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October 17, 2013

TO: Commission Members & Special Advisors  
of the Commission to Investigate Public Corruption

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

RE: Follow-Up to September 17, 2013 Testimony  
(1) CJA's Unresponded-to August 5, 2013 Letter and Subsequent  
Correspondence Pertaining to the Commission's Procedures, Rules, Protocol for  
Conflicts of Interest, and Public Hearings;  
(2) CJA's Unresponded-to July 19, 2013 corruption complaint and  
intervention request to Commission Member Albany County District Attorney Soares

It is now a month since my September 17, 2013 testimony at the Commission's public hearing in Manhattan. Referring to CJA's August 5, 2013 letter entitled "Keeping the Commission to Investigate Public Corruption True to its Name & Announced Purpose" and to our subsequent correspondence, to which there had been no response, I stated:

"This Commission is supposed to restore, restore public trust... You have serious and substantial correspondence about your procedures, your rules, and you don't respond...

I respectfully submit and ask each member of this Commission to read the correspondence that was withheld from you by your Executive Director, Regina Calcaterra, and by your three Co-Chairs because I think you need to know how they are operating and also because, as I'm sure you know, most of you being lawyers, that there are threshold issues relating to conflicts of interests. You are presuming to judge others as to conflicts of interest. How are you, how are you, what are your rules and procedures, what is your protocol for conflicts of interest?..." (at 2:23:00, underlining added).

Have you read CJA's August 5<sup>th</sup> letter and subsequent correspondence?<sup>1</sup> Do you subscribe to the non-response of Executive Director Calcaterra and your Co-Chairs, Onondaga County District

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<sup>1</sup> CJA's website, [www.judgewatch.org](http://www.judgewatch.org), posts the August 5, 2013 letter and subsequent correspondence on its own webpage, as part of our "People's Campaign to Hold the Commission to Investigate Public Corruption True to its Name & Announced Purpose". Here's the direct link: <http://www.judgewatch.org/web->

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Attorney William Fitzpatrick, Nassau County District Attorney Kathleen Rice, and Milton Williams, Jr.?

If not, why has there been no response from you since? And are you aware that your Executive Director and Co-Chairs have continued to ignore CJA's correspondence? This includes our September 18<sup>th</sup> e-mail itemizing the documentary materials I furnished the Commission at the September 17<sup>th</sup> hearing in support of my oral and written testimony and stating:

“I am available to assist the Commission in its investigations, including by furnishing methodologies that make sense. Feel free to call to invite me to do so.”

It also includes our October 4<sup>th</sup> letter entitled:

“When Will the Commission to Investigate Public Corruption be Holding Public Hearings at Which the Public Will be Able to Testify as to the Breadth of Public Corruption Within its Knowledge and Experience?, Etc.”

As noted by that October 4<sup>th</sup> letter, the Commission has thus far afforded the public only an hour and a half at a single public hearing – the Manhattan hearing – to testify as to the breadth of public corruption. Indeed, following the September 17<sup>th</sup> Manhattan hearing, the Commission restricted the subject areas of the September 24<sup>th</sup> Albany hearing to effectively bar the public from testifying as to the public corruption within its knowledge and experience. Presumably, this was to prevent a replay of what took place in the hour and a half of public testimony at the Manhattan hearing when so many members of the public presented oral and written testimony of pervasive judicial corruption in which U.S. Attorneys, District Attorneys, the New York State Attorney General, and other public officers and agencies are complicit. This is, of course, diametrically opposite to the Commission's pretense, born of its personal, professional, and political relationships and interests, that U.S. Attorneys, District Attorneys, the New York State Attorney General, and others are corruption fighters.

Indeed, based on our July 19, 2013 corruption complaint to Commission member Albany County District Attorney P. David Soares, to which I referred when I testified and which our August 5<sup>th</sup> letter identified (at p. 5) as having been e-mailed to the Commission on July 22, 2013,<sup>2</sup> nothing could have been more obscene than for the Commission, presumably by its Co-Chairs, to have invited U.S.

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[pages/searching-nys/commission-to-investigate-public-corruption/aug-5-2013-ltr-etc.htm](http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/aug-5-2013-ltr-etc.htm) . A separate webpage posts a video clip of my September 17, 2013 oral testimony, written statement, and the evidence that substantiates both. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people-evidence/sassower-elena.htm>.

<sup>2</sup> District Attorney Soares was an indicated recipient of our August 5<sup>th</sup> letter for this reason. He was also included as a recipient of all our subsequent correspondence to the Commission's Executive Director and three Co-Chairs -- as was Eric Galarneau, Chief of his Public Integrity Unit.

