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September 16, 2024

Honorable William K. Taylor
Supreme Court Justice
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Rochester, New York 14614

Honorable Janson D. McNair
Chairperson
Monroe County Board of Ethics
Office of Public Integrity
Times Square Building
45 Exchange Boulevard
Suite 888
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Dear Sirs,

On July 22, 2024, District Attorney Sandra Doorley submitted a request via affidavit to Monroe County Supreme Court Justice William Taylor for the appointment of a Special District Attorney under County Law §701. This request was precipitated by a report from the Monroe County Board of Ethics dated July 18, 2024 dealing with D.A. Doorley's conduct during and subsequent to an April 22, 2024 police encounter which resulted in the issuance of a speeding ticket to Ms. Doorley. On page 16 of the Board of Ethics report, it is stated "...we believe that the due application for the appointment of a special district attorney...would prove an important element of District Attorney Doorley's continuing commitment to her efforts to restore the public's trust in her."

Although not specifically delineated in the order appointing me as a Special District Attorney, I have undertaken as my mission to answer the questions raised on page 16 of the Board's report, namely "Whether further investigation of any potential charges emanating from her (DA Doorley)

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conduct may be possible or warranted at this point..." The report alludes to interviews conducted by investigators both from the newly formed New York State Commission on Prosecutorial Conduct and the Monroe County Office of Public Integrity with the arresting officer Cameron Crisafulli and Lieutenant Jeffrey Webster, both of the Town of Webster Police Department. In those interviews, (page 16 of the Board's report) both officers believed that DA Doorley could have been charged with Obstructing Governmental Administration (Penal Law §195.05, a class A misdemeanor) and Officer Crisafulli believed the DA could have been charged with violating Vehicle and Traffic Law Section 1144(a) (a traffic violation).

I am not limiting myself to considering only the offenses mentioned by the two officers. I am also not charged with determining whether or not a violation of the Canons of Ethics has occurred. I am not efforting to conduct extensive interviews as in my judgment the Board of Ethics review and the OPI review were thorough and balanced. There is little mystery as to what occurred in this highly documented matter. On April 22, 2024, DA Doorley was speeding at 55 mph in a 35 mph zone; a diligent police officer activated his emergency lights and attempted to pull her over; the DA failed to pull over and proceeded approximately one mile to her home where she was confronted by the pursuing officer; DA Doorley made three phone calls to the Webster Police Chief Dennis Kohlmeier; there was approximately 25 minutes of verbal interaction between the pursuing officer and DA Doorley, joined by a Lt. Webster and a Sergeant Johnson, the majority of said dialogue being captured on Officer Crisafulli's body worn camera (I will discuss the dialogue further in this report); DA Doorley was issued a speeding ticket to which she pled guilty and paid a fine; and finally this matter has received extensive media coverage on a local, state and national level and it's been investigated by the Monroe County Board of Ethics and the Monroe County Office of Public Integrity and will be examined by the Bar Association Grievance Committee and the New York State Commission on Prosecutorial Conduct. It's now being examined by me solely to determine if additional charges are appropriate against DA Doorley.

I think it would be appropriate to explain exactly who I am and my mindset in reviewing this matter at the direction of Justice Taylor. I am the son of a New York City Police detective, so I have had intimate contact with police work for quite a long time. I started as an intern with the Onondaga County District Attorney's Office in 1975. I became an assistant district attorney in that office in 1977 and remained there until the end of 1986 having achieved the rank of Chief Assistant DA in charge of the Homicide Bureau, the youngest person ever to hold that position. I was in private practice for five years until I ran for and was elected District Attorney in 1991 and have held that office to the present day having been re-elected eight times. I have served as President of the New York State DA's Association and President of the National DA's Association and continue to serve as a Board Member of both organizations. I have created within both organizations a Best Practices Committee with an emphasis on ethics training, a model that's now copied in thirty other states. I have been honored as Prosecutor of the Year both by the NYS DA's Association and the New York State Bar Association and recently received the New York State

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District Attorney's Association Frank Hogan Award, its highest honor for Prosecutorial Excellence. I have known DA Sandra Doorley for many years and consider her a colleague and a friend and have made very clear to her and her attorney that my reputation is far more important to me than any fealty I have for the DA and that my review of these facts would be objective and done without fear or favor to anyone.

