

Center for Judicial Accountability, Inc. (CJA)

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Subject: ALERT & STORY PROPOSAL: Erie County's 2020 elections for district attorney, for 13 state senate & assembly seats & for its 27th congressional seat -- A Tale of Two Complaints
Attachments: 6-12-20-complaint-erie-da-flynn.pdf; erie-signature.pdf; 6-12-20-erie-co-public-integrity-unit.jpg

ALERT & STORY PROPOSAL:

Erie County's 2020 elections for district attorney, for 13 state senate & assembly seats & for its 27th congressional seat -- A Tale of Two Complaints

Erie County District Attorney John Flynn, who faced *no* primary challenger in June, is not only running, *unopposed*, for re-election in November, but is poised to pick up the ballot lines of ALL eight of New York's recognized political parties – Democratic, Republican, Independence, Conservative, Working Families, Green, Libertarian, & Serve America Movement-SAM.

Shouldn't The Buffalo News – Erie County's SOLE daily newspaper – be investigating and reporting on this travesty: a sham election, sham political parties, and an incumbent district attorney cynically capitalizing on voters' reasonable belief that each party line is a "seal of approval", reinforcing his fitness. And what about identifying the Erie County culprits responsible for this abomination: Erie County's 13 state senate and assembly members, almost all seeking re-election or higher office, who, for years – and for their own self-gain – have wilfully failed to take steps to ensure legislative oversight of what's been going on in Erie County and elsewhere in the state as to elections, district attorneys – and virtually everything else.

Isn't it odd that in a county of over 900,000 people, amply supplied with lawyers practicing criminal law, where the average salary of a Buffalo lawyer ranges between \$63,835 and \$92,293, there is not a crush of candidates for a job with a \$210,900 salary, plus another \$30,000 or so in non-salary benefits.

What kind of "outreach" did the eight parties do? Did they announce the district attorney "job opening" among their party members, soliciting candidates and suggestions. Did they contact the Erie County Bar Association's criminal law committee and Buffalo Law School for help in locating quality candidates who might have some affinity to their party platforms.

And how, if at all, did the parties examine D.A. Flynn's record in office? Was there any recognition by them that the job of district attorney entails not only enforcing the penal law, but ensuring that the county's public officers are doing their job – a function the D.A. discharges through the grand jury, whose pivotal role in safeguarding against "wilful misconduct in office of public officers" is enshrined in the New York State Constitution (Article I, §6) and expanded upon in the Criminal Procedure Law (§190.05; §§190.55(1), (2c), §190.85).

Did they examine how D.A. Flynn's so-called Public Integrity Unit operates? Wouldn't this have been an obvious starting point for the newest of NY's recognized parties, the SAM Party, with its platform of "Transparency. Accountability. Competition" and mission to "Fix the Culture of Corruption", whose website not only identifies D.A. Flynn as among its 38 endorsed candidates, but reveals him to be its ONLY endorsed D.A. candidate. How did that endorsement happen? And did the SAM Party – or the Working Families Party, whose website also identifies its "proud" endorsement of D.A. Flynn – ask him such basic questions about his Public Integrity Unit as:

- (1) the number of public corruption complaints it was receiving *via* its website portal: <https://www2.erie.gov/da/index.php?q=public-integrity-complaint-form> or by other transmittal;
- (2) its procedures for handling public corruption complaints, such as acknowledging the complaints and specifying a timetable for disposition;
- (3) its conflict-of-interest protocol for public corruption complaints;
- (4) the number and percentage of public corruption complaints dismissed without presentment to grand juries;
- (5) the number and percentage of public corruption complaints presented to grand juries – and their dispositions: dismissal, indictments, grand jury reports;
- (6) the names of those indicted as a result of public corruption complaints – and the court file numbers of the criminal cases.