Attorney Preet Bharara and U.S. Attorney Loretta Lynch to testify at the September 17<sup>th</sup> hearing, to be heralded as heroes by District Attorney Fitzpatrick<sup>3</sup> and allowed to posture themselves and be portrayed as crusaders against public corruption<sup>4</sup> – without a question from the Co-Chairs or District Attorney Soares as to their inaction on the open-and-shut, *prima facie*, April 15, 2013 and May 13, 2013 corruption complaints we filed with them against Governor Cuomo, Attorney General Schneiderman and New York's other highest public officers for grand larceny of the public fisc and other corrupt acts in connection with the judicial pay raises and unitemized, slush fund budget appropriations – inaction giving rise to our July 19<sup>th</sup> corruption complaint to District Attorney Soares.

Certainly, too, for District Attorney Fitzpatrick to have trumpeted District Attorney Soares' Public Integrity Unit as "one of the innovative things" he has done (at 0:8:50) – as if it is properly functioning – was a further deceit, unless he was unaware of that unit's inaction on our July 19<sup>th</sup> complaint, born of District Attorney Soares' financial and other conflicts of interest – conflicts afflicting other Commission members, special advisors, and staff, as well.

I was cut off at the September 17<sup>th</sup> hearing as I began to speak about the July 19<sup>th</sup> complaint. In the event you have not yet read it – a hard copy of which was beside me when I testified – here's the direct link to our webpage for the complaint, where it is posted with the six inches of documentary proof I furnished District Attorney Soares and the Commission: <http://www.judgewatch.org/web-pages/judicial-compensation/albany-da.htm>. Suffice to quote its concluding paragraphs:

“Needless to say, your handling of this complaint necessarily begins with acknowledging and confronting conflicts of interest – starting with District Attorney

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<sup>3</sup> District Attorney Fitzpatrick, referring to U.S. Attorney Bharara: “Now, let me have the pleasure of introducing a great American who has done as much to restore that integrity as any other New Yorker. I suspect that sometimes our first speaker must feel like Diogenes walking through the halls of Albany looking for an honest man.”; “It's very comforting to know that the right man is in charge in the Southern District”; District Attorney Fitzpatrick, referring to U.S. Attorney Lynch: “We are very fortunate tonight to have, as our second speaker, another legendary name in law enforcement in the State of New York.”; “...most of all, thank you for answering our President's call and coming back to public service. The citizens of New York are very lucky you said yes.”

<sup>4</sup> U.S. Attorney Bharara: “Fighting public corruption has been a top priority for my office for a long while, as it has been for my friends Loretta Lynch and Cy Vance.”

U.S. Attorney Lynch: “Now, as the United States Attorney for the Eastern District of New York, I am honored to lead an office with a long tradition of fighting public corruption... Our current cases continue this rich tradition of protecting the public fisc and attempting to safeguard the public's faith in the political system.”

New York County District Attorney Cyrus Vance: “As you just heard from my colleagues, the U.S. Attorneys for the Southern and Eastern Districts of New York, and as everyone in New York government knows well, the FBI and federal prosecutors have been remarkably successful in policing and prosecuting our public officials...”

Soares' own financial interest and that of every other New York district attorney in perpetuating the 'grand larceny of the public fisc' here at issue inasmuch as district attorneys salaries are statutorily linked to judicial salaries.<sup>[fn]</sup>

I propose we discuss this and other equally substantial conflicts of interest so that an appropriate threshold determination may be made as to whether District Attorney Soares can and should be handling this corruption complaint and intervention request – or whether referral to some other public officer or body is in order so that the public fisc and public interest may be served and protected.

I stand ready to assist you to the fullest, to be interviewed under oath, and to give testimony before a grand jury. For immediate purposes, I am – as you requested – accompanying this letter with your complaint form which requires that I acknowledge that 'any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.' This I have done.

As the Moreland Commission to Investigate Public Corruption will be holding its first public hearing on September 17, 2013, and I have already telephoned and requested to testify, it would be additionally beneficial for us to work together to resolve the conflict of interest issues and straightforward evidentiary matters pertaining to this complaint – and not unique to this complaint.” (pp. 6-7, underlining in the original).

You may be sure that among the referred-to “other equally substantial conflicts of interests” I would have discussed with District Attorney Soares and his Public Integrity Unit, had either seen fit to contact me about the July 19<sup>th</sup> corruption complaint, is the close relationship between District Attorney Soares and Governor Cuomo and Attorney General Schneiderman, such that, at the July 2, 2013 press conference at which Governor Cuomo announced this Commission, the video shows District Attorney Soares in an honored seat beside the Attorney General, with the Governor talking to him for a full two minutes before the press conference begins.

Thus, my public exclamations at the Commission's September 24<sup>th</sup> hearing in Albany during the testimony of Mark Sacha, audible from the video (at 2:22:58 – 2:29:26):

Sacha: “...I am here to advise the public and the voting citizens of New York of the 'elephant in this room'. The hypocrisy which has not yet been addressed before this Commission. Election fraud and public corruption are not prosecuted properly, in my opinion, not because of the lack of laws in this State but because of the lack of will.”

