

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
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E-Mail: mail@judgewatch.org
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BY E-MAIL

May 18, 2018

TO: Interim New York Attorney General Candidates
Thomas J. Abinanti; Daniel O'Donnell; Elizabeth Holtzman;
Leecia Roberta Eve; Lloyd Constantine; Doris Ling-Cohan;
Michael D. Diederich, Jr.; Nicole Gueron; Thomas E. Humbach;
Mina Quinto Malik; Jennifer P. Stergion; Alex Zapesochny

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

RE: Testing the Fitness of Acting Attorney General Barbara Underwood –
& Every Other Candidate for Interim Attorney General

At the Legislature's May 15-16 hearings on your applications to be New York's interim attorney general, no one questioned the fitness of Acting Attorney General Barbara Underwood to serve as interim attorney general.

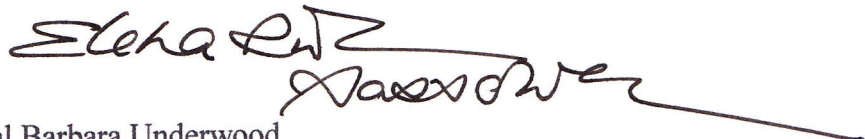
Is she fit? The enclosed May 16th letter to Acting Attorney General Underwood is, explicitly, a TEST of her fitness – as **no candidate may be deemed qualified who takes no investigative and remedial action upon being given NOTICE AND EVIDENTIARY PROOF that the attorney general's office not only fails in its duty to uphold the law, but actively subverts the law and abets corruption at the highest levels of our state government.**

Do you disagree?

And what would your response be, if you were appointed interim attorney general and the same EVIDENCE-BASED NOTICE were addressed to you? It is to allow you to be comparably TESTED that the letter states, in its final paragraph, that it would be furnished to each of you, so that each of you could identify what your response would be, if appointed. This is your opportunity to demonstrate that you are worthy of the public trust – and that you are a leader.

The whistle-blower gets the prize: the gratitude of the People of the State of New York for transforming the political landscape and wiping out Albany's "culture of corruption" with a speed matching Attorney General Schneiderman's resignation.

Thank you.



Enclosure

cc: Acting Attorney General Barbara Underwood
The Legislature
The Press

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BY E-MAIL & EXPRESS MAIL

May 16, 2018

TO: Acting Attorney General Barbara D. Underwood

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

RE: NOTICE: Corruption and Litigation Fraud by Former Attorney General Eric Schneiderman and his Office – and Your Duty to Take Investigative and Remedial Action, most immediately, in the Citizen-Taxpayer Action *Center for Judicial Accountability, et al. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16; RJI #01-16-122174) and pursuant to “The Public Trust Act” (Penal Law §496: “Corrupting the government”)

At yesterday’s hearing before the Legislature, at which you were the first candidate interviewed for appointment as interim attorney general to fill the vacancy resulting from Attorney General Schneiderman’s resignation on “allegations...unrelated to [his] professional conduct or the operations of the office”¹, you appeared to be unaware of any corruption problems within the attorney general’s office in which you have been solicitor general since 2007.

Are you, in fact, unaware?

This is to give you NOTICE that there is a mountain of open-and-shut, prima facie EVIDENCE of Attorney General Schneiderman’s corruption in office and by his office, aiding and abetting systemic corruption in all three branches of our state government, involving Governor Cuomo, Comptroller DiNapoli, the Legislature, Chief Judge DiFiore – and their massive, ongoing larceny of taxpayer dollars, via the state budget. This includes the hundreds of millions of dollars of fraudulent and larcenous expenditures in the Governor’s Legislative/Judiciary budget bill for fiscal year 2018-2019, about which I testified before the Legislature at its January 30, 2018 and February 5, 2018 budget hearings and at a February 2, 2018 forum on the state budget, held by Westchester’s Assembly delegation – all retained by the Governor and Legislature in the unamended Legislative/Judiciary budget bill, enacted two months later.

¹ Attorney General Schneiderman’s May 7, 2018 letter of resignation, three hours after publication by New Yorker Magazine of allegations by four women of his abusive conduct in their relationships and social encounters with him.

