

Testimony Before the Commission to Investigate Public Corruption
Honorable Cyrus R. Vance, Jr.
September 17, 2013

Thank you to Co-Chairs Fitzpatrick, Rice, and Williams, and to the entire Commission, for the invitation to testify today. By way of background, I have been District Attorney of New York County since January 1, 2010, and I also currently serve as Co-Chair of the New York State Permanent Commission on Sentencing. Between July 2012 and this year, I served a one-year term as President of the District Attorneys Association of the State of New York (DAASNY). In that capacity, last October I formed the New York State White Collar Crime Task Force. The Task Force is co-Chaired by District Attorney Frank Sedita of Erie County, and my Chief Assistant, Dan Alonso, who is with me today.

The purpose of the Task Force was to have a thoughtful group of lawyers study our fraud and corruption laws from top to bottom, not thinking politics but thinking substance, to come up with a set of recommendations that could be considered by the Legislature in its 2014 session next January. This type of study of white-collar crime had never been done in New York in a comprehensive way, nor had our fraud and corruption laws undergone significant revisions since 1986.

The Task Force was not made up exclusively of District Attorneys or Assistant District Attorneys. To the contrary, I broadened the membership to make sure that it reflected the views of a number of lawyers outside law enforcement, from private practice, the bench, and academia.

To that end, only about half of our members are sitting state prosecutors. The other half are lawyers in private practice, academics, a sitting federal prosecutor, a New York State tax official, and a retired Judge of the New York Court of Appeals, Al Rosenblatt. In addition to DA Sedita, it includes three other elected District Attorneys, including the co-Chair of this Commission, Bill Fitzpatrick of Onondaga County, and a number of ADAs from around the state.

The recommendations of the Task Force were unanimously adopted by the Board of Directors of the Association this past July. We will be publicly presenting the findings of the Task Force and releasing its full report next week. In the meantime, I am pleased to give you a summary of the Task Force's recommendations in the public corruption area, including procedural reforms that are, we believe, crucial for the effective enforcement of the law.

But before I do that, I'd like to give you some background. When I became District Attorney, it was clear to me that the state sorely needed serious upgrades of its outdated corruption and procedural laws. In 2010, my first year in office – a year in

which **three members** of the state Legislature plus the State Comptroller were charged with crimes – I worked with the District Attorneys Association and then-Senator Eric Schneiderman, together with other members of the Senate and the Assembly, to suggest reforms in this area. That proposal, whose sponsors styled it the Public Corruption Prevention and Enforcement Act (Exhibit A), included a crime that punishes ongoing schemes to defraud the public of the faithful services of public officials; a proposal to fix New York’s bribery laws to punish offers to bribe as seriously as agreed-upon bribes; greater transparency in the use of discretionary legislative funds; and closing a loophole that led to the acquittal of an elected state judge in 2010 on charges that she had disguised campaign contributions that exceeded the legal limit.

We thought it was a great proposal, and two editorial boards – the *New York Times* (Exhibit B) and the *Daily News* (Exhibit C) – endorsed our proposal. Most of our state legislators, on the other hand, were not particularly enthused, and the proposals stalled after the Senate Codes Committee passed it.

In 2011, a year in which **two members** of the State Legislature were charged with crimes, my office and the Association worked with the State Bar Government Ethics Task Force to suggest penal reforms such as an unlawful gratuity statute, which would have punished giving benefits over \$3,000 to public officials (or receiving such benefits) simply because of the official’s position, as well as a reform to New York’s bribery law. Additionally, DAASNY proposed reforms of the State Inspector General’s office to enhance its independence, and also proposed that there should be an Inspector General for the Legislature. (Exhibit D). When these proposals were entered into the mix during the negotiations leading up to the Public Integrity Reform Act of 2011, we were told that the Legislature had taken penal reform off the table. All of our proposals, including the Inspector General proposals, were dropped.

Finally, in 2012, a year in which **two members** of the State Legislature were charged with crimes, as president of DAASNY, I created the White Collar Crime Task Force to examine these problems in detail, from top to bottom. The goal was to make good government recommendations that could potentially be embraced by diverse interests around the state.

It is worth noting that, while the Task Force was conducting its deliberations in 2013, a year in which **three members** of the State Legislature have been charged with crimes, my office worked closely with the Executive Chamber to provide input into Governor Cuomo’s corruption legislation, styled the Public Trust Act, and which, like previous efforts, did not pass either house. (Exhibit E). That was despite the recommendation of each and every one of the 62 District Attorneys in New York State that the bill pass. (Exhibit F).

Before I turn to the Task Force's specific recommendations, I'd like to address *why* we are recommending these laws. As you just heard from the U.S. Attorneys, and as everyone in New York government knows well, the F.B.I. and federal prosecutors have been remarkably successful in policing our corrupt officials.

That success has led some to suggest that New York does not need criminal law reform in the area of corruption. Why, according to this point of view, do we need to do anything at all, when federal authorities have been doing a fine job?

The answer, I believe, is that reliance on the federal government to safeguard state and local government integrity, although it may be working in the sense that public corruption is being exposed, is risky public policy and is inherently in tension with a federal system of sovereign states. To be sure, in terms of corruption enforcement, the U.S. Attorneys and the United States Attorney General, to say nothing of the FBI, are *currently* active in rooting out this New York problem. But there is nothing in federal law or politics that requires that they continue to do so in the future.

Why, in a government that gives states primacy in police power, would New York cede this area to a federal government of limited powers, whose future resources and attention may be diverted to different priorities?

Now, as we all know, some high-level government officials (and many low-level ones) do, on occasion, wind up in our state courts. Attorneys General Schneiderman and Cuomo, in the recent past, successfully prosecuted Senator Shirley Huntley and Comptroller Alan Hevesi, respectively. DA Charles J. Hynes of Brooklyn sent two Supreme Court Justices to state prison, and did the same to Assembly member Clarence Norman, his Democratic county leader. And my own office, the Manhattan DA's office, a little more than a decade ago obtained the convictions of Assembly member Gloria Davis and Senator Guy Velella.

But these successes, a fraction of those of our federal counterparts, came about in spite of the state system, not because of it. Criminal prosecution may not be the answer to all of society's problems, but any system of corruption enforcement is doomed without effective criminal sanctions. It is simply time to stop handcuffing state prosecutors and allow them to do the jobs that they should be doing to root out corruption.

To this end, the Task Force made seven recommendations that most closely relate to the problem before the Moreland Act Commission. Two are procedural and five are substantive.

- **New York should eliminate Automatic Transactional Immunity.**
Federal grand juries may use hearsay without limitation, but state grand juries are generally required to hear from each person who has personal knowledge

of the events at issue. And under current New York law, which is unique in the country and not required by any Supreme Court precedent, every witness before a state grand jury *automatically* receives full *transactional* immunity about anything to which they testify, which means that they can never be prosecuted in a state court for matters about which they testify in response to questions. Even witnesses who lie *still* can't be prosecuted for the crime under investigation, only for perjury – often a particularly difficult crime to prove. The results have been abysmal for New York, in two ways.

First, there have been numerous miscarriages of justice. In the violent crime area, for example, in more than one case a supposed murder witness who had, unbeknownst to the prosecutor, actually committed the murder, was called before the grand jury and absolved of all liability. In white collar crime, a business executive whose company had been victimized was called before a grand jury to describe the company's operations and testify about a possible extortion. Subsequently, a different prosecutor began investigating the executive for tax fraud connected to the company. Because the defendant had been asked about the company's operations by the first prosecutor, the case against him was dismissed and prosecution was barred.

Many similar cases have unfolded over the years. But they pale in comparison to the current law's second fatal flaw: the chilling effect on investigations and prosecutions of all kinds, particularly of corruption. Prosecutors are understandably reluctant to call the very people who know about corruption for fear of giving them a pass for all of their transgressions, forever – to say nothing of the credibility issues that witness must face at trial, having been “granted” full immunity from prosecution.

In the words of a criminal surreptitiously recorded by my office many years ago: “I never knew about this thing, immunity They can't throw you before the grand jury 'cause they don't know what's gonna come out. That's the name of the game.”

I believe, and all 62 of the District Attorneys in New York State agree, that it would be much more sensible for New York to adopt the federal “use immunity” rule, used in a majority of states, which in practice has much less of a chilling effect on corruption investigations. In 1982, state prosecutors, supported by the first Governor Cuomo, former Attorney General Robert Abrams, and every major editorial board in the state, tried and failed to get this law changed. I believe that it's time to try again.

I recommend, therefore, that the Legislature amend CPL §§ 50.10(1) and 190.40(2) to authorize a grant of use immunity rather than transactional immunity on witnesses, thereby conforming New York law to federal law and

the law of most other states and allowing for fuller use of the grand jury to investigate complex crime.

- **New York Should Amend the Accomplice Corroboration Requirement.** The lifeblood of prosecution of sophisticated crime, which corruption typically is, is the use of informants, co-conspirators, and accomplices, who are in the best position to supply information about the inner workings of criminal enterprises.

But in New York, even when co-conspirators “switch governments,” to use the famous words of Sammy Gravano, New York’s accomplice corroboration rule makes it impossible to prosecute others without independent corroborating evidence. This is a sensible rule in concept, and one that even federal prosecutors follow in practice, but its interpretation in New York makes it a poison pill in corruption investigations. Federal prosecutors often corroborate the testimony of one cooperator with another. But in New York, even nine cooperators corroborating the tenth are not enough – the evidence must be independent. How about a tape? Sure, but it had better be a non-accomplice that vouches for its authenticity, or it won’t be admissible. These hyper-technical hurdles have no place in a system that is serious about cleaning up its government.