I think it prudent at this point to discuss what exactly it is that a prosecutor is charged with doing. In a word, its justice. That word may be subject to myriad interpretations but when all is said and done, a prosecutor's job is to hold offenders accountable, protect the public, prevent crime and promote preventative measures, be open and honest both with the Court and with defense counsel, to never seek prosecution of even an arguably innocent person. In short, to some of us, it's the greatest job in the world. A prosecutor belongs to the only profession whose members wake up each morning and think of ways to put themselves out of business. We derive as much professional satisfaction by exonerating the innocent as we do in convicting the guilty. And we recognize that our greatest asset or weapon, depending on one's point of view, is our discretion. Does a prosecutor seek or not seek the death penalty? Do we divert an offender to a specialty court and keep him or her out of the system? Do we pursue a top count conviction in adult court or consent to having a juvenile referred to Family Court? And the task now before me, does a prosecutor recommend more charges against a possible offender based on a review of these facts and a consideration of the overall situation.

When making that latter decision, amongst other things, this prosecutor considers:

- 1) The available evidence of guilt to ethically sustain a charge; is there proof for a conviction beyond a reasonable doubt after trial? Are there any legal impediments to a prosecution?
- 2) The harm caused by the alleged conduct.
- 3) The effect of charging or not charging upon the public's faith and trust in the criminal justice system.
- 4) The background of the possibly accused; the likelihood that he or she will re-offend; and has the subject recognized the inappropriate nature of his or her conduct and shown remorse.

Let me outline my analysis of the case going through each of the four criteria listed in sequence.

- I. The evidence, or lack thereof, of guilt of any uncharged crime; any impediments to further charges.

DA Doorley in this case was speeding. She failed to adhere to a lawful attempted police stop. She called the local police chief. She retreated to her home and failed to follow police commands. She

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was disrespectful and profane to the pursuing officer. She accepted a UTT for speeding (Vehicle and Traffic Law §1180-d) and pled guilty to the charge and paid a fine.

Let's look at possible infractions that could have been charged on April 22, 2024 by the Town of Webster Police Department, starting with V&T violations:

- The first possible charge of course is speeding and me having a grasp for the obvious, this is what Officer Crisafulli charged her with and to which she pled guilty. (There are significant legal ramifications to that. Remember, I am being asked to determine whether additional charges are appropriate today, not on April 22, 2024). Significantly, Officer Crisafulli acknowledges that he is exercising his discretion in issuing the ticket and he several times alludes to considering other charges, including "arrestable" offenses, although he does not indicate at that time what they might be (In New York, officers have summary arrest powers and once those decisions are made, they are in no way binding on a prosecutor; he or she may dismiss, upgrade or downgrade the charges in exercising prosecutorial discretion).
- Secondly, reference was made in the Board of Ethics report (page 16) that in a subsequent interview, Officer Crisafulli opined that he believed a violation of Section 1144(a) of the V&T Law "could have been made." This is incorrect. That section is the so called "pull over" law that is inapplicable to these facts.
- Thirdly, there is V&T Law §1102 which reads in relevant part "No person shall fail or refuse to comply with any lawful order or direction of any police officer..." Officer Crisafulli would clearly have been justified in issuing an additional UTT to DA Doorley based on her alleged failure to comply with his lights and siren. Whether DA Doorley's assertion that she thought he was following someone else is believable would be a credibility determination for the local magistrate hearing the case. In any event, this discussion is moot as DA Doorley has pled guilty to the speeding offense rendering a prosecution for §1102 impossible due to double jeopardy (which may bar all potential prosecution in this case as will be discussed later).

I now began a review of possible Penal Law charges that may have been brought against DA Doorley for her conduct on April 22, 2024. Penal Law §270.25 deals with a motorist fleeing a lawful police stop. The law was passed after Trooper Craig Todeschini was killed in a crash while pursuing a motorcyclist who refused to pull over and was travelling well in excess of 100 mph. The actions of DA Doorley on April 22, 2024 do not remotely compare to the statutory requirements of Penal Law 270.25. Further as Webster Police Captain Mark Reed stated to investigators "This was not a pursuit" (OPI Report Section 17) and Officer Crisafulli acknowledged that DA Doorley's vehicle did not "increase speed or drive recklessly" and in fact "slowed down once it pulled onto a street" where the DA resides (OPI Report section 20).

