

CENTER for JUDICIAL ACCOUNTABILITY, INC. (CJA)

Post Office Box 8101
White Plains, New York 10602

Tel: 914-421-1200

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

March 3, 2020

TO: Governor Andrew Cuomo, Esq.

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

RE: Your January 21, 2020 address on the Executive Budget – Part II:
The so-called “independent commission [that] proposed pay raises for New York’s elected officials because we performed” – & your other related slides and claims about public trust in government, transparency, & “nothing to hide”

This letter is the second of a trilogy of letters pertaining to your January 21, 2020 address on the Executive Budget. The first letter, dated February 18, 2020, demonstrated that the “very simple” budget numbers on your “Partners in Government” slide were “false, contrived, and the product of fraud”. This letter establishes the same with respect to six additional slides projected on the screen as you spoke.¹ The six slides, projected in succession, read:

Slide: “BUILDING TRUST IN GOVERNMENT AND OUR DEMOCRACY”

Slide: “Our entire agenda will not be possible if New Yorkers don’t have confidence in their democratic process or their government.”

Slide: “Last year, an independent commission proposed pay increases for New York’s elected officials, because we performed – and passed nine timely budgets.”

Slide: “NOTHING TO HIDE
We need New Yorkers to trust in our government, and that means finally bringing transparency to government.”

¹ For your convenience, CJA’s website, www.judgewatch.org, has a webpage for this letter, posting all the referred-to substantiating evidence – beginning with the VIDEO of your Executive Budget address. It is accessible from our homepage *via* the prominent center link “LEGISLATIVE SESSIONS: Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raise”. Here’s the direct link to the webpage: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-3-20-ltr-to-gov.htm> – part of a series of webpages for the “2020 LEGISLATIVE SESSION”.

Slide: “This year, we can establish an unprecedented level of disclosure and transparency by requiring all elected officials and Commissioners in the State **with government salaries over \$100,000** to release their tax returns.”

Slide: “Let Albany rise above and set a simple, new, inarguable national standard.” (capitalization and typeface emphases in the slides).

Your words, accompanying these slides, were as follows:

“Building trust in government and our democracy. Our entire agenda doesn’t work if New Yorkers don’t have confidence in the process.

Last year an independent commission proposed a pay increase for elected officials because we performed. I said, all along, I support a pay increase for the Legislature, if we perform our duty. It has performed its duty, constitutionally passed the budget on time. We’ve done that nine times, nine timely budgets. That hasn’t been done in decades. And besides the constitutional responsibility of passing the budget on time, we have passed nation-leading laws and brought this state to a higher point than ever before. I support a pay increase for the Legislature.

And the Commission said there should also be a ban on outside income. Now the whole situation has gotten confused because there are lawsuits, etc. And part of the raise went through, the ban hasn’t been done.

But I would say to the people of this state, look we haven’t banned outside income, which the Commission had recommended, but we have nothing to hide because we will release our taxes. And you can see who is paying me and who is not paying me. And you can see if there is a conflict of interest. But I would do it for all elected officials across this state. If you make more than \$100,000 from the public you should make your income taxes available. Because we have nothing to hide.

I think it is a simple profound gesture. You know, historically Albany had a reputation for corruption and certain dark practices when it comes to government. Lincoln called for the men from Albany to figure out how to get the votes when he needed them. Let Albany set the opposite example. The most transparent government in the United States of America, period. No government does this. And in one move we change the entire perception and we say to the country, you can now follow us.” (<https://www.youtube.com/watch?v=OXCIS2X2jJw> (at 22 mins)).²

² In a similar vein, your January 8, 2020 State of the State address, wherein you stated:

“To accomplish all of this, people must trust government. Especially in these cynical times, hyper-partisanship overcomes reason. The negativity that is out there sows doubt and suspicion. Let Albany rise above. Let Albany set a simple, new, inarguable national standard. Let’s be bold. Every state commissioner, the governor, the lieutenant governor, the attorney general, the comptroller, every assembly member, every senator, any elected official in the state of New York who earns over \$100,000 a year should set a new level of disclosure and transparency by making New York state taxes available to be seen by the

In keeping with your “nothing to hide” proclamation and exhortation that trust and confidence in government requires transparency, this letter calls upon you to disclose your receipt of CJA’s July 15, 2019 analysis of the December 10, 2018 Report of the Committee on Legislative and Executive Compensation – the same as you are calling “an independent commission” – and to release your findings of fact and conclusions of law with respect thereto.