As you are acting attorney general, this is now your duty to investigate and rectify, including pursuant to Executive Law §63.1, State Finance Law §123 *et seq.*, Rules 5.1 and 8.3 of New York's Rules of Professional Conduct – and Penal Law §496: “The Public Trust Act”.

Executive Law §63 specifies the attorney general's “General duties”. Its paragraph 1 requires that the attorney general “Prosecute and defend all actions and proceedings in which the state is interested”, with his litigation posture contingent upon the “interests of the state”. State Finance Law §123 *et seq.*, entitled “Citizen-Taxpayer Actions”, contemplates, in four separate paragraphs, the attorney general's role in preventing “illegal or unconstitutional disbursement of state funds”. Rule 5.1 of New York's Code of Professional Conduct specifies “Responsibilities of Law Firms, Managers and Supervisory Lawyers”. Rule 8.3 pertains to the duty of “Reporting Misconduct”. Penal Law §496, entitled “Corrupting the government”, is “The Public Trust Act” that, on March 28, 2014, the “three men in a room” popped into the fiscal year 2014-2015 budget – giving Governor Cuomo the pretense to shut down the Commission to Investigate Public Corruption, whose constitutionality was being challenged in a declaratory judgment action by, *inter alia*, the other two “men in the room”.

The attorney general's duty – first and foremost – is to ensure compliance by state public officers with the state constitution and with statutory and rule provisions in conformity therewith. Yet, Attorney General Schneiderman and his office jettisoned all such compliance with respect to commission-based judicial and district attorney salary increases, the Judiciary budget, the Legislative budget, the Executive budget – enabling and perpetuating the most flagrant corruption and larceny of taxpayer monies, including NOW, in this fiscal year.

The EVIDENCE of this is easy to verify. Apart from my fact-specific, EVIDENCE-supported January 30, 2018, February 2, 2018, and February 5, 2018 testimony before legislators pertaining to this fiscal year, it is laid out in four MAJOR lawsuits, each of which, pursuant to Executive Law §63.1, it was Attorney General Schneiderman's duty to prosecute because there was NO legitimate defense, but which, as to each, he defended with litigation fraud, because he had NO legitimate defense.

Three of the lawsuits were brought by our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), each, expressly, on behalf of the People of the State of New York and the public interest – and each naming Attorney General Schneiderman as a defendant, suing him for corrupting his office:

- (1) A declaratory judgment action, *CJA v. Cuomo, ...Schneiderman, et. al.*, commenced in Supreme Court/Bronx County (#302951-2012) and transferred to Supreme Court/New York County (#401988-2012) – with a March 30, 2012 verified complaint challenging, *as written and as applied*, Chapter 567 of the Laws of 2010, establishing a Commission on Judicial Compensation;

- (2) A citizen-taxpayer action, *CJA v. Cuomo, ...Schneiderman, et al*, commenced in Supreme Court/Albany County (#1788-2014), by a March 28, 2014 verified complaint, incorporating CJA's declaratory judgment action and challenging, *as written and applied*, the Legislative and Judiciary budgets for fiscal year 2014-2015 and the Governor's combined Legislative/Judiciary budget bill; thereafter expanded to fiscal year 2015-2016 by a March 31, 2015 verified supplemental complaint; and then to fiscal year 2016-2017 by a March 23, 2016 verified second supplemental complaint, also challenging, *as written and as applied*, Chapter 60, Part E, of the Laws of 2015, establishing a Commission on Legislative, Judicial and Executive Compensation, and additionally challenging the constitutionality of the whole of the Executive budget, including the Legislature's behind-closed-doors party conferences, substituting for open committee deliberations and votes, its one-house budget resolutions, and the culminating "three men in a room" budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker, also behind-closed-doors, and including their amending and addition of budget bills;
- (3) A citizen-taxpayer action, *CJA v. Cuomo, ...Schneiderman, et al*, commenced in Supreme Court/Albany County (#5122-2016) by a September 2, 2016 verified complaint, addressed to fiscal year 2016-2017, whose first nine causes of action rested on and incorporated the March 23, 2016 verified second supplemental complaint in the first citizen-taxpayer action, with a tenth cause of action added, challenging the constitutionality and lawfulness of the district attorney salary reimbursement item in the Governor's Aid to Localities budget bill for fiscal year 2016-2017; with all ten causes of action then reiterated and expanded by a March 29, 2017 verified supplemental complaint to embrace fiscal year 2017-2018.

