

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Testimony of Elena Ruth Sassower **Director, Center for Judicial Accountability, Inc. (CJA)**

November 30, 2015 Public Hearing **Commission on Legislative, Judicial & Executive Compensation**

My name is Elena Ruth Sassower and I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a nonpartisan, nonprofit citizens' organization that for more than a quarter of a century has documented that New York's judiciary is not discharging its constitutional function to render fair and impartial justice, according to law. Rather, it is pervasively corrupt, from trial levels up through appellate and supervisory levels, "throwing" cases by fraudulent judicial decisions that falsify and omit the controlling facts and obliterate the most basic adjudicative and due process standards. And making this even more catastrophic and unconstitutional is that ALL safeguards within the judiciary and within the legislative and executive branches are dysfunctional and corrupted – not the least reason because when citizens bring suit to enforce black-letter, unambiguous law and principles of constitutional governance, judges "throw" the cases, usually with the connivance of our state's highest law enforcement officer – the New York Attorney General – who, when he has no legitimate defense, defends anyway with litigation fraud – for which he is rewarded by fraudulent judicial decisions in favor of his governmental clients.

As I stated when I testified before the Commission to Investigate Public Corruption at its September 17, 2013 public hearing, "Cases are perfect paper trails. There's a record. So it's easy to document judicial corruption." That was at the same hearing at which U.S. Attorney Preet Bharara testified. Indeed, on CJA's website, www.judgewatch.org, there is a prominent homepage link entitled "What's Taking You So Long, Preet?: CJA's Three Litigations whose Records are Perfect 'Paper Trails' for Indicting New York's Highest Public Officers for Corruption".

U.S. Attorney Bharara's prosecution of former Assembly Speaker Silver and his unrelated prosecution of former Temporary Senate President Skelos are each for small change. And establishing this, resoundingly, are those three litigations accessible from our homepage link bearing his name. These litigations, each of which we brought in the public interest, on behalf of the People of the State of New York, involve the open-and-shut, *prima facie* case of their collusion with each other and with Governor Cuomo and Chief Judge Lippman in grand larceny of the public fisc. This, with respect to the judicial salary increases recommended by the August 29, 2011 Report of their appointed Commission on Judicial Compensation – whose fraudulence, statutory violations, and unconstitutionality we proved by an October 27, 2011 Opposition

Report,¹ presented to all four of these highest constitutional officers, without response (Exhibit 7). This nonfeasance and collusion against the People was the subject of the first of the three litigations, a declaratory judgment action, which we commenced in March 2012 – and as to which we sought U.S. Attorney Bharara’s intervention as part of a fully-documented criminal complaint we hand-delivered for him on April 15, 2013 (Exhibit 2), a copy of which I handed up to the Commission to Investigate Public Corruption, in testifying before it five months later. The second litigation, a citizen-taxpayer action, as well as the third litigation, our intervention in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption, embrace the multi-billion-dollar slush-fund judiciary budget in which the judicial salary increases are embedded, with direct ramifications on the whole of the state budget, on three-men-in-a-room, behind-closed-doors governance, and the dysfunction born of Senate and Assembly rules vesting autocratic powers in the Temporary Senate President and Assembly Speaker. Both of these two subsequent litigations, commenced in March and April 2014, arose from U.S. Attorney Bharara’s nonfeasance with respect to the April 15, 2013 criminal complaint and from the corruption of the Commission to Investigate Public Corruption, which he covers up.

But for the evisceration of any cognizable judicial process in ALL three of these litigations – resulting from the double-whammy of Attorney General Schneiderman’s litigation fraud, rewarded by fraudulent judicial decisions – current judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating this Commission, would have been declared unconstitutional, long, long ago. So this Commission has U.S. Attorney Bharara to thank for the ongoing three-branch crime spree involving judicial salary increases and the secreting of them in the budget – sufficient, in and of itself, to disentitle all the constitutional officers whose compensation is before you from any increase.

The Judiciary and judicial pay raise advocates testifying here today, and by their written submissions, tout the excellence and high-quality of the Judiciary – implicitly recognizing that judicial salary increases are predicated on judges fulfilling their constitutional function of rendering justice. Plainly, they need a reality check if they are actually unaware of the lawlessness and non-accountability that reigns in New York’s judicial branch, notwithstanding our notice to them, again, and again, and again. Let them confront, with findings of fact and conclusions of law, our October 27, 2011 Opposition Report and our three litigations arising therefrom. This includes our constitutional analysis, drawn from the Court of Appeals’ February 23, 2010 decision in the judges’ judicial compensation lawsuits and from Article VI of the New York State Constitution, that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4,} (CJA’s October 27, 2011 Opposition Report,

¹ Our Executive Summary to the Opposition Report is annexed as Exhibit 1.

prefatory quote & page 12, underlining in the original).²

For your convenience, I am furnishing you with the starting point of the three litigations: our verified complaints in each – the first of which included a full copy of our dispositive Opposition Report, identical to what I handed to Chairwoman Birnbaum four weeks ago, at the conclusion of your November 3rd first organizational meeting.

Of these three litigations, only the citizen-taxpayer action is live and unfolding. As to it, I am also furnishing you with our supplemental verified complaint and the very last submissions in the case: our November 5, 2015 reply papers in further support of our cross-motion for summary judgment and other relief, laying out the state of the record before the judge. Highlighted therein are the uncontested facts and law entitling us to declarations that the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report are fraudulent, statutorily-violative, and unconstitutional – and that the statute that created that Commission, materially replicated in the statute that created this Commission, was unconstitutional, *as written and as applied*.³

The judge to whom the case was assigned, who got a \$40,000 salary increase as a result of the Commission on Judicial Compensation's Report, does not have to be excellent to render those requested declarations of fraud, unlawfulness, and unconstitutionality. He does, however, need to earn his \$174,000 yearly salary, by at least being competent and honest – as that is all that is necessary for rendering the declarations, as you can readily verify from the dispositive presentation in our reply papers.

Such declarations, mandated by law and the most basic adjudicative principles, will restore judicial salaries to their 2011 levels and preclude any increase until the systemic corruption infesting New York's judiciary is rectified, including by a lawfully-functioning Commission on Judicial Conduct – not the sham that currently exists. It will also require the shutdown of this Commission on multiple grounds of unconstitutionality – with the "*as written*" grounds being reinforced by those "*as applied*", manifested by how this Commission has been operating in this statutorily-violative first month of its operations⁴, including at this hearing, conducted as if the

² A copy is annexed as Exhibit 3, together with the constitutional analysis appearing at pages 10-13 of the Opposition Report.

³ Pages 19-25 of our November 5, 2015 memorandum of law are annexed as Exhibit 4.

⁴ The Commission was statutorily-required to be established on June 1, 2015. However, none of its four appointing authorities – not the Governor, not the Temporary Senate President, not the Assembly Speaker, and not the Chief Judge – made appointments by June 1st. It appears that the Governor did not even make his appointments to the Commission until October 30, 2015 – in apparent response to CJA's filing of a FOIL request for documents pertaining to the appointments made to the Commission and the Commission's functioning (Exhibit 5). My subsequent e-mail chain to the Commission (Exhibit 6), spanning from November 2, 2015 to November 18, 2015, reflects its non-response to my request that it hold more than a single hearing and issue press releases about the hearing and written submissions. My attachments to those e-mails were, in addition to the October 30, 2015 FOIL request (Exhibit 5), the Executive Summary to the Opposition Report (Exhibit 1), and CJA's October 28, 2011 e-mails and letters

current judicial salary levels are not – as each of the Commissioners must by now know them to be – “ill-gotten gains”, stolen from the taxpayers.

Indeed, based upon my communications with you over the past month, your verification should largely be done. As I stated to you on November 3rd, in my e-mail requesting to testify at this hearing, the four weeks until the hearing were ample time for each Commissioner to individually verify the accuracy of our October 27, 2011 Opposition Report:

“thereby requiring that this Commission’s recommendations – having ‘the force of law’ – be for the nullification/voiding of the [Commission on Judicial Compensation’s] August 29, 2011 Report AND a ‘claw-back’ for the \$150-million-plus dollars that the judges unlawfully received pursuant thereto.” (Exhibit 6)

The only way you can get away with doing anything else in your own report, which is statutorily-required by December 31, 2015, is by obliterating the existence of our Opposition Report, the record of our three litigations based thereon – and all findings of fact and conclusions of law that are your duty to make with respect thereto. This kind of fraudulent concealment is precisely how the Commission on Judicial Compensation operated – and how judges operate when they “throw” cases by fraudulent judicial decisions.

This Commission’s threshold duty is, of course, to address issues of the disqualification of its members for actual bias and interest – and my November 3rd e-mail requesting to testify, set that forth, stating:

“...should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA’s citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well...” (Exhibit 6).

Time does not permit me to furnish the particulars. Suffice to say, that all three have demonstrated their utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption they have perpetuated.

All documentary proof supporting this testimony, including as relates to the disqualifying bias and interest of Commissioners Cozier, Lack, and Birnbaum will be posted on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs To Their Victims!”.

to the Judiciary and judicial pay raise advocates and to the Commission on Judicial Compensation, furnishing them the opportunity to contest the accuracy of the Opposition Report, also furnished to the Commission’s four appointing authorities (Exhibit 7).

EXHIBIT 1

CJA's Executive Summary
to its October 27, 2011 Opposition Report

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewidth.org
Website: www.judgewidth.org

Election Day, November 8, 2011

EXECUTIVE SUMMARY

OPPOSITION REPORT TO THE “FINAL REPORT OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION”

On August 29, 2011, the Special Commission on Judicial Compensation rendered a “Final Report” to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman recommending a 27% salary increase for New York State judges over the next three years.

These salary recommendations will automatically become law and cost New York taxpayers hundreds of millions of dollars – unless overridden by the Legislature by April 1, 2012. Nevertheless, NONE of New York’s bar associations, scholars, funded “good government” organizations, or media have critically examined the Commission, its Report, or the Court of Appeals’ February 23, 2010 decision in the judiciary’s judicial compensation lawsuits against the Governor and Legislature that propelled enactment of the statute creating the Commission.

Such critical examination has been done, however, by the unfunded, non-partisan, non-profit citizens’ organization, Center for Judicial Accountability, Inc. (CJA). Embodied in an October 27, 2011 Opposition Report, it demonstrates that the Commission’s Report is “statutorily non-conforming, constitutionally violative, and the product of a tribunal disqualified for interest and actual bias”. Indeed, it demonstrates that the Commission’s Report is a “fraud upon the public”, achieved by concealing the citizen opposition to any judicial pay raises, championed by CJA, and all the facts, law, and legal argument presented in support.

Based thereon, CJA’s Opposition Report calls upon the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge – to whom it is addressed – to secure:

- (1) legislative override of the Commission’s judicial pay recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution; and
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, which the Commission unlawfully and unconstitutionally ignored,

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens’ organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

without findings, in order to recommend judicial pay raises.

CJA's constitutional challenge to the Commission's pay raise recommendations is based on CJA's analysis of Article VI of the New York State Constitution, as drawn from the Court of Appeals' February 23, 2010 decision – an analysis which CJA placed before the Commission three weeks before its August 29, 2011 Report. It demonstrated that any increase in judicial compensation is unconstitutional, absent predicate findings that New York state judges are discharging their duties to render fair and impartial justice and that mechanisms are in place and functioning to remove corrupt judges. The Commission's Report makes no such findings and conceals the analysis, whose accuracy it does not dispute (at pp. 1, 3, 10-13).

CJA raises a ***further constitutional challenge*** in questioning whether, without a constitutional amendment, it was constitutional for the legislature and executive branches to delegate judicial compensation to an appointed commission whose recommendations do not require affirmative legislative and executive action to become law – which is what they did by the statute creating the Commission (at fn. 2).

