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WRITTEN TESTIMONY FOR THE LEGISLATURE'S FEBRUARY 11, 2019 BUDGET HEARING ON "LOCAL GOVERNMENT OFFICIALS/GENERAL GOVERNMENT"

February 19, 2019

My name is Elena Sassower. I am director and co-founder of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), which for more than a quarter of a century has been furnishing the Legislature with EVIDENCE that New York's Judiciary is corrupt and "throws" cases by fraudulent judicial decisions, obliterating the most fundamental adjudicative standards – aided and abetted by a long list of governmental actors, including:

- (1) the monitor of New York's Judiciary, the state Commission on Judicial Conduct, which dumps, without investigation, facially-meritorious, judicial misconduct complaints, particularly when they are against high-level, politically-connected judges, as opposed to non-lawyer judges of the town and village courts;
- (2) New York's highest law enforcement officer, the state attorney general, whose *modus operandi* in defending lawsuits against the Commission on Judicial Conduct, the Judiciary, and other public officers and entities, sued for corruption, where he has NO legitimate defense, is to corrupt the judicial process with litigation fraud; and
- (3) New York's district attorneys, who ignore fully-documented public corruption complaints filed with them, relating to the Judiciary, the Commission on Judicial Conduct, the attorney general, and other public officers and entities.

Cases are "perfect paper trails" – and the EVIDENCE that CJA has furnished the Legislature has included litigation records from which the foregoing is readily verifiable. Among these:

- (1) Three Article 78 proceedings, suing the Commission on Judicial Conduct for dumping, without investigation, facially-meritorious judicial misconduct complaints, defended by the attorney general;
- (2) A federal action, suing New York's Judiciary for corrupting the attorney disciplinary system it controls and using it to retaliate against a judicial whistle-blowing attorney, defended by the attorney general, also a defendant therein;

- (3) A declaratory judgment action – to which the Legislature was a named defendant – challenging the commission-based judicial salary increases resulting from Chapter 567 of the Laws of 2010, defended by the attorney general, also a defendant therein;
- (4) A motion to intervene in the Legislature’s declaratory judgment action against the district attorney-stacked Commission to Investigate Public Corruption, defended by the attorney general, who had participated with the Governor in establishing the Commission;
- (5) Two citizen-taxpayer actions – to which the Legislature was and is a named defendant – challenging the commission-based judicial salary increases resulting from Chapter 567 of the Laws of 2010 and from its successor, Chapter 60, Part E of the Laws of 2015, and also challenging the judiciary, legislative, and executive budgets, including the budget “process” and its culminating behind-closed-doors “three-men-in-a-room” budget deal-making, defended by the attorney general, also a defendant therein.

The Legislature’s response to this and other EVIDENCE of systemic governmental corruption has been to willfully and deliberately ignore it. Indeed, it appears that the Legislature has NEVER held an oversight hearing of the function and functioning of the attorney general, nor of the role of the district attorneys in upholding public integrity, as, for instance, their handling of public corruption complaints and control of access to the grand jury.

As for New York’s Judiciary, including its attorney disciplinary system and the Commission on Judicial Conduct, the Legislature has, for decades, refused to hold oversight hearings at which the public could testify about what has been going on. The most recent oversight hearing was nearly ten years ago, on June 8 and September 24, 2009, when then Senate Judiciary Committee Chair John Sampson held two oversight hearings of the Commission on Judicial Conduct and of the court-controlled attorney grievance committees, at which nearly two dozen witnesses testified about the corruption. A third hearing, scheduled for December 16, 2009, was cancelled and not rescheduled. As for the oral and written witness testimony and substantiating EVIDENCE the Committee received, it went uninvestigated. The Senate Judiciary Committee made NO findings of fact, no conclusions of law, and rendered no committee report. This, even as the Judiciary was suing the Legislature and Governor for salary raises for its supposedly excellent, high-quality judges – securing, in February 2010, a fraudulent judicial decision by the New York Court of Appeals, intimidating the Legislature and Governor to enact, in November-December 2010, without legislative due process and in a lame-duck legislative session, Chapter 567 of the Laws 2010, establishing a quadrennial Commission on Judicial Compensation, whose “force of law” judicial salary increase recommendations of its subsequent August 29, 2011 report neither the Legislature, Governor, nor Judiciary would oversee, despite their fraud and violations of the statute pursuant to which they purport to be rendered.