The fourth lawsuit, a declaratory judgment action purportedly brought by the Legislature against the Commission to Investigate Public Corruption, in Supreme Court/New York County (#160941-2013), challenging the constitutionality of Governor Cuomo's Executive Order #106, establishing the Commission to Investigate Public Corruption, was defended by Attorney General Schneiderman – and, as to it, CJA moved by an April 23, 2014 order to show cause and verified complaint to intervene, also expressly on behalf of the People of the State of New York and the public interest.

Original litigation records are, of course, in the possession of your office. They are also accessible from CJA's website, www.judgewatch.org, which posts the litigation records of all four cases.

As I stated in testifying on September 17, 2013 before the Commission to Investigate Public Corruption and, most recently, on January 30, 2018, when I testified before the Legislature at its "public protection" budget hearing: "Cases are perfect paper trails..." The litigation records of all four lawsuits are just that and establish precisely what happened in each case, revealing the same pattern of attorney general misconduct, covered up by judges who:

- (1) concealed, without adjudication, or denied, without findings, the threshold issue of Attorney General Schneiderman's duty to have determined the "interests of the

state”, pursuant to Executive Law §63.1, and our requested entitlement to his representation and/or intervention based thereon;

- (2) concealed, without adjudication, or denied, without findings, the conflict of interest issues mandating Attorney General Schneiderman’s disqualification as a defendant, representing himself and his co-defendants – Governor Cuomo, Comptroller DiNapoli, the Legislators, the Chief Judge;
- (3) concealed, without adjudication, or denied, without findings, our fact-specific, law-supported motions for sanctions, costs, and criminal and disciplinary referrals against Attorney General Schneiderman and his culpable staff for their litigation fraud; and;
- (4) “threw” the cases by fraudulent judicial decisions, falsifying the factual record and misrepresenting applicable law to deny us relief to which we were entitled, *as a matter of law*, including summary judgment on our causes of action.

Of the four lawsuits, only CJA’s second citizen-taxpayer action is yet unfolding. That case, encompassing and incorporating the records of the three prior suits, is the subject of a January 10, 2018 notice of appeal to the Appellate Division, Third Department, which we filed from a November 28, 2017 decision and judgment in the case.

There is, however, no need to burden CJA with the expense and effort of perfecting the appeal – as the November 28, 2017 decision and judgment and the prior decisions on which it rests are:

“criminal acts, each flagrantly falsifying the factual record and obliterating fundamental black-letter law – including by concealing without adjudication, the threshold integrity issues pertaining to defendant Attorney General Schneiderman’s duties, conflicts of interest, and litigation fraud”.

This is the description appearing in our January 10, 2018 notice of appeal (at p. 5), in the possession of your office, with a further copy herein enclosed because it furnishes substantiating proof: an appended 27-page, single-spaced “legal autopsy”/analysis of the appealed-from November 28, 2017 decision and judgment.

The accuracy of this “legal autopsy”/analysis is your duty to verify – since, pursuant to Executive Law §63.1, you have NO defense to the appealed-from decision and judgment, which, *as a matter of law*, must be voided. Only this is consistent with the “interests of the state” – and your obligations pursuant to State Finance Law §123 *et seq.* and such other provisions as Executive Law §63-c and State Finance Law §187 *et seq.* (“New York False Claims Act”).

Consequently, your duty is to obviate the appeal entirely by moving to vacate the November 28, 2017 decision and judgment and the underlying decisions on which it rests, including pursuant to CPLR §5015(a)(3) “fraud, misrepresentation, or other misconduct of an adverse party”; or, alternatively, to

represent CJA on the appeal and perfect and prosecute it on behalf of the People of the State of New York and the public interest that CJA has heretofore been representing.