The Commission's statutory violations, particularized by CJA's Opposition Report, are:

- (1) ***In violation of the Commission statute***, the Commission's judicial pay raise recommendations are unsupported by any finding that current “pay levels and non-salary benefits” of New York State judges are inadequate (at pp. 1, 16, 31);
- (2) ***In violation of the Commission statute***, the Commission examines only judicial salary, not “compensation and non-salary benefits” (at pp. 18-21, 25-31);
- (3) ***In violation of the Commission statute***, the Commission does not consider “all appropriate factors” – a violation it attempts to conceal by transmogrifying the statutory language “all appropriate factors” to “a variety of factors” (at pp. 4-5, 21);
- (4) ***In violation of the Commission statute***, the Commission makes no findings as to five of the six statutorily-listed “appropriate factors” it is required to consider (at pp. 21, 23-24);
- (5) ***In violation of the Commission statute***, the Commission does not consider and makes no findings as to “appropriate factors” presented by CJA's citizen opposition as disempowering New York's judges from any pay raise – whose appropriateness is uncontested by the Commission and judicial pay raise advocates. Among these:
 - (a) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay (at pp. 10-13); and
 - (b) the fraudulence of claims put forward to support judicial pay raises by judicial pay advocates (at pp. 13-15), including their concealment of pertinent facts, *inter alia*:

- (i) that New York's state-paid judges are not civil-service government employees, but "constitutional officers" of New York's judicial branch;
- (ii) that the salaries of all New York's "constitutional officers" have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the "constitutional officers" of our executive branch – and the 62 Senators and 150 Assembly members who are the "constitutional officers" of our legislative branch;
- (iii) that the compensation of New York's judicial "constitutional officers" is comparable, if not superior, to the compensation of New York's executive and legislative "constitutional officers", with the judges enjoying incomparably superior job security;
- (iv) that New York's executive and legislative "constitutional officers" have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
- (v) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
- (vi) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York's 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
- (vii) that New York judges enjoy significant "non-salary benefits";
- (viii) that throughout the past 12 years of "stagnant" pay, New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there is no shortage of qualified lawyers eager to fill vacancies;
- (ix) that the median household income of New York's 19+ million people is \$45,343 – less than one-third the salary of New York Supreme Court justices.

These concealments – hallmarks of the judicial compensation lawsuits and of the Court of Appeals February 23, 2010 decision purporting a judicial pay raise “crisis” and separation of powers violation by the Legislature and Governor in “linking” judicial salaries to legislative salaries – are all replicated by the Commission’s Report. In so doing, it simultaneously covers up the fraudulence of the lawsuits and that decision.

As set forth by the Opposition Report:

- judges have NO constitutional entitlement to cost of living increases (at pp. 34-35);
- there is NO separation of powers constitutional violation by “linkage” (at fn. 9); and
- the Commission’s recommended judicial pay raise distorts and skews the appropriate symmetry in pay of the “constitutional officers” of New York’s co-equal government branches (at pp. 36-37).

Beyond the actual bias of the Commissioners, proven by their constitutionally, statutorily, and evidentiarily-violative Report, the Opposition Report also identifies (at pp. 15-17) the disqualifying interest of several Commissioners – beginning with Chairman William C. Thompson, Jr. As highlighted (at pp. 2, 10, 13, 15), Chairman Thompson was the subject of a written application for his disqualification for interest, presented by CJA promptly upon his appointment to the Commission, which neither he nor the Commission determined in face of notice that the Commission could not lawfully proceed until that threshold issue was ruled upon. Such is itself grounds for voiding the Commission’s judicial pay raise recommendations.

So that the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge may have the assistance of the Commissioners and of judicial pay advocates in discharging their mandatory duties to protect the People of New York, CJA’s Opposition Report identifies, in its “Conclusion” (at p. 37), that it is being furnished to the Commissioners, as well as to judicial pay raise advocates, so that they may have the opportunity to rebut it, if they can.

The “Conclusion” (at p. 37) also looks ahead to the 2012 elections, when every member of New York’s Senate and Assembly is up for re-election, and lays out an agenda of citizen action to “vindicate the public’s rights by making judicial pay raises and judicial accountability the decisive election issues they rightfully are”, in the event the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge fail to act. As stated:

“Voters will find it easy to embrace so self-evident a proposition [**NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE – THE MONEY BELONGS TO THE VICTIMS!**], as likewise CJA’s further position that the money be used to rehire the hundreds of court employees terminated to save money and to staff new judgeships whose creation is warranted by caseload levels far exceeding capacity.”

EXHIBIT 2

CJA's April 15, 2013 criminal complaint
to U.S. Attorney Preet Bharara



United States Attorney's Office
Southern District of New York
Civilian Crime Reports Unit
Criminal Division

Civilian Crime Report

The U.S. Attorney's Office represents the Government in legal proceedings and works closely with investigative agencies including the FBI. The Criminal Division of the United States Attorney's Office is charged with enforcing the federal criminal laws within the Southern District of New York, which encompasses: the boroughs of Manhattan and the Bronx, as well as Dutchess, Orange, Putnam, Rockland, Sullivan, and Westchester Counties.

Person Completing This Report:	Person/Entity Being Complained About:
Name: <u>Zora Ruth Sassorn</u>	Name: <u>NYS Governor Andrew Cuomo,</u>
Address: <u>Center for Judicial Accountability, Inc</u>	Address: <u>Temporary Senate President Dean Skelos,</u>
Address (Line 2): <u>Box 8101</u>	Address (Line 2): <u>Assembly Speaker Sheldon Silver</u>
City, State: <u>White Plains</u>	City, State: <u>Chief Judge Jonathan Lippman</u>
Zip: <u>New York 10602</u>	Zip: <u>Attorney General Eric Schneiderman</u>
County: <u>Westchester</u>	County: <u>Comptroller Thomas DiNapoli</u>
Phone: <u>914 455-4373</u>	Phone: <u>+ other constitutional public officers their counsel + professional staffs.</u>

Although the volume of information we receive from concerned members of the public prevents us from responding individually to every Report, be assured that we will carefully consider the information you have provided us to determine whether there is a matter for this Office to investigate. If we determine that your Report raises a matter within the jurisdiction of this Office to investigate and that further information from you is necessary for our investigation, you will be contacted. This Office does not resolve individual consumer complaints.

NATURE OF ALLEGED CRIMINAL VIOLATION(S):

- Healthcare/Medicare Fraud
- Public Corruption/Fraud/Waste
- Computer Crimes/Hacking
- Child Pornography/Exploitation
- Securities Fraud
- Tax Fraud
- Organized Crime
- Environmental Crime
- Mortgage/Bank/Credit Card/ATM Fraud & Identity Theft
- Other (please explain) _____
- Terrorism/National Security
- Corporate Fraud
- Human Trafficking (for sex or forced labor)
- Internet Fraud
- Drugs

Does this Report Pertain to an Ongoing Case? Yes No Not Sure

If Yes, Please Provide the Following Case Information: Center for Judicial Accountability, Inc et al
Andrew Cuomo, et al

Case Title and Docket Number (if known): _____

Please clearly describe the violation of federal criminal laws that you would like to bring to our attention. Include as much information as possible, including the dates, places and nature of incident, and contact information for any witnesses (do not send original documents):

Grand Corerney of the Public Fisc +
othr Corrupt Acts
see accompanying April 15, 2013 letter

EX 2

Are You a Victim of this Alleged Crime?

Yes No Not Sure

Are You Aware of Any Other Victim(s)?

Yes No Not Sure

If Yes, Please List Other Victim(s): *The People of the State of NY, etc.*

Are You Represented by an Attorney in this Matter? Yes No

If Yes, Please Provide Attorney Contact Info:

Name: _____ Phone: _____

Address: _____

Have You Filed a Lawsuit Concerning this Matter? Yes No

If Yes, Please Provide the Following Case Information:

Case Title and Docket Number: *Center for Judicial Accountability, Inc, et al*
vs. Cuomo, et al

Name and Address of Court: *Supreme Court / New York County # 401988/2012*

Status of Court Case (pending, dismissed, settled): *pending*

Have You Previously Filed a Report about this Matter with this Office or Any Other Federal, State or Local Agency(s)?

Yes No If Yes, Date Filed: *NY Attorney General*

Contact Person: *NYs Comptroller* Agency: *"Public Integrity Bureau"*

Status of Previous Report: *"Investigations Unit"* *11/29/11*
3/1/12 unknown-pending *"does not warrant action by this office at this time"*

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that all of the foregoing information is true, correct and complete to the best of my knowledge, information and belief.

Signature *Elena R. P. Vasquez* Executed on this Date: *April 15, 2013*

IMPORTANT NOTE REGARDING THE PRESERVATION OF YOUR LEGAL RIGHTS:

Submitting a Report to this Office has no effect on any statute of limitation that might apply to any claim you may have. By submitting a Report to this Office you have not commenced a lawsuit or other legal proceeding, and this Office has not initiated an investigation or lawsuit regarding the subject of your Report. If you believe that your rights have been violated and you seek to sue for money or other relief, you should contact a private attorney.

Mail this completed report to: United States Attorney's Office
Southern District of New York
Attn: Civilian Crime Reports Unit (Criminal Division)
One St. Andrew's Plaza
New York, NY 10007

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director

BY HAND

April 15, 2013

Preet Bharara, U.S. Attorney for the Southern District of New York
One Saint Andrews Plaza
New York, New York 10007

ATT: Brendan McGuire, Chief, Public Corruption Unit

RE: Achieving “the Dream of Honest Government”:

(1) Criminal Complaint against NYS’ Highest Constitutional Officers for Grand Larceny of the Public Fisc and Additional Corrupt Acts – as, likewise, against NYS’ Other Constitutional and Public Officers and their Taxpayer-paid Counsel and Professional Staffs;

(2) Intervention in *Center for Judicial Accountability, et al. v. Andrew Cuomo, et al.* (NY Co. #401988/2012) & Transfer to the U.S. District Court, with Amendment of the Verified Complaint to Embody Additional Causes of Action and Supervening Facts, Including as to the Violations of Constitutional, Statutory, and Rule Provisions Underlying Passage of the NYS Budget for Fiscal Year 2013-2014 and Judiciary/Legislative Appropriations Bill S.2601-A/A.3001-A.

Dear Chief McGuire:

Following up my voice mail message for you on April 8th and our telephone conversation on April 9th, this is to reiterate that our nonpartisan, nonprofit citizens’ organization, Center for Judicial Accountability, Inc. (CJA), has been “step[ping] up to the plate” to achieve “the dream of honest government” for more than twenty years – and that, because of this,

- (1) we have the EVIDENCE to back up U.S. Attorney Bharara’s statements at his April 2nd and April 4th press conferences that governmental corruption in New York State is “pervasive” and “rampant” (4/2 prepared remarks, at p. 4; 4/4/ prepared remarks, at pp. 1, 4);

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens’ organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

- (2) we have the EVIDENCE to answer, by a resounding YES, the U.S. Attorney's question as to whether "items in the budget" were tainted by corruption (4/4 prepared remarks, at p. 5);
- (3) we have the EVIDENCE to establish that "the most powerful special interest in politics is self-interest" (4/2 prepared remarks, at p. 4);
- (4) we have the EVIDENCE to prove "the deafening silence of the many individuals...who learned of...criminal activity being conducted in the...Capitol and elsewhere, and...said nothing. No one made a call. No one blew the whistle. No one sounded the alarm." (4/4 prepared remarks, at p. 5);
- (5) we have the EVIDENCE to reinforce the necessity that the U.S. Attorney not back down from his pledge: "we will continue pursuing and punishing every corrupt official we find" (4/2 prepared remarks, at p. 4).

All this EVIDENCE is here presented in support of this criminal complaint against New York's highest constitutional officers in the state's three government branches – Governor Andrew Cuomo, Attorney General Eric Schneiderman, and Comptroller Thomas DiNapoli in the executive branch, Temporary Senate President Dean Skelos and Assembly Speaker Sheldon Silver in the legislative branch, and Chief Judge Jonathan Lippman in the judicial branch. Together with the government branches, these constitutional officers are each named defendants, sued for corruption and collusion against the People, in the lawsuit *Center for Judicial Accountability, et al. v. Andrew Cuomo, et al.*, which we have brought "on behalf of the People of the State of New York & the Public Interest".

The allegations of the verified complaint chronicle a complete breakdown of constitutional checks and balances by the constitutional and public officers of New York's three government branches with respect to EVIDENCE of systemic corruption of the processes of judicial selection, judicial discipline, and of the judicial process itself – culminating in their collusion in a scheme to raise judicial salaries through the artifice of a special commission on judicial compensation that would thereafter be the model for achieving legislative and executive salary raises.

The most important exhibit to the verified complaint is CJA's October 27, 2011 Opposition Report to the August 29, 2011 "Final Report" of the Special Commission on Judicial Compensation, demonstrating that its recommendation to raise judicial salaries 27% over three years was fraudulent, unconstitutional, and, on its face, flagrantly violative of the EXPRESS statutory prerequisites of Chapter 567 of the Law of 2010 for a judicial salary raise recommendation. Based thereon, the Opposition Report called upon Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman – the Commission's four appointing authorities to whom the Opposition Report was addressed – to take steps to protect the People of New York. These steps were identified, on the cover of the Opposition Report, as:

- (1) “Legislation Voiding the Commission’s Judicial Pay Recommendations;
- (2) Repeal of the Statute Creating the Commission;
- (3) Referral of the Commissioners to Criminal Authorities for Prosecution;
- (4) Appointment of a Special Prosecutor, Task Force, and/or Inspector General to Investigate the Documentary and Testimonial Evidence of Systemic Judicial Corruption, Infesting Supervisory and Appellate Levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation Unlawfully and Unconstitutionally Ignored, Without Findings, in Recommending Judicial Pay Raises.”