I sent the analysis to you and to Lieutenant Governor Hochul, jointly, by priority mail, with an accompanying July 15, 2019 coverletter entitled “NOTICE of Your Duty to Void the December 10, 2018 Report of the Committee on Legislative and Executive Compensation that Boosted Your Salaries”. It stated:

“This is to give you NOTICE of what you should already know: that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation that has boosted your salaries is a fraud upon the People of the State of New York – and a larceny of their tax dollars. This is obvious from comparing the Report to the enabling statute on which it purports to be based and from my opposition testimony at the Committee’s November 30, 2018 public hearing, immediately following that of Assembly Speaker Heastie.

To assist you in belatedly discharging your oversight responsibilities so as to protect the People you were elected to serve, here transmitted is an analysis of the December 10, 2018 Report. Based thereon, your duty is:

- (1) to void the December 10, 2018 Report because it is fraudulent, statutorily-violative, and unconstitutional;
- (2) to return, to the public fisc, the salary increases disbursed since January 1, 2019 as a result of the December 10, 2018 Report;
- (3) to refer the Compensation Committee members and their *pro bono* counsel for criminal prosecution – and for the Attorney General to herself bring such prosecution – based on penal law violations including: Penal Law §175.35: ‘offering a false instrument for filing in the first degree’; Penal Law §195.20: ‘defrauding the government’; Penal §190.65: ‘scheme to defraud in the first degree’; and Penal Law

public because we have nothing to hide. Let New Yorkers know. Let New Yorkers know who is paying their officials and who their officials and representatives actually work for because you cannot serve two masters. We asked for President Trump’s taxes. And we were right. But let’s practice what we preach. Let’s lead by example. And let’s show them ours. Let’s make history and redefine the symbolism of President Lincoln calling for the men from Albany to come down to Washington. And let that be a call for representatives of the most transparent government in the country. Albany can lead the way. And the ‘New York State Nothing to Hide Law’ can do just that. Let’s do it.”

<https://www.youtube.com/watch?v=QmlnFatM9E> (at 1 hour/12 minutes).

§496.05; §496.06: 'PUBLIC TRUST ACT': 'corrupting the government in the first degree'; 'public corruption'.

Should you disagree as to your duty, back it up by rebutting the specifics of the analysis – and do so as immediately as possible and no later than August 15, 2019.

Thank you.” (capitalization and underlining in the original NOTICE).

You and Lieutenant Hochul apparently did not disagree, because I received no response from either of you. Likewise, I received none from your “Partners in Government” – Attorney General James, Temporary Senate President Stewart-Cousins, and Assembly Speaker Heastie. To each I had also sent the analysis and NOTICE by priority mail³, as well as by a July 15, 2019 e-mail that I also sent you. Indeed, I further e-mailed the analysis and NOTICE to Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie by a July 16, 2019 e-mail and, simultaneously, to the 13 other legislators in leadership positions whose stipends, like their own, had been preserved by the December 10, 2018 Report in recognition of the “significantly more work” and “additional duties” they are expected to perform. The July 16, 2019 e-mail called upon all 15 stipend-benefitting legislative leaders to demonstrate their discharge of the greater responsibilities for which they are paid and expressly requested that they forward the e-mail to their 198 fellow legislators, as it involved a “matter of seriousness and substance involving them”. The only response I received was from Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq., not contesting the accuracy of the analysis in any respect.