With even less legislative due process, on March 31/April 1, 2015, the Legislature, in collusion with the Governor – and as part of their behind-closed-doors “three-men-in-a-room” budget deal-making – repealed Chapter 567 of the Laws of 2010 and replaced it with a materially identical statute, Chapter 60, Part E of the Laws of 2015, establishing the quadrennial Commission on Legislative, Judicial and Executive Compensation. Here, too, the Legislature, Governor, and Judiciary would discharge no oversight over that Commission’s December 24, 2015 report, whose “force of law” judicial salary recommendations were correspondingly fraudulent and violative of the statute pursuant to which they purport to be rendered.

Since 2012, the cost to New York taxpayers of the August 29, 2011 and December 24, 2015 commission reports, which, to date, have raised judicial salaries by approximately \$75,000 per judge – and, additionally, the salaries of district attorneys, which are statutorily-linked to judicial salaries – is on the order of \$400 million dollars and currently grows by about \$70 million a year. And whatever the exact figures are, they will increase in fiscal year 2019-2020 because the December 24, 2015 report contains final judicial salary increase recommendations, effective April 1, 2019 – and appropriations for it are embedded in the Judiciary’s proposed fiscal year 2019-2020 budget and in the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 embodying it. Identically to past years, there is no line-item for the increase – and the Judiciary’s proposed budget not only conceals any information about its cumulative dollar amount and its percent increase, but that the Legislature is statutorily-empowered to abrogate it, which is what it must do.

In holding these public hearings on the state budget, the Legislature affords the Judiciary’s proposed budget no hearing of its own, as would be consistent with its status as a separate government branch, constitutionally empowered, with the Legislature, to construct its own budget. Perhaps this is because, were it to do so, it would be more obvious that the Legislature holds no public hearing on its own proposed budget. Nor has it placed the Judiciary’s proposed budget in its “general government” budget hearing, as might be reasonably expected. Instead, it is in the “public protection” budget hearing, where the Chief Administrative Judge testifies first.

Since 2013, I have alerted the Legislature, over and again, that the Judiciary’s proposed budgets and the Chief Administrative Judge’s hearing testimony are materially false and misleading and obscure and conceal the most pertinent facts in its larceny of taxpayer money. And, repeatedly, I have supplied the Legislature with a list of questions to guide it in questioning the Chief Administrative Judge about the specifics of the Judiciary’s budget and the legislative/judiciary budget bill to which it relates. This the Legislature ignores, in favor of questioning the Chief Administrative Judge about “policy” – largely, but not necessarily, arising from the “policy” legislation that the Governor unconstitutionality places within the Executive budget.

To assist the Legislature in discharging its constitutional responsibilities with respect to the Judiciary’s proposed budget for fiscal year 2019-2020 and the Governor’s Legislative/Judiciary Budget Bill #S.1501/A.2001 – not remotely discharged when Chief Administrative Judge Marks testified at its January 29, 2019 “public protection” budget hearing – attached is a list of questions for Chief Administrative Judge Marks, modelled on the essentially identical questions I furnished last year, in advance of his testimony at the January 30, 2018 “public protection” budget hearing – not a

single one of which any legislator asked, either at that budget hearing or thereafter.