Corrupt public officials, corporate criminals, gang members, and many others continue to reap the benefit of New York’s outdated and overly restrictive law. Although accomplice testimony deserves sharper scrutiny, it is not necessarily untrustworthy. New York’s rule codifies a blanket judgment that an accomplice is *per se* unreliable just because he participated in the defendant’s crimes, when there are myriad factors that make witnesses unreliable. With proper safeguards, such as an instruction from the trial court on the inherent dangers of accomplice testimony, such factors ought to be for the jury to weigh in assessing credibility. A cellmate who committed assault should not be presumed more trustworthy, as he is under current law, than a self-confessed accomplice to forgery.

I recommend, therefore, that New York amend, but not eliminate, the accomplice corroboration requirement of CPL § 60.22 to allow cross-corroboration by a separate accomplice.

- **New York Should Amend Its Public Servant Bribery Law.** Although New York’s public bribery law by its terms is violated when a bribe is merely offered or solicited, it paradoxically also requires an illicit “agreement or understanding” between the bribe giver and the bribe receiver in order for the crime to be complete. This exacting element is not required under New York’s other bribery laws, including labor bribery, sports bribery, and commercial bribery,

and the laws of most other jurisdictions, which are subject to the less exacting requirement of an “intent to influence” the recipient of the bribe.

As it stands, therefore, those who bribe public officials are less likely to be prosecuted than those who bribe boxers. The Task Force’s proposal would align New York’s public bribery law with these other bribery laws, but would carve out an exception for campaign contributions, which would continue to be treated as they are under current law. This distinction is in recognition of the nature of campaign contributions, the First Amendment interests at stake, and the observations of the U.S. Supreme Court in the context of the federal law on extortion under color of official right.

The Task Force therefore recommends replacing the “agreement or understanding” requirement in New York’s bribery law with a requirement of an “intent to influence” the public servant. This would legislatively overrule the Court of Appeals’s decision in *People v. Bac Tran*, 80 N.Y.2d 170 (1992).

- **New York Should Create a Law Against Undisclosed Self-Dealing.** The Task Force has also proposed a new law to deal with courses of conduct where public servants conceal their interests in government business above a certain threshold.

Under current law, undisclosed self-dealing can at best be prosecuted as a failure to provide proper disclosure under Article 4 of the Public Officers Law, which is punishable as a Class A misdemeanor and only applies to state employees. Or, if the interest or transaction is one that must otherwise be disclosed in a filing with a public office, it could be prosecuted as Offering a False Instrument for Filing – which, depending on the circumstances could either be a Class A misdemeanor or a Class E felony – but that law also requires a filing in all circumstances. Neither, therefore, is a sufficient deterrent to self-dealing conduct. The state should demonstrate a more serious commitment to ending the abuses of public trust that accompany self-dealing behavior.

The Task Force proposes that New York criminalize public servants intentionally engaging courses of conduct in connection with the award of public business or funds, where they or a relative are receiving or intending to receive undisclosed benefits.

- **New York Should Upgrade the Crime of Official Misconduct.** The Task Force solicited the views of a number of public officials and other groups. One suggestion that we adopted came from Comptroller DiNapoli, who suggested that we recommend upgrading the existing crime of Official Misconduct, currently only a misdemeanor, to create two new crimes of Official Misconduct in the Second and First degrees (Class E and D felonies, respectively).

By way of background, Official Misconduct criminalizes a public servant's unauthorized action (or his or her failure to perform an act his or her duty requires) with the intent to obtain a benefit or deprive another person of a benefit. So, if a high-ranking police official voids moving violations and parking tickets issued to her family members, the level of the offense is the same whether the revenue lost to the municipality totals \$50 or \$5,000. Similarly, if a law enforcement official fails to act on an embezzlement complaint because the alleged perpetrator is the son of a friend, the level of that offense is a Class A misdemeanor, regardless whether that failure to act prevented the victim company from recovering \$500 or \$5,000 in stolen funds. And, while our Penal Law includes sections for Rewarding Official Misconduct and Receiving a Reward for Official Misconduct, which present a range of E and C felonies, these offenses do not reach situations where there is no reward to the official, that is, when the breach of the official's duty serves only to deprive a third party of a benefit.

I recommend, consistent with the Task Force's conclusions, that the Legislature upgrade the existing crime of Official Misconduct based on the amount of the benefit obtained or deprived.

- **New York Should Enhance Sentences for Abuse of Public Trust.** Bribery, bribe receiving, and rewarding official misconduct, as examples, all include the actor's status as a public servant as an element of the offense, and our lawmakers plainly considered the actor's status in grading the seriousness of the offenses and the potential penalties. But unfortunately, wayward public officials have not always confined their misdeeds to the sections of the penal statutes that specifically reference them.

So, for example, if a Senator uses her position to embezzle money from a charity, or a police officer uses his position to facilitate a drug transaction, the elements of a Grand Larceny charge or a drug sale charge do not capture each defendant's abuse of position, nor do the potential penalties. The Task Force believes that the facts that cause the additional harm – the public-servant status of the offender and the abuse of his or her official position – should be captured through an appropriate sentencing enhancement.

For example, if a Commissioner uses his status to facilitate getting away with a private fraud, say, a class C felony, that defendant would now be punished for a class B felony and be subject to more serious punishment. This would apply only to public servants who commit non-corruption offenses that are significantly facilitated by their position. The enhancement would work much in the way that hate crimes or crimes of terrorism are currently enhanced under our penal law. Abuses of trust should be treated in the same way.

I therefore recommend legislation providing that, upon a conviction for the substantive offense, the level of the underlying substantive offense would be elevated one category for sentencing purposes if the actor uses his position, or attempts to do so, in a manner that significantly facilitates the concealment or commission of the crime.

This was also a proposal made to the Task Force by Comptroller DiNapoli and embraced by the Task Force.

- **New York Should Enhance the Crime of Defrauding the Government.** New York currently has a law called Defrauding the Government, which sounds like it could be very useful, but it's not. Its usefulness is greatly diminished by two major problems that mar its effectiveness: it only applies to schemes committed by or with people inside the government, and it treats a scheme that obtained more than \$1 million no more seriously than one that obtained more than \$1,000. This is unacceptable.

The Task Force has proposed, in a similar manner as that proposed in the Governor's Public Trust Act, that the crime be gradated according to the seriousness of the offense. The current crime is always a class E felony, and likely for that reason, it is rarely used, having been charged only 41 times statewide between 2007 and 2011. Our proposal would gradate the crime from an E felony up to a B felony for schemes that obtain more than \$250,000.

We also propose that the amended law apply to schemes that target the government, whether or not they were committed by or with the help of insiders. The reality is that government fraud and corruption often go hand in hand, but the requirement that the prosecutor prove in all instances the involvement of an insider is an unnecessary burden. There is no good reason to handcuff prosecutors in investigating both. I urge that this potentially useful statute be made actually useful.

We have also made some additional recommendations to amend this statute, which are beyond the scope of this hearing but which may be found in the Task Force's final report.

Conclusion

I would like to conclude by quoting from a 1987 article in the *New York Times* that followed the New York City corruption scandals of the mid-1980s. (Exhibit G). That article reported, among other things, that "[h]alf a dozen district attorneys said local officials they believe to be corrupt have gone unprosecuted because New York laws

make it too difficult – more difficult than in most other states – to bring corruption cases.”¹

That was 26 years ago. Things have only gotten worse. Thank you for the chance to give you my thoughts this evening. Dan or I would be happy to answer any questions you might have.

¹ Jeffrey Schmalz, *New York Officials Shifting Blame in Efforts to Combat Corruption*, N.Y. TIMES, Aug. 19, 1987.

EXHIBIT A

STATE OF NEW YORK

S. 7707--A

A. 10942--A

SENATE - ASSEMBLY

May 4, 2010

IN SENATE -- Introduced by Sens. SCHNEIDERMAN, C. JOHNSON, BRESLIN, ADDABBO, AUBERTINE, BONACIC, DUANE, KRUEGER, PERALTA, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. KELLNER, KOON, BACALLES, CORWIN, MOLINARO, GABRYSZAK -- Multi-Sponsored by -- M. of A. DUPREY, JOHN, QUINN, SWEENEY, TOWNSEND -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to increasing penalties for violations relating to scheme to defraud the government, bribery, and duty to provide faithful public services; to amend the public officers law, in relation to faithful public services and increases penalties for financial disclosure violations, and in relation to community project grants; to amend the legislative law, in relation to reporting requirements; to amend the executive law, in relation to making technical changes thereto; to amend the state finance law, in relation to the legislative community projects fund and executive community projects fund; to amend the judiciary law, in relation to the inspection of annual statements of financial disclosure; and to amend the election law, in relation to campaign contributions and expenditures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "public
2 corruption prevention and enforcement act of 2010".

3 § 2. Section 10.00 of the penal law is amended by adding three new
4 subdivisions 21, 22 and 23 to read as follows:

5 21. For the purposes of sections 195.18 and 195.20 of this chapter
6 "scheme" means any plan, pattern, device, contrivance, or course of
7 action, and "intent to defraud" includes an intent to deprive the state

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD16966-12-0

1 or a political subdivision of the state or a governmental instrumentali-
2 ty of faithful public services.