To speed your verification of the state of the record in CJA's second citizen-taxpayer action – as to which I testified at the January 30, 2018 “public protection” budget hearing, handing up the September 16, 2017 misconduct complaint I had filed with the Attorney Grievance Committees for the First and Third Judicial Departments against Attorney General Schneiderman and attorneys under his supervision, and additionally handing up the June 16, 2017 misconduct complaint I had filed with the Commission on Judicial Conduct against the judge – I recommend that you read those complaints, as well as their supplements, which I had also handed up. Although these, too, are in the possession of your office, they are also posted on CJA's website, on webpages containing links to the substantiating record proof. For your further convenience, hard copies of the complaints are enclosed.

Needless to say, there is nothing discretionary about the investigative and corrective relief here sought – and your failure to investigate and take corrective steps, in face of this NOTICE, will render you complicit in, and liable for, the multitudinous constitutional, statutory, and rule violations, laid out by CJA's citizen-taxpayer actions and by CJA's succession of corruption and ethics complaints that prosecutorial and disciplinary authorities have been “sitting on” since 2013.

For your convenience, CJA's webpage for this letter, accessible *via* our prominent homepage link, “CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance”, will post links to all referred-to substantiating EVIDENCE. It will also post a link to a further webpage from which virtually everything can be accessed, in essentially chronological fashion, including the corruption and ethics complaints filed with federal and state authorities and illustrative letters and e-mails to Attorney General Schneiderman. The title of the webpage – reflective of the reach of what is now before you – is:

“WHAT THE NOW DEPARTED ATTORNEY GENERAL ERIC T. SCHNEIDERMAN LEAVES BEHIND: The open-&-shut, *prima facie* EVIDENCE of his litigation fraud, covering up the open-&-shut, *prima facie* EVIDENCE of his corruption and that of his co-defendants Cuomo, DiNapoli, Flanagan, Heastie, Senate & Assembly Members, the Chief Judge – for which they must ALL be indicted and will be convicted, including pursuant to ‘The Public Trust Act’”.

Suffice to say, that “The Public Trust Act”, Penal Law §496, is the same as Assemblyman Brian Curran cited in his question to you: “...will you bring corruption charges under... Article 496 of the state law to pursue corruption here in New York State... regardless of what office it was, whether it be any branch of the legislature, the governor's office, or any?”.

You responded to this question that, if presented with “evidence and law”: “I would pursue it unless I thought that a federal prosecution would be more likely to be effective, in which case I would be collab – talking with federal prosecutors to see whether, perhaps, they would have a greater chance of succeeding in that prosecution.”

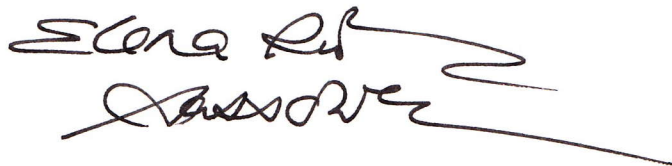
Based on the EVIDENCE, the state does not have to rely on federal prosecutors. State prosecutors have long had ample penal provisions – prior to the vaunted “Public Trust Act” – for indicting and convicting Governor Cuomo, Temporary Senate President Flanagan, Assembly Speaker Heastie, their predecessors, Skelos and Silver, a huge swathe of rank-and-file legislators, former Attorney General Schneiderman, Comptroller DiNapoli, Chief Judge DiFiore and her predecessor Lippman, among so many others, for the crimes laid out by CJA’s litigation papers and corruption and ethics complaints. Indeed, further evidencing that state prosecutors have the EVIDENCE and law to successfully prosecute – including with respect to the budget for this fiscal year – is the March 6, 2018 corruption complaint I filed with Albany County District Attorney P. David Soares, which he has been “sitting on” ever since, just as he has been “sitting on” my prior three corruption complaints filed with him, dated July 19, 2013, January 7, 2014, and June 21, 2016. This March 6, 2018 fourth corruption complaint is entitled “SEEKING ENFORCEMENT OF ‘THE PUBLIC TRUST ACT’ – Penal Law §496, ‘corrupting the government’”. A copy is enclosed with this NOTICE, for filing with you and prosecution.