From a google search, it appears that Erie County's "local journalism" has barely reported that D.A. Flynn is running for re-election or that the office of district attorney is up for election – and has not reported, at all, that the district attorney has a pre-eminent public integrity/anti-corruption function. Worse still, it appears to have allowed D.A. Flynn to deceive it and through it, the public, that he is doing his job apolitically and with integrity – inferentially justifying his uncontested re-election. D.A. Flynn's two recent press conferences – on June 19th and June 30th – illustrate this:

- his June 19th press conference announcing his dismissal of the widely-reported complaint of electoral violations by then state Senator Chris Jacobs pertaining to his residence address, where D.A. Flynn asserted that the reason he was keeping the complainant's identity confidential was because he "want[s] to encourage anyone who believes that a crime occurred to be able to come forward" as "it is important that the public knows" that he takes complaints of criminal conduct "seriously" and doesn't "just dismiss it and blow it off" [video, at 14:36-15:08], and
- his June 30, 2020 press conference, discussing his arrest of two Buffalo police officers on felony assault charges in the Suttles matter, where D.A. Flynn stated "all I'm doing is my job. My job is to prosecute those who have violated the law, plain and simple" because "I can't disregard that [law]. I can't turn a blind-eye to that.... I got to do my job. There is a law on the books, I have to follow the law.....I need to be consistent. If I have any credibility as a district attorney, if I have any credibility as a public official, I need to be consistent in what I do. I've been consistent since day one on this job and I'll be consistent until I leave five years from now." [video, 7:58-8:10; 10:39-11:30].

These public confidence-building statements by D.A. Flynn are LIES – but no reporters challenged their accuracy at the press conferences or by their reporting. Presumably this is because they had no information and evidence with which to do so – and D.A. Flynn’s further statement, toward the close of the June 30th press conference, reflects this, where he prefaced his assertion “I treat every case fairly. And I treat every case with the end result of doing justice” by saying “I think that everyone here knows me” [video, at 33:18-33:29].

So that The Buffalo News can reassess, for itself and “local journalism” what it “knows” – and report to the public that it has been “used” and “played” by D.A. Flynn – terms D.A. Flynn employed at the June 19th press conference [video, at 14:36-15:46; 20:05] – attached is the fully-documented, politically-explosive, time-sensitive corruption/grand jury complaint that D.A. Flynn has been “sitting on” for the past four weeks – a complaint I sent to him at 11:49 a.m. on Friday, June 12th, by the below e-mail. A short time earlier, I had submitted it to his Public Integrity Unit, *via* its website portal – and a photo is also attached. The only response I received was on Monday, June 15th, at about 9:30 a.m., when a female staffer called me, seemingly from the Public Integrity Unit, seemingly acknowledging the portal transmittal, but brushing it off, without having read the complaint or examining its substantiating proof. My reply was to guide the staffer to CJA’s website, www.judgewatch.org, and to the webpage entitled: “Invoking ‘The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments...’, pursuant to Article I, §6 of the New York State Constitution”. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/grand-juries.htm>. After eye-balling the posted complaint and evidence, the staffer quickly disconnected the call, as I was asking her name.

You, too, need only “eye-ball” the complaint and its substantiating evidence to know that D.A. Flynn’s above statements at his June 19th and 30th press conferences were brazen falsehoods and that his Public Integrity Unit is demonstrably sham, as otherwise both would have called me – immediately – for the specifics of my contacts with the 13 Erie County state Senate and Assembly members who are the subject of the complaint – beginning with the “Most important of these”, highlighted at pp. 6-7 of the complaint, as:

- “(1) Assembly Majority Leader Crystal Peoples-Stokes, who, prior to being appointed to that \$34,500 stipend-receiving leadership position by Assembly Speaker Heastie in January 2019, had been chair of the Assembly Committee on Governmental Operations, since January 2015, drawing a \$12,500 yearly stipend for four years;
- (2) Assembly Codes Committee Ranking Member Angelo Morinello, ESQ., appointed to that \$11,000 stipend-receiving leadership position in January 2020 by Assembly Minority Leader William Barclay, ESQ.;
- (3) Senate Committee on Investigations and Government Operations Ranking Member Senator Chris Jacobs, ESQ., appointed to that non-stipend-receiving position in January 2019 by Senate Majority Leader Flanagan, ESQ.;
- (4) Senator Patrick Gallivan, a member of the Senate Codes Committee, of the Senate Committee on Crime Victims, Crime and Correction, and of the Senate Finance Committee.” (underlining and capitalization in the complaint)

