identified documentary evidence] is NOT dispositive of the duty they owe to the counties that elected them to repudiate the salary increases and to take steps to secure the voiding of the reports, they must come forward with their findings of fact and conclusions of law with respect to that evidence." (at p. 4, capitalization and underlining in the original).

Thank you.



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June 29, 2016

TO: District Attorneys Association of the State of New York (DAASNY)
ATT: President Thomas Zugibe, Rockland County District Attorney

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: **CONFRONTING THE EVIDENCE: District Attorney Salaries – & Accountability Including for the Establishment of a Commission on Prosecutorial Conduct**

- (1) Where is your response, as DAASNY's president, to CJA's June 10, 2016 e-mail?
- (2) Putting CJA's June 10, 2016 e-mail on the agenda of DAASNY's annual meeting – and giving notice to DAASNY's 62 district attorney members of their duty with respect thereto;
- (3) Request for DAASNY's intervention in CJA's citizen-taxpayer action *CJA v. Cuomo, et al.* (Albany Co. #1788-2014) to void judicial salary increases that are fraudulent, statutorily-violative, and unconstitutional;
- (4) Assisting DAASNY's incoming first vice president, Albany County District Attorney P. David Soares, in doing his duty with respect to CJA's July 19, 2013 corruption complaint, January 7, 2014 (first) supplement, and June 21, 2016 second supplement – beginning with responding to CJA's June 21, 2016 letter to him;
- (5) Request that DAASNY file an ethics complaint against D.A. Soares with the Appellate Division, Third Department Committee on Professional Standards for his violation of conflict-of-interest rules and other misconduct with respect to CJA's corruption complaints.

I have yet to receive a response from you, as president of the District Attorneys Association of the State of New York (DAASNY), to the Center for Judicial Accountability's June 10, 2016 e-mail entitled "What are your positions? – beginning with repeal of the statutory link between D.A. and judicial salaries". A copy is enclosed.

The straightforward questions the e-mail asked fell into three categories, stated, as follows:

"Firstly, do you favor repeal of the statutory link set forth in Judiciary Law 183-a, retroactive to April 1, 2016?..."

Secondly, do you agree that the Commission [on Legislative, Judicial and Executive Compensation]’s December 24, 2015 report is a ‘grand larceny of the public fisc’, being statutorily-violative, fraudulent, and unconstitutional for the multitude of reasons particularized by CJA’s March 23, 2016 verified second supplemental complaint in our citizen-taxpayer action [CJA v. Cuomo, et al (Albany Co. #1788-2014)] – and that it must be so-declared by any fair and impartial tribunal?...

Thirdly, would you support legislative oversight hearings with respect to the above – and with respect to whether the 62 state district attorneys are, in fact, ‘fulfilling the state constitutional and statutory duties related to enforcement of the State Penal Law’?...” (underlining in the original).

Have you responded to these three categories of questions? If not, why not? Is there an explanation other than your financial interest in district attorney salary increases for yourself and fellow district attorneys and your political, professional, and personal interests in concealing how you and they willfully fail and refuse to enforce the penal law when doing so requires that criminal charges be brought against corrupt public officials with whom you have political and personal relationships?

As a public officer – and president of the DAASNY – your duty is to acknowledge your conflicts of interest and rise above them. Yet, it appears that you are no more willing to do so now than you were three years ago, when you were one of ten district attorney members of the Commission to Investigate Public Corruption to whom I presented an open-and-shut, fully-documented July 19, 2013 corruption complaint that your fellow Commission member, Albany County District Attorney P. David Soares, was “sitting on” – and that you and the Commission allowed him to “sit on” – because it was against New York’s highest constitutional officers – including Governor Cuomo and Attorney General Schneiderman, who had established the Commission – and pertained to the judicial salary increases to which district attorney salary increases are tied.¹

¹ The facts pertaining to CJA’s July 19, 2013 corruption complaint – and the conflicts of interest of D.A. Soares and the Commission with respect thereto – are particularized by CJA’s April 23, 2014 proposed verified complaint to intervene in the Legislature’s declaratory judgment action against the Commission (*Senate v. Rice*, New York County #160941-2013), setting forth the media-suppressed true story of the Commission to Investigate Public Corruption – & how it operated.