That the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge were duty-bound to take all these requested steps, possibly excepting repeal of the statute, is evident from the most cursory examination of CJA’s October 27, 2011 Opposition Report, furnishing a devastating background history and virtual line-by-line analysis of the Commission’s August 29, 2011 “Final Report”. Yet, there was no response from any of these highest constitutional officers – lawyers all, each with ample lawyers on their taxpayer-paid staff. Likewise, four months later, they did not respond to our March 2, 2012 letter to them¹, requesting that they disclose their findings of fact and conclusions of law with respect to the Opposition Report and that they take action, consistent therewith, to protect the People of New York and the public purse from the statutorily-violative, fraudulent, and unconstitutional judicial pay raises, whose first phase was scheduled to take effect on April 1, 2012.

As for Attorney General Schneiderman, to whom we had furnished the Opposition Report on November 29, 2011, with a complaint based thereon to his “Public Integrity Bureau”, he also did not respond to the March 2, 2012 letter, to which he was an indicated recipient. Nor was there any response from Comptroller DiNapoli, also an indicated recipient of the letter, and to whose “Investigations Unit” we had filed a complaint on March 1, 2012. Both complaints were against the Commission on Judicial Compensation for fraud:

“effectively stealing from the People of New York hundreds of millions of taxpayer dollars, while depriving them of the means afforded by the New York State Constitution for securing judicial accountability.”²

¹ The March 2, 2012 is Exhibit Q in the compendium of exhibits to the verified complaint.

² Copies of these two complaints were annexed to our March 2, 2012 letter, with footnote 1 reciting the disposition of our complaint to Attorney General Schneiderman’s “Public Integrity Bureau”. As for our complaint to Comptroller DiNapoli’s “Investigations Unit”, we never received any notification of its disposition.

As a result, our unfunded citizens' organization was burdened with the effort and expense of bringing the lawsuit *CJA v. Cuomo*, which we did on March 30, 2012, in Supreme Court/Bronx County, accompanied by an order to show cause for a preliminary injunction, with TRO, to stay the first phase of the judicial pay raises, which would otherwise take effect on April 1, 2012.

The record of *CJA v. Cuomo* is posted on our website, www.judgewatch.org, from which you can see the corrupt course of what transpired both before and after the case was transferred to Supreme Court/New York County, where, as of this date, more than five-and-a-half months after we filed with New York County Clerk Norman Goodman a complaint of record tampering and official misconduct by court personnel and more than two months after filing with the Unified Court System Inspector General Sherrill Spatz a complaint against Clerk Goodman for obstructing justice and collusion with record tampering, we have yet to receive a written disposition of either complaint.

By reason thereof, the first phase of the judicial pay raises took effect on April 1, 2012. Its cost to New York taxpayers for fiscal year 2012-2013 was purported to be \$27.7 million for the judicial salary increases. This does not include the indeterminate millions of dollars for increases in district attorney salaries and county clerk salaries because of their statutory link to judicial salaries. Nor does it include increased costs of "fringe benefit" for the judges, district attorneys, and county clerks – these being pensions, social security, etc. This \$27.7 million, plus unknown millions more, is now replicated in fiscal year 2013-2014 – on top of which is the second phase of the judicial pay raise, which took effect on April 1, 2013, whose cost is purported to be another \$8.2 million for increased judicial salaries, again, not including the indeterminate millions in related costs. The total imposition on taxpayers for these two fiscal years is upwards of \$70 million and will exceed \$100 million by the end of fiscal year 2014-2015, if the third phase of the judicial salary increase takes effect on April 1, 2014. Because of the non-diminution clause of the New York State Constitution, Article VI, §25a, the cumulative cost of this three-phase judicial salary raise – with all its related costs – will be an annually recurring imposition on New York taxpayers, in perpetuity, unless voided by a court in a lawsuit, such as *CJA v. Cuomo*.

So that you can appreciate how many of New York's constitutional and public officers – and their taxpayer-paid counsel and professional staff – are complicit in this massive and perpetually recurring grand larceny of the public fisc, our website chronicles our exhaustive efforts, apart from the lawsuit, to "Securing Legislative Oversight & Override of the second and third phases of the judicial pay raises" by a webpage of that name, accessible *via* our top panel "Latest News". Among these other larcenous constitutional and public officers are Budget Director Robert Megna, Chief Administrative Judge Gail Prudenti, and Senators and Assembly Members in leadership positions: Senate Majority Coalition Leader Jeffrey Klein, Senate Minority Leader Andrea Stewart-Cousins, Assembly Minority Leader Brian Kolb, Senate Finance Committee Chair John DeFrancisco, Senate Finance Committee Ranking Member Liz Krueger, Assembly Ways and Means Committee Chair Herman Farrell, Jr., Assembly Ways and Means Committee Ranking Member Robert Oaks, Senate Judiciary Committee Chair John Bonacic, Senate Judiciary Committee Ranking Member John Sampson, Assembly Judiciary Committee Chair Helene Weinstein, and Assembly Judiciary Committee Ranking Member Tom McKeivitt.

The “Securing Oversight & Override” webpage posts the primary-source materials evidencing what took place:

In the week and a half preceding the February 6th Senate and Assembly joint budget hearing on “public protection”, I wrote Chief Judge Lippman (*via* Chief Administrative Judge Prudenti), Temporary Senate President Skelos and Assembly Speaker Silver, Governor Cuomo, and Attorney General Schneiderman and Comptroller DiNapoli, identifying that I would be testifying about CJA’s Opposition Report and verified complaint and calling upon them to themselves testify about them and produce their findings of fact and conclusions of law with respect thereto. All this correspondence was sent to the chairs and ranking members of the four committees having direct oversight over the Judiciary budget – the Senate Finance Committee, the Assembly Ways and Means Committee, the Senate Judiciary Committee, and the Assembly Judiciary Committee – with a letter to them reiterating a request I had made in phone calls to them two weeks earlier, *to wit*, that their committees review the Opposition Report and verified complaint in advance of the February 6th hearing – as these were dispositive of the Legislature’s duty to override the second phase of the judicial salary increase – and that they notify Chief Administrative Judge Prudenti “to come to the hearing prepared to discuss the particularized showing of unconstitutionality, statutory violations, and fraud presented by the Opposition Report – if not by the four causes of action of the *CJA v. Cuomo* verified complaint based thereon”, as they would be interrogating her extensively with respect thereto, and that they would also invite Chief Judge Lippman to also be present at the hearing to address same.

There was no response from any of them to these letters – including at the February 6th hearing, where Chief Administrative Judge Prudenti, unaccompanied by Chief Judge Lippman, made no mention of the Opposition Report and verified complaint and was not questioned about them. Nor was I questioned about them when I testified, handing up CJA’s Opposition Report, verified complaint, and that correspondence.

The video and witness list for the February 6th hearing are posted on the “Securing Oversight & Override” webpage. As reflected therein, Chief Administrative Judge Prudenti was scheduled to be the first witness. I was scheduled to be the last. By the time I testified, nearly 7-1/2 hours after the hearing had begun, most legislators were gone, the press was gone, and virtually no one remained in the audience. In the ten minutes that were permitted for my testimony, I presented opposition not only to the judicial pay raises, but to the whole of the Judiciary budget based on its lack of requisite itemizations, including with respect to the second phase of the judicial salary increase whose dollar amount was nowhere identified.

Thereafter, I endeavored to ascertain who at the fiscal and judiciary committees was reviewing my document-supported testimony and when their findings of fact and conclusions of law would be made public with respect thereto. There was no answer. Nor did these four committees ever render any committee report with respect to the February 6th hearing so that the votes of the Senators and Assembly Members not present at the hearing might be informed by what I had presented. Indeed, without the committees even voting on the Judiciary budget and its appropriations bill, the bill –

S.2601/A.3001 – combined in the same bill as appropriations for the Legislature, was passed onto the Senate and Assembly and embodied in resolutions establishing a Joint Budget Conference Committee.

As a result of this violation of any cognizable “process”, I was burdened with contacting all members of the Joint Budget Conference Committee, its Subcommittee on “Public Protection”, Criminal Justice, and Judiciary, and ultimately all members of the Senate and Assembly to alert them to the nature and significance of my February 6th opposition testimony and the absence of “process” in the form of a committee report and vote.

These alerts, embodied by my correspondence, chronicle the flagrant nonfeasance and misfeasance by Senators, Assembly members, and their taxpayer-supported professional staff. Over and beyond their willful and deliberate disregard of CJA’s Opposition Report and verified complaint – whose accuracy and dispositive nature they did not deny or dispute in any respect – and their equally willful and deliberate disregard of our showing that the Judiciary appropriations bill was a veritable “slush fund”, they blithely trampled on a succession of constitutional, statutory, and rule provisions to achieve its passage and that of other budget appropriations bills.

On March 29th, with the budget passed, I wrote to the Governor’s Chief of Staff, urging that the Governor NOT sign the Judiciary/Legislative appropriations bill, S.2601-A/A.3001-A. In pertinent part, I stated:

“it is essential that the Governor take steps to protect the public purse from judicial salary increases he KNOWS to be statutorily-violative, fraudulent, and unconstitutional, as would be evident were he to disgorge such findings of fact and conclusions of law as he made – or as were made on his behalf by...counsel – with respect to CJA’s October 27, 2011 Opposition Report and the four causes of action of our public interest lawsuit based thereon – *CJA, et al. v. Cuomo, et al.*

Please be advised – and I hereby give notice – that the Legislature’s passage of the budget for fiscal year 2013-2014 violated express constitutional and statutory safeguards and its own rules – particularly its passage of Judiciary appropriations bill S.2601-A/A.3001-A – the same bill as contains the Legislature’s appropriations.

To the extent you are unaware of these violations, we have steadily chronicled them, since February 6th, by the primary-source materials posted on our website, www.judgewatch.org, on the webpage devoted to Securing Legislative Oversight & Override of the judicial pay raises...’. Increasingly, these have pertained to violations affecting not only S.2601-A/A.3001-A, but the entire budget. Our new webpage ‘Holding Government Accountable for its Grand Larceny of the Public Fisc’, which...I have been constructing since I got up this morning to aid the Governor in understanding the situation, showcases these violations no less prominently. Both webpages are accessible *via* the ‘Latest News’ top panel of our website. Here’s the direct link: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>.” (March 29th letter, at pp. 1-2, capitalization & underlining in original).

This March 29th letter then identified posted materials from which the Governor could ascertain his “duty to New York’s citizens and taxpayers NOT to sign S.2601-A/A.3001-A”, further pointing out that among the “must-read” posted correspondence was “CJA’s March 11th letter, summarizing and elaborating upon my testimony at the Legislature’s February 6th budget hearing on ‘public protection’”, that this March 11th letter had been enclosed with our March 19th letter to the Governor to which we had received no response – and that the title of the March 19th letter had been:

“Assisting the Legislature in Discharging its Constitutional Duty: The People’s Right to Know the Dollar Cost of the Judiciary Budget & of the Appropriations Bill for the Judiciary & to be Protected from ‘Grand Larceny of the Public Fisc’ by Unidentified, Unitemized Judicial Pay Raises, whose Fraudulence, Statutory-Violations, and Unconstitutionality are *Proven by Documentary Evidence in Your Possession & the Legislature’s*” (underlining & italics in March 19th letter).

The March 29th letter concluded with a final request:

“In view of the serious and substantial nature of this letter and its political and other ramifications for the Governor, kindly furnish it to him, without delay.” (at p. 3, underlining in the original).

Notwithstanding the March 29th letter was e-mailed to the Governor’s Executive Chamber in the early morning hours of March 30th – and then, again, later in the day on March 30th – we received no response from the Governor’s office. Instead, on April 2nd, Governor Cuomo went on an upstate tour to promote and ceremonially sign the budget, repeating his long-standing rhetoric that an on-time budget, the third in a row, shows that our state “government is working and is working for you”.

Thereupon, with U.S. Attorney Bharara’s April 2nd announcement of the charges against Senator Malcolm Smith and others, Governor Cuomo engaged in further deceit, proclaiming during his upstate budget tour to the press, “We have zero tolerance for any violation of the public integrity and the public trust”. As the foregoing demonstrates, the truth is just the opposite. The Governor has 100% tolerance for the most flagrant corruption and abuse of the public trust, of which he himself, in collusion with other public officers, is an active participant.

