

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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TO: U.S. Attorney for the Western District of New York Trini Ross

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

RE: YOUR FIRST TEST AS U.S. ATTORNEY: How will you be confronting your conflicts of interest arising from CJA's October 16, 2020 public corruption complaint against NY's top state constitutional officers & its 62 D.A.s for fraud and larceny involving their salary raises & the state budget, established by open-and-shut, *prima facie* EVIDENCE – & what about your mandated reporting obligations?

Welcome to your new office, whose duties you swore to faithfully execute – and which, to assist you in so-doing, is governed by 28 USC §528¹, proscribing conflicts of interest.

Your knowledge of the multitude of rules, procedures, and entities within the U.S. Justice Department promulgated and created pursuant to 28 USC §528², whose purpose is to ensure your recusal in appropriate circumstances, is reflected by your answers to #22 of the U.S. Senate Judiciary Committee's public portion of its questionnaire entitled "**Potential Conflicts of Interest**".

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization documenting judicial corruption and the worthlessness of existing safeguards, in order to propel change.

¹ 28 USC §528 reads:

"The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office."

² See, *inter alia*, [28 CFR §45.2](#) ("Disqualification Arising from Personal or Political Relationship"); [5 CFR §2635.501-503](#) (Subpart E – Impartiality in Performing Official Duties); [28 USC §530B](#) ("Ethical standards for attorneys for the Government"); [§1-4.020 of the U.S. Justice Department's Justice Manual](#); [Departmental Ethics Office](#); [Professional Responsibility Advisory Office](#); [Office of Professional Responsibility](#); [U.S. Office of Government Ethics](#).

Its two questions – and your answers – were, as follows:

“a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.”

“During the nomination process, I consulted with the Department of Justice’s ethics office and Designated Ethics Officer to identify any potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.”

b. Explain how you will resolve any potential conflicts of interest, including the procedure you will follow in determining these areas of concern.”

“If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department’s designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice’s ethics office and will recuse myself from any matter in which recusal is required.”

If, prior to your nomination, you were appropriately vetted by the Biden White House, either directly or *via* the Justice Department, or thereafter by the Senate Judiciary Committee as part of your confirmation, you would have been interrogated about the conflicts of interest that would TEST you, IMMEDIATELY upon taking office as U.S. Attorney, arising from a public corruption complaint against the top constitutional officers of all three branches of New York’s state government and all 62 of its district attorneys, whose “exact crime” was summarized as:

“Fraud and larceny...involving their OWN pay raises – the product of 3 ‘force of law’ commission/committee reports which are ‘false instruments’, violating a succession of penal laws – and the NYS budget, violating a mountain of constitutional, statutory, and legislative rule provisions.”

[The complaint, which I had filed with the FBI on October 16, 2020](#), at the instruction of the office of Acting U.S. Attorney for the Northern District of New York Antoinette Bacon, was [accompanied by open-and-shut, prima facie EVIDENCE](#) mandating indictments and ensuring convictions of the complained-against constitutional officers and their multitude of accomplices, in and out of government. Yet, there was ZERO response to the complaint from the FBI and ZERO response thereafter from Acting U.S. Attorney Bacon, to whom I turned, by a [November 4, 2020 letter/complaint](#), for oversight of the FBI. There was also ZERO response from Acting U.S. Attorney for the Western District of New York James Kennedy, Jr. and from New York’s other two acting U.S. Attorneys to whom, by a [December 19, 2020 letter/complaint](#), I also turned for oversight, with a copy to Acting U.S. Attorney Bacon, stating:

“Please advise – as soon as possible, as I will be furnishing the October 16, 2020 complaint to incoming President Biden and the U.S. Senate in connection with their respective appointments and confirmations of U.S. Attorneys for the four districts of New York...No nominee may be deemed fit to hold such pre-eminent positions of public trust and law enforcement who does not assure prosecutions based on the October 16, 2020 complaint – and claw-backs of the half-billion dollars in fraudulent salary raises already paid out.” (at p. 2, underlining added).

In the event you are unaware of my written communications to the Biden White House and Senate Judiciary Committee, alerting them to the situation and to the imperative to carefully vet prospective U.S. Attorneys for New York as to how they would handle conflicts of interest arising from my October 16, 2020 FBI complaint and my December 19, 2020 letter/complaint based thereon to New York’s four acting U.S. Attorneys, these communications are posted on CJA’s website, www.judgewatch.org, accessible from the top panel “Latest News” by the link entitled: “[President Biden’s New U.S. Attorneys for NY, their Confirmations by the U.S. Senate, & the Unanswered Question...](#)”

Particularly germane to you is my [August 4, 2021 letter to Senate Judiciary Committee Member Josh Hawley](#), which I thereafter furnished for distribution to all Committee members, as it specifies three significant conflicts of interest:

- (1) pertaining to you and then Lieutenant Governor Kathy Hochul – and now Governor Hochul, “the highest constitutional officers whose prosecution is evidentially mandated by the December 19, 2020 complaint”.³ She is the wife of William Hochul, with whom you worked for more than 20 years, at the office of the U.S. Attorney for the Western District of New York, starting with your arrival there in March 1995 and spanning the 6-1/2 years that he was U.S. Attorney, from April 2010 through October 2016;
- (2) pertaining to you and then Acting U.S. Attorney Kennedy, whose wilful nonfeasance with respect to the December 19, 2020 complaint is a serious corrupting of his office that you are duty-bound to report. You worked with him, for more than 20 years, in the office of the U.S. Attorney for the Western District of New York – including the 6-1/2 years he was U.S. Attorney Hochul’s First Assistant, from April 2010 through October 2016;
- (3) pertaining to you and the other complained-against constitutional officers – apart from now Governor Hochul – whose prosecution the December 19, 2020 complaint evidentially mandates, such as Democratic Assembly Majority Leader Crystal Peoples-Stokes, who, according to a [March 24, 2021 Buffalo News article](#), “wrote a recommendation letter to Schumer regarding

³ See CJA’s webpage for now Governor Hochul and her Lieutenant Governor Brian Benjamin, subtitled “[What They Know – & Since When](#)”.

[you] and gathered other letters of support from the legal community.”⁴

Can there be any doubt that your duty is to recuse yourself from the October 16, 2020 public corruption complaint – and to arrange for its investigation and prosecution by the Public Integrity Section of the Justice Department’s Criminal Division, consistent with its annual reports to Congress, whose first section, entitled “Recusals by United States Attorneys’ Offices”, states:

“Public corruption cases tend to raise unique problems of public perception that are generally absent in more routine criminal cases. An investigation of alleged corruption by a government official, whether at the federal state, or local level, or someone associated with such an official, always has the potential of becoming a high-profile case simply because its focus is on the conduct of a public official. In addition, these cases are often politically sensitive because their ultimate targets tend to be politicians or government officials appointed by politicians.

A successful public corruption prosecution requires both the appearance and the reality of fairness and impartiality. This means that a successful corruption case involves not just a conviction but public perception that the conviction was warranted, not the result of improper motivation by the prosecutor, and is free of conflicts of interest. In a case in which the local conflict of interest is substantial, the local office is removed from the case by a procedure called recusal. Recusal occurs when the local office either asks to step aside, or is asked to step aside by Department headquarters, as primary prosecutor. Federal cases involving corruption in which the conflict is substantial are usually referred to the Public Integrity Section either for prosecution or direct operational supervision.” ([latest annual report, for 2019, at pp. 1-2](#), underlining added).

On September 10, 2021, shortly after discovering from [§1-4.020 of the Justice Department’s Justice Manual](#) that each U.S. Attorney’s office is required to have a “designated Ethics Advisor”, and the Justice Department’s extensive protocol of consultation and authorization governing conflict of interest situations, I telephoned the office of the U.S. Attorney for the Western District of New York (716-843-5700) to find out who its “designated Ethics Advisor” is and whether Acting U.S. Attorney Kennedy had consulted with him/her about the December 19, 2020 letter/complaint, to which he had obvious conflicts of interest. On September 13th, after phoning again, I was told that the “designated Ethics Advisor” is Assistant U.S. Attorney Mary Fleming⁵, but that she would not speak with me.

⁴ See CJA’s webpage for Assembly Majority Leader Peoples-Stokes subtitled “[What She Knows – & Since When](#)”. Also, inasmuch as the [July 26, 2021 White House announcement of your nomination](#) identified that “from 1994 to 1995”, you had been “a civil litigation associate at Hiscock & Barclay, LLC” – which was the law firm of the father of Assembly Minority Leader William Barclay, himself a lawyer, see his “[What He Knows – & Since When](#)” CJA webpage. Obviously, too, over your more than two decades in New York’s Western District U.S. Attorney’s office, you developed professional and personal relationships with criminal attorneys practicing within its 17-county jurisdiction, including those who were or are currently its 17 district attorneys.

⁵ According to the [Western District of New York U.S. Attorney’s website](#), Ms. Fleming has been in the

Yesterday morning, I telephoned again and after again being told that she would not speak with me, replied that Assistant U.S. Attorney Ransom Reynolds, the “designated Ethics Advisor” for the office of the U.S. Attorney for New York’s Northern District, had called me back, upon my leaving a voice message for him. This prompted the receptionist to transfer my call to Ms. Fleming’s line, where I left a voice message, so-stating. As yet, I have received no return call.