As your response to this NOTICE is additionally a TEST of your fitness to serve as interim attorney general, please advise, by no later than Monday, May 21, 2018, as to what actions you will be taking consistent with the EVIDENCE to which you are here alerted and furnished.

Finally, inasmuch as CJA’s above four litigations were all the consequence of the indefensible, cover-up response of Attorney General Schneiderman’s “Public Integrity Bureau” to the November 29, 2011 corruption complaint I filed with it, and its non-response to my March 2, 2012 letter and subsequent e-mails, sent to it – as to which, based on my testimony at the Legislature’s February 6, 2013 “pubic protection” budget hearing, the Legislature’s duty was to promptly call upon Attorney General Schneiderman to produce his findings of facts and conclusions of law with respect to CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report – please advise as to whether you wish to revise your response to Assemblyman Curran: “we have a very good public integrity unit”.

So that the other interim attorney general candidates may also be TESTED as to their fitness, a copy of this NOTICE will be provided to each of them, so that each can identify what his/her response would be, if appointed.

Thank you.

A handwritten signature in black ink, appearing to read "P. David Soares", with a long horizontal flourish extending to the right.

Enclosures & cc's: see next page

Enclosures:

(1) CJA's November 29, 2011 corruption complaint to Attorney General Schneiderman's "Public Integrity Bureau"; its responding December 7, 2011 letter; CJA's subsequent March 2, 2012 letter² & March 30, 2012 order to show cause for a stay with TRO – and supporting affidavit³, annexing March 29, March 28, and March 2, 2012 e-mails reflecting transmittals to the Bureau Chief and Deputy Bureau Chief of the "Public Integrity Bureau"; as well as CJA's April 5, 2012 transmitting letter to Attorney General Schneiderman, *et al.*, urging review by "independent counsel, whose name we hereby request";

(2) CJA's March 6, 2018 corruption complaint to Albany County District Attorney Soares, with its incorporated March 6, 2018 supplement to the Attorney Grievance Committee for the Third Judicial Department;

(3) CJA's January 10, 2018 notice of appeal in 2nd citizen-taxpayer action, *CJA et al. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16; RJ1 #01-16-122174);

(4) CJA's September 16, 2017 conflict-of-interest/misconduct complaint against Attorney General Schneiderman and his culpable attorney staff to the Attorney Grievance Committees for the First and Third Judicial Departments⁴, with transmitting coversheet/forms.

cc: Candidates for Interim Attorney General
Legislators
The Press

² CJA's March 2, 2012 letter – with its four exhibits -- is, additionally, Exhibit Q to CJA's March 30, 2012 verified complaint in the declaratory judgement action.

³ See, especially, ¶10, stating, with respect to CJA's October 27, 2011 opposition report:

“Defendant SCHNEIDERMAN, in particular, must be required to disgorge his findings of fact and conclusions of law at the Court's hearing of this TRO, since his failure to do so in response to our March 2, 2012 letter has resulted in our being unfairly burdened with having to bring this lawsuit, which was his obligation to bring, pursuant to Executive Law §63.1. As highlighted by our March 2, 2012 letter (at p. 3), such findings of fact and conclusions of law as defendant SCHNEIDERMAN would have made would have established his duty, pursuant to Executive Law §63.1, to have undertaken this lawsuit, with an ‘injunction on the People's behalf.’” (underlining in the original).

⁴ Exhibits A and B thereto are CJA's June 16, 2017 judicial misconduct complaint and September 11, 2017 supplement, filed with the Commission on Judicial Conduct, against Court of Claims Judge/Acting Supreme Court Justice Denise Hartman – the judge assigned to CJA's second citizen-taxpayer action. Perhaps you know her, as she worked in the attorney general's office for 30 years, including under Attorney General Schneiderman and, prior thereto, under then Attorney General, now Governor, Cuomo, who appointed her to the bench in 2015.