Suffice to here note that the Commission’s ten district attorney members each had salary increases of nearly \$40,000 a year at stake. These ten were: (1) yourself; (2) D.A. Soares; (3) Commission Co-Chair Onondaga County D.A. William Fitzpatrick, who made no disclosure that his wife was a judge who also had nearly \$40,000 a year at stake – and that, to remain on the bench, she was additionally dependent on reappointment by the Governor; (4) Commission Co-Chair (then) Nassau County D.A. Kathleen Rice; (5) (then) Bronx D.A. Robert Johnson, who made no disclosure that his wife was a judge, also having nearly \$40,000 a year at stake, nor that he had his own judicial ambitions (which he would achieve by his election to the bench in November 2015); (6) (then) Franklin County D.A. Derek Champagne, who made no disclosure that he had judicial ambitions (which he would achieve by his election to the bench in November 2014); (7) (then) Erie County D.A. Frank Sedita III, who made no disclosure that he had judicial ambitions (which he would achieve by his election to the bench in November 2015); (8) Warren County D.A. Kathleen Hogan; (9)

Certainly, you cannot now acknowledge the statutory violations, fraud, and unconstitutionality of the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report – on which the current round of salary increases for full-time district attorneys rest – without exposing the largely identical statutory violations, fraud, and unconstitutionality of the Commission on Judicial Compensation's August 29, 2011 report that were the subject of our July 19, 2013 corruption complaint — and on which the prior round of district attorney salary increases rest.

Only a week remains of your term as DAASNY's president. Unless you are planning to respond to CJA's June 10, 2016 e-mail before then, it must be provided to your successor, Oneida County District Attorney Scott McNamara, for response. In the event you have not already done this, I do so now by forwarding this letter to him, with a request that it be added to the agenda of DAASNY's annual meeting. Indeed, because the questions posed by CJA's June 10, 2016 e-mail directly impact all 62 of New York's district attorneys – all of whose participation is required for expeditious and complete responses to its questions – I am also forwarding this letter to them so that each may additionally ensure that it is included on the agenda of DAASNY's annual meeting and responsibly addressed.

To the full-time district attorneys² whose salary increases, since 2012, derive from the August 29, 2011 report of the Commission on Judicial Compensation and from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, this letter additionally serves as notice that those two reports are each false instruments, violating a succession of penal law provisions, as, for instance:

Penal Law §175.35 (“offering a false instrument for filing in the first degree”);
Penal Law §155.42 (“grand larceny in the first degree”);
Penal Law §190.65 (“scheme to defraud in the first degree”);
Penal Law §195.20 (“defrauding the government”);
Penal Law §195 (“official misconduct”);
Penal Law §105.15 (“conspiracy in the second degree”);
Penal Law §20.00 (“criminal liability for conduct of another”); and
Penal Law §496 (“corrupting the government”) – part of the “Public Trust Act”.

Essex County D.A. Kristy Sprague; and (10) (then) Broome County D.A. Gerald Mollen.

² It appears that only one county in New York State has a part-time district attorney. It is Hamilton County, whose population, 4,787, makes it the least populous in the state. Pursuant to Judiciary Law §183-a, and County Law §700.8, there is no statutory link between district attorney salaries and judicial salaries for counties with populations of less than 40,000, irrespective of whether those counties have designated their district attorneys full time or part time, excepting Essex County (38,971). The other counties in New York State with populations under 40,000, which appear to have designated their district attorneys as full time, notwithstanding they are not entitled to district attorney salary reimbursement from the state (County Law §700.10, §700.11), are: Schuyler (18,518), Yates (25,256), Lewis County (27,222); Schoharie County (32,087); and Seneca County (35,436).