3 22. "Faithful public services" means conduct that is free of undis-
4 closed self-dealing and free of the unauthorized or unlawful conferral
5 or intended conferral of a benefit, directly or indirectly, on a public
6 servant.

7 23. "Self-dealing" means any action taken by a public servant in his
8 or her official capacity with intent to benefit himself or herself,
9 directly or indirectly, and which relates to his or her private business
10 interests.

11 § 3. Section 195.20 of the penal law, as amended by chapter 1 of the
12 laws of 2010, is amended to read as follows:

13 § 195.20 [Defrauding] Scheme to defraud the government in the first
14 degree.

15 A person is guilty of [defrauding] a scheme to defraud the government
16 in the first degree when, being a public servant or party officer or
17 acting in concert with a public servant or party officer, he or she:

18 (a) engages in a scheme constituting a systematic ongoing course of
19 conduct with intent to:

20 (i) defraud the state or a political subdivision of the state or a
21 governmental instrumentality within the state; or

22 (ii) to obtain property, services or other resources from the state or
23 a political subdivision of the state or a governmental instrumentality
24 within the state by false or fraudulent pretenses, representations or
25 promises; or

26 [(ii)] (iii) defraud the state or a political subdivision of the state
27 or a governmental instrumentality within the state by making use of
28 property, services or resources of the state, political subdivision of
29 the state or a governmental instrumentality within the state for private
30 business purposes or other compensated non-governmental purposes; and

31 (b) either (i) so obtains property, services or other resources with a
32 value in excess of one thousand dollars from such state, political
33 subdivision or governmental instrumentality, or (ii) confers or obtains
34 a benefit or benefits, directly or indirectly, with a combined value in
35 excess of one thousand dollars.

36 [Defrauding] Scheme to defraud the government in the first degree is a
37 class [E] D felony.

38 § 4. The penal law is amended by adding a new section 195.18 to read
39 as follows:

40 § 195.18 Scheme to defraud the government in the second degree.

41 A person is guilty of a scheme to defraud the government in the second
42 degree when, being a public servant or party officer or acting in
43 concert with a public servant or party officer, he or she engages in a
44 scheme constituting a systematic ongoing course of conduct with intent
45 to:

46 (a) defraud the state or a political subdivision of the state or a
47 governmental instrumentality within the state; or

48 (b) obtain property, services or other resources from the state or a
49 political subdivision of the state or a governmental instrumentality
50 within the state by false or fraudulent pretenses, representations or
51 promises; or

52 (c) defraud the state or a political subdivision of the state or a
53 governmental instrumentality within the state by making use of property,
54 services or resources of the state, political subdivision of the state
55 or a governmental instrumentality within the state for private business
56 purposes or other compensated non-governmental purposes.



1 Scheme to defraud the government in the second degree is a class E
2 felony.

3 § 5. Section 200.00 of the penal law, as amended by chapter 833 of the
4 laws of 1986, is amended to read as follows:

5 § 200.00 Bribery in the third degree.

6 A person is guilty of bribery in the third degree when he or she
7 confers, or offers or agrees to confer, any benefit upon a public serv-
8 ant [upon an agreement or understanding that] with the intent to influ-
9 ence such public servant's vote, opinion, judgment, action, decision or
10 exercise of discretion as a public servant [will thereby be influenced].

11 Bribery in the third degree is a class D felony.

12 § 6. Section 200.03 of the penal law, as amended by chapter 833 of the
13 laws of 1986, is amended to read as follows:

14 § 200.03 Bribery in the second degree.

15 A person is guilty of bribery in the second degree when he or she
16 confers, or offers or agrees to confer, any benefit valued in excess of
17 ten thousand dollars upon a public servant [upon an agreement or under-
18 standing that] with the intent to influence such public servant's vote,
19 opinion, judgment, action, decision or exercise of discretion as a
20 public servant [will thereby be influenced].

21 Bribery in the second degree is a class C felony.

22 § 7. Section 200.04 of the penal law, as added by chapter 276 of the
23 laws of 1973, is amended to read as follows:

24 § 200.04 Bribery in the first degree.

25 A person is guilty of bribery in the first degree when he or she
26 confers, or offers or agrees to confer, any benefit upon a public serv-
27 ant [upon an agreement or understanding that] with the intent to influ-
28 ence such public servant's vote, opinion, judgment, action, decision or
29 exercise of discretion as a public servant [will thereby be influenced]
30 in the investigation, arrest, detention, prosecution or incarceration of
31 any person for the commission or alleged commission of a class A felony
32 defined in article two hundred twenty of [the penal law] this part or an
33 attempt to commit any such class A felony.

34 Bribery in the first degree is a class B felony.

35 § 8. The penal law is amended by adding a new section 200.28 to read
36 as follows:

37 § 200.28 Duty to provide faithful public services.

38 For purposes of this article, the duties of a public servant shall
39 include but not be limited to the duty to provide faithful public
40 services. In executing the duties of his or her office, every public
41 servant shall have the duty to provide faithful public services to his
42 or her constituents and the state or political subdivision thereof, as
43 applicable. In executing the duties of his or her office or employment,
44 every public servant shall also have the duty to provide faithful public
45 services to a state or local agency or legislature, as applicable.

46 § 9. Subdivision 3 of section 73-a of the public officers law is
47 amended by adding a new paragraph 20 to read as follows:

48 20. If the reporting individual, such reporting individual's spouse or
49 domestic partner is a non-compensated director, officer or trustee, or
50 such reporting individual's relative or a relative of such reporting
51 individual's spouse or domestic partner is employed in any position at,
52 for or within a non-profit entity in New York state as described in
53 section 501(c)(3) of the United States internal revenue code, list below
54 the name of the entity, business address of the entity, name of spouse,
55 domestic partner or other relative, degree of relationship with the

1 reporting individual and title of the compensated or non-compensated
2 position.

3 <u>Entity Name/</u>	4 <u>Name of Spouse/</u>	5 <u>Degree of</u>	6 <u>Title or</u>
7 <u>Address</u>	8 <u>Domestic Partner/</u>	9 <u>Relationship</u>	10 <u>Position</u>
11 <u>Relative</u>			
12 _____			
13 _____			
14 _____			
15 _____			
16 _____			

17 § 10. Subdivision 1 of section 74 of the public officers law, as
18 amended by chapter 1012 of the laws of 1965, the opening paragraph as
19 amended by chapter 14 of the laws of 2007, is amended to read as
20 follows:

21 1. [Definition. As used in this section:] Definitions of terms of
22 general use in this section:

23 a. The term "state agency" shall mean any state department, or divi-
24 sion, board, commission, or bureau of any state department or any public
25 benefit corporation or public authority at least one of whose members is
26 appointed by the governor or corporations closely affiliated with
27 specific state agencies as defined by paragraph (d) of subdivision five
28 of section fifty-three-a of the state finance law or their successors.

29 b. The term "legislative employee" shall mean any officer or employee
30 of the legislature but it shall not include members of the legislature.

31 c. The term "faithful public services" shall mean conduct that is free
32 of undisclosed self-dealing and free of the unauthorized or unlawful
33 conferral or intended conferral of a benefit, directly or indirectly, on
34 an officer or employee of a state agency, member of the legislature or
35 legislative employee. Every officer or employee of a state agency,
36 member of the legislature or legislative employee shall have a duty of
37 faithful public services with respect to his or her constituents and the
38 state or to a state agency or legislature, as applicable.

39 d. The term "self-dealing" shall mean any action taken by an officer
40 or employee of a state agency, member of the legislature or legislative
41 employee in his or her official capacity with intent to benefit himself
42 or herself, directly or indirectly, and which relates to his or her
43 private business interests.

44 § 11. Subdivision 3 of section 74 of the public officers law is
45 amended by adding a new paragraph j to read as follows:

46 j. In executing the duties of his or her office, every officer or
47 employee of a state agency, member of the legislature or legislative
48 employee shall have the duty to provide faithful public services to his
49 or her constituents and the state, as applicable. In executing the
50 duties of his or her office or employment, every officer or employee of
51 a state agency, member of the legislature or legislative employee shall
52 also have the duty to provide faithful public services to a state agency
53 or the legislature, as applicable.

54 § 12. Subdivision 4 of section 74 of the public officers law, as
55 amended by chapter 14 of the laws of 2007, is amended to read as
56 follows:

4. Violations. In addition to any penalty contained in any other
provision of law any such officer, member or employee who shall know-
ingly and intentionally violate any of the provisions of this section may
be fined, suspended or removed from office or employment in the manner
provided by law. Any such individual who knowingly and intentionally
violates the provisions of paragraph b, c, d or i of subdivision three

1 of this section shall be subject to a civil penalty in an amount not to
2 exceed ten thousand dollars and the value of any gift, compensation or
3 benefit received as a result of such violation. Any such individual who
4 knowingly and intentionally violates the provisions of paragraph a, e or
5 g of subdivision three of this section shall be subject to a civil
6 penalty in an amount not to exceed the value of any gift, compensation
7 or benefit received as a result of such violation. Any such individual
8 who knowingly and intentionally violates the provisions of paragraph j
9 of subdivision three of this section shall be subject to a civil penalty
10 in an amount not to exceed ten thousand dollars and the value of any
11 gift, compensation or benefit received as a result of such violation.
12 Any such individual who, as part of or in furtherance of a scheme or
13 artifice to defraud a state agency, the legislature, any political
14 subdivision, his or her constituents or the state, as applicable, know-
15 ingly and intentionally violates the provisions of paragraph j of subdi-
16 vision three of this section shall, in addition to any penalty contained
17 in this section or any other provision of law, be guilty of a class E
18 felony.