CJA’s newest webpage “Holding Government Accountable for its Grand Larceny of the Public Fisc” takes the EVIDENCE posted on our webpage “Securing Legislative Oversight & Override of the...judicial pay raises” and reformats it as EVIDENTIARY EXHIBITS for a criminal complaint.

That criminal complaint must begin with New York’s highest constitutional officer, Governor Cuomo. Indeed, following the Governor’s hypocritical “zero tolerance” claims – and the inspiring statements of U.S. Attorney Bharara at his April 2nd and 4th press conferences about cleaning up New York State government and his determination to investigate and prosecute corrupt public officials – I modified the “Holding Government Accountable for its Grand Larceny of the Public Fisc” webpage to be a presentation to the U.S. Attorney in support of this criminal complaint, stating:

“Here’s the evidence, U.S. Attorney Bharara:

Let’s start at the top – with Governor Cuomo, who colluded with the Legislature in rewarding a systemically corrupt Judiciary with a slush-fund budget whose unidentified, unitemized funding includes statutorily-violative, fraudulent & unconstitutional judicial salary increases”

So dispositive is the EVIDENCE posted on this webpage – and none more so than the documents I handed up at the February 6th budget hearing: (1) CJA’s October 27, 2011 Opposition Report and its Executive Summary; (2) the March 30, 2012 verified complaint in *CJA v. Cuomo*; and (3) CJA’s correspondence with the three government branches in the week and a half preceding the February 6th hearing – that there is no need for U.S. Attorney Bharara to embark upon any of the “aggressive and creative tool[s]” to which he referred at the April 4th press conference:

“wiretaps and confidential informants and undercover agents and stings. And, yes, seeking the cooperation of elected officials who can help us investigate and prosecute their own corrupt colleagues”.

Here presented is an open-and-shut case. A simple subpoena to our highest constitutional officers for their records with respect to these documents and CJA’s communications and correspondence with them thereafter will suffice to indict and convict them for grand larceny of the public fisc and other crimes against the People.

Similar subpoenas will also suffice to indict and convict a huge number of other constitutional and public officers and their counsel and professional staffs who were duty-bound to make findings of fact and conclusions of law with respect to the October 27, 2011 Opposition Report, and/or to take steps to secure the findings of fact and conclusions of law of the Governor, Temporary Senate President, Assembly Speaker, Chief Judge, Attorney General, and Comptroller – but did not do so because, as they knew, it would require, at very minimum, that they protect the public purse from judicial pay raises that flagrantly violate Chapter 567 of the Laws of 2010 – their only legal basis – quite apart from being fraudulent and unconstitutional.

That is not to say that U.S. Attorney Bharara might not also use his referred-to “aggressive and creative tool[s]” – including offering immunity to the formerly high-ranking Senator Smith in exchange for his testimony against fellow legislators pertaining to the corruption chronicled by the *CJA v. Cuomo* verified complaint and by such subsequent correspondence as our December 7, 2012 letter to the Independent Democratic Conference, which Senator Smith had joined. Entitled “ACHIEVING A FISCALLY RESPONSIBLE, FULLY FUNCTIONAL SENATE”, this December 7, 2012 letter called upon the Independent Democratic Conference members to repudiate their “historic partnership” with a Republican Conference under Senator Skelos based upon the documented allegations of the *CJA v. Cuomo* verified complaint, which we stated “would easily support a criminal prosecution of him for official misconduct and criminal fraud upon the taxpaying public” (at p. 2). In substantiation, we asked them to secure from Senator Skelos such findings of fact and conclusions of law as he or Senate counsel made with respect to our October 27, 2011

Opposition Report, stating, “This will give you all the evidence necessary to repudiate, as you must, any partnership with a Senate Republican conference having Senator Skelos as its head”. The letter further requested that they initiate legislative override of the second and third phases of the judicial pay raises by referring the evidence of unconstitutionality, statutory violations, and fraudulence to all relevant Senate committees for discharge of their oversight responsibilities, consistent with Senate rules, further urging that they advance reform of Senate rules, consistent with the non-partisan, good-government recommendations of the 2009 Temporary Senate Committee on Rules and Administration Reform, a signal achievement of Senator Smith’s tenure as Senate Majority Leader.³

As discussed, it is ESSENTIAL that U.S. Attorney Bharara not back down from his pledge to “continue to pursue and to punish every corrupt official we can find”. Only by so doing – and by bringing to justice corrupt officials at the highest levels who are the example for the rest – can “the dream of honest government” ever be realized.

I look forward to meeting with you and U.S. Attorney Bharara, to furnishing further substantiating documents, including fax and e-mail receipts, to answering your questions, testifying under oath – and to providing you names of the many, many victims of this state’s systemically and pervasively corrupt judicial system, who can furnish you with documentary and testimonial evidence of their own. Meantime, I refer you to the testimony given by a succession of witnesses at the Senate Judiciary Committee’s aborted 2009 hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system, as to which, to date, there has been no investigation, no findings, no committee report. Such state of affairs – and its significance to the judicial pay raise issue – is focal to our Opposition Report (pp. 3-4, 11-12, 19 (fn. 25) and verified complaint (¶¶31-50, 52-55, 62-67, 74-81, 86-88, 94, 98, 106-108, 133, 135(e), 152-153, 160-162), each identifying that the videos and transcripts of those hearings are accessible *via* the “Latest News” top panel of CJA’s website.⁴

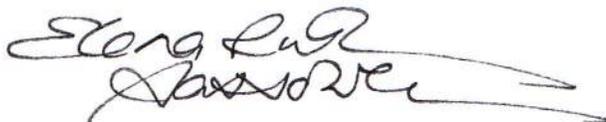
³ The December 7, 2012 letter is enclosed herewith, together with our follow-up December 21, 2012 letter to the Independent Democratic Conference, entitled “What is Your Response to CJA’s December 7, 2012 Letter?” These two letters were, thereafter, furnished to all Senators. That correspondence and our comparable correspondence to Assembly members are accessible *via* our “Latest News” webpage, by the hyperlink entitled “CJA’s championing of appropriate rules and leadership for the New York State Legislature”.

As I further identified when we spoke, Senator Smith had been Ranking Member of the Senate Judiciary Committee during Senator DeFrancisco’s chairmanship of the Senate Judiciary Committee years earlier. His participation at a March 17, 2003 meeting with Senator DeFrancisco, at which I provided each of them with the final two motions from CJA’s public interest lawsuit against the Commission on Judicial Conduct, documenting how New York Courts, including the Court of Appeals, had corrupted the judicial process to protect a corrupt Commission on Judicial Conduct, is recounted at ¶39 of the *CJA v. Cuomo* verified complaint. These two final motions are the same as I handed up at the February 6th budget hearing because – like the October 27, 2011 Opposition Report – they are free-standing exhibits to the *CJA v. Cuomo* verified complaint.

⁴ As stated in footnote 7 of the Opposition Report (at p. 3):

In addition to the criminal complaint herein initiated, we also request the U.S. Attorney's intervention in *CJA v. Cuomo* and his transfer of the case to the U.S. District Court, with appropriate amendment of the verified complaint to include additional causes of action and supervening facts, such as the violations of constitutional, statutory, and rule provisions underlying passage of the state budget for fiscal year 2013-2014 and Judiciary/Legislative appropriations bill S.2601-A/A.3001-A.

Thank you.



See next page for enclosures & cc's

“These Senate Judiciary Committee hearings, held on June 8, 2009 and September 24, 2009, were each videoed and stenographically recorded by the Committee. CJA’s website posts both the videos and stenographic transcripts, accessible *via* the top panel ‘Latest News’ and left side panel ‘Judicial Discipline-State-NY’.

Most immediately germane to the judicial compensation issue is the testimony of Regina Felton, Esq. at the September 24, 2009 hearing, as the judge against whom she filed numerous judicial misconduct complaints with the Commission on Judicial Conduct, all dismissed, was a co-petitioner in one of the [judges’] judicial compensation lawsuits [*Maron, et al. v. Silver, et al.*].

Other important testimony involving the Commission on Judicial Conduct’s dismissal of facially-meritorious, documented judicial misconduct complaints is that of James A. Montagnino, Esq. (at the June 8, 2009 hearing), Nora Drew Renzulli, Esq. (at the September 24, 2009 hearing), Pamela Carvel (at the June 8, 2009 hearing), and Catherine Wilson (at the September 24, 2009 hearing).” (underlining in the Opposition Report).

Additionally notable is the testimony (at the June 8, 2009 Senate Judiciary Committee hearing) of William Galison – and all the more so as he filed with you an April 3, 2013 criminal complaint of “Fraud in the Nomination and Confirmation of New York Chief Judge Jonathan Lippman by Members of the New York State Judiciary Committee”. Such criminal complaint – and documents substantiating it – are accessible from CJA’s website, including from our webpage for the Senate Judiciary Committee’s 2009 hearings on the Commission on Judicial Conduct and attorney disciplinary system, containing a hyperlinked webpage for Mr. Galison. That hyperlinked webpage additionally posts the videos of the Senate Judiciary Committee’s February 11, 2009 hearing on Chief Judge Lippman’s confirmation, as well as its June 5, 2009 hearing on “merit selection” to the New York Court of Appeals – at which Mr. Galison and I both testified.

Mr. Galison also testified at the Commission on Judicial Compensation’s July 20, 2011 hearing. However, that video is not available as the Commission removed it from its website shortly before it issued its August 29, 2011 “Final Report”, presumably because of the significance of my testimony and the exchange between myself and the Commission’s chairman, who refused to address the threshold issue of his disqualification, which I had raised.

The *CJA v. Cuomo* verified complaint references Mr. Galison at ¶¶63 and 86.

- Enclosures: (1) Documents handed up at February 6th budget hearing in support of testimony
-- March 30, 2012 verified complaint in *CJA v. Cuomo*, with compendium & free-standing exhibits, including:
 CJA's October 27, 2011 Opposition Report, with Executive Summary
 -- CJA's correspondence with three gov't branches: January 29th – February 5th
- (2) CJA's March 19, 2013 letter to Governor Cuomo, with enclosures
(3) CJA's March 29, 2013 letter to Governor Cuomo
(4) CJA's December 21, 2012 letter to Independent Democratic Conference, enclosing December 7, 2012 letter

cc: Senator Malcolm Smith
The Complained-Against Constitutional & Public Officers, Counsel & Professional Staff
The Public & Press

EXHIBIT 3

Constitutional analysis, as set forth in
preface & pages 10-13 of CJA's October 27, 2011 Opposition Report

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Doris L. Sassower, President & Founder

Eli Vigliano, Special Counsel
Harold Somer, Board Chairman

October 27, 2011

HOLDING GOVERNMENT ACCOUNTABLE:

***“NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE –
THE MONEY BELONGS TO THE VICTIMS!”***

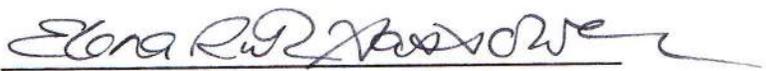
**OPPOSITION REPORT TO THE “FINAL REPORT
OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION”**

PRESENTED TO:

Andrew M. Cuomo, Governor of the State of New York
Dean G. Skelos, Temporary President of the New York State Senate
Sheldon Silver, Speaker of the New York State Assembly
Jonathan Lippman, Chief Judge of the State of New York

IN SUPPORT OF:

- (1) Legislation Voiding the Commission’s Judicial Pay Recommendations;
- (2) Repeal of the Statute Creating the Commission;
- (3) Referral of the Commissioners to Criminal Authorities for Prosecution;
- (4) Appointment of a Special Prosecutor, Task Force, and/or Inspector General to Investigate the Documentary and Testimonial Evidence of Systemic Judicial Corruption, Infesting Supervisory and Appellate Levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation Unlawfully and Unconstitutionally Ignored, Without Findings, in Recommending Judicial Pay Raises

Written by: 
Elena Ruth Sassower, Director

* Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens’ organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

“The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4,,}”

^{“fn4} Such safeguards are properly viewed as comparable to the ‘good Behaviour’ provision of the U.S. Constitution, immediately preceding – and in the same sentence as – the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].”

(concluding paragraph of analysis of Article VI of the New York State Constitution, based on the Court of Appeals’ February 23, 2010 decision in the judicial compensation lawsuits, presented by the Center for Judicial Accountability’s August 8, 2011 letter to the Commission on Judicial Compensation (at pp. 3-4) and August 23, 2011 letter to Chief Administrative Judge Ann Pfau (pp. 2-4) – whose accuracy is uncontested by them and other judicial pay raise advocates.)

