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FRIDAY, SEPTEMBER 2, 2011

An ALM Publication

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County Prosecutors Ask Judge to Revisit Allegations in Opinion

BY W. KESHNER

Albany County District Attorney George Peck has decried what it is as a judge's unfounded opinion in a written opinion. Prosecutors had improperly led a grand jury, alleged a prosecutor said would harm his reputation. District Attorney George Peck was decried on Wednesday to reargue an Aug. 23 Acting Supreme Court opinion in *People v. Peck* in People v. Peck, No. 894N-11, two counts of criminally negligent homicide and one third-degree criminally negligent assault against upstate New York.

There is absolutely no evidence of prosecutorial misconduct or influence on the Grand Jury. District Attorney Kathleen Peck examined the record and allowed prosecutors to argue, he would know that the grand jury did nothing. Instead, he admittedly reached conclusions on assumption of fact, with reckless disregard for the facts. We

have moved to reargue to ensure that Judge Peck appreciates the law and the propriety of the prosecutors' conduct throughout this case. If the motion is denied, we will appeal."

Mr. Draper was charged in connection with an April 2010 multi-car collision at a Bethpage intersection that resulted in the deaths of Barbara Ryan, 44, and her 11-year-old daughter, Joanna.

Justice Peck held that the prosecution had presented insufficient evidence to demonstrate that the incident was anything other than an accident. But he also said that he was dismissing the negligence counts "for the reason of improper prosecutorial conduct and unfair dealing which usurped the power of the Grand Jury."

On the morning of May 19, the grand jury declined to indict Mr. Draper for homicide but charged him with criminally negligent homicide, reckless driving and two traffic infractions. But the judge complained that Mr. Bushwack returned and initiated a colloquy with the grand jury in the afternoon although it had not asked for his legal advice.

After Mr. Bushwack re-instructed the grand jury on the law, it reversed its earlier decision by indicting Mr. Draper for homicide.

"There might be an appropriate explanation why

Raises for Justices Mean Higher Pay For Some D.A.s

BY JOHN CAHER
ALBANY

A STATUTORY LINK between judicial and district attorney salaries means many upstate and Long Island chief prosecutors are in line for substantial pay increases over the next three years, and the increased cost may be entirely borne by counties already up in arms over "unfunded mandates."

Under Judiciary Law §183-a, district attorneys in counties outside of New York City with more than 500,000 residents are entitled to the same salary as Supreme Court justices, and full-time prosecutors in counties with populations between 100,000 and 500,000 get paid the same as a county judge.

The provision would affect 22 of 57 counties outside New York City. The law does not apply to the city's district attorneys, who earn \$190,000 a year.

With last week's recommendation by the Special Commission on Judicial Compensation to increase judicial salaries 17 percent next April and 27 percent over the next three years—which is binding unless the Legislature and Governor Andrew M. Cuomo

enact legislation rejecting the proposal—district attorneys will receive the same raise. Supreme Court justices now make \$136,700 and county court judges are paid between \$119,800 and \$136,700.

However, district attorney salaries, unlike judicial salaries, are primarily a local expense.

\$136,700

Current Supreme Court justice pay

\$174,000

Proposed salary by April 1, 2014

In the past, when judicial salaries were determined by the Legislature, lawmakers routinely added an offset to help cover the additional expense for prosecutors imposed on counties.

For instance, the last time judicial and district attorney salaries were increased, in 1999, the state picked up between 36 percent and 42 percent of the cost of the D.A. raises, depending on the county.

But in this round, the Legislature and governor are not involved in setting judicial, and

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D.A. Pay

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therefore district attorney salaries and, so far, there is no offset. And the counties, already reeling over a new law that imposes a limit on property tax increases and perpetually leery of mandates that do not come with money, are alarmed.

"It was incredibly irresponsible [to not factor in district attorney salaries while debating judicial salaries], especially as the counties are all earnestly working to cap their property taxes," said Stephen J. Acquario, executive director of the New York

State Association of Counties.

William C. Thompson Jr., the former New York City comptroller and the chairman of the now dissolved pay commission, was not immediately available for comment.

Mr. Acquario said he and the counties are lobbying for additional state funds, but it remains unclear whether the state will cover any portion of the increased expense.

Mary Pat Hancock, chairwoman of the Genesee County Legislature, is hopeful that when the monies are actually appropriated for the judicial raises funds will be included to reimburse the counties for the district attorney raises.

"I certainly hope they do it, because we sure don't need another mandate," Ms. Hancock said.

Michael Whyland, spokesman for Assembly Speaker Sheldon Silver, D-Manhattan, said that if the matter is addressed, it will have to be addressed in Mr. Cuomo's budget for the next fiscal year, which begins on April 1, 2012, the same day the first phase of the raises takes effect.

Mr. Cuomo's Division of Budget did not respond to several inquiries on the issue this week.

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