19 § 13. Section 80 of the public officers law is renumbered section 81
20 and a new section 80 is added to article 4 to read as follows:

21 § 80. Community project grants. 1. Definitions. As used in this
22 section:

23 (a) The term "community project grant" shall mean a budgetary allo-
24 cation as funded by the legislative community projects fund as defined
25 in section ninety-nine-t of the state finance law, and the executive
26 community projects fund as defined in section ninety-nine-u of the state
27 finance law at the discretion and request of the governor or a member of
28 the legislature for a not-for-profit as defined in paragraph (d) of this
29 subdivision, university, college, school district or municipality;

30 (b) The term "sponsor" shall mean the governor or a member of the
31 legislature who makes a request for a community project grant;

32 (c) The term "grantee" shall mean the recipient of a community project
33 grant;

34 (d) The term "not-for-profit" shall mean an entity qualified as exempt
35 for federal tax purposes under section 501(c)(3) of the United States
36 internal revenue code.

37 (e) The term "relative" shall mean an individual's spouse, domestic
38 partner, child, stepchild, stepparent, or any person who is a direct
39 descendent of the grandparents of such individual or of the reporting
40 individual's spouse or domestic partner.

41 2. Standards. (a) No sponsor shall make a request for a community
42 project grant unless:

43 (i) the grantee is a not-for-profit, university, college, school
44 district and/or municipality; and

45 (ii) the grantee, if a not-for-profit, has been incorporated in the
46 state of New York for at least one year prior to April first of the year
47 in which the community project grant is requested and is registered with
48 the attorney general under section one hundred seventy-two of the execu-
49 tive law.

50 (b) No grantee shall receive a community project grant if:

51 (i) the grantee has been barred by a government agency in any juris-
52 isdiction as a result of inappropriate or unlawful activity within the
53 last five years;

54 (ii) any compensated or non-compensated director, officer or trustee
55 of a grantee, if a not-for-profit, has been convicted or charged with a

1 felony or misdemeanor that is related to the administration of such
2 grantee's business within the last five years;

3 (iii) the grantee has failed to file a required federal, state or city
4 tax return or pay taxes owed within the last five years.

5 (c) Where a violation of the provisions of this subdivision is alleged
6 to have occurred, the attorney general shall have jurisdiction under
7 section sixty-three-c of the executive law.

8 3. Prohibitions. (a) No sponsor shall request a community project
9 grant for a grantee if the sponsor or a relative of such sponsor is a
10 compensated or non-compensated director, officer or trustee.

11 (b) No sponsor or any relative of such sponsor who requests a communi-
12 ty project grant shall have a financial interest, direct or indirect, to
13 such grantee or has received or will receive any financial benefit,
14 either directly or indirectly, from such grantee or from matters
15 contained in the community project grant.

16 (c) Any sponsor who knowingly and intentionally violates any provision
17 of this subdivision shall be guilty of a class E felony. The attorney
18 general and any district attorney shall have concurrent authority to
19 investigate and prosecute violations of this subdivision.

20 4. Waiver of standards. A sponsor may request a waiver from the
21 attorney general of provisions contained in paragraph (b) of subdivision
22 two of this section. In assessing whether or not to issue a waiver, the
23 attorney general shall consider the history of the sponsor, the suit-
24 ability of a potential community project grant for the sponsor, the
25 effectiveness of any previous grants under the community project fund,
26 and any other factors the attorney general deems appropriate.

27 5. Rules and regulations. The attorney general may promulgate rules
28 and regulations necessary to effectuate the provisions of this section.

29 § 14. Subparagraph 1 of paragraph a of subdivision 14 of section 80 of
30 the legislative law, as amended by chapter 14 of the laws of 2007, is
31 amended to read as follows:

32 (1) the information set forth in an annual statement of financial
33 disclosure, including the categories of value or amount, filed pursuant
34 to section seventy-three-a of the public officers law except [the cate-
35 gories of value or amount which shall be confidential, and any other]
36 any item of information deleted pursuant to paragraph i of subdivision
37 seven of this section;

38 § 15. Subparagraph 1 of paragraph (a) of subdivision 17 of section 94
39 of the executive law, as amended by chapter 14 of the laws of 2007, is
40 amended to read as follows:

41 (1) the information set forth in an annual statement of financial
42 disclosure, including the categories of value or amount, filed pursuant
43 to section seventy-three-a of the public officers law except [the cate-
44 gories of value or amount, which shall remain confidential, and any
45 other] any item of information deleted pursuant to paragraph (h) of
46 subdivision nine of this section;

47 § 16. Section 99-d of the state finance law, as added by chapter 474
48 of the laws of 1996, is renumbered section 99-t and the section heading,
49 as added by chapter 474 of the laws of 1996, and subdivision 1, as
50 amended by section 2 of part BB of chapter 686 of the laws of 2003, are
51 amended to read as follows:

52 [Community] Legislative community projects fund. 1. There is hereby
53 established in the joint custody of the comptroller and the commissioner
54 of taxation and finance a special fund to be known as the legislative
55 community projects fund. This fund may have separate accounts designated
56 pursuant to a specific appropriation to such account or pursuant to a

1 written suballocation plan approved in a memorandum of understanding
2 executed by the director of the budget, the secretary of the senate
3 finance committee and the secretary of the assembly ways and means
4 committee. Such suballocation shall be submitted to the comptroller.

5 § 17. The state finance law is amended by adding a new section 99-u to
6 read as follows:

7 § 99-u. Executive community projects fund. 1. There is hereby estab-
8 lished in the joint custody of the comptroller and the commissioner of
9 taxation and finance a special fund to be known as the executive commu-
10 nity projects fund. This fund may have separate accounts designated
11 pursuant to a specific appropriation to such account or pursuant to a
12 written suballocation plan approved in a memorandum of understanding
13 executed by the director of the budget, the secretary of the senate
14 finance committee and the secretary of the assembly ways and means
15 committee. Such suballocation shall be submitted to the comptroller.

16 2. Such fund shall consist of monies transferred to such fund from the
17 general fund/state purposes account, or any other monies required to be
18 transferred or deposited, pursuant to law. Monies may not be transferred
19 or loaned between the accounts of this fund, unless specifically
20 provided (a) by law, or (b) by letter signed by the director of the
21 budget, but only upon the joint request of the secretary of the senate
22 finance committee and the secretary of the assembly ways and means
23 committee.

24 3. (a) As required to make timely payments from such accounts upon
25 presentment of proper vouchers therefor, the state comptroller shall
26 make transfers to any account in this fund up to the amounts annually
27 specified for transfer to such account and in compliance with subdivi-
28 sion two of this section, but only from such fund or funds authorized to
29 provide such transfers.

30 (b) By the close of each fiscal year, all remaining amounts not yet
31 transferred shall be transferred to the designated accounts for which
32 such transfers were authorized, up to the total amounts specified for
33 transfer to each account in each fiscal year, pursuant to law and in
34 compliance with subdivision two of this section.

35 4. Notwithstanding section forty of this chapter or any other
36 provision of law, appropriations of this fund shall be available for
37 liabilities incurred during and after the close of the fiscal year for
38 which such appropriations are enacted, provided however that such appro-
39 priations shall lapse on the fifteenth day of September following the
40 close of the fiscal year, and no monies shall thereafter be paid out of
41 the state treasury or any of its funds or the funds under its management
42 pursuant to such appropriations.

43 5. The director of the budget shall issue a certificate of approval
44 for any appropriation in any account of this fund no later than the
45 later of sixty days after the enactment of such appropriation or five
46 days after the execution of a written suballocation plan pursuant to the
47 provisions of subdivision one of this section. Such approval shall
48 satisfy any other requirement for a certificate of approval.

49 6. (a) The state shall not be liable for payments pursuant to any
50 contract, grant or agreement made pursuant to an appropriation in any
51 account of this fund if insufficient monies are available for transfer
52 to such account of this fund, after required transfers pursuant to
53 subdivision three of this section. Except with respect to, grants, or
54 agreements executed by any state officer, employee, department, institu-
55 tion, commission, board, or other agency of the state prior to the
56 effective date of this section, any contract, grant or agreement made

1 pursuant to an appropriation in this fund shall incorporate this
2 provision as a term of such contract, grant or agreement.

3 (b) The exhaustion of funds available for such transfers shall not
4 preclude the approval of contracts hereunder pursuant to section one
5 hundred twelve of this chapter. Notwithstanding any other provision of
6 law, interest shall not be due to any recipient for any late payments
7 made from this fund which result from insufficient monies being avail-
8 able in an account of this fund.

9 7. Monies shall be paid out of such accounts on the audit and warrant
10 of the state comptroller on vouchers certified or approved by the head
11 of the appropriate agency.