CJA's August 8, 2011 letter to the Commission

Each of the three threshold issues particularized by CJA's August 8th letter (Exhibit I) are now grounds for all the relief this Opposition Report seeks: (1) overriding the Commission's recommendations; (2) repeal of the Commission statute; (3) criminal referrals of the Commissioners; (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the evidence of systemic judicial corruption which the Commission unlawfully and unconstitutionally ignored, without findings, in order to recommend judicial pay raises.

As to the First Threshold Issue: Chairman Thompson's Disqualifying Self-Interest:

One does not have to be a lawyer – as each of you is – to know that disqualification is a THRESHOLD issue – and that the Commission could not lawfully proceed, absent a ruling by the Commission as to Chairman Thompson's disqualifying self-interest, particularized by our June 23rd letter (Exhibit B-1).

By July 20th, with no response from the Commission to that issue, I publicly raised it at the Commission's one and only hearing, in Albany. The video establishes what took place.¹⁵ The Commission cut me off and allowed Chairman Thompson to cut me off, without any ruling, over my rightful protest. CJA's August 8th letter (Exhibit I) enclosed, as its first attachment, my transcription of my videoed appearance at the hearing, stating:

“If the Commission – three of whose members are lawyers – believes that without ruling on Chairman Thompson's disqualification for interest, it can lawfully proceed to discuss ‘specific raise levels for judges’, it should state this publicly, with legal authority, disclosing the specifics of the disqualification detailed by CJA's June 23rd letter.” (CJA's August 8, 2011 letter, at p. 2, underlining in the original).

The Commission's Report conceals the disqualification issue, totally.

As to the Second Threshold Issue: Systemic Judicial Corruption Constituting an “Appropriate Factor” for the Commission's Consideration, Having Constitutional Magnitude: ✓

The August 8th letter (Exhibit I) presented the following constitutional analysis based on the Court of Appeals' February 23, 2010 decision:

“As set forth by CJA's June 23rd letter, ‘corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels’, disentitles it to any boost in judicial compensation.

¹⁵ CJA's September 2nd letter (Exhibit M) apprised the Commissioners that although its website posted a link for the video of its July 20th hearing, it was not, in fact, accessible. It is still not accessible.

Such corruption and lawlessness are not only ‘appropriate factors’ for your consideration under the statute requiring you to consider ‘all appropriate factors’, but your disregard of these factors would be unconstitutional pursuant to the very February 23, 2010 Court of Appeals decision in the judicial compensation cases that underlies the Commission’s creation.

In that decision – whose fraudulence was particularized by CJA’s July 19, 2011 letter to which I referred at the hearing – the Court of Appeals searched the New York State Constitution for a textual basis to reject the ‘linkage’ of judicial salaries with legislative and executive salaries and found ‘significant’ that although the legislature is vested with the power to raise salaries, the provisions relating to the compensation of judicial, legislative, and executive officers are not set forth in the legislative article of the Constitution, but within the separate articles for each branch. The Court held that it is within the separate judiciary article that determination is to be made as to whether, on ‘its own merit’, New York State judges deserve an increase in compensation.

Article VI is the judiciary article of the New York State Constitution and it provides not only appellate, administrative, and disciplinary safeguards for ensuring judicial integrity, but express procedures for removing unfit judges. Indeed, Article VI specifies three means for removing judges – the Commission on Judicial Conduct [§22], concurrent resolution by the legislature [§23], and impeachment [§24] – and these in the three sections that IMMEDIATELY precede §25(a) to which judges point in clamoring that inflation has unconstitutionally diminished their compensation:

‘The compensation of a judge...shall not be diminished during the term of office for which he was elected or appointed.’

Of these three means for judicial removal provided by Article VI, concurrent legislative resolution and judicial impeachment exist in name only – having given way to the Commission on Judicial Conduct, as to which, more than 22 years ago, the New York State Comptroller issued a report entitled ‘*Not Accountable to the Public*’, calling for legislation to permit independent auditing of its handling of judicial misconduct complaints.^{fn2} Such never happened – and 20 years later, in 2009, at Senate Judiciary Committee hearings on the Commission on Judicial Conduct – the first legislative hearings on the Commission since 1987 – its corruption was attested

^{fn2} The Comptroller’s 1989 Report and accompanying December 7, 1989 press release, ‘*Commission on Judicial Conduct Needs Oversight*’, are posted on CJA’s website, www.judgewatch.org, most readily accessible via the sidebar panel ‘Library’. Because of its importance – and so that they may be physically part of this Commission’s record – a copy of each is being furnished with this letter.”

to by two dozen New Yorkers who provided and proffered supporting documentation – as to which, to date, there has been NO investigation, NO findings, and NO committee report.

It was CJA’s position, presented by our May 23rd and June 23rd letters and reiterated by my July 20th testimony that:

‘There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto... [and] until mechanisms are in place and functioning to remove judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of ‘judicial perjuries’, being knowingly false and fabricated.’ (May 23, 2011 letter, capitalization in the original).^{fn3}

Our position now is stronger. The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4}” (CJA’s August 8, 2011 letter, at pp. 2-4, underlining and capitalization in the original).

This constitutional analysis was quoted, *verbatim*, in CJA’s August 23, 2011 letter to Chief Administrative Judge Ann Pfau (Exhibit K-1) – to which the Commissioners were indicated recipients. Entitled:

“Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court Administration’s ‘Memorandum discussing constitutional considerations in establishing pay levels’ –

^{fn3} The correctness of this position may be seen from the federal statute for the Citizens’ Commission on Public Service and Compensation, requiring that its review of compensation levels of federal judges, the Vice-President, Senators, Representatives, and others include ‘any public policy issues involved in maintaining appropriate ethical standards’ – with ‘findings or recommendations’ pertaining thereto ‘included by the Commission as part of its report to the President’ [2 U.S.C. §363].”

^{fn4} Such safeguards are properly viewed as comparable to the ‘good Behaviour’ provision of the U.S. Constitution, immediately preceding – and in the same sentence – as the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].”

and the Substantiating Evidence” (underlining in the original title),

the letter highlighted the OCA’s obligation – and that of judicial pay raise advocates – to confront the constitutional analysis and evidence of systemic judicial corruption presented by judicial pay raise opponents.

Neither the OCA nor judicial pay raise advocates have done so (Exhibits J-2, J-3, J-4, J-5, J-6, J-7, K-2). Nor has the Commission, whose Report, in addition to concealing CJA’s August 8th letter (Exhibit I), conceals the statutory language requiring the Commission to consider “all appropriate factors”.

The constitutional analysis and evidence presented by CJA and other judicial pay opponents of systemic corruption in New York’s judiciary, encompassing integrity safeguards and judicial removal provisions, is entirely uncontested.

As to the Third Threshold Issue: The Fraud & Lack of Evidence Put Forward by Judicial Pay Raise Advocates

CJA’s August 8th letter (Exhibit I) reiterated what I had stated at the July 20th hearing:

“this Commission has been inundated by fraud from the advocates of judicial pay raises, who have furnished a combination of no evidence and irrelevant and misleading evidence to support their claims. From my list of ‘20 specific frauds’, to which I referred, I sufficed to identify only one: their claim that we have ‘a quality, excellent, top-rate judiciary with judges discharging their constitutional duties.

The documentary evidence I left for you, on the table, at the July 20th hearing – the two final motions in CJA’s lawsuit against the Commission on Judicial Conduct^[fn5] – puts the lie to the supposed ‘excellence’ and ‘quality’ of a score of judges whose fraudulent judicial decisions, protecting the Commission on Judicial Conduct, are therein demonstrated, covering up the corruption of scores of other judges – William Thompson, Sr., pivotally among them – as documented in underlying case records.

Unless you are intending to recommend judicial pay raises without predicate findings, based on evidence, that our New York State judges are doing their jobs, in compliance with the Constitution and the Rule of Law, and that safeguarding mechanisms are functioning, your obligation to the People of this State is to confront this rebutting evidence. As I reasonably suggested, *twice*, as you curtailed and concluded my presentation, you should call upon the advocates of judicial pay raises to assist you with fact-finding. ...” (CJA’s August 8, 2011 letter, at pp. 4-5, underlining and italics in the original).

EXHIBIT 4

CJA's entitlement to declarations that the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation are fraudulent, statutorily-violative, and unconstitutional & that the statute that created that Commission – materially replicated in the statute that created the Commission on Legislative, Judicial and Executive Compensation – was unconstitutional, *as written and as applied* (pages 19-26 of CJA's November 5, 2015 memorandum of law in its citizen-taxpayer action)

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

Index #1788-14

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.
----- X

PLAINTIFFS' REPLY MEMORANDUM OF LAW

in Further Support of Plaintiffs' Cross-Motion for Summary Judgment & Other Relief

ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org



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that the legislative budget was not even within the announced jurisdiction of the “public protection” conference subcommittee.

Consequently, plaintiffs are entitled to a declaration that the legislative/judiciary budget bills for fiscal years 2014-2015 and 2015-2016 violate Legislative Law§54-a.

AAG Kerwin Does Not Contest Plaintiffs’ Entitlement to Declarations that the Judicial Salary Increases Recommended by the August 29, 2011 Report of the Commission on Judicial Compensation, Embedded in the Judiciary’s Proposed Budgets and Legislative/Judiciary Budget Bills, are Fraudulent, Statutorily-Violative, and Unconstitutional – & that Chapter 567 of the Laws of 2010 – Now Materially Replicated in Chapter 60 of the Laws of 2015 – was Unconstitutional, as Written & as Applied

Plaintiffs’ second and sixth causes of action (¶108, PRAYER FOR RELIEF/WHEREFORE clause, at p. 44; ¶¶179-181, 190, PRAYER FOR RELIEF/WHEREFORE clause, at p. 39) challenge the lawfulness of the judicial salary increases embedded in the Judiciary’s proposed budgets for fiscal years 2014-2015 and 2015-2016 and the legislative/judiciary budget bills embodying them.

As set forth at ¶5 of plaintiffs’ complaint, these salary increases were recommended by the August 29, 2011 Report of the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010. Plaintiffs demonstrated the fraudulence, statutory violations and unconstitutionality of that Report by their October 27, 2011 Opposition Report. The very first page of its Introduction called for repeal of the commission statute – Chapter 567 of the Laws of 2010 – as “deleterious to the public and unconstitutional, *as written and as applied*.^{fn2}”, stating, by its annotating footnote 2:

“As to whether, without constitutional amendment, the legislative and executive branches can, by statute, delegate judicial compensation to an appointed commission, whose recommendations do not require affirmative legislative and executive action to become law, such will be separately presented.” (underlining in the original).

Plaintiffs then “separately presented” that issue by their March 30, 2012 verified complaint in their declaratory judgment action *CJA v. Cuomo I*, whose second cause of action, entitled “Chapter

567 of the Laws of 2010 is Unconstitutional, *As Written*”, included the following subsection:

“B. Chapter 567 of the Laws of 2010 Unconstitutionally Delegates Legislative Power Without Essential Safeguarding Provisions & Guidance

145. Such case law as *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743; 836 N.Y.S.2d 794 (Supreme Court/Bronx Co. 2007), affirmed by the Appellate Division, First Department, 41 A.D.3d 252 (2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815 (N.Y., Nov. 27, 2007); motion granted 9 N.Y.3d 986 (N.Y., Nov. 27, 2007), reflects further grounds upon which Chapter 567 of the Laws of 2010 is unconstitutional, *as written*.

146. Article III, §1 of the New York State Constitution vests the legislative power in the Senate and Assembly. There is no provision in the Constitution for delegating decision-making power over judicial salaries to an appointed commission, let alone to an appointed commission whose recommendations are self-executing so as to become law automatically without affirmative legislative or executive action by the People’s elected representatives.

147. Such delegation, moreover, could only be constitutional if the appointed commissioners were of a sufficient number and diversity, and untainted by an agenda or other bias and interest.

148. At bar, Chapter 567 of the Laws of 2010 provides for only seven commissioners – and of these, only two are appointed by the Legislature. This is an insufficient number to reflect the diversity of either the Legislature or the State.

149. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the judiciary’s agenda of pay raises.

150. As the judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the chief judge is directly interested in the determination, the chief judge’s participation as an appointing authority is, at very least, a constitutional infirmity.

151. Nor could such delegation be constitutional unless the statute defined the constitutional considerations relevant to the Commission’s evaluation of judicial compensation levels.

152. Chapter 567 of the Laws of 2010 is not sufficiently-defined and provides insufficient guidance to the Commission as to the ‘appropriate

factors' for it to consider. The statute requires the Commission to 'take into account all appropriate factors, including but not limited to' six listed factors. These six listed factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I.

153. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any pay raise recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI are functioning.