Sassower: “By the D.A.s.”

Sacha: “The sad reality is that District Attorneys are political.”

Sassower: ““Yayy — right on!”

Sacha: “Many have horrible conflicts of interest – ”

Sassower: “Yes they do!”

Sacha: “– which affect their ability to act. In order to reach their position, they make alliances, they accept political money, and they cut political deals with other politicians. They reach their goals through these people.

The public has a right to know the truth based on my own personal experience. ...

...The public should know of the conflicts that exist.”

Sassower: “On this Commission, that they refuse to address.”

...

Sacha: “Ladies and Gentlemen, prosecuting the powerless is easy. The real test is when you are asked to prosecute or to investigate the powerful. The truth is that election law cases are not pursued because few elected District Attorneys will prosecute their political friends and political family.”

Sassower: “Right.”

Sacha: “District Attorneys have subpoena power. They have had it forever. They choose not to use it. They treat these cases differently, at least in my experience. They have the power and the means, but they lack the will. This is the sad truth. [Erie County District Attorney] Sedita has made public statements making it clear that he will not investigate election crimes. Yet he sits on this panel.

In this article from two days ago, Mr. Sedita says I do not investigate murder cases, I do not investigate sex crimes, and I damn sure don’t investigate election cases. Yet he’s on this panel.”

Sassower: “Outrageous.”

Do you approve of District Attorney Soares sitting on our July 19<sup>th</sup> corruption complaint for nearly three full months now? Surely, he would benefit from the Commission’s role model example as to how he should be handling the conflicts of interest that are disabling him from discharging his duties – as, likewise, disabling the Commission.

In that connection, I refer you to Mr. Sacha’s follow-up to his testimony: his October 9, 2013 complaint to the Commission, where, under the heading “Conflicts of Interest”, he describes this

“important preliminary point that must be understood”<sup>5</sup>:

“Legal ethics are not situational ethics. They apply to all, especially to those lawyers with power such as District Attorneys, elected officials and even governors. As you know, New York State Law designates District Attorneys as the chief law enforcement officers in their respective county. Each County District Attorney takes an oath to enforce the laws of New York State.

Legal ethics rules require attorneys to avoid conflicts. Loyalty and independent judgment are essential. The State of New York Unified Court System’s Rules of Professional Conduct require that the judgment of a lawyer should be exercised free of compromising influences and loyalties. The District Attorneys Association of the State of New York (DAASNY) Code of Conduct for political activity states that District Attorneys may not misuse their public positions for the purpose of obstructing or furthering the political activities of any political party or candidate. The National District Attorneys Association standards state in Section 1-3.3 Specific Conflicts, Subdivision (D):

*‘The prosecutor should excuse himself or herself from the investigation and prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor’s neutrality, judgment or ability to administer the law in an objective manner may be compromised.’*

No District Attorney should decide a matter in which he or she has a personal interest. To do so damages the public trust and hinders the interest of justice. Where an actual or potential conflict of interest exists, the prosecutor should seek the appointment of a special prosecutor.” (at p. 3).

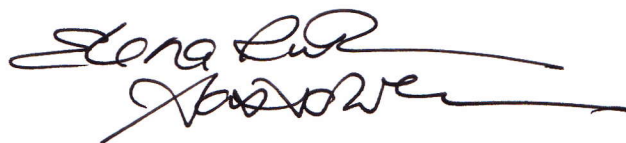
In addition to your response to our August 5<sup>th</sup> letter and subsequent correspondence, please advise whether you will be taking steps to secure a special prosecutor for our July 19<sup>th</sup> corruption complaint and its requested intervention in our People’s lawsuit, *Center for Judicial Accountability, Inc. et al. v. Andrew Cuomo and Eric Schneiderman, et al.* – and, if not, how you will address District Attorney Soares’ inaction and that of every other investigative and prosecutorial body with respect thereto, including not only U.S. Attorneys Bharara and Lynch, but U.S. Attorney Richard Hartunian, who shares geographic jurisdiction with District Attorney Soares.

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<sup>5</sup> Mr. Sacha’s October 9, 2013 complaint, the video clip of his September 24<sup>th</sup> testimony, and the written statement, with his handwritten notes, that he used as a guide when he testified, are posted on our website, on its own webpage. Here’s the direct link: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people-evidence/sacha-mark.htm>.

Meantime, a copy of my September 17<sup>th</sup> written testimony is enclosed.

Thank you.

A handwritten signature in black ink, appearing to read "Eric Galarneau". The signature is written in a cursive style with a long horizontal line extending to the right.

Enclosure

cc: Eric Galarneau, Chief, Public Integrity Unit/Albany County District Attorney Soares  
Mark Sacha, Esq.  
The Public & The Press