12 § 18. Subdivision 4 of section 211 of the judiciary law, as amended by
13 chapter 188 of the laws of 1990, is amended to read as follows:

14 4. By September first, nineteen hundred eighty-eight, the chief judge,
15 after consultation with the administrative board, shall approve a form
16 of annual statement of financial disclosure which form shall apply to
17 all judges, justices, officers and employees of the courts of record of
18 the unified court system, who receive annual compensation at or above
19 the filing rate defined by paragraph (1) of subdivision one of section
20 seventy-three-a of the public officers law or are determined to hold a
21 policy-making position pursuant to the rules and regulations promulgated
22 pursuant to this subdivision. Such form of annual statement of financial
23 disclosure shall be substantially similar to the form set forth in
24 subdivision three of section seventy-three-a of the public officers law.
25 Within one year after approval of such form, the chief judge shall cause
26 the chief administrator of the courts to promulgate rules or regulations
27 which require every judge, justice, officer and employee of the courts
28 of record of the unified court system, who receives annual compensation
29 at or above the filing rate defined by paragraph (1) of subdivision one
30 of section seventy-three-a of the public officers law or is determined
31 to hold a policy-making position, to report the information required by
32 the approved form effective first with respect to a filing which shall
33 be required in nineteen hundred ninety-one (generally applicable to
34 information for the preceding calendar year) and thereafter, effective
35 for future annual filings. Such rules and regulations shall also provide
36 for the determination, by the appointing authority, of policy-makers who
37 shall be required to file the annual statement of financial disclosure
38 required by this subdivision. Any judge, justice, officer or employee of
39 the courts of record of the unified court system who, pursuant to such
40 rules or regulations, is required to file a completed annual statement
41 of financial disclosure and who makes such filing in accordance with the
42 requirements contained in such rules or regulations, shall be deemed to
43 have satisfied the requirements of any other law mandating the filing of
44 a completed annual statement of financial disclosure for the applicable
45 calendar year which might otherwise apply to such judges, justices,
46 officers or employees, and no duplicate filing shall be required on
47 account of any other such law, notwithstanding the provisions of such
48 other law. Notwithstanding the provisions of article six of the public
49 officers law or any rule or regulation to the contrary, the ethics
50 commission for the unified court system shall make available for public
51 inspection the information set forth in the annual statement of finan-
52 cial disclosure filed pursuant to this subdivision, including the cate-
53 gories of value or amount. Notwithstanding the provision of article six
54 of the public officers law, the ethics commission for the unified court
55 system may choose to keep confidential the names of the unemancipated
56 children on the annual statement of financial disclosure filed pursuant



1 to this subdivision, any item of information deleted pursuant to judi-
2 ary rules and other records of such commission as it sees fit.

3 § 19. Paragraph 1 and the opening paragraph of paragraph 3 of subdivi-
4 sion 9 of section 14-100 of the election law, as amended by chapter 70
5 of the laws of 1983, are amended to read as follows:

6 (1) any gift, subscription, outstanding loan (to the extent provided
7 for in section 14-114 of this [chapter] article), advance, or deposit of
8 money or any thing of value, made in connection with the nomination for
9 election, or election, of any candidate, or made to promote the success
10 or defeat of a political party or principle, or of any ballot proposal,
11 any payment, by any person other than a candidate or a political
12 committee authorized by the candidate, made in connection with the nomi-
13 nation for election or election of any candidate, or any payment made to
14 promote the success or defeat of a political party or principle, or of
15 any ballot proposal including but not limited to compensation for the
16 personal services of any individual which are rendered in connection
17 with a candidate's election or nomination without charge; provided
18 however, that none of the foregoing in this paragraph shall be deemed a
19 contribution if it is made, taken or performed by a candidate or his
20 spouse or by a person or a political committee independent of the candi-
21 date or his or her agents or authorized political committees. For
22 purposes of this article, the term "independent of the candidate or his
23 agents or authorized political committees" shall mean that the candidate
24 or his agents or authorized political committees did not authorize,
25 request, suggest, foster or cooperate in any such activity; and provided
26 further, that the term contribution shall not include:

27 § 20. Subdivision 1 of section 14-104 of the election law, as amended
28 by chapter 430 of the laws of 1997, is amended to read as follows:

29 1. (a) Any candidate for election to public office, or for nomination
30 for public office at a contested primary election or convention, or for
31 election to a party position at a primary election, shall file state-
32 ments sworn, or subscribed and bearing a form notice that false state-
33 ments made therein are punishable as a class A misdemeanor pursuant to
34 section 210.45 of the penal law, at the times prescribed by this article
35 setting forth the particulars specified by section 14-102 of this arti-
36 cle, as to all moneys or other valuable things, paid, given, expended or
37 promised by him or her, except as described in paragraph (b) of this
38 subdivision to aid his or her own nomination or election, or to promote
39 the success or defeat of a political party, or to aid or influence the
40 nomination or election or the defeat of any other candidate to be voted
41 for at the election or primary election or at a convention, including
42 contributions to political committees, officers, members or agents ther-
43 eof, and transfers, receipts and contributions to him or her to be used
44 for any of the purposes above specified, or in lieu thereof, any such
45 candidate may file such a sworn statement at the first filing period, on
46 a form prescribed by the state board of elections that such candidate
47 has not made [no] any such expenditures or received any funds and does
48 not intend to make any such expenditures, except through a political
49 committee authorized by such candidate pursuant to this article. A
50 committee authorized by such a candidate may fulfill all of the filing
51 requirements of this [act] article on behalf of such candidate. If a
52 candidate files a sworn statement pursuant to this subdivision, the
53 candidate becomes an agent of the committee.

54 (b) Any candidate for election to public office, or for nomination for
55 public office at a contested primary election or convention, and such
56 candidate's spouse or domestic partner, shall file statements sworn, or

1 subscribed and bearing a form notice that false statements made therein
2 are punishable as a class A misdemeanor pursuant to section 210.45 of
3 the penal law, disclosing all gifts and all loans, excluding loans from
4 a financial institution, in excess of one thousand dollars (i) by the
5 last date to accept or decline a designation or nomination, whichever is
6 earlier, if the candidate has not declined, for the twelve months imme-
7 diately preceding such statement and (ii) at times prescribed by this
8 article setting forth the particulars in section 14-102 of this article.
9 A committee authorized by a candidate may not fulfill the filing
10 requirements of this paragraph on behalf of such candidate or such
11 candidate's spouse or domestic partner.

12 § 21. Subdivision 2 of section 14-108 of the election law, as amended
13 by chapter 109 of the laws of 1997, is amended to read as follows:

14 2. Each statement shall cover the period up to and including the
15 fourth day next preceding the day specified for the filing thereof;
16 provided, however, that any contribution, gift or loan in excess of one
17 thousand dollars, if received after the close of the period to be
18 covered in the last statement filed before any primary, general or
19 special election but before such election, shall be reported, in the
20 same manner as other contributions, gifts or loans, within twenty-four
21 hours after receipt.

22 § 22. Subdivision 1 of section 14-120 of the election law, as amended
23 by chapter 79 of the laws of 1992, is amended to read as follows:

24 1. No person shall in any name except his own, directly or indirectly,
25 make a contribution, loan or payment or a promise of a contribution,
26 loan or payment to a candidate or political committee or to any officer
27 or member thereof, or to any person acting under its authority or in its
28 behalf or on behalf of any candidate, nor shall any such committee or
29 any such person or candidate knowingly receive a contribution, loan or
30 payment or promise of a contribution, loan or payment, or enter or cause
31 the same to be entered in the accounts or records of such committee, in
32 any name other than that of the person or persons by whom it is made.
33 It shall be no defense to a violation of this section that the person
34 giving the contribution, loan or payment provides the contribution, loan
35 or payment to a candidate prior to the candidate giving it to the
36 campaign committee.

37 § 23. If any clause, sentence, paragraph, section or part of this act
38 shall be adjudged by any court of competent jurisdiction to be invalid,
39 such judgment shall not affect, impair, or invalidate the remainder
40 thereof.

41 § 24. This act shall take effect immediately; provided, however, that
42 sections nine through twenty-two of this act shall take effect on the
43 sixtieth day after it shall have become a law.

EXHIBIT B



May 9, 2010

EDITORIAL

There Ought to Be a Bruno Law

So, add Joseph Bruno, New York's former Senate leader, to the Albany List of Shame. On Thursday, a federal judge sentenced him to two years in prison for using his office for personal gain. This has to stop. New York needs a tough reform law and more honest lawmakers.

The Bruno case is a pointed example of one of the oldest sayings in Albany: It's not what's illegal there that's scandalous, it's what's legal. New York has a law that is supposed to prohibit the use of an official position "to secure unwarranted privileges." It is flimsy, at best. So are the state laws requiring disclosure.

Mr. Bruno used his office, staff and clout to earn millions from companies and unions seeking business from the state. When he was convicted, it was under a federal statute that requires "honest services."

The United States Supreme Court is now considering whether that law is too vague and should be overturned. (District Judge Gary Sharpe allowed Mr. Bruno to stay out of prison until the high court rules.)

New York City's new district attorney, Cyrus Vance Jr., is promoting a bill intended to finally root out state corruption. It would strengthen disclosure requirements, expand the definition of bribery and attempted bribery, and harden the prohibition on the use of taxpayer-paid services for private work. It would cover many of the abuses committed by Mr. Bruno.

Two Democrats, State Senator Eric Schneiderman, who is running for attorney general, and Assemblyman Micah Kellner of Manhattan, are pushing the Vance bill. Too many others in the Legislature prefer the laws to be loose and easy.

At the sentencing, Mr. Bruno was still insisting that he "did nothing wrong." Nothing wrong? He used Senate lawyers to help get around state laws. He used cars and drivers and copying machines paid for by taxpayers to help out his private business. Supplicants wanting state help invested in his businesses because he was powerful and they needed laws to go their way.