As such, it is the duty of each district attorney, upon verifying the facts and evidence substantiating the June 10, 2016 e-mail, to apprise his/her county attorney, county legislative board, and county executive officer, that he/she is disavowing the salary increases arising from those reports, and to advise them to secure a judicial declaration to void the reports, including by filing an *amicus curiae* brief in CJA's pending citizen-taxpayer action for such declaration, *CJA v. Cuomo, et al.* (Albany Co. #1788-2014). For any district attorneys to do otherwise and claim, let alone even accept, the salary increases, in face of *prima facie* proof that they are fraudulent and lawless, would make him/her complicit in the very penal law violations that are his/her duty to prosecute.

As you know – because you should have done it already – verifying that the reports and salary increases are fraudulent and unlawful is simple because CJA has done the “heavy lifting”:

- The fraudulence and unlawfulness of the August 29, 2011 report of the Commission on Judicial Compensation is established, with fact and law, by CJA's October 27, 2011 Opposition Report – and by CJA's March 30, 2012 verified complaint in our declaratory judgment action based thereon, *CJA v. Cuomo, et al.* (Bronx Co. #302951-2012, transferred to New York County and there stalled);
- The fraudulence and unlawfulness of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation is established, with fact and law, by CJA's March 23, 2016 verified second supplemental complaint in our citizen-taxpayer action, *CJA v. Cuomo, et al.*, and, in particular, by its thirteenth, fourteenth, and fifteenth causes of action (¶¶385-452).

For the convenience of all, the links to the foregoing documentary evidence are posted on the webpage I have created for this letter on CJA's website, www.judgewatch.org. It is accessible *via* the prominent homepage link: “NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS – The Money Belongs to their Victims!”, which brings up a menu page with a link entitled “HOW MANY D.A.s DOES IT TAKE TO CONFRONT EVIDENCE & ABIDE BY ETHICAL RULES?”

Needless to say, should ANY of the district attorney beneficiaries of the August 29, 2011 and December 24, 2015 reports believe that CJA's aforesaid documentary evidence is NOT dispositive of the duty they owe to the counties that elected them to repudiate the salary increases and to take steps to secure the voiding of the reports, they must come forward with their findings of fact and conclusions of law with respect to that evidence.

Based upon that evidence – and the reinforcing record of the *CJA v. Cuomo, et al* citizen-taxpayer action, also readily available to you from CJA's webpage for this letter – CJA additionally requests that DAASNY intervene in the citizen-taxpayer action so as to preserve the integrity of the judicial process and secure the judicial declarations the record compels. Indeed, the two-year-old record

could not be more unequivocal in what it shows:

- (1) defendants, represented by Attorney General Schneiderman, himself a defendant, have had no legitimate defense;
- (2) defendant Attorney General Schneiderman, at every juncture, has corrupted the judicial process with litigation fraud because he has had no legitimate defense;
- (3) Albany Supreme Court, has aided and abetted defendants by failing to address the evidence of their litigation fraud which plaintiffs' responding papers have laid out before it; and
- (4) the posture of the case, since its commencement on March 28, 2014, is one of summary judgment for the plaintiffs.

Finally, questions are in order regarding your April 19, 2016 letters to legislative leaders and Governor Cuomo, requesting that the state pick up the tab for the increases in district attorney salaries resulting from the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report. The letters, co-signed by the president of New York State Association of Counties, William Cherry, stated:

“DAs are entitled to the fair and just compensation pursuant to law for fulfilling the state constitutional and statutory duties related to the enforcement of the State Penal Law”.³

Isn't the “pursuant to law” to which you are referring Judiciary Law §183-a, tying district attorney salaries with judicial salaries and whose constitutionality the Court of Appeals upheld on the premise that district attorney enforcement of the penal law is a “State interest” justifying state take-over of the counties' setting the salaries of their own district attorneys? (*Kelly v. McGee*, 57 NY2d 522 (1982)).

As you know, the district attorney-filled Commission to Investigate Public Corruption, acting out of pure self-interest, did not examine whether district attorneys are enforcing the penal law with respect to public corruption matters. This, in face of the testimony of ordinary citizens at the Commission's September 17, 2013 public hearing that corruption complaints they had filed with district attorneys had gone nowhere.⁴ Indeed, to no avail, I supplied the Commission with a ready-made list of

³ This is repeated, with only slight variation, in the model “Resolution Calling on the State of New York to Fully Reimburse Counties For District Attorney Salary Increases Set by the State”, which DAASNY and/or NYSAC furnished the counties to adopt.