154. The absence of such explicit factor to guide the Commission renders the statute unconstitutional, *as written*.”

Seven months ago, Chapter 567 of the Laws of 2010 was repealed – and how it happened is described by Plaintiffs' September 22, 2015 memorandum of law:

“In the behind-closed doors, ‘three-men-in-a-room’ budget negotiations for fiscal year 2015-2016, defendants Cuomo, Skelos and Heastie amended budget bills which, at the 11th hour, were introduced and passed by the Legislature in rubber-stamp fashion. Among these was Budget Bill #S.4610-A/A.6721-A and its amendments included repeal of Chapter 567 of the Laws of 2010, so as to replace the Commission on Judicial Compensation, with a Commission on Legislative, Judicial, and Executive Compensation.

The amendment – Part E of Budget Bill #S.4610-A/A.6721-A – largely replicates the provisions of Chapter 567 of the Laws of 2010. *As written*, it suffers from the same constitutional infirmities as were directly challenged by the verified complaint in *CJA v. Cuomo I* [Second Cause of Action: ¶¶140-154] – and which are indirectly challenged by the verified complaint herein...” (at p. 48).

Among the provisions that Part E of Budget Bill #S.4610-A/A.6721-A replicates is “the force of law” power given to commission recommendations, absent affirmative legislative action – the unconstitutionality of which was the subject of plaintiffs' second cause of action in *CJA v. Cuomo I*.

On June 3, 2015, a handful of Assembly members introduced Assembly Bill #07997, whose

purpose, expressly stated by its sponsors' memo, is to:

“...eliminate the provisions in the 2015 budget that stated that the salary determinations of the special commission on compensation could become effective automatically ‘with the force of law,’ and could ‘supersede’ any inconsistent provisions of the Judiciary Law, Executive Law, and Legislative Law, without any further legislative action.” (Exhibit 22-b to plaintiff Sassower’s accompanying reply affidavit).

According to the memo, “this budget bill language violates several fundamental provisions of the New York State Constitution”. The memo then furnishes seven specifics – five of which identically apply to Chapter 567 of the Laws of 2010:

“b. Article III, Section 1 of the New York State Constitution states that the legislative power ‘shall be vested in the Senate and Assembly.’ A non-elected commission cannot be delegated legislative power to enact recommendations ‘with the force of law’ that can ‘supercede’ inconsistent provisions of law.

...

d. Article III, Section 13 of the New York State Constitution states that ‘no law shall be enacted except by a bill,’ yet the salary commission was given the power to enact salary recommendations ‘with the force of law’ without any legislative bill approving of such salaries being considered by the legislature.

e. Article III, Section 14 of the New York State Constitution states that no bill shall be passed ‘or become law’ except by the vote of a majority of the members elected to each branch of the legislature. The budget bill, however, stated that the recommendations of the salary commission would ‘have the force of law’ without any vote whatsoever by the legislators. Such a provision deprives the members of the legislature of their Constitutional right to vote on every bill prior to its enactment into law.

f. Article IV, Section 7 of the New York State Constitution gives the Governor the authority to veto any bill, but there is no corresponding ability of the Governor to veto any recommendations of the salary commission before such recommendations would become effective.

g. Article VII, Section 6 of the New York State Constitution states in relevant part that ‘(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill,’ yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill.”

As recounted by plaintiff Sassower’s accompanying affidavit, she alerted AAG Kerwin to

Assembly Bill #07997 and its relevance to plaintiffs' challenge herein to the judicial salary increases. Yet, AAG Kerwin has not come forward with any response. For that matter, she has not come forward with any response to plaintiffs' October 27, 2011 Opposition Report and to the four causes of action of their March 30, 2012 verified complaint in *CJA v. Cuomo, I*⁴ – copies of which plaintiffs' furnished the Court by their September 22, 2015 opposition/cross-motion, including for purposes of establishing their entitlement to their cross-motion's third branch pertaining to AAG Kerwin's fraud and violations with respect to their June 16, 2014 order to show cause with TRO, which required the legislative defendants to preserve those very documents and turn them over to the Court.⁵

It must be noted that from April to September 2013, plaintiffs repeatedly apprised defendants Legislators and Governor of the background history of "the force of law" provision of Chapter 567 of the Laws of 2010, directly challenged by their *CJA v. Cuomo I* second cause of action (§§145-154). The context was plaintiffs' efforts to prevent enactment of legislation establishing "a special commission on compensation for state employees designated managerial or confidential", A.246/S.2953, containing an identical "force of law" provision. Their April 20, 2013 memo furnished, repeatedly, to all Legislators and to the Governor⁶ stated:

⁴ These are: "As and for A First Cause of Action: Evisceration of Separation of Powers: Collusion of the Three Government Branches against the People" (§§128-139); "As and for a Second Cause of Action: Chapter 567 of the Laws of 2010 is Unconstitutional, *As Written*" (§§140-154); "As and for a Third Cause of Action: Chapter 567 of the Laws of 2010 is Unconstitutional, *as Applied*" (§§155-166); "As and for a Fourth Cause of Action: "The Commission's Judicial Pay Raise Recommendations are Statutorily-Violative" (§§167-172).

⁵ See pp. 42-44 of plaintiffs' September 22, 2015 memorandum of law: "Plaintiffs' Entitlement to Sanctions and Other Relief against AAG Kerwin & Those Complicitous in her Fraud and Contempt of the Order to Show Cause, with TRO, Signed by the Court on June 16, 2014".

⁶ Plaintiffs' correspondence to the Legislators and Governor pertaining to the managerial/confidential employees compensation commission is posted on CJA's website, www.judgewatch.org, on a webpage entitled

“The express basis of ¶¶145-154 of the verified complaint’s second cause of action, appearing beneath the title heading ‘Chapter 567 of the Laws of 2010 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions and Guidance’, is the 2007 decision of Bronx Supreme Court Justice Mary Ann Brigantti-Hughes in *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (2007).^{fn} At issue in *McKinney* was a statute which allowed recommendations of a special commission to become law, without affirmative legislative action. Judge Brigantti-Hughes upheld the statute – Chapter 63 (Part E) of the Laws of 2005 – only because it contained safeguarding provisions. Such safeguarding provisions, however, are absent from Chapter 567 of the Laws of 2010 and from A.246/S.2953 – each also allowing commission recommendations to become law, without affirmative legislative action.

That Chapter 63 (Part E) of the Laws of 2005 should have been stricken as unconstitutional may be seen from the *amicus curiae* brief that the New York City Bar Association filed with the Court of Appeals, in support of the motion of the McKinney plaintiffs for leave to appeal.^{fn} The *amicus* brief described the statute delegating legislative power to a commission, without requiring the legislature to affirmatively vote on its recommendations before they would become law, as:

‘a process of lawmaking never before seen in the State of New York’
(at p. 24);

a ‘novel form of legislation...in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)’;

a ‘gross violation of the State Constitution’s separation-of-powers and...the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State’s laws’ (at p. 25);

‘most unusual [in its]...self-executing mechanism by which recommendations formulated by an unelected commission automatically become law...without any legislative action’ (at p. 28);

unlike ‘any other known law’ (at p. 29);

‘a dangerous precedent’ (at p. 11) that

‘will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).

“Fighting Off the Progeny of the Judicial Compensation Statute – & Securing a Functioning Legislative Process”, accessible from the left sidebar panel “Judicial Compensation-State-NY”.

Indeed, Appellate Division, Fourth Department Justice Eugene Fahey deemed the statute unconstitutional, violating due process, the presentment clause, and separation of powers, in his dissenting opinion in *St. Joseph Hospital, et al. v. Novello*, 43 A.D.3d 139 (2007) – another case challenging Chapter 63 (Part E) of the Laws of 2005, which came up to the Court of Appeals in the same period as *McKinney*.

The Court of Appeals' response to these two important cases, simultaneously before it, was in keeping with its corrupt, politicized conduct chronicled by the *CJA v. Cuomo* verified complaint. It dismissed both the *McKinney* and *St. Joseph Hospital* appeals of right, '*sua sponte*', on its standard boilerplate, 'no substantial constitutional question is directly involved', thereafter denying leave to appeal without reasons.

These were not the only challenges generated by Chapter 63 (Part E) of the Laws of 2005. There are five others identified by the New York City Bar Association's May 2007 report '*Supporting Legislative Rules Reform: The Fundamentals*' (at pp. 9-10), whose discussion of the statute was in the context of describing it as the product of New York's dysfunctional Legislature, whose rules vest disproportionate power in the leadership, leaving committees, which should be the locus for developing legislation and discharging oversight responsibilities, as nothing more than shells.^{fn}" (Exhibit 23 to plaintiff Sassower's accompanying affidavit, underlining in the original).⁷

As the record before this Court is devoid of even an assertion by AAG Kerwin that the judicial salary raises recommended by the Commission on Judicial Compensation complied with the statutory prerequisites of Chapter 567 of the Laws of 2010 and does not contest the accuracy of plaintiffs' October 27, 2011 Opposition Report and the four causes of action of the March 30, 2012 verified complaint in *CJA v Cuomo I*, plaintiffs are entitled to a two-fold declaration by the Court, based on the massive documentary evidence before it, that the judicial pay raises are statutorily-violative, fraudulent, and unconstitutional and that Chapter 567 of the Laws of 2010 – now materially replicated in Chapter 60 of the Laws of 2015 – was unconstitutional, *as written and as applied*.

⁷ CJA's website contains a webpage relating to the litigation challenges to Chapter 63 (Part E) of the Laws of 2005, which posts the City Bar's *amicus* brief in *McKinney v. NYS Dept. of Health* and Justice Fahey's dissenting opinion in *St. Joseph Hospital v. Novello*. The direct link is here:

CONCLUSION

The record herein requires the granting of all ten branches of plaintiffs' cross-motion, *as a matter of law*, and denial of AAG Kerwin's dismissal/summary judgment motion, *as a matter of law*, in all respects.



ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

November 5, 2015

EXHIBIT 5

CJA's October 30, 2015 FOIL/records request
to the Governor, Temporary Senate President, Assembly Speaker,
and Chief Judge

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL

October 30, 2015

TO: FOIL/Records Access Officers of the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge:
Mongthu Zago, FOIL Counsel/Records Access Officer/Executive Chamber
Secretary of the Senate Francis Patience
Assembly Records Access Officer Robin Marilla
Shawn Kerby/Records Access Officer/Office of Court Administration

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

RE: FOIL/Records Request: Commission on Legislative, Judicial and Executive Compensation

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], Senate Rule XV ["Freedom of Information"], Assembly Rule VIII, ["Public Access to Records"] and §124 of the Chief Administrator's Rules, this is to request all publicly-available records that the Commission on Legislative, Judicial and Executive Compensation was established on June 1, 2015, as required by Part E of Budget Bill #S.4610-A/A.6721-A (Chapter 60 of the Laws of 2015) – and, specifically:

- (1) records establishing who are the three members of the Commission that the Governor was required to appoint and the dates of their appointments, including the Governor's signed/certified appointment letters and any public announcement or press release with respect thereto;
- (2) records establishing who is the one member of the Commission that the Temporary Senate President was required to appoint and the date of the appointment, including the Temporary Senate President's signed/certified appointment letter and any public announcement or press release with respect thereto;
- (3) records establishing that the Assembly Speaker appointed Roman Hedges as the one member he was required to appoint and the date of the appointment, including the Assembly Speaker's signed/certified appointment letter and any public announcement or press release with respect thereto;
- (4) records establishing the date on which the Chief Judge appointed Sheila Birnbaum and Barry Cozier to be the two members of the Commission he was required to appoint – including the Chief Judge's signed appointment letters;

EX 5

- (5) records establishing that the Chief Judge's designation of Sheila Birnbaum as Commission chair is consistent with the statute, namely, that it vests him with the power to designate which of his two appointees "shall serve as chair", rather than vesting it in the seven appointed Commissioners – or all four of the Commission's appointing authorities;
- (6) records establishing that the Commission is operational and has funding, staff, an office, phone number, e-mail, and website for discharging its statutory duties.

For your convenience, a copy of the statute – Part E of Budget Bill #S.4610-A/A.6721-A (Chapter 60 of the Laws of 2015) – is enclosed.

Pursuant to Public Officers Law §89.3, your response is required "within five business days" of receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

A handwritten signature in black ink, appearing to read "Elena", with a long horizontal line extending to the right from the end of the signature.