Judge Sharpe told Mr. Bruno, "You have blinders on." He could have been speaking to all of Albany.

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EXHIBIT C

Opinion

Pass Joe's Law: Bruno's federal crimes must be state offenses, too

THURSDAY, MAY 6, 2010, 9:05 PM



Right up to the moment he was sentenced to two years in prison, [Joe Bruno](#) just didn't get it. His long and rambling plea for leniency made clear that he still believes he did nothing wrong in abusing his office for personal profit.

Once, no doubt, Bruno followed a sure moral compass. But after years of unaccountable power, he lost sight of the distinctions between right and wrong, public and private, person and title.

He thought he could do anything. After all, he was the Senate majority leader. After all, he was the most powerful Republican in [New York State](#). After all, nothing seemed to be illegal under [Albany's](#) deliberately porous system of ethical regulations and enforcement.

But Bruno was wrong. And, thanks to a federal criminal trial, he became the personification of all that is rotten about Albany. Based on Bruno's performance in court yesterday, he retains that benighted status.

Federal Judge Gary Sharpe was merciful in sparing Bruno the much harsher punishment for which he was eligible. Although Bruno was unrepentant, he is elderly, and there's no chance of a repeat offense. He now pins hope for freedom on an upcoming [U.S. Supreme Court](#) ruling that could invalidate the federal statute he was found to have violated.

Whether or not Bruno eventually skates, his trial and sentencing have sent a message to a Legislature that is swamped with public revulsion. The prosecution put all of Albany on trial. The conviction must result in real reform.

Amazingly, lawmakers have balked and bickered. They have passed only a no-brainer statute to make clear that exploiting public resources for private gain is prohibited. New York actually needed this law to, for instance, bar a legislator from devoting a secretary to personal business.

But legislation that would force serious disclosure of outside income, strictly regulate conflicts of interest and set up a truly independent policing agency to keep the pols honest has gotten tied up in self-protective maneuvering.

Offering new hope is a bill to clearly establish that officials have a duty to faithfully serve the public interest. Drafted with the help of [Manhattan District Attorney](#) Cy Vance's office, the legislation would bar lawmakers from setting up phony consulting businesses whose clients are looking for help in the Legislature. That was how Bruno got rich quick.

The bill is sponsored by [Sen. Eric Schneiderman](#) and Assemblyman Micah Kellner, both of [Manhattan](#), and has much else to recommend it.

Other provisions would reform the Legislature's system of member-item grants to fight conflicts of interests, make bribery prosecutions easier and close a loophole that lets political donors make huge unreported campaign contributions.

Call it Joe's Law. Get it passed.

OTHER STORIES



China's Slowdown Comes to an End



Polanski's rape victim tells all in her new book



Limbaugh, Hannity & Palin nose-dive



City Style: Tel Aviv (Robb Report)

EXHIBIT D



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FRANKLIN COUNTY

October 12, 2010

Karl J. Sleight, Esq.
Harris Beach PLLC
677 Broadway, Suite 1101
Albany, NY 12207

RE: TASK FORCE ON GOVERNMENT ETHICS

Dear Mr. Sleight:

Thank you for the opportunity to weigh in on behalf of the District Attorneys Association of the State of New York ("DAASNY") regarding the work of the New York State Bar Association's Task Force on Government Ethics. By way of background, DAASNY was founded more than 100 years ago to bring District Attorneys in New York State and their legal staffs together to discuss matters of mutual interest, and where appropriate to promote public policies that aim to enhance the effective enforcement of the law.

You suggested that DAASNY might be helpful if it weighed in on the issue of state-local interagency effectiveness in dealing with ethics and corruption matters with a criminal element, with a particular emphasis on our view of the structure of the Office of the New York State Inspector General ("IG's office").¹ Because DAASNY is committed to rooting out corruption at all levels of government, we believe that a few observations about the IG's office could be relevant to your task.

As you know, the IG's office was originally created by Executive Order by Governor Mario Cuomo, and later expanded using the same mechanism by Governor George Pataki. In January 2006, sections 51 through 55 (Article 4-A) of the Executive Law were enacted, making the IG's office now a creature of statute. The IG's office is responsible for investigating and rooting out "corruption, fraud, criminal activity, conflicts of interest or abuse" in covered agencies (essentially the entire executive branch and some public authorities and public benefit corporations). It has no jurisdiction over the legislative or judicial branches.

Independence of the IG's Office

The structure of the IG statute has created an issue that has arisen at various times in various administrations, that of a perceived lack of independence between the IG and the leadership of the Executive Branch that he is charged with investigating. Whether this perception is accurate or not, it could have the effect of impairing the

¹ DAASNY takes no position on the work or the independence of the current Inspector General or any of his predecessors, and nothing in this letter should be read to imply otherwise. Rather, this letter is only concerned with ways that the structure of the office might be improved.

October 12, 2010

effectiveness of the IG's office, and we believe that three simple changes to the Executive Law could improve the perception of independence, and thereby increase the effectiveness of the IG's office.

First, the Inspector General should report directly to the Governor. Currently, he reports to the Secretary to the Governor, who is charged with supervisor of the entire executive chamber. This is problematic, and because of this structure, in recent years IGs have recused themselves from certain investigations involving the executive chamber. To avoid this, the IG should, much like the New York State Medicaid Inspector General, report directly to the Governor.

Second, the Inspector General should serve for a five-year term. Under current law, the IG's term of office is treated very much like an agency commissioner's, in that he essentially serves at the pleasure of the Governor. I believe that the Governor's power to terminate without cause can have a powerful chilling effect on the willingness of the IG's office to take on tough investigations that could at a minimum be embarrassing to the administration. A better system would give IGs a term of five years – much like the current term of the members of the Commission on Public Integrity – during which they could only be removed for cause. Such a system would greatly increase their independence and enhance New Yorkers' confidence in the policing of the Executive Branch.

Finally, we believe that the IG should be nominated by the Governor and confirmed by the Senate, much like other agency heads, judges, and the Medicaid Inspector General. Giving the Senate a role would serve as a democratic check against the Governor's choice by giving a voice to the people's elected representatives in determining who will be responsible for rooting out waste, fraud and abuse.

Reports Issued by the IG's Office

We also believe that there is some room for reform in the process that leads to the IG's office issuing reports. Although the IG has the responsibility under Executive Law 53(4) to "prepare and release to the public written reports of such investigations, as appropriate," the law is silent as to what is "appropriate" and what form such reports should take. This is relevant to criminal matters in two ways.

First, the IG's reports often state "findings" and "conclusions" that the IG makes at the end of his or her investigations. This may be an appropriate way to report on the outcome of an investigation, but in the absence of an adversary proceeding, it would be useful to have additional safeguards built into the law. In that way, where witnesses or subjects of investigations disagree with the IG, they would have a formal way to register such disagreement and even, perhaps, to have it resolved by a neutral party.

A useful comparison may be made to the system of grand jury reports in section 190.85 of the Criminal Procedure Law, which allows such reports to be issued "concerning misconduct, non-feasance or neglect in public office by a public servant."

October 12, 2010

There, before a grand jury report may be made public, a court must find that the report is supported by a preponderance of the evidence. Even then, anyone named in the report has a right to be heard by the judge before the report is released.

To be sure, grand jury reports are creatures of the criminal justice system, where such procedural safeguards are a more natural fit. But the findings in IG reports may damage reputations in the same way, and as such should be deserving of some procedural protections. At the current time, only the IG's unreviewable discretion determines what reports issue and what their content is.

Second, in criminal matters that have not yet been adjudicated, it is preferable for such reports to be deferred until the conclusion of a criminal matter. Currently, nothing requires the IG to make a confidential referral to a District Attorney before making a public one, although, to be sure, the IG's office often does make confidential referrals. But because criminal investigations and prosecutions often take unpredictable turns, it is important that the framework of the IG's office require that the District Attorney's office be included once criminality becomes apparent. We do not quarrel with the IG's obligation to report "where appropriate," but believe that it would be prudent in criminal matters for such reports to be made with significant input from the appropriate District Attorney.

Inspector General for the Legislature

In an ideal world, the IG would not only have jurisdiction over the Executive Branch, but also over the Legislative Branch of New York government, where currently there is no inspector general function. This circumstance has led, by default, to policing of ethics matters that turn criminal by outside prosecutorial agencies, which is never ideal in the first instance. Rather, we have found that a strong inspector general function in partnership with prosecutors only where appropriate is the best way to be vigilant about waste, fraud, and abuse.

I recognize that a proposal for a unified Inspector General would run into both political realities and separation of powers concerns that should not be set aside lightly. For that reason, I suggest that the Legislature establish a Legislative Inspector General, with jurisdiction over the Senate and the Assembly, their staffs, and those doing business with the Legislative branch. Doing so would go a long way to enhancing New Yorkers' faith in their government.

Thank you for the opportunity to comment on the Task Force's work. If you have any questions, please do not hesitate to contact me.

Sincerely,



Derek P. Champagne
President

EXHIBIT E

DAILY NEWS

Opinion

Unleash state's district attorneys to attack corruption

New York law desperately needs to be updatedBY [CY VANCE](#) / NEW YORK DAILY NEWS

PUBLISHED: WEDNESDAY, JUNE 19, 2013, 4:15 AM

UPDATED: WEDNESDAY, JUNE 19, 2013, 4:15 AM



RICHARD DREW/ASSOCIATED PRESS

Gov. Cuomo has proposed the Public Trust Act to strengthen New York's state's ability to attack political corruption.