⁴ The testimony of these ordinary citizens and its significance is recounted at ¶¶59, 66, 92-93, 123, 126 of CJA's April 23, 2014 proposed verified complaint to intervene in the Legislature's declaratory judgment action against the Commission, as well as at ¶¶48-52, 65 of my April 23, 2014 affidavit in support of intervention.

“questions that an unconflicted Commission to Investigate Public Corruption would be requiring of all 62 of this state’s district attorneys” to answer – beginning with its own member D.A. Soares and CJA’s July 19, 2013 corruption complaint. Those questions are as applicable today as 2-1/2 years ago – and a copy of CJA’s November 13, 2013 letter to D.A. Soares in which they were set forth is enclosed so that each of this state’s 62 district attorneys may have the opportunity to voluntarily answer them.⁵

At DAASNY’s annual meeting, D.A. Soares will become DAASNY’s first vice president – in line to become its president a year from now. Yet, he continues to “sit on” CJA’s July 19, 2013 corruption complaint and the January 7, 2014 supplement to it. For that reason – and because he is currently running unopposed for re-election as Albany County D.A. – I wrote him a June 21, 2016 letter, requesting a status update. Simultaneously, I filed with him a second supplemental corruption complaint to the July 19, 2013 corruption complaint – one resting on the *CJA v. Cuomo, et al.* citizen-taxpayer action and containing a request for his intervention therein. A copy is enclosed. Although requesting his response by June 24, 2016, I have received none.

Can DAASNY rise above its own conflicts of interest to assist D.A. Soares in addressing his conflicts of interest with respect to CJA’s June 21, 2016 second supplemental corruption complaint – and CJA’s July 19, 2013 corruption complaint and January 7, 2014 (first) supplement? Does DAASNY agree that D.A. Soares should be requesting the appointment of a special prosecutor for them – and for purposes of intervention in the *CJA v. Cuomo, et al.* citizen-taxpayer action?

There is currently no commission on prosecutorial conduct – the subject of the Senate and Assembly’s June 8, 2016 “public forum”, at which DAASNY presented testimony by President-Elect D.A. McNamara, D.A. Soares, Bronx County D.A. Darcel Clark, and by Queens County Assistant D.A. Robert Masters, who stated that you had asked him “to substitute” for you. Does DAASNY agree that the Appellate Division, Third Department Committee on Professional Standards is the proper body for an ethics complaint to be filed against D.A. Soares for his willful violation of conflict-of-interest rules with respect to CJA’s corruption complaints? Does DAASNY deny that the documentary evidence underlying CJA’s corruption complaints establishes, *prima facie*, “grand larceny of the public fisc and other corrupt acts” by New York’s highest public officers – such that a district attorney has NO “discretion” as to whether to enforce their multitudinous violations of the penal law?⁶

⁵ CJA’s November 13, 2013 letter to D.A. Soares was entitled “What are Your Procedures for Handling Public Corruption Complaints? – & Other Questions that an Unconflicted Commission to Investigate Public Corruption Would Ask”. So important is the letter that CJA’s April 23, 2014 proposed verified complaint in the Legislature’s declaratory judgment against the Commission quoted it, virtually in full, at its ¶87 – annexing it as its Exhibit P. Similarly, it was quoted, virtually in full, at ¶63 of my April 23, 2014 affidavit in support of intervention and discussed at ¶64.

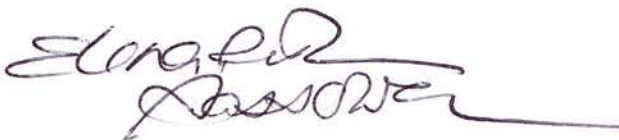
⁶ According to President-Elect D.A. McNamara, in his June 8, 2016 testimony:

Inasmuch as President-Elect McNamara expressed confidence in the attorney grievance committees and testified that DAASNY, through you, had sent a letter requesting a grievance committee investigation of the St. Lawrence County district attorney, consistent with its obligation under ethical rules to report misconduct,⁷ CJA requests that DAASNY abide by those same ethics rules to report D.A. Soares' misconduct – and to file an ethics complaint against him with the Committee on Professional Standards.