I am eager to speak with you after you have read this letter and examined its live links, so that I might not only answer your questions, but update you on the continuing grand larceny, fraud, and trashing of constitutional governance being perpetrated on the People of the State of New York by their corrupt, law-breaking state constitutional officers – and, in particular, by the posturers filling state legislative seats, only partially recited by my [August 26, 2021 supplement to the December 19, 2020 complaint](#), filed with Acting U.S. Attorney for New York’s Eastern District Jacqueline Kasulis, to which there has also been ZERO response, including as to her conflicts of interest, recited therein (at pp. 11-12).

So that I may be guided accordingly, please let me hear from you soon – including as to your mandated “whistle-blowing” reporting obligations.⁶ Meantime, to assist you – and New York’s

office since before you arrived there – and chief of the civil division for nearly 22 years. This presents you with yet another conflict of interest, arising from whether Acting U.S. Attorney Kennedy consulted her about his conflicts of interest upon receipt of the December 19, 2020 letter/complaint – and, if not, her failure to meet her ethical duties – including her reporting obligations – upon her receipt of the September 10th messages about it that I left with the receptionist.

⁶ Inasmuch as you “served as an Assistant Counsel with the Department of Justice’s Office of Professional Responsibility from 2007 to 2009”, you may be presumed to be especially familiar with the provisions requiring U.S. Justice Department attorneys to report misconduct, abuse, fraud, and waste. Suffice to here quote [§ 1-4.300 of the Justice Manual entitled “Reporting Attorney Professional Misconduct and Related Law Enforcement Misconduct to the Office of Professional Responsibility \(OPR\)”](#), which reads, in pertinent part:

“Department employees shall report to their supervisor any evidence or non-frivolous allegation that a Department attorney engaged in professional misconduct. Department employees also shall report to their supervisor any evidence or non-frivolous allegations of misconduct against Department law enforcement personnel that relate to allegations of attorney misconduct within the jurisdiction of OPR. Misconduct constitutes professional misconduct when it relates to an attorney’s responsibility to investigate, litigate, or provide legal advice. The supervisor shall evaluate whether the allegation is non-frivolous and the misconduct is of a serious nature; if so, the supervisor shall report the allegation to OPR through the component. An employee may also report misconduct allegations directly to OPR. If the evidence or allegation concerns an Assistant United States Attorney, the supervisor also shall notify EOUSA General Counsel’s Office.

If the supervisor was involved in the alleged misconduct, the supervisor must bring the evidence or non-frivolous allegation of misconduct to the attention of a higher-ranking official regardless of whether the supervisor believes the misconduct to be of a serious nature.

...

other three incoming U.S. Attorneys, to whom comparable letters will be sent – I have posted this letter on a webpage entitled: “[Can Law & Ethical Duties Prevent NY’s 4 New U.S. Attorneys from Politicizing & Corrupting their Offices, as their predecessors did by acting on their conflicts of interest](#)”, also accessible from CJA’s top panel “Latest News”.

Thank you.

s/ELENA SASSOWER

P.S. In the interest of expedition, after posting this letter, I phoned to leave a further message on “designated Ethics Advisor” Fleming’s voice mail, to apprise her of the posting, so that she could get a head start in assisting you with the conflict of interest issues that are her function. After speaking with the receptionist, my call was forwarded – and she now picked up. As I began summarizing the situation pertaining to the December 19, 2020 letter/complaint, she asked if I might send it to her. With that, I brought her onto CJA’s website and led her to the “[Bringing In the Feds](#)” webpage, accessible from the “Latest News” top panel, on which she saw it posted as #3. Seemingly, she knew nothing about it – and I briefly described the background leading up to it – and the events since. Before my phone battery failed, I sufficed to show her the link at the bottom of the “Bringing In the Feds” webpage for the “[Can Law & Ethical Duties...](#)” webpage posting this letter, which she then accessed. I immediately called her back, but got her voice mail, on which I left a message, apologizing for the disconnect. I believe my final words to her were to get me before a grand jury – and this is what I also earnestly ask you, as merited by the MOUNTAIN of open-and-shut, *prima facie* EVIDENCE, readily-accessible from CJA’s website, including from the “[VIDEO AND PAPER TRAIL](#)” [chronological webpage](#), whose link was furnished as “Additional Information” by my October 16, 2020 FBI complaint.

I will now repost this letter, as modified by this postscript – and mail you a printed, signed original, for sharing with “designated Ethics Advisor” Fleming and still-Acting U.S. Attorney Kennedy.

Thank you.

The decision whether to conduct an investigation of a former employee is made on a case-by-case basis. OPR obtains the approval from the Office of the Deputy Attorney General before declining to investigate or terminating an investigation on the ground that an employee has left the Department.”