Seven of those 15 stipend-benefitting legislators are lawyers.⁴ So, too, Lieutenant Governor Hochul and Attorney General James are lawyers. You also are a lawyer – and a former Attorney General. As such, you know that your failure and the failure of your “Partners” to deny or dispute the accuracy of CJA’s analysis concedes its truth, *as a matter of law* – reinforcing what is evident from the most cursory examination of its content: that the December 10, 2018 Report is violative of the cited penal laws, as well as many others. Among these, the additional penal laws to which I first alerted your then New York Chief Judge nominee, Westchester County District Attorney Janet DiFiore, in a December 31, 2015 letter calling upon her to protect the People of the State of New York and the public fisc from the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, each raising judicial and district attorney salaries and each statutorily-violative, fraudulent, and unconstitutional – a letter I thereafter furnished to you and your “Partners

³ According to USPS tracking, delivery was made to you and to Attorney General James on July 18, 2019, to Temporary Senate President Stewart-Cousins on July 17, 2019, and to Assembly Speaker Heastie on July 19, 2019.

⁴ With the resignation from leadership of Assembly Minority Leader Brian Kolb – and the elevation of Assemblyman Angelo Morinello, Esq. to be ranking member of the Assembly Codes Committee – the number of lawyers is now eight out of 15. On February 26, 2020, I forwarded the July 16, 2019 e-mail, with its attached NOTICE and analysis, to Assembly Codes Committee Ranking Member Morinello, Esq.

in Government”.⁵

For your convenience, a copy of the December 31, 2015 letter is annexed, identical to the copy annexed to CJA’s May 31, 2019 motion to the Court of Appeals for, *inter alia*, disclosure by the Associate Judges of their financial and other interests in CJA’s second citizen-taxpayer action, suing Chief Judge DiFiore, yourself, and your other “Partners” with respect to those two Reports – and the budget.⁶ The further penal laws cited by the letter pursuant to which prosecution based on the August 29, 2011 and December 24, 2015 Reports was and is warranted:

Penal Law §155.42: “Grand larceny in the first degree”⁷;

Penal Law §110.00: “Attempt to commit a crime”;

Penal Law §195: “Official misconduct”;

Penal Law §105.15: “Conspiracy in the second degree”;

Penal Law §20.00: “Criminal liability for conduct of another”.

⁵ The transmittal to all your “Partners” was first to the Legislature, most importantly by CJA’s January 15, 2016 letter for oversight by the Legislature’s appropriate committees. It was furnished to you, the Attorney General, and Comptroller thereafter by the March 23, 2016 verified second supplemental complaint in CJA’s first citizen-taxpayer action against you and them [at ¶¶274-276, ¶¶292-296, ¶314, ¶425, ¶455 (R.148-149, R.156-157, R.161, R.201, R.212-213), thereafter embodied by the September 2, 2016 verified complaint in CJA’s second-citizen-taxpayer action against all of you, plus Chief Judge DiFiore [at ¶¶17-21 (R.97-99)].

⁶ It is also identical to the copies of the December 31, 2015 letter that I handed up to the (current) Commission on Legislative, Judicial and Executive Compensation in testifying at its November 4, 2019 hearing about the letter and about the second citizen-taxpayer action to which it gave rise. Did James Malatras, who you appointed to that sham, rigged Commission – and singled out for praise at your January 8, 2020 State of the State address as having “the best policy mind” (at 21 mins./29 secs.) – not inform you about my evidence-based testimony and subsequent written communications? The direct link to CJA’s webpage for that Commission is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/menu-2019-2020-commission.htm>.

⁷ This has been described as: “Arguably, other than the most serious violent felonies, the ‘worst’ felony any individual could be arrested or indicted for...anywhere in the State of New York...often part of another criminal scheme. That criminal scheme may be Enterprise Corruption” – Penal Law 460.20 – which is:

“one of the strongest tools in a prosecutor’s arsenal and one of the most serious White Collar crimes on the proverbial books. A class ‘B’ felony carrying a mandatory minimum term of incarceration, Enterprise Corruption, pursuant to Penal Law 460.20, is New York’s version of the Federal Government’s RICO statute.”