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The next potential charge I considered was Official Misconduct in violation of Penal Law §195.00, a class A misdemeanor, which requires a public servant (here the DA) with intent to obtain a benefit (not being charged with a traffic offense) to commit an act relating to her office but constituting an unauthorized exercise of her official functions, knowing that such act is unauthorized. In this case there is no evidence to support an assertion that DA Doorley committed “an act” relating to her office. Viewing the evidence in a light most unfavorable to the DA, she tried to talk herself out of a ticket, unsuccessfully as it turns out. I have never seen a prosecution, nor have I prosecuted a case like this myself, for Official Misconduct under facts even remotely similar to this. Having served by Gubernatorial Appointment as Co-Chair of the Moreland Commission to Investigate Public Corruption, I say with a high degree of certainty that no ethical prosecutor would treat these facts as Official Misconduct.

That leaves finally a possible charge of Obstructing Governmental Administration in violation of Penal Law §195.05, a Class A Misdemeanor (several times during the exchanges recorded on the body worn camera, Officer Crisafulli refers to “arrestable offenses.” Under the new criminal justice reforms, none of the considered offenses are “arrestable” under CPL §150.20 (1)(a) and Court of Appeals decisions. Technically the issuance of a UTT or an appearance ticket is an arrest, but I interpreted Officer Crisafulli’s comments as suggesting the DA could have been physically placed in custody which was not a legal option).

Is there proof of OGA and are there viable defenses to such a charge so as to mitigate against making a charge?

The relevant elements of OGA in the Second Degree are as follows:

A person is guilty of OGA in the Second Degree when that person intentionally (obstructs, impairs or prevents the administration of law or other governmental functions or) prevents or attempts to prevent a public servant from performing an official function by means of intimidation... or interference or by means of any independently unlawful act. (CJI Jury Charge Instructions). In layman’s terms, was there proof sufficient to sustain an arrest and a conviction that DA Doorley attempted (obviously in light of the fact that a ticket was issued and a plea was entered to speeding, I can only consider an “attempt” when envisioning possible criminal conduct) to prevent Officer Crisafulli from issuing her a UTT for speeding or an appearance ticket for some other charge. So lets consider the evidence, arguable or otherwise, that she did so during the 25 minute post speeding encounter with Officer Crisafulli. DA Doorley’s treatment of the officer was demeaning and unprofessional. She was profane, referred to him as an “asshole,” she reached out to the Chief, Office Crisafulli’s superior officer, and put the Officer on the phone with the Chief. A reasonable observer could easily conclude that the only purpose for this interaction was to have Chief Kohlmeier convince Crisafulli to “back off” and drop the whole affair. It would not be an abuse of police discretion to have issued an appearance ticket for OGA had that been done on April 22, 2024 even though that would have been a stretch. Here is why I believe it would be an abuse of my prosecutorial discretion to issue such an appearance ticket today.

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Initially, there is a serious question about double jeopardy. Ultimately this would be a legal question to be decided by a Court and based on case law I have reviewed I don't know how a Court would rule. Many times a prosecutor is faced with a dilemma of upgrading charges but faced with the logistical problem of not having completed an investigation. For example, a defendant is speeding and causes a death of another motorist. The driver refuses a breath test and does not exhibit sufficient common law indicia of DWI to warrant an arrest. The local police agency issues the driver a ticket for imprudent speed or some other traffic infraction. Meanwhile the prosecutor is considering homicide charges but is awaiting accident reconstruction, blood tests, review of the driver's whereabouts before the accident, blood work of the deceased and multiple other factors. So what my office would do is to file a notice under CPL §170.20 precluding the local court from taking a plea to the traffic charge and thus, preventing double jeopardy (see *Corbin vs. Hillery*, 74 N.Y.2d 279, [1989]) from attaching. No such move was done in this case which is understandable as no special prosecutor was appointed which in hindsight may have been a prudent action. (Note that DA Doorley almost immediately attempted to have her conduct reviewed by a fellow DA and has self reported herself to the Bar Association). However, the defendant in this case, DA Doorley, signed the ticket pleading guilty on April 23, 2024 and forwarded it to the Webster town Court on that date. Due to recusals, the defendant's plea was not accepted by a visiting judge until May 7, 2024. Had some appropriate official in Monroe County or officials of the Town of Webster PD been concerned about additional charges, this almost two-week delay would have provided ample opportunity to address this concern and have the County Attorney or the Town Attorney approach the Court in Webster. That was not done. I emphasize that a double jeopardy argument *may* have been successful which obviously means it may have been denied.

