

"Legal autopsy/analysis" of Asst. Solicitor General Brodie's
Aug 3, 2018 Memorandum, annexed to Ex DD to Sessions
Aug 6, 2018
reply
affidavit

in securing and perpetuating the unlawful law. To hold otherwise and confer upon judges a constitutional right to increases in their compensation that they procured through statutory violations, fraud, and unconstitutionality would not only be inequitable, but itself unconstitutional.

Tellingly, Solicitor General Brodie's Point I(E)(1) furnishes no caselaw, let alone caselaw corresponding to the extraordinary facts of this case. Nor does it identify the "law" which has established the judicial compensation that is "not to be diminished". It is, in fact, the same "law" as existed on April 1, 2012 before any of the commission-based judicial salary increases took effect – Judiciary Law, Article 7-B (§220 *et seq.*). Its §221-a, entitled "Salary of justices of the appellate divisions of supreme court", relevant to this Court, reads:

"The annual salaries of the presiding justices and associate justices of the appellate divisions of the supreme court shall be as follows:

Presiding Justice	147,600
Associate Justice	144,000".

Assistant Solicitor General Brodie's Point I (at pp. 2-12):
"The Relief in Appellant's Order to Show Cause Should be Denied"

Unlike Assistant Solicitor General Brodie's July 23rd letter, which had not gone *seriatim* through the relief sought by appellants' order to show cause, Point I of his "memorandum" does, as follows:



As to Appellants' First Branch,
Assistant Solicitor General responds (at p. 2)
under a title heading: "Paragraph 1, Calling for Judicial Disclosures, Should Be Denied."

Its four-sentence paragraph includes his sentence "See 22 N.Y.C.R.R. §100.3(E)", which he cites for the proposition that "judges are not required to disclose the reasons for their recusal", falsely making it appear that this is relief appellants are seeking, which they are not. What they are seeking is disclosure from judges who believe themselves capable of sitting, notwithstanding the reasonable questions that require their disqualification, pursuant to §100.E. As to this, the procedure is set forth

in §100.3F, entitled “Remittal of disqualification”, to which Assistant Solicitor General Brodie does not even refer, let alone quote, to support his bald assertion “Nor are [judges] required to provide information about their fitness to judge particular matters”, which in circumstances involving §100.3E is false.

Appellants’ entitlement to the granting of their first branch is set forth by ¶¶4-10 and ¶52 of appellant Sassower’s moving affidavit in support of the order to show cause and reinforced by pages 25-28 of the “legal autopsy”/analysis, annexed as Exhibit Z to her August 1st reply affidavit, whose accuracy is uncontested by Assistant Solicitor General Brodie.

As to Appellants’ Second Branch,
Assistant Solicitor General Brodie responds (at pp. 2-4) under a title heading
“Paragraph 2, Calling for Disclosures by Attorney General Underwood,
Should Be Denied”.

Both its title and its content, contained in four paragraphs spanning a page and a half, conceal the disclosures which the second branch specifies in the order to show cause:

“directing that Attorney General Barbara D. Underwood identify who has determined “the interest of the state” on this appeal – and plaintiffs-appellants’ entitlement to the Attorney General’s representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq.*, including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto” --

reflective of the fact that Assistant Solicitor General Brodie has NO argument to support denial of the specified disclosure, making his opposition, frivolous. Instead, he argues:

“The Attorney General is authorized to defend State officers and entities in litigation, *see* Exec. L. §§63(1) and to litigate in support of the constitutionality of the State’s statutes, *see* Exec. L. §71(1). In this case, she has done both.”

This is a deceit. The authorization “to defend” in Executive Law §63.1 is contingent on “the interest of the state”. Yet, Assistant Solicitor General Brodie does not assert here, did not assert at the