<https://www.newyorkthefandlarceny.com/grand-larceny-in-the-first-degree-new-york-penal-law-155-42.html>.

ALL the statutory violations, fraudulence, and unconstitutionality that the December 31, 2015 letter summarizes pertaining to the December 24, 2015 and August 29, 2011 Reports are repeated by the December 10, 2018 Report – and CJA’s July 15, 2019 analysis proves this. And further common to all three Reports – each “false instruments” and easily verified as such, facially, by comparison to the statutes pursuant to which they purport to be rendered⁸ – is that neither you nor your “Partners in Government” have disgorged any findings of fact and conclusions of law that were your duty to have each made in support of corrective action you were duty-bound to have taken, but did not.

Fortunately, the New York State Constitution protects the People against wilful misconduct in office by its public officers – and contemplates both criminal prosecutions and removal proceedings. Among its provisions, Article I, §6, quoted by the analysis (at p. 39), as follows:

“...any public officer who, upon being called before a grand jury to testify concerning the conduct of his or her present office or of any public office held by him or her within five years prior to such grand jury call to testify, or the performance of his or her official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his or her present office by the appropriate authority or shall forfeit his or her present office at the suit of the attorney-general.

The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law.”

Suffice to say that any grand jury examining your above statements and slides from the January 21, 2020 Executive Budget address would deem their deceits to warrant further and more stringent charges against you – and against your collusive, self-dealing “Partners in Government”.

Even as to your reference to “lawsuits, etc.”, a grand jury would find you had not been honest. There is nothing “confused” about “the whole situation” regarding the Committee’s ban on outside income. Nothing could be plainer than that the Committee exceeded its statutory charge – and you may be presumed to know this independent of the two Supreme Court decisions in *Delgado v. State of New York* and *Barclay v. Committee on Legislative and Executive Compensation* that Attorney General James has chosen not to appeal for the obvious reason that she cannot fabricate argument to counter their strike-down of the Committee’s ban.

⁸ These statutes, identical in material respects, are Chapter 567 of the Laws of 2010, which was repealed and replaced by Chapter 60, Part E, of the Laws of 2015, which was itself supplemented by Chapter 59, Part HHH, of the Laws of 2018.

Indeed, a grand jury might reasonably find that in addition to explaining that the Committee's ban was beyond its statutory scope⁹, it was incumbent upon you to have revealed that the evidence before the Committee showed no difference between the "performance" of legislators *without* outside income and those *with*. A grand jury might even conclude that candor required that you disclose what that evidence consisted of, *to wit*, CJA's second citizen-taxpayer action against you and your "Partners" which, notwithstanding a record establishing *prima facie* and irrefutably that the budget is "off the constitutional rails" and violates a multitude of statutory and legislative rule provisions in a heist of taxpayer monies, the responses of legislators *without* outside income has been identical to those of legislators *with* outside income: no comment and no action¹⁰ – replicating the same with respect to CJA's predecessor litigations embodied therein.

Other deceptions a grand jury might find pertaining to your January 21, 2020 Executive Budget address:

- your so-called "Nothing to Hide Act" requiring disclosure of state tax returns by elected public officers – Part TT of your Public Protection/General Government Article VII Budget Bill #S.7505/A.9505. Or do you deny that tax returns will not reveal the conflicts disabling legislators at issue in CJA's second citizen-taxpayer action and predecessor litigations against you and your "Partners"? Wouldn't you agree that not discoverable from tax returns are the conflicts that stem from the control that you and legislative leaders have seized over the budget to create a slush-fund from which to reward subservient legislators and punish those who do not toe the line? How about the conflicts that rank-and-file legislators face by reason of the power that you and legislative leaders wield over their re-election prospects and their ambitions for election or appointment to other public offices? These are not disclosable from tax returns, right? And why does your "Nothing to Hide Act" not include disclosure of tax returns by appointed public officers, as, for instance, the Chief Judge and six Associate Judges of the New York Court of Appeals? Was it to reward the appointed Court of Appeals Judges for obliterating all legal and adjudicative standards in CJA's second citizen-taxpayer – thereby perpetuating the statutorily-violative, fraudulent, and unconstitutional salary increases of the August 29, 2011 and December 24, 2015 Reports of which they are beneficiaries – as well as your own salary increases arising from the comparably violative December 10, 2018 Report. Were you enticing them to do the same with respect to CJA's final November 25, 2019 vacatur motion, which by a February 18, 2020 decision they did. Do you deny that the record before them establishes CJA's entitlement to summary judgment on all ten of our causes of action as to the unconstitutionality, unlawfulness and larceny of the state budget – and of the commission/committee scheme utilized for the salary increases?¹¹