Two of the questions on that list are directly relevant to the Commission on Judicial Conduct, whose administrator and counsel, Robert Tembeckjian, this year, like last year, testified for increased funding, immediately following Chief Administrative Judge Marks' testimony at the "public protection" budget hearing. These two questions read:

- "39. How about Senate and Assembly Judiciary Committee oversight hearings of the Commission on Judicial Conduct, at which the public was given notice and the opportunity to testify and submit evidence? Do you know when they were last held – and what findings of fact and conclusions of law were made based thereon? Although the Commission is not funded through the Judiciary budget, it is among the agencies within the Legislature's 'public protection' budgeting. Surely, Chief Judge DiFiore's 'Excellence Initiative' recognizes the Judiciary's obligation to ensure that the Commission on Judicial Conduct is adequately funded and properly functioning, does it not? What advocacy, if any, has it undertaken, with respect to funding, which in this year's State Operations Budget Bill #S.1500/A.2000 (at p. 447) is \$5,696,000. And what has it done to advance an independent auditing of the Commission on Judicial Conduct's handling of judicial misconduct complaints – the necessity of which was recognized nearly 30 years ago, in the 1989 report of the then state Comptroller Edward Regan, entitled Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, whose press release was equally blunt: 'COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT'.
40. Doubtless in the nearly three years since Chief Judge DiFiore announced her 'Excellence Initiative', many members of the public have complained to her about the lawlessness that prevails in the judiciary, resulting from a Commission on Judicial Conduct that is worthless, as well as the worthlessness of entities within the judiciary charged with oversight, including the court-controlled attorney disciplinary system and the Judiciary's Office of Inspector General. What has she done to verify the situation?"

The attached list also includes questions – likewise repeated from last year – about the Judiciary's "throwing" cases by fraudulent judicial decisions, such as:

- "28. Do you dispute the accuracy of CJA's assertion, stated in its last year's written and oral testimony for the Legislature's January 30, 2018 and February 5, 2018 budget hearings, that both citizen-taxpayer actions were 'thrown' by fraudulent judicial decisions, upending ALL cognizable judicial standards to grant defendants relief to which it was not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of*

law?

29. Would you agree that establishing that this is what happened – including with respect to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases – can be verified by examining the court record?
30. In view of Chief Judge DiFiore’s ‘Excellence Initiative’, referred to at the outset of the Judiciary’s Executive Summary (p. i), as being her ‘highest priority’ – with a goal of achieving ‘operational and decisional excellence in everything that we do’ – would the Judiciary be willing to demonstrate how its ‘Excellence Initiative’ works by evaluating the ‘decisional excellence’ in the citizen-taxpayer actions in which it was interested, furnishing the Legislature with its findings of fact and conclusions of law with respect to the judicial decisions, particularly as relates to the causes of action pertaining to the Judiciary’s budgets and the judicial salary increases?”

Suffice to say that at the January 29, 2019 “public protection” budget hearing, the legislators engaged Chief Administrative Judge Marks and Administrator Tembeckjian, as if completely unaware of any corruption problem relating to the Judiciary and Commission on Judicial Conduct, let alone of EVIDENCE establishing it, *prima facie*. Certainly, they expressed no awareness that Mr. Tembeckjian was responding to their questioning with brazen lies – as would have been obvious to them had they examined the EVIDENCE I handed up at last year’s “public protection” budget hearing, stating, as follows, at the conclusion of my testimony:

“There is no excellence in the Judiciary. The Judiciary is as dishonest in its budget as it is in its decisions. The Judiciary is throwing cases. That includes the lawsuit against you, suing you for your corruption with respect to the budget.

I leave with you – my time is up – I leave with you the evidence, the judicial misconduct complaint filed with the Commission on Judicial Conduct against the judge, and the complaint filed against Attorney General Schneiderman, who is your codefendant and has represented you with litigation fraud, because you had no defense to any of the causes of action.

Cases are perfect paper trails.

...

The last thing I will say is that DA Soares has been sitting on a corruption complaint involving what you have been doing with respect to the budget since 2013, and that is also the subject of a misconduct complaint filed with the attorney grievance committees.