As U.S. Attorney for the Southern District of New York Preet Bharara has publicly railed against “enablers” – his euphemism for conspirators and accomplices who should be criminally prosecuted as such – a copy of this letter will be sent to him and to U.S. Attorney for the Northern District of New York Richard Hartunian, who has criminal prosecutorial jurisdiction in Albany County.

So that we and the U.S. Attorneys may be guided accordingly, as likewise voters deciding on this year's re-election of such district attorney incumbents as D.A. Soares, please respond expeditiously – and no later than by July 15, 2016.

Thank you.



“...the last grievance that was filed against me was filed against me because I refused to prosecute somebody. And I only say that to you because my main problem with the commission you are trying to create is this: this commission is going to have a chilling effect upon prosecutors doing their job.

The most difficult thing that we do that causes people to really have problems with us and come after us is when we refuse to prosecute something when they feel that they are wrong. And the number one tool in the criminal justice system to prevent wrongful convictions is prosecutorial discretion. Because when we look at a case and we say, I don't think the person is guilty, I don't think the evidence supports prosecuting this person, and then you end up with a grievance like the last one I had because I wouldn't do that...” (at 31:45 mins., underlining added).

⁷ The testimony and colloquy of President-Elect McNamara at the Legislature's June 8, 2016 “public forum” are at 29:50 mins. – 42 mins., 2:30 hours – 2:37 hours; of D.A. Soares are at 55:30 mins. – 1:09 hours; of D.A. Clark are at 1:23 hours – 1:39 hours; and of Assistant D.A. Robert Masters are at 2:01 hours – 2:13 hours. (see also 2:41 hours – 2:44 hours).

The Legislature's June 8, 2016 “public forum” – in essence a public hearing – reinforces testimony of ordinary citizens at the September 17, 2013 public hearing of the Commission to Investigate Public Corruption (fn 4, *supra*); testimony of ordinary citizens at the June 8, 2009 and September 24, 2009 public hearings of the Senate Judiciary Committee on the court-controlled attorney disciplinary system and the Commission on Judicial Conduct; and testimony of ordinary citizens at the July 28, 2015, August 4, 2015, and August 11, 2015 public hearings of the Judiciary's Commission on Statewide Attorney Discipline – identifying the nonfeasance and misfeasance of attorney disciplinary committees, the Attorney General, as well as other public officers and agencies (*inter alia*, the Commission on Judicial Conduct) with respect to complaints they had filed. Links to the videos and transcripts of these public hearings are posted on CJA's webpage for this letter.

Enclosures: (1) CJA's June 10, 2016 e-mail to DAASNY & NYSAC
(2) CJA's November 13, 2013 letter to Albany County District Attorney Soares
(3) CJA's June 21, 2016 letter/complaint to Albany County District Attorney Soares

cc: Albany District Attorney P. David Soares & New York State's 60 other district attorneys
New York State Association of Counties (NYSAC)
County attorneys, legislative boards, & executive officers of the 62 counties
Participants at the New York State Senate and Assembly's June 8, 2016 "public forum"
New York State Senate and Assembly "leadership"
Chairs and ranking members of the Senate and Assembly committees and joint commissions
with oversight jurisdiction over New York's 62 district attorneys – & Judiciary Law §183-a:
Senate Judiciary Committee
Senate Codes Committee
Senate Committee on Investigations and Government Operations
Senate Committee on Local Government
Assembly Judiciary Committee
Assembly Codes Committee
Assembly Committee on Governmental Operations
Assembly Committee on Oversight, Analysis, and Investigation
Assembly Committee on Local Governments
Legislative Commission on Government Administration
Legislative Commission on State-Local Relations
New York State Law Revision Commission
U.S. Attorney for the Southern District of New York Preet Bharara
U.S. Attorney for the Eastern District of New York Richard Hartunian