⁹ See analysis at pp. 10, 14, 31-32, 34-36.

¹⁰ See analysis at pp. 20-22, 32.

¹¹ CJA's website posts the full record before the Court of Appeals – and the direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-ct-of-appeals.htm>. Particularly useful is CJA's March 26, 2019 letter to the Court, which was accompanied by a

free-standing “legal autopsy”/analysis, summarizing what the lower judges had done with respect to each of the ten causes of action of the September 2, 2016 verified complaint.

With respect to the eighth cause of action pertaining to the statutory violations of the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, rendering its judicial salary increase recommendations null and void [¶¶77-80 & ¶¶453-457 (at R.114 & R.212-213)], the “legal autopsy”/analysis showed (at pp. 26-27) that Acting Supreme Court Justice Denise Hartman had dismissed it, in two sentences, by her December 21, 2016 decision [R.531, R.56], stating that the Commission on Legislative, Judicial and Executive Compensation was not a party, which was not only *sua sponte*, but unsupported by *any* law. On appeal, the Appellate Division, Third Department *sub silentio* abandoned this *sua sponte*, legally unsupported ground, by its December 27, 2018 memorandum and order (at p. 8), replacing it by its own *sua sponte* evidentiarily-unsupported ground: “Dismissal of the eighth cause of action was also proper because the record shows that the Commission considered the requisite statutory factors in making its recommendations regarding compensation”. The “legal autopsy”/analysis identified this single-sentence substitute to be a “LIE”, *inter alia*, because:

“there is NO EVIDENCE, in ‘the record...that the Commission considered the requisite statutory factors in making its recommendations regarding judicial compensation’ – and, tellingly, the appeal panel furnishes not a single example of the ‘requisite statutory factors’ specified by the eighth cause of action as having been ignored by the Commission, which it, in fact, ‘considered’.” (March 26, 2019 “legal autopsy”/analysis, at p. 26, capitalization in the original).

This was uncontested by you and your co-defendant “Partners” – and by the Court of Appeals.

Also uncontested was what had happened in the first citizen-taxpayer action, pertaining to the statutory violations of the August 29, 2011 Report of the Commission on Judicial Compensation, rendering its judicial salary increase recommendations null and void. These statutory violations were embodied by the second cause of action of CJA’s March 28, 2014 verified complaint pertaining to the Judiciary budget [¶108 (R.262)] – and they were simply “cherry-picked” out by Acting Supreme Court Justice Roger McDonough in his October 9, 2014 decision [at p.5 (R.330)] dismissing the second cause of action as non-justiciable and based on unidentified “documentary evidence”. Thereafter, by his August 1, 2016 decision [R.315-325] he rested on that earlier decision in dismissing the corresponding sixth cause of action of CJA’s March 31, 2015 verified supplemental complaint [¶¶179-193 (R.294-300)] and tenth cause of action of CJA’s March 23, 2016 verified second supplemental complaint [¶¶317-331 (R.162-167)] each also pertaining to the Judiciary budget, as non-justiciable and based on unidentified “documentary evidence”.

CJA’s second citizen-taxpayer action furnished the particulars of Justice McDonough’s fraud in the first citizen-taxpayer action by a “legal autopsy”/analysis annexed as