Thank you.”

This statement was made in the presence of then Senate Finance Committee Ranking Member Krueger and Assembly Ways and Means Chair Weinstein, whose responsibility it was to alert the members of the fiscal committees, and of such other appropriate committees as the Assembly and Senate Judiciary and Codes Committees, of their duty to investigate and report on the truth of what I

had said – and the EVIDENCE I had provided in substantiation. Such EVIDENCE included Comptroller Regan’s 1989 report on the Commission on Judicial Conduct – the same as referred-to by the above-quoted question I had furnished the Legislature last year – in which the comptroller identified that without access to the records of the Commission’s handling of judicial misconduct complaints, which the Commission refused to give him, NO assessment could be made as to whether the Commission was doing the job the taxpayers were paying it to do.

That same principle – access to, and review of, EVIDENTIARY RECORDS – applies to:

- (1) the Judiciary’s handling of litigations by its judges and its handling of attorney misconduct complaints by its attorney grievance committees;
- (2) the district attorneys’ handling of public corruption complaints; and
- (3) the attorney general’s handling of public corruption/misconduct complaints.

And, of course, it applies to every other government entity, whose claim to taxpayer monies rests on doing the job they are paid to do, absent which any increased salaries and funding are an unconstitutional imposition on the taxpayers.

To further assist the Legislature in discharging its constitutional responsibilities, as laid out herein, and by my written and oral testimony at five prior legislative budget hearings: the first time, in 2013, then twice in 2017, and twice last year, plus at two local budget forums, in 2017 and 2018, sponsored by legislators from Westchester, CJA’s webpage for this written testimony¹ will post links for that EVIDENCE-supported testimony, and for the records of the above-itemized lawsuits, and for the records of the misconduct/corruption complaints I filed with the Commission on Judicial Conduct and the court-controlled attorney grievance committees, subsequent to my testimony at last year’s budget hearings. Suffice to say, that since furnishing the Legislature with the record EVIDENCE, last year, that CJA’s citizen-taxpayer actions had been “thrown” in Supreme Court/Albany County, by a double-whammy of litigation fraud by the attorney general and fraudulent judicial decisions, facilitated by the Commission on Judicial Conduct and the court-controlled attorney grievance committees – the record now establishes that the same double-whammy has been repeated at the Appellate Division, Third Department, aided and abetted by the Commission on Judicial Conduct and court-controlled attorney grievance committees. And the result? The budget for fiscal year 2019-2020 repeats, thus far, ALL the constitutional, statutory, and rule violations that those two citizen-taxpayer actions challenged – and to which, as the lawsuit records establish, the People of the State of New York were, and are, entitled to summary judgment.

Finally, since this year, as in previous years, the Legislature has not discharged any oversight over its own proposed budget – or of the legislative portion of the Governor’s legislative/judiciary budget bill

¹ CJA’s webpage for this written testimony is accessible from CJA’s homepage, www.judgewatch.org, via the center link for the “2019 Legislative Session”. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2019-legislative/feb-19-2019-written-testimony.htm>.

– also attached is a list of questions to facilitate its doing so. Such are rightfully answered by former Temporary Senate President Flanagan, Assembly Speaker Heastie – and by now Temporary Senate President Stewart-Cousins – each of whom should have come forward to testify in support of the Legislature’s proposed budget. The list of questions for them is likewise modelled on the questions I previously furnished, including last year, for the February 5, 2018 budget hearing on “local government officials/general government”.

Thank you.



Enclosures:

- (1) The Judiciary’s Proposed Budget for Fiscal Year 2019-2020...
Questions for Chief Administrative Judge Marks
- (2) The Legislature’s Proposed Budget for Fiscal Year 2019-2020...
Question for Former Temporary Senate President Flanagan,
Assembly Speaker Heastie, & Temporary Senate President Stewart-Cousins