Enclosure

cc: Sheila Birnbaum, Esq.
Barry Cozier, Esq.
Roman Hedges, Ph.D
Committee on Open Government
The Public

EXHIBIT 6

CJA's November 18, 2015 e-mail to Chair Birnbaum
& Commission on Legislative, Judicial & Executive Compensation,
with chain of e-mails spanning from November 2, 2015

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Wednesday, November 18, 2015 4:25 PM
To: sheilabirnbaum@quinnemanuel.com; nyscompensation@gmail.com;
barry.cozier@leclairryan.com; gajohnson@mec.cuny.edu
Cc: 'kconley@nypost.com'; 'joelstashenko@aol.com'; 'jstashenko@alm.com';
'kfischer@alm.com'; Kris Fischer (jstorey@alm.com); adenney@alm.com
Subject: Informing the Public about the Commission's Nov. 30 Public Hearing on Judicial
Compensation & its Opportunity to be Heard

Dear Chairwoman Birnbaum,

Today's New York Post runs an article entitled "Pay hikes eyed for NY judges, lawmakers", whose opening sentence reads: "A state panel is quietly looking at increasing pay for judges and state lawmakers." (underlining added). Here's the link: <http://nypost.com/2015/11/18/pay-hikes-eyed-for-ny-judges-lawmakers/>.

Perhaps the Commission can explain to the article's author, New York Post reporter Kirstan Conley, why a full two weeks after the Commission scheduled a November 30th public hearing in Manhattan on judicial compensation, it has yet to send out a press release about it and the opportunity that the public has to testify and/or make written submissions about salaries and benefits for judges, whose costs it pays for. Certainly, there is not a single press release posted on the Commission's website: <http://nyscommissiononcompensation.org/index.shtml>.

As for the article's statement that the Commission "published just one public-hearing notice, on Halloween, four days before its first hearing on Nov. 3" that is, of course, erroneous. The Commission never published a public-hearing notice for a November 3rd hearing. Rather, New York Law Journal reporter Joel Stashenko received a communication from someone, based upon which he mistakenly reported that the Commission was going to be holding a November 3rd hearing. In fact, it was the Commission's first organizational meeting.

Please immediately confer with the Commissioners so that press releases about the Commission's November 30th public hearing – and the opportunity the public has to testify and/or to furnish written comment – go out forthwith.

Needless to say, the only reason for the Commission's proceeding "quietly" – as it has – is its knowledge that the taxpaying public would never tolerate pay raises for corrupt and incompetent judges – such as we have and cannot rid ourselves of. Likewise pay raises for our collusive and corrupt Legislators and Governor, Attorney General, and Comptroller – all demonstrated, resoundingly, by CJA's advocacy spanning a quarter of a century, including our October 27, 2011 Opposition Report and our three public-interest lawsuits arising therefrom – the latter easily accessible from CJA's website, www.judgewatch.org, via the prominent homepage link: "**What's Taking You So Long, Preet?: CJA's Three Litigations whose Records are Perfect 'Paper Trails' for Indicting New York's Highest Public Officers for Corruption**". These are the same highest public officers as want pay raises.

Thank you – including for your response to my below e-mail by the posting, a short while ago, of the video of the Commission's November 3rd first organizational meeting!

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

From: Center for Judicial Accountability [mailto:elena@judgewatch.org]
Sent: Wednesday, November 18, 2015 1:10 PM

To: 'Sheila Birnbaum'

Cc: 'nyscompensation@gmail.com'; 'barry.cozier@leclairryan.com'; 'gajohnson@mec.cuny.edu'

Subject: thank you -- RE: Video of the Commission's Nov 3rd organizational meeting, upstate hearings, & CJA's Oct. 27, 2011 Opposition Report

These are important [Commission](#) decisions.

From: Sheila Birnbaum [<mailto:SheilaBirnbaum@quinnemanuel.com>]

Sent: Wednesday, November 18, 2015 12:21 PM

To: Center for Judicial Accountability

Cc: nyscompensation@gmail.com; barry.cozier@leclairryan.com; gajohnson@mec.cuny.edu

Subject: Re: Video of the Commission's Nov 3rd organizational meeting, upstate hearings, & CJA's Oct. 27, 2011 Opposition Report

This will be sent to all of the Commissioners as all correspondence is.

On Nov 18, 2015, at 10:06 AM, Center for Judicial Accountability <elena@judgewatch.org> wrote:

Dear Chairwoman Birnbaum,

It is now more than two weeks since the Commission's first organizational meeting, on November 3rd – and the video has yet to be posted on the Commission's website, as you stated it would be in our first e-mail exchange. For your convenience, that exchange, which took place on November 2nd, is at the bottom of the below e-mail chain.

What is taking the Commission so long to post the video of the November 3rd meeting? Why was the Commission able to post meeting minutes within just a few days – but not the meeting video? Is there something in the video that the Commission does not want the public to see – as, for instance, the Commissioners' decision to drop a second public hearing and to hold only a single one, on November 30th in Manhattan – which they did without the slightest discussion of whether that would be fair to New Yorkers in the state's vast western, northern, and central regions, where, additionally, salaries and costs of living are so markedly lower.

On the subject of the dramatically lower salaries and costs of living outside the metropolitan New York City area – one of the many "appropriate factors" that all seven members of the 2011 Commission on Judicial Compensation collusively ignored in order to reach the fraudulent pre-determined pay raise recommendations of their August 29, 2011 Report – I refer you to CJA's October 27, 2011 Opposition Report (in particular p. 30) and Executive Summary (at p. iii), which, by now, you and your six fellow Commission members should have each read and considered so dispositive as to mandate a Commission request, if not demand, to the Judiciary and other judicial pay raise advocates for their comment, including their findings of fact and conclusions of law with respect thereto.

Consequently, please deem this e-mail as CJA's request that the Commission not only immediately post the November 3rd video and schedule at least one upstate public hearing on judicial compensation – but, additionally, that it give notice to the Judiciary and judicial pay raise advocates for their findings of fact and conclusions of law with respect to CJA's October 27, 2011 Opposition Report. As seen from the annexed October 28, 2011 e-mail from CJA to the Judiciary and judicial pay raise advocates, they have had a FULL FOUR YEARS to have made findings of fact and conclusions of law.

Needless to say, the Commission's notice to the Judiciary and judicial pay raise advocates – particularly those who have already contacted the Commission about testifying at the November 30th Manhattan hearing – should request their response to CJA's assertion that the October 27, 2011 Opposition Report

requires “that this Commission’s recommendations – having ‘the force of law’ – be for the nullification/voiding of the August 29, 2011 Report AND a ‘claw-back’ of the \$150 million-plus dollars that the judges unlawfully received pursuant thereto.”

Please forward this e-mail to ALL Commissioners, especially Commissioner Mitra Hormozi, who – according to the meeting minutes – did not participate at the November 3rd first organizational meeting due to a scheduling conflict.

Thank you.

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

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]

Sent: Tuesday, November 03, 2015 2:04 PM

To: nyscompensation@gmail.com; sheilabirnbaum@quinnemanuel.com; barry.cozier@leclairryan.com; gajohnson@mec.cuny.edu

Subject: Request to testify at the Compensation Commission's November 30, 2015 Public Hearing in NYC -- its Sole Hearing on Judicial Compensation

Dear Commissioners :

I hereby request to testify at the Commission’s November 30, 2015 public hearing in New York City.

Such hearing date, nearly 4 full weeks from now, gives each Commissioner ample time to individually determine whether, as particularized by CJA’s October 27, 2011 Opposition Report, the 3-phase judicial pay raises recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and received by this state’s judges beginning April 1, 2012, are statutory-violative, fraudulent, and unconstitutional – thereby requiring that this Commission’s recommendations – having “the force of law” – be for the nullification/voiding of the August 29, 2011 Report AND a “claw-back” of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto.

Because of the importance of CJA’s October 27, 2011 Opposition Report, not only to your statutorily-required December 31, 2015 report of “adequate levels of compensation and non-salary benefits” for this state’s judges, but to your statutorily-required November 15, 2016 report of “adequate levels of compensation and non-salary benefits” for our legislative and executive constitutional officers, I furnished a hard copy of the full October 27, 2011 Opposition Report to Chairwoman Birnbaum at the conclusion of this morning’s organizational meeting. It consisted of: (1) CJA’s 38-page Opposition Report; (2) CJA’s substantiating two-volume Compendium of Exhibits; and (3) the final two motions in CJA’s lawsuit against the Commission on Judicial Conduct that went up to the Court of Appeals in 2002 – identified by the Opposition Report as having been handed up by me to the Commission on Judicial Compensation at its one and only July 20, 2011 public hearing, in support of my testimony.

To the other three Commissioners physically present at this morning’s meeting -- Commissioners Johnson, Cozier, and Lack -- I furnished to each, *in hand*, a copy of the 38-page Opposition Report and its 4-page Executive Summary.

As for the three Commissioners not physically present – Commissioners Hedges, Reiter, and Hormozi – I had brought to the meeting copies of the 38-page Opposition Report and 4-page Executive Summary for them, as well. Unless they request same, I will assume they will be reading and/or downloading the

Opposition Report from CJA's webpage: <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm>. The Executive Summary is attached.

Finally, should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA's citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well. I so-stated this to them, this morning – and will particularize the details, with substantiating evidence, in advance of the November 30, 2015 public hearing, should they fail to step down from the Commission – or publicly disclose and address their conflicts-of-interest.

Meantime, I am available to answer questions and provide such additional information and evidence as may be required.

Thank you.

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

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Tuesday, November 03, 2015 7:35 AM
To: 'nyscompensation@gmail.com'
Cc: sheilabirnbaum@quinnemanuel.com; barry.cozier@leclairryan.com; gajohnson@mec.cuny.edu

Subject: No Pay Raises for NY's Corrupt Public Officers - The Money Belongs to Their Victims!

Dear Commissioners:

As a convenience to the Commission on Legislative, Judicial and Executive Compensation, I have constructed a webpage for the Center for Judicial Accountability's evidence-based advocacy on the three-branch compensation issues before you. It is entitled "No Pay Raises for New York's Corrupt Public Officers --The Money Belongs to Their Victims!" -- and is accessible from the prominent center link, bearing that title, on CJA's homepage, www.judgewatch.org

It can also be accessed by the left sidebar panel "Judicial Compensation-State-NY": <http://www.judgewatch.org/web-pages/judicial-compensation/ny-judicial-compensation-menu.htm>.

Finally, inasmuch as **CJA's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report** is the **STARTING POINT** for your determination of the **compensation issues as relate to ALL THREE BRANCHES**, I take this opportunity to furnish you that link, directly. Here it is: <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm>. The four-page executive summary is attached.

I am available to answer questions, including publicly and under oath.

Thank you.

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

P.S. – correcting the typo in my yesterday's e-mail (below) as to the date of the Commission on Judicial Compensation's initial meeting, it was July 11, 2011, not July 10, 2011.

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Monday, November 02, 2015 6:28 PM
To: 'Sheila Birnbaum'
Cc: 'Barbara Kalmanash'; 'barry.cozier@leclairryan.com'; 'gajohnson@mec.cuny.edu'

Subject: thank you for your prompt response.

From: Sheila Birnbaum [<mailto:SheilaBirnbaum@quinnemanuel.com>]
Sent: Monday, November 02, 2015 6:23 PM
To: Center for Judicial Accountability
Cc: Barbara Kalmanash; 'barry.cozier@leclairryan.com'; 'gajohnson@mec.cuny.edu'

Subject: Re: Will tomorrow's organizational hearing be live-streamed and/or videoed?

It will be videoed and put on our web site

On Nov 2, 2015, at 6:21 PM, Center for Judicial Accountability <elena@judgewatch.org> wrote:

Dear Chairwoman Birnbaum,

Following up the October 30, 2015 FOIL request, which I directly sent to you and Commissioner Cozier – and my lengthy telephone conversation with your excellent assistant, Barbara Kalmanash, late this afternoon, inquiring about whether tomorrow's organizational meeting of the Commission on Legislative, Judicial and Executive Compensation was going to be live-streamed &/or videoed – as the 2011 Commission on Judicial Compensation's initial organizational meeting in New York City had been – here's a link to the Center for Judicial Accountability's 2011 webpage pertaining to that Commission, posting the video of its July 10, 2011 live-streamed organizational meeting: <http://www.judgewatch.org/web-pages/judicial-compensation/2011-paper-trail-comm-jud-comp.htm>. That webpage additionally posts the video of its one and only public hearing, on July 20, 2011 in Albany, at which I testified. To facilitate your finding each video, I have highlighted each by enlarged purple lettering.

Your own Commission's website – which I believe did not go live until yesterday and which only this afternoon posted a side panel for the 2011 Commission – links to the 2011 Commission's webpage. Although that webpage contains a link to a webpage of its meetings and hearing, that further webpage never posted the video of the July 10, 2011 live-streamed organizational meeting. As for the video of the live-streamed July 20, 2011 hearing, it was originally posted, but thereafter became inaccessible. That is why I made FOIL requests for each – ultimately securing them, in 2013, which I then posted on CJA's above webpage.