Obviously, for D.A. Flynn and his Public Integrity Unit, **Senator Jacobs** would have been the priority from among these four, as he alone was on the June 23rd ballot – twice – both in a special election and in a primary election for NY’s 27th congressional seat – and just as obviously that such priority would have increased on June 15th after D.A. Flynn got the phone call complaint of Senator Jacob’s election violations, recounted by him at the June 19th press conference [video, at 10:20]. And they would have had no difficulty in locating, *on their own*, the documentary evidence pertaining to Senator Jacobs’ knowledge of, and complicity in, the fraud and larceny involving the state budget and the pay raises that are the subject of the June 12th complaint. It is posted at **link #1** on CJA’s webpage for the **featured “2020 LEGISLATIVE SESSION”**, bringing up a webpage of correspondence whose **#1** are the four e-mails I had sent to Senator Jacobs, his

senior fellow, and his legislative aide on January 28, 2020 – the 1st e-mail reflecting the phone conversation I had just had with Senator Jacob's senior fellow and concluding with the sentence: "If Senator Jacobs thinks voters should elevate him to Congress, he should first address his responsibilities as state senator – and as ranking member of the Senate's preeminent oversight committee."

And further down, as the last e-mails on that same webpage of correspondence, D.A. Flynn and his Public Integrity Unit would have found, at #15, the two e-mails I had sent to **Assemblyman Morinello** and his chief of staff on February 26, 2020 and February 27, 2020, not only reflecting my phone conversation with the chief of staff, but forwarding the July 16, 2019 e-mail I had sent to **Assembly Majority Leader Peoples-Stokes** and the 14 other legislative leaders then receiving stipends entitled "NOTICE of Your Duty to Void the December 10, 2018 Report of the Committee on Legislative & Executive Compensation that Boosted Your Salaries -- & Preserved Your Stipends", **expressly** requesting that they forward it to "the other 57 Senate members and 141 Assembly members" – with that July 16, 2019 e-mail annexing CJA's July 15, 2019 analysis of the December 10, 2018 Report and its accompanying NOTICE and furnishing the e-mail I had sent the previous day to the Governor, Lieutenant Governor, Attorney General, Temporary Senate President, and Assembly Speaker. **This is the same July 15-16, 2019 correspondence that is the FIRST SENTENCE of the "summary" that constitutes the complaint (pp. 2-4) – that FIRST SENTENCE reading:**

"On July 15-16, 2019, I furnished Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, and ALL 213 state legislators, *via* their 15 stipend-receiving legislative leaders, with a July 15, 2019 written NOTICE and substantiating analysis that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation – on which their pay raises are based – was 'a fraud on the People of the State of New York – and a larceny of their tax dollars', violating a succession of penal laws, and that their duty was to void it, to return the pay raise monies they had already received, and to initiate criminal prosecutions of the Committee's four members and abetting attorneys." (complaint, p. 2, capitalization and underlining in the original)

No district attorney "sitting on" a complaint mandating prosecution of state legislators for crimes supported by evidence so "*prima facie* and open-and-shut" as to guarantee their conviction and who, instead, allows them to stand for re-election and for higher office before unsuspecting voters whose tax dollars they are stealing – is fit to remain in office, let alone seek re-election.

The job of the district attorney is to assess evidence, primarily with regard to the penal law. D.A. Flynn purported to demonstrate this at both his June 19th and June 20th press conferences – stating, at the June 19th press conference, that the June 15th complaint against Senator Jacobs that he was dismissing after "thorough investigation" was because "there is not enough evidence to go forward on any of the allegations that were made", "nowhere near the evidence needed, nowhere even close, quite frankly" [video: at 0:34-0:38; 19:39-20:00] – the first allegation relating to a "false instrument".