In recent months, the politics sections of New York papers have read more like Hollywood screenplays: elected officials wearing secret wires, scheming to bribe their way onto their ballot, engaging in shady business dealings.

It's hard not to notice that virtually all these alleged crimes have been prosecuted in federal, not state courts, and by U.S. attorneys, not district attorneys.

That's because in New York, local prosecutors have been forced to handle public corruption cases with one hand tied behind our backs, hampered by ineffective and outdated laws that create hurdles not seen in federal court.

To strengthen New York's weak state corruption and procedure laws, Gov. Cuomo has proposed the Public Trust Act. It's a much-needed first step to give local prosecutors the right tools to crack down on public corruption.

For one thing, it finally gives teeth to New York's public bribery laws, which unlike our other bribery statutes — sports, commercial and labor — require either a mutual agreement between the parties or that the person giving the bribe believes that the public servant will be influenced by a bribe offer.

Under the governor's proposal, the offer of a bribe could be treated as seriously as the completion of a bribe.

Do we really want it to be harder to prove a case against a crooked politician than a boxer?

The bill also would end New York's unseemly practice of giving a complete transactional immunity "bath" to witnesses who appear before grand juries in cases of misconduct in public office and government fraud. This would give state prosecutors a tool that our counterparts in other states and the federal government have had for decades — though narrowly tailored to apply only to the problem at hand.

And, recognizing the seriousness of fraud against the public, the act also creates the crime of "corrupting the government," which would apply to ongoing schemes to defraud the state or local government, regardless of whether the perpetrator is a public servant.

These provisions are a great way to get change rolling at a time when New Yorkers are rightfully demanding more vigorous oversight of elected officials.

Still, some in Albany have asked why we need additional laws and procedural reform in the state if federal authorities are on the case catching the crooks. The short answer is that reliance on the federal government to police our corrupt public servants is risky public policy.

Why, in a federal system built on states having the primary police power, would New York cede this area almost whole-hog to a federal government that might not always be so interested in the problem, or so balanced in its enforcement?

Yes, occasionally, these criminals do wind up in state court. Brooklyn District Attorney Charles Hynes sent two crooked judges to state prison, as well as Assemblyman Clarence Norman, the Democratic county leader. My own office in the last decade won convictions against Assemblywoman Gloria Davis and state Sen. Guy Velella.

But these successes came about in spite of the system, not because of it.

After months of reading about political scandals in the headlines, New Yorkers are crying out for significant reform to a substandard system. They shouldn't accept Albany lawmakers responding by turning a deaf ear. The district attorneys of New York — all 62 of us, united as rarely before — urge Albany lawmakers to pass the governor's Public Trust Act without further delay.

Vance is Manhattan district attorney.

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EXHIBIT F

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June 11, 2013

The Honorable Sheldon Silver
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable Dean G. Skelos
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

The Honorable Jeffrey D. Klein
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 913
Albany, NY 12247

Re: Governor's Program Bill #3: Public Trust Act

Dear Speaker Silver, Majority Coalition Leader Skelos, and Majority Coalition Leader Klein:

On behalf of the District Attorneys Association of the State of New York (DAASNY), a voluntary organization comprised of the 62 elected District Attorneys in our State and the Special Narcotics Prosecutor of the City of New York, we write in support of Governor's Program Bill #3, which would enact provisions of the Public Trust Act (the "Act").

Public servants control funding streams, public works projects, health and safety, and myriad policies that impact the lives of every New Yorker. Taken together, the well-reasoned measures in the Act will hold individuals accountable for egregious violations of the public trust. If we cannot hold public servants accountable for their crimes or protect the integrity of the public, we lose the trust of the citizenry and the integrity of our democracy.

The Act addresses a number of areas where relatively weak state laws have allowed behavior that corrupts and defrauds our state and local governments to go unchecked. Strengthening our state laws in this area would send a clear message that this kind of criminality will not be tolerated at any level across the state. We highlight the most significant of the Act's several important improvements in existing law:

First, the Act improves the existing bribery and bribe receiving statutes in important ways. Although the current bribery laws purport to treat offers to bribe as seriously as completed bribes, the Court of Appeals has interpreted these statutes in a very stringent fashion, requir-

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

ing either a mutual agreement between the parties or at least an understanding that the public servant will in fact be influenced. *People v. Tran*, 80 N.Y.2d 170, 176 (1992). This reality has made it more difficult to prosecute those who offer bribes to our public servants, and is in tension with the intent of the Legislature when the law was enacted. *See id.* at 181 (Simons, J., dissenting) (“The Legislature could hardly have intended that citizens are free to offer cash to public officials just so long as the officials do nothing to prompt the offer.”). In addition to transforming the bribery statutes into a strong tool, the Act also eliminates an obvious anomaly by making the intent necessary for public bribery statutes consistent with that for commercial bribery, sports bribery, and labor bribery, all of which simply require an intent to influence the individual involved. Additionally, the Act gradates bribery more strongly to punish larger bribes more seriously, beginning with a D felony and rising to a B felony for bribing or bribe receiving in excess of \$10,000.

Second, the Act strongly targets official misconduct by enhancing the penalty for violating the existing PL §195.00 (Official Misconduct) from an A misdemeanor to an E felony for violations of the statute that do not result in the actual obtaining or depriving of a benefit, or where the benefit is not capable of valuation. It also creates the new crimes of Official Misconduct in the Second Degree, a D felony, and Official Misconduct in the First Degree, a C felony, where the benefit gained from such misconduct is valued in excess of \$1,000 and \$3,000, respectively. By treating this kind of misconduct seriously for the first time, this aspect of the Act would greatly benefit anti-corruption efforts.

Third, the Act repeals the ineffectual PL §195.20, Defrauding the Government, and replaces it with the new crime of Corrupting the Government. This new charge would apply to ongoing, systematic schemes to defraud one or more government entities, regardless of whether the perpetrator is a public official. Four degrees of this crime, ranging from an E felony to a B felony, would apply based upon monetary gain. This provision is extremely important in treating frauds against the public seriously, and is a centerpiece of the legislation.

Fourth, the Act creates a new class of crimes called Public Corruption, which increases penalties by one degree for specific existing crimes – larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering – in cases where the victim is a public entity. Like the proposed Corrupting the Government statute, Public Corruption would apply regardless of whether the perpetrator was a public official or a person targeting a public entity.

Fifth, the Act rethinks the penalties attendant to certain violations. It increases the maximum level of fines that can be levied to three times the amount of the defendant’s gain for the crime of corrupting the government. It bars an individual convicted of any of the bribery, official misconduct, or public corruption crimes from registering as a lobbyist or serving in civil office. And it disqualifies individual and corporate offenders from bidding on and obtaining state contracts when convicted of crimes set forth in Public Trust Act.

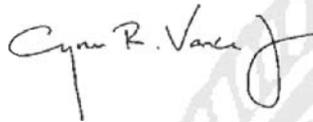
Sixth, the Act creates a class A misdemeanor for those who fail to report to a district attorney a bribe or attempted bribe. One of the difficulties with prosecuting public corruption is the paucity of witnesses willing to come forward to report these activities. This provision, which builds on the existing duty for certain state officials contained in Executive Law §55, is therefore a welcome addition to the law.

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Finally, the Act changes the standard from automatic transactional to automatic use immunity in narrow instances in which a witness testifies before a grand jury investigating government fraud or misconduct in public office. This means that the witness, who may or may not also be part of the criminal transaction under investigation or any other criminal transaction, could still be prosecuted for his or her role if prosecutors develop evidence that is neither derived directly nor indirectly from the evidence given by the witness. This is consistent with the Constitutional standard used in federal court and the overwhelming majority of other states for all crimes, although the change proposed in the Act would be much narrower in scope.

For all these reasons, DAASNY strongly supports the Public Trust Act and looks forward to seeing this bill enacted into law.

Sincerely,



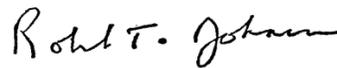
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President, DAASNY



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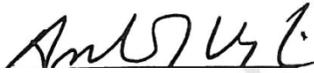
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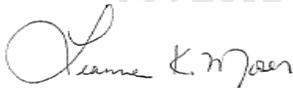
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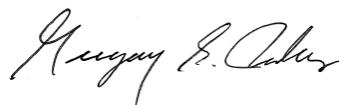
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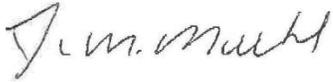


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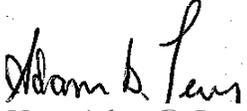
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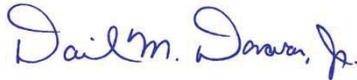
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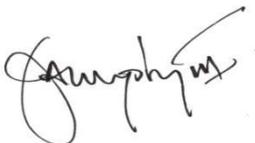
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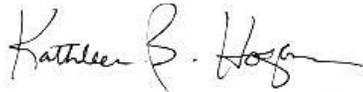
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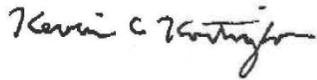
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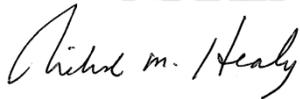
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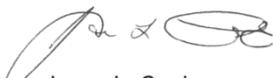
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cc: Governor Andrew M. Cuomo

EXHIBIT G

New York Officials Shifting Blame In Struggle to Combat Corruption

By JEFFREY SCHMALZ, Special to the New York Times
Published: August 19, 1987

As corruption cases mount throughout New York State, officials are unable to agree on what needs to be done about dishonesty in government and are caught up in a scramble to blame one another for the problem.