I trust Ms. Kalmanash will fill you in on much of what I additionally recounted for her as to the fraud committed by the 2011 Commission – covered up by all the executive and legislative public officers who believe themselves entitled to pay raises. It is chronicled in CJA's October 27, 2011 Opposition Report, in a mountain of correspondence, criminal and ethics complaints relating thereto, and by the public interest litigations we have undertaken over the past four years, all accessible from the prominent links on CJA's homepage, www.judgewatch.org. Of most immediate interest may be my most recent

testimony before the JCOPE/LEC Review Commission at its October 14, 2015 public hearing – as I testified about the conflict-of-interest ethics complaints that JCOPE and LEC have been sitting on against New York’s highest public officers pertaining to the 2011 Commission and the fraudulent, statutorily-violative, and unconstitutional judicial pay raises it recommended – whose consequence has been the establishment of the Commission on Legislative, Judicial and Executive Compensation. Here’s CJA’s webpage posting the video of the October 14, 2015 hearing and my referred-to JCOPE/LEC complaints and related correspondence:

<http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/exposing-JCOPE.htm>.

Please forward this e-mail to all seven members of the Commission on Legislative, Judicial and Executive Compensation so that they can be apprised of the systemic fraud, corruption, and dysfunction that is before them, threshold, not only with respect to judicial compensation, but with respect to legislative and executive compensation.

Thank you.

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

<10-30-15-foil-compensation-commission.pdf>

<10-28-11-email-judicial-pay-raise-advocates.pdf>

<11-8-11-executive-summary-opp-report.pdf>

EXHIBIT 7

CJA's October 28, 2011 e-mails to Judiciary & Judicial Pay Raise Advocates
& to Commission on Judicial Compensation –
cc'ing Governor, Temporary Senate President,
Assembly Speaker, Chief Judge

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Friday, October 28, 2011 9:50 PM
To: 'apfau@courts.state.ny.us'; 'judith.kaye@skadden.com'; 'wduggan@courts.state.ny.us'; 'dturbow@courts.state.ny.us'; 'jforstadt@stroock.com'; 'robert.spolzino@wilsonelser.com'; 'vdoyle@nysba.org'; 'Stewart.Aaron@aporter.com'; 'l.kelmachter@fuchsberg.com'; 'mmaney@hancocklaw.com'; 'rmaldonado@balberpickard.com'; 'victorkovner@dwt.com'; 'advocacy@moderncourts.org'; 'michael.waldman@nyu.edu'; 'adam.skaggs@nyu.edu'; 'clamanna@nysafclio.org'; 'betsey@lwvny.org'; 'laura@lwvny.org'; 'bbheck1@yahoo.com'; 'psherwin@proskauer.com'; 'ddadey@citizensunion.org'; 'StarQuest@nycivic.org'; 'Morgan Pehme'; 'martin.cirincione@nypti.org'; 'dleidh@law.columbia.edu'; 'Catherine_cerulli@urmc.rochester.edu'; 'arothstein@nycbar.org'
Cc: 'katie.sherwin@exec.ny.gov'; 'skelos@nysenate.gov'; 'silver@assembly.state.ny.us'; 'jross@courts.state.ny.us'; 'contact@judicialcompensation.ny.gov'; 'William C. Thompson Jr.'; 'Richard Cotton'; 'William Mulrow'; 'Robert Fiske Jr.'; 'Kathryn S. Wylde'; 'James Tallon Jr.'; 'Mark Mulholland'; 'kfischer@alm.com'; 'wstorey@alm.com'; 'jstashenko@alm.com'; 'jcaher@alm.com'; 'David King'
Subject: Holding Government Accountable: CJA's October 27 Opposition Report in Support of Legislative Override of Commission on Judicial Compensation's Judicial Pay Recommendations & Other Relief
Attachments: 10-28-11-ltr-pay-advocates.pdf; 10-27-11-cja-opposition-report.pdf; 10-27-11-inventory-compendium-vol-1.pdf; 10-27-11-inventory-compendium-vol-2.pdf

Attached is CJA's above-entitled letter of today's date to judicial pay raise advocates, together with CJA's October 27, 2011 Opposition Report. The direct link to the webpage of CJA's website that posts the Opposition Report is <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm>.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
718-708-5303

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director

October 28, 2011

TO: Judicial Pay Raise Advocates

New York State Chief Administrative Judge Ann Pfau
Former New York State Chief Judge Judith S. Kaye
Family Court Judges W. Dennis Duggan & Daniel Turbow/Organizers
Coalition of New York State Judicial Associations –
Association of Supreme Court Justices of the State of New York
New York City Supreme Court Justices Association
Designated Supreme Court Justices Association
New York State Court of Claims Judges (Parts B, D & E) Association
New York State Surrogates Association
New York State Family Court Judges Association
New York City Family Court Judges Association
New York City Criminal Court Judges Association
New York City Civil Court Judges Association
New York State City Court Judges Association
New York City Housing Court Judges Association
New York State District Court Judges Association
Former Appellate Division, Second Department Justice Robert Spolzino
Joseph L. Forstadt, Esq., Counsel/Associations of Supreme Court Justices
Bar Association Leaders who testified at the July 20, 2011 public hearing
Vincent E. Doyle, III, President, NYS Bar Association
Roger Juan Maldonado, Chair, Council on Judicial Administration/
NYC Bar Association
Stewart Aaron, President, NY Co. Lawyers' Association
Leslie Kelmachter, President, NYS Trial Lawyers Association
Lance D. Clarke, Past President, Nassau County Bar Association
Maureen Maney, President-Elect, Women's Bar Association of the State of NY
Fund for Modern Courts: Victor Kovner, former Chair
Brennan Center for Justice: Michael Waldman, Executive Director
J. Adam Skaggs, Senior Counsel/Democracy Program
Dennis Hughes, President of New York State AFL-CIO
League of Women Voters of the State of New York: Betsey B. Swan, President
Citizens Union of the City of New York:
Peter J. W. Sherwin, Chair/Board of Directors & Dick Dadey, Executive Director
Martin Cirincione, Deputy Director/New York Prosecutors Training Institute, Inc.
Dorchen Leidholdt, Director/Ctr for Battered Women's Legal Services/Sanctuary for Families
Catherine Cerulli, Associate Professor, University of Rochester School of Medicine

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

RE: Holding Government Accountable: CJA's October 27, 2011 Opposition Report in Support of Legislative Override of the Commission on Judicial Compensation's Judicial Pay Recommendations & Other Relief

On October 27, 2011, the Center for Judicial Accountability, Inc. (CJA) challenged the Commission on Judicial Compensation's August 29, 2011 Final Report by an Opposition Report – four originals of which we delivered to the New York City offices of Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman to enable these public officers to discharge their official responsibilities to protect the People of this State.

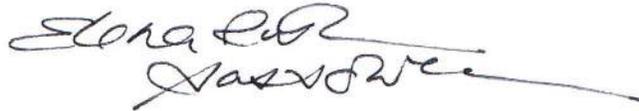
The Opposition Report demonstrates that the Commission's judicial pay raise recommendations are "fraudulent, statutorily non-conforming, and constitutionally violative". Based thereon, it seeks:

- (1) legislation voiding the Commission's judicial pay raise recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution; and
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

The "Conclusion" to the Opposition Report (at p. 37) stated that we would furnish the Opposition Report to the Commissioners and to judicial pay raise advocates so that they might rebut its presentation of fact, law, and legal argument, if they could. For that reason, it is herewith furnished to you, by e-mail. It is also readily accessible to you from CJA's website, www.judgewatch.org, most conveniently *via* the top panel "Latest News" and side panel "Judicial Compensation-NYS". The substantiating exhibits are also posted. CJA's companion letter of today's date to the Commissioners is enclosed.

We request that the judge recipients of this letter forward it to ALL the judges and former judges who testified at the Commission's July 20th hearing and/or submitted written statements to the Commission – indeed, to ALL New York State's 1,200-plus judges and such former state judges who have retired and/or resigned since 1999 – so that they, like yourselves, may have the opportunity to contest CJA's October 27, 2011 Opposition Report, if they can.

Consistent with applicable legal principles, the failure of the Commissioners and judicial pay raise advocates to respond to CJA's Opposition Report will be deemed a concession that they cannot do so without conceding the fraud, illegality and unconstitutionality therein particularized – reinforcing the People's entitlement to all the relief sought.

A handwritten signature in black ink, appearing to read "Sheldon Silver", with a long horizontal line extending to the right.

Attachment: CJA's October 27, 2011 Opposition Report,
with a link to CJA's webpage on which it and the exhibits are posted
Enclosure: CJA's October 28, 2011 letter to the Commissioners

cc: Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Chief Judge Jonathan Lippman
Commission on Judicial Compensation
Public & Press

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

Elena Ruth Sassower, Director
Doris L. Sassower, President

October 28, 2011

TO: Commission on Judicial Compensation
William C. Thompson, Jr., Chairman
Richard Cotton
William Mulrow
Robert Fiske, Jr.
Kathryn S. Wylde
James Tallon, Jr.
Mark Mulholland

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

RE: Holding Government Accountable: CJA's October 27, 2011 Opposition Report in Support of Legislative Override of the Commission on Judicial Compensation's Judicial Pay Raise Recommendations & Other Relief

Yesterday, CJA challenged the Commission's August 29, 2011 Final Report by an Opposition Report – four originals of which we delivered to the New York City offices of Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman so that these public officers can discharge their mandatory duties to protect the People of this State.

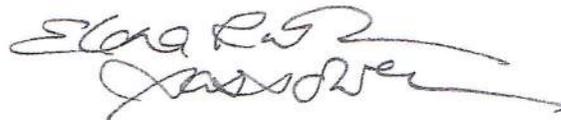
The Opposition Report demonstrates that your judicial pay raise recommendations are “fraudulent, statutorily-non-conforming, and constitutionally violative”. Based thereon, it seeks:

- (1) legislation voiding your judicial pay raise recommendations;
- (2) repeal of the statute creating the Commission;
- (3) your referral to criminal authorities for prosecution; and
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which you unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

The "Conclusion" to the Opposition Report (at p. 37) stated that the Report would be furnished you to afford you the opportunity to rebut its presentation of fact, law, and legal argument, if you could. It is herewith attached, by e-mail. It is also readily accessible to you from CJA's website, www.judgewatch.org, most conveniently *via* the top panel "Latest News" and side panel "Judicial Compensation-NYS". The substantiating exhibits, virtually all in your possession, are also posted.

Should you wish to see the original of the Opposition Report, you can secure same from the New York Law Journal, **as Commissioner Fiske is a member of its Board of Editors** – and we delivered an original, with its two-volume exhibit compendium, to the Law Journal yesterday so that it could begin long-overdue, honest reporting of the judicial compensation issue for the "Bench and Bar" it purports to "serv[e]".

Needless to say, your failure to respond to CJA's Opposition Report will be deemed a concession that you cannot do so without conceding the fraud, illegality and unconstitutionality therein particularized – reinforcing the People's entitlement to all the relief sought.



Attachment: CJA's October 27, 2011 Opposition Report,
with a link to CJA's webpage on which it and the exhibits are posted

cc: Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Chief Judge Jonathan Lippman
New York Law Journal
Judicial Pay Advocates
New York State Budget Direct Robert L. Megna
Public & Press

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Friday, October 28, 2011 5:59 PM
To: 'contact@judicialcompensation.ny.gov'; 'William C. Thompson Jr.'; 'Richard Cotton'; 'William Mulrow'; 'Robert Fiske Jr.'; 'Kathryn S. Wylde'; 'James Tallon Jr.'; 'Mark Mulholland'
Cc: 'katie.sherwin@exec.ny.gov'; 'skelos@nysenate.gov'; 'silver@assembly.state.ny.us'; 'jross@courts.state.ny.us'; 'kfischer@alm.com'; 'wstorey@alm.com'; 'jstashenko@alm.com'; 'jcaher@alm.com'; 'David King'
Subject: Holding Government Accountable: CJA's Oct 27 Opposition Report in Support of Legislative Override of Commission on Judicial Compensations's Judicial Pay Raise Recommendations & Other Relief
Attachments: 10-28-11-ltr-commission.pdf; 10-27-11-cja-opposition-report.pdf; 10-27-11-inventory-compendium-vol-1.pdf; 10-27-11-inventory-compendium-vol-2.pdf

Attached is CJA's above-entitled letter of today's date to the chairman and members of the now defunct Commission on Judicial Compensation, together with CJA's October 27, 2011 Opposition Report. The direct link to the webpage of CJA's website that posts the Opposition Report is <http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm> .

Elena Sassower, Director
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