When is D.A. Flynn planning to report on his "thorough investigation" of the evidence furnished by the June 12th complaint in support of its "summary" (pp. 2-4)? Why has it taken so long for him to "move forward" with what is clearly a mountain of documentary evidence dispositive of the 11 penal law violations specified by the complaint (at p. 2), including "false instruments", with respect to:

- the December 10, 2018 Report of the Committee on Legislative and Executive Compensation, by which the state legislators procured increases in their salaries from \$79,500 to \$110,000;
- the Legislature's uncertified December 1, 2019 budget for FY2020-21, with its overage of \$2,713,038 for legislative salaries and stipends;

- the Governor's January 21, 2020 legislative/judiciary budget bill for FY 2020-21, containing the \$2,713,038 overage and appending, in an out-of-sequence, mistitled section at the back of the bill, 32 pages of supposed "reappropriations" for the Legislature – untallied, but seemingly totaling over \$100,000,000, and including "reappropriations" of legislative salaries and stipends from past years, which, after the "three-men-in-a-room" behind-closed-doors, budget deal-making finale, the Legislature enacted, unchanged.

Can there be any doubt that putting the June 12th complaint and its substantiating documentary evidence "in front of a grand jury", who he described at the June 30th press conference as "23 members of society, from at large" [video, at 22:36-22:42], would result in swift indictments – and even swifter when the grand jury has the benefit of my sworn testimony and answers to any of its questions.

Certainly, if the predicate for D.A. Flynn's holding a press conference on a complaint against public officers and electoral candidates is that it must first be media-reported – as the June 15th complaint had been, by The Buffalo News and other Erie County media, you can easily accommodate by leading the media-pack with a story. And surely it should feature the contrast between D.A's Flynn's prompt recusal from the Suttles assault investigation of the two Buffalo police officers because of conflicts of interest, with his failure to recuse himself, at the outset, from handling the June 12, for conflicts of interest that are obvious from the very face of the complaint (at pp. 5, 8). Foremost of these, his financial interest arising from the fact that the complaint exposes that his \$210,900 salary, paid from the Erie County budget and HUGELY disproportionate to the salaries paid to the county executive (\$118,376); county comptroller (\$80,613); county sheriff (\$79,092); and county clerk (\$79,092), is the product of two "false instruments" – the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation – as to which Erie County state legislators, as part of a broader scheme to procure their own legislative pay raises, have, for years, wilfully refused to discharge ANY legislative oversight.

I am available to assist you, *to the max*, on this major story which will upend, for great good, Erie County's 2020 elections for district attorney, its 13 state legislative seats, and its 27th congressional seat – with corresponding electoral impact in New York's other 61 counties and beyond. To that end, I have created a webpage on CJA's website for the 2020 Erie County D.A. race, posting this PRESS ALERT & STORY PROPOSAL, with many more links for the substantiating evidence. It is 1 of 15 webpages for each of New York's 15 district attorney races on the 2020 ballot – accessible from CJA's homepage. www.judgewatch.org, via its prominent center link "Elections 2020 – Taking Out Corrupt & Collusive Legislative Incumbents & Conspiring D.A.s -- *All Beneficiaries of Statutory-Violative, Fraudulent, Unconstitutional Pay Raises & Other Larcenies of Taxpayer Monies*". The direct link to the Erie County D.A. race is here: <http://www.judgewatch.org/web-pages/elections/2020/da-elections/2020-da-erie.htm>.

I invite you to call me, throughout the weekend, no matter how early or late, **as time is of the essence** – and ask that by noon on Monday, July 13th, a reporter or editor call or e-mail me, in response to this ALERT & STORY PROPOSAL so that I may know where matters stand.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, June 12, 2020 11:49 AM

To: 'John.flynn@erie.gov' <John.flynn@erie.gov>

Subject: CORRUPTION COMPLAINT in support of grand jury inquiry, pursuant to Article I, §6 of the NYS Constitution, of Erie County state legislators for "wilful misconduct in office", including larceny & fraud...

TO: Erie County District Attorney John Flynn

This follows the voice mail message I left a short time ago, requesting an e-mail address for you, because your electronic Public Integrity Unit complaint form, <https://www2.erie.gov/da/index.php?q=public-integrity-complaint-form>, which I have since utilized, does not have an attachment feature. I am assuming your e-mail follows the format of your predecessor, Acting District Attorney Michael Flaherty, which was Michael.flaherty@erie.gov.

Attached is my above-entitled corruption/grand jury complaint of today's date addressed to you – with a separate scanned signature page. The link for CJA's "GRAND JURIES" webpage for the complaint, hyperlinking, linking, and posting all referred-to evidence, is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/grand-juries.htm>.

Thank you.

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