The United States Attorney for New York's Southern District blames the State Legislature, saying it has blocked the tougher laws that are necessary. Legislators blame district attorneys, saying current laws are sufficient but unenforced. The district attorneys maintain the laws are not sufficient.

Governor Cuomo wants stricter laws but also blames the times, saying New York's corruption is part of a nationwide breakdown in values.

Citizen watchdog groups are outraged, demanding to know how 44 municipal officials could have accepted, according to the F.B.I., 105 out of 106 bribes offered. Aftermath of Arrests

A host of questions are being bandied about among government leaders in the aftermath of those officials' arrests last week, only the latest in a series of corruption cases that include the New York City scandals, the indictment of a former Syracuse mayor and investigations into possible payroll abuses by half a dozen state legislators:

Just how pervasive is corruption in the state? Is New York State more corrupt than other areas? Are tougher laws the answer? Why is most of the New York corruption being exposed by the Federal Government and not state and local authorities?

"There is a mound of evidence that something is terribly wrong with the political system in New York," said the United States Attorney for the Southern District, Rudolph W. Giuliani. An Intensive Campaign

In interviews with more than two dozen elected officials, academics and leaders of watchdog groups, these points emerged:

- * Half a dozen district attorneys said local officials they believe to be corrupt have gone unprosecuted because New York laws make it too difficult - more difficult than in most other states - to bring corruption cases.
- * Governor Cuomo, Attorney General Robert Abrams and others said that when the Legislature reconvened in January, they would undertake an intensive campaign to win passage of laws aimed at making it easier to obtain corruption convictions. But some lawmakers and civil-rights groups said they would campaign to block such laws, arguing that the laws would make it too easy for prosecutors to convict innocent people.
- * Several academics and law-enforcement officials outside New York State said they did not believe New York was more corrupt than other areas. They said the types of cases being uncovered were common around the country and showed no widespread organized machine or network of corruption. And they argued that the very cases drawing a public outcry were proof that the system worked, that corruption in New York was being uncovered and prosecuted.
- * Discussion and handling of the corruption issue is clouded by allegations about the political motivations of an array of officials. Legislators assert, for example, that Mr. Giuliani is grandstanding, making the problem appear worse than it is, to build up his reputation in preparation for a race for the Senate or the New York City mayoralty - a motive Mr. Giuliani vigorously denies.

The United States Attorney does not produce figures to prove that corruption is more rampant in New York than elsewhere. And New York officials adamantly contend it is not. 'Whispers Become Shouts'

"You want to go to Cicero, Illinois, to California," Governor Cuomo said, referring to areas where recent corruption cases have been brought. "In Washington, you've got the guys at the very top stealing money. It's not just New York. But everything we do is gigantic because of the media exposure. Everything we do, our whispers become shouts."

Although Mr. Giuliani acknowledges that it is impossible to say which state is more corrupt because much corruption goes unexposed, he argues that New York has made itself more attractive to corruption than many other states. He lays the blame squarely with the Legislature.

The United States Attorney says legislators sent the wrong signal around the state in their battle over an ethics code, which "they had to be dragged, kicking and screaming, to enact." He said lawmakers filled the code with loopholes. For example, financial disclosure is really not disclosure, Mr. Giuliani said, since a legislative commission can block the release of any data.

He pointed out that lawmakers could not be prosecuted by a district attorney for filing a false disclosure form unless the commission first voted to recommend prosecution.

"What sort of signal is that to other officials in the state?" he asked. Immunity From Prosecution

In addition, he said the state's laws should be changed to conform to those of the Federal Government and most other states. Currently, a witness before a state grand jury is automatically granted immunity from prosecution and cannot be prosecuted for anything he testifies

about before the grand jury.

Mr. Giuliani said that hindered corruption cases. An official thought to be honest who testifies before a grand jury may be found later to have been corrupt. He cannot be prosecuted, however, because he is protected by the immunity.

Under the Federal system - which Mr. Giuliani, Governor Cuomo and Attorney General Abrams believe should be adopted by New York - a grand jury witness can be prosecuted for something he testified about as long as the evidence was obtained independently of statements the witness made before the grand jury.

Under the current state system, a defendant cannot be convicted solely on the basis of testimony by an accomplice. The testimony must be corroborated by other evidence, such as a witness or physical evidence. The Federal Government allows convictions based solely on an accomplice's testimony, and Mr. Giuliani, Mr. Cuomo and Mr. Abrams want the state to do the same.

In interviews, half a dozen state prosecutors, including District Attorneys Carl A. Vergari of Westchester County and Kenneth Gribetz of Rockland County, said they had to drop cases against local officials because the only evidence they had was the testimony of an accomplice - either someone who offered a bribe or received one. "The Liberal View"

The changes in the state law have been blocked over the last decade by the Legislature. Mr. Giuliani said he did not think lawmakers were "venal," adding that they had acted mostly out of "philosophical reasons, the liberal view of criminal justice."

"I don't think they mean to protect crooked politicians," he said. "But the end result is that they do it."

He added, however, that some lawmakers were also practicing defense attorneys and that "making the system unwieldy so that it doesn't work very well is of benefit to them."

Lawmakers express outrage over his comments. They point out that the changes in the state criminal code have been debated for decades, with such groups as the New York Civil Liberties Union opposed to them.

"I'll tell you what upsets me," said State Senator Emanuel R. Gold, a Queens Democrat. "I applaud Giuliani's work. I applaud the F.B.I. Get the bribe takers. But don't look for a scapegoat everytime you do it. The unnecessary gratuitous reference to it in some way being the fault of the Legislature - bribery has been a crime in New York for 200 years. To suggest the Legislature condones bribery is childish and absurd." Potential for Abuse

The Speaker of the State Assembly, Mel Miller, and others argue that the changes in law sought by Mr. Giuliani, the Governor and the Attorney General - all of which are supported by district attorneys - have too much potential for abuse.

"We have strengthened the laws in some areas," Mr. Miller, a Brooklyn Democrat, said.

"But in other areas," he added, apparently referring to the changes Mr. Giuliani wants, "we thought the present law was better."

Legislators say that an accomplice is by definition a criminal and that to convict someone based solely on an accomplice's testimony is to rely on the word of a witness whose honor is tarnished. They say an unscrupulous district attorney could strike a deal with the accomplice, agreeing to reduce other charges against him in return for giving false testimony.

They also say an unscrupulous district attorney could abuse the proposed change in witness immunity. The district attorney might say the witness is being convicted on the basis of independently obtained evidence, but who really knows if the evidence was obtained independently?

The legislators say that simply because the Federal Government and other states have adopted the changes and indicate that they are pleased with them does not mean they are not being abused. There may be all kinds of abuses, the legislators say, that no one has a way of knowing about. Opposed by Police Groups

The lawmakers say police groups, among the most powerful lobbying influences in Albany, are among the leading opponents to changing the grand-jury immunity.

Police officers like the current system, the lawmakers say, because once they testify against a defendant, they have immunity from prosecution. If a later charge is made against the officer - say, for police brutality in the officer's handling of the case - the officer cannot be prosecuted.

In conversations among themselves, some lawmakers are contemptuous of Mr. Giuliani and mock some of the cases he has brought, particularly the ones announced last week against the 44 municipal officials. They were arrested on charges that they accepted bribes and kickbacks from an undercover F.B.I. agent who posed as a vendor of steel products. Some lawmakers, reflecting a concern by others about so-called sting operations, contend that the officials were entrapped.

All that is not to say that legislators are opposed to changes in the law. State Senator Nick Spano, a Yonkers Republican, called last week for legislation requiring competitive bidding by municipalities for contracts worth more than \$300. Currently, a construction contract must be worth at least \$7,000 and a purchase contract at least \$5,000 before competitive bidding is necessary.

Legislators also maintain that municipalities need to increase their salaries for officials, arguing that a public-works supervisor earning \$17,000 a year and overseeing \$2 million in contracts is vulnerable to bribes. Abuses Overlooked

But the lawmakers are especially critical of district attorneys, saying they need to be more aggressive in the pursuit of corruption and

suggesting that some district attorneys are too close to the local political operation and too willing to overlook abuses.

The district attorneys, for their part, say the Legislature has not given them the tools they need, especially the changes in the state laws that Mr. Giuliani and others recommend. But even if the laws were passed, they say they will not necessarily have the resources to expose corruption. That takes money - for the setting up of bogus corporations for a sting operation, for example, and manpower - that they say they do not have.

The district attorneys also argue that Mr. Giuliani's success is not their failure, that the system is working, that corruption is being uncovered and that it does not matter whether it is by them or him. **Not Easy to Change**

Paul H. Elisha, the executive director of New York Common Cause, a citizen group, endorses many of the changes proposed by the Governor, Mr. Giuliani and legislators. But he says much of the problem comes from factors not easy to change.

Much of the corruption, he says, is in localities dominated by one political party - be it Democrats in New York City or Republicans upstate. A way needs to be found to provide internal monitoring in those localities that fills the void left by the lack of normal Republican-Democratic checks on each other.

In the end, Mr. Elisha has no proposal for dealing with what he sees as the root of corruption. "You can pass laws that will hopefully be a deterrent," he said. "But you can't pass a law making an honest man out of someone who is dishonest."

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