If one assumes (and I don't base prosecution on assumptions) that DA Doorley corruptly attempted to influence Officer Crisafulli to "deep six" the ticket, she clearly has established a defense of renunciation under Penal Law §40.10. Assuming (again) that DA Doorley wanted to get out of a ticket and called the Chief to enlist "his aid", belittled Officer Crisafulli to intimidate him, flashed her badge to further her goal, none of that supersedes her renunciation of any such scheme within six minutes of physically encountering Crisafulli. On multiple occasions DA Doorley says, sometimes in a profane way, just to give her the ticket. Her assertion that she will in some way "fix" the ticket herself is absolute gibberish. No one seriously believes that the DA was going to prosecute the case herself and dismiss it and thus have her career ended by a gubernatorial removal or an action by one of the several bodies investigating her conduct. There is one telling moment where Sergeant Johnson, exasperated with her conduct, says "What do you want us to do? Not do our job because its you?" The DA's immediate response is "No...write me a ticket." This is recorded by Crisafulli's body worn camera from a distance while Johnson is talking to Doorley in her garage and its far from certain they knew they were being recorded. To me, this is as clear a renunciation, assuming there ever was an intent to obstruct, as a prosecutor and defense counsel could have. With that evidence, the filing of a misdemeanor information on this date would be totally inappropriate.

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Finally, there is no evidence of a physical act required by law by DA Doorley to obstruct, particularly when we are talking about a ticket that was issued followed by a plea of guilty. (Let me add that most prosecutors are not looking for more cases to charge. While I in no way condone it, most people stopped on a highway by a police officer spend the first several moments of the encounter trying to talk the cop out of issuing a ticket. This has been going on in the US since at least 1899 when NYC taxicab driver Jacob German was cited for driving 12 mph in an 8 mph zone. It's not clear if German tried to talk his way out of the ticket but he was imprisoned anyway. I have no desire to add several hundred OGA cases to my docket).

II. Harm caused.

Getting to the second of four areas I consider, let's assume a prosecutor disagrees with me and thinks an OGA charge is appropriate. Putting myself in that person's shoes despite the erroneous nature of that conclusion, I ask who has been harmed? Well, certainly Officer Crisafulli was treated unprofessionally. He, however, stayed true to his oath. He observed a speeder and gave her a ticket. He made a decision, appropriate in my judgement, that exercising his discretion he felt that sole charge was appropriate under the facts of this case. I agree.

Certainly, the citizens on Phillips Road don't want speeders in their neighborhood. My concern however is about actual, not potential, harm.

The taxpayers of Webster are undoubtedly not thrilled by multiple officers responding to a speeding ticket that was precipitated by the DA's conduct. But that "harm" is ephemeral and does not in my mind rise to the level of warranting an additional charge.

III. Public Confidence.

Few people truly understand the role of a District Attorney and the impact of that position on people's lives. No one is especially worried about the DA until his or her daughter is murdered. I have understood this for most of my professional career. A community has to trust its DA and have confidence that no one is above the law, that all are treated equally before the bar of justice. I am not oblivious to the fact that the Monroe County community is disturbed by the conduct of DA Doorley. She was speeding in her company car; she was rude and demeaning to a cop who goes out every day to protect us. She in my own terms screwed up royally. There is a lot of healing to do in Monroe County. In my judgment no one is more aware of that than DA Doorley. Both reports acknowledge that she has taken efforts to restore that trust. I am aware that some who read this report will never have trust restored because they never trusted her to begin with. Some will feel betrayed or let down. Ultimately absent some action by the remaining investigators the voters of Monroe County will make a decision about their confidence and trust in DA Doorley. It's axiomatic that one does not serve for over three decades as a prosecutor without acquiring some enemies, as well as numerous friends. It is a job that virtually everyone with a keyboard knows how to do better than the DA herself. When considering whether my decision will impact the public's trust in the system, I exclude the opinions of those who think a DA can do no wrong. I

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also exclude those who feel state prison is too lenient even after she was tarred and feathered. By all accounts from reviewing the two thorough reports provided to me, this was an aberration in the DA's conduct. She works in a high stress job, that stress compounded in this instance by a rash of homicides, the death of a friend and a health scare regarding her husband. But as Officer Crisafulli said referring to his role as a police officer "We have bad days also." He also summed it up best in his decision to not file further charges (sustainable or not) and in pursuing his duty "I'm sorry that you had a bad day... And I'm sorry it went this way, but I do respect what you do." Perspective is always important for a prosecutor and I hope for any reader of this report as well.

Which brings me to my final criterion in deciding whether or not to bring charges.

IV. Background of the Accused.

Please understand that the phrase "prosecution" is multi-faceted. There is a crime; an investigation; a collaboration between police and prosecutors; there is analysis of forensic evidence; there may be an arrest; an arraignment; assignment of counsel; bail argument; further investigation; a grand jury presentment; if an indictment, a further arraignment and bail argument; motions and discovery; pre-trials; plea bargain offers and acceptance or rejection; jury selection; trial; verdict; post-trial motions; appeals. So, when someone says "will you prosecute this case" it is a nuanced question. Do you mean will I arrest someone? Try them? Try to put them in jail? When those issues are weighed by an experienced prosecutor, the background of the accused is always taken into consideration. Is this a first offense? How badly was someone hurt? Is the accused repentant? Likely to offend again? A person of good character? Someone who abused his or her authority? An elected official held to a higher standard?

In this case which has been examined by multiple agencies and more to come, the facts are little in dispute. An elected District Attorney was speeding home and captured on radar by a police officer doing his job. Rather than pulling over, she proceeded to her home and parked in her garage; the pursuing officer engaged her in conversation about her failure to pull over; she disparaged him with vulgarity and the air of privilege by virtue of her position. Finally, she got a speeding ticket, pled guilty and paid a fine.

This was unprofessional, it was wrong, it was completely avoidable and unnecessary and way out of line for Monroe County's Chief Law Enforcement Officer.

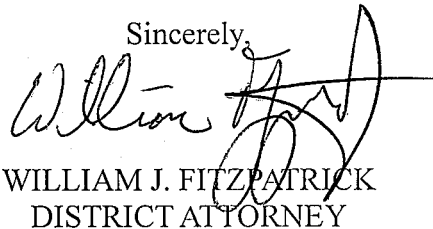
On the other side of the scale is a three-decade public servant rising from the ranks of an assistant district attorney to be the elected District Attorney of Monroe County, one of the largest counties in New York State. Regardless of one's opinion of the DA, regardless of one's opinion of her

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conduct on April 22, 2024 and regardless of one's opinion of prosecutors or police in general, DA Doorley's prior service which by all accounts has been exemplary, matters. I know and DA Doorley, who along with her attorney cooperated fully with me in my review, knows that prosecutors need to be held to a higher standard. It's part of the job. But I'm not going to further pursue charges and disregard who she is and sacrifice her career on the altar of making an example out of her by bringing unsustainable charges. If you seriously don't think she knows she screwed up, that she's been embarrassed and suffered a blow to her stellar reputation, well you haven't been paying attention.

Based on all the above, I decline to authorize the filing of any additional charges against DA Sandra Doorley and frankly I cannot remotely imagine an ethical and competent prosecutor determining otherwise. I will consider my assignment as Special District Attorney terminated unless advised to the contrary by Justice Taylor.

Sincerely,



WILLIAM J. FITZPATRICK
DISTRICT ATTORNEY

WJF/mr

Cc: Chief Dennis Kohlmeier, Webster PD
DA Sandra Doorley
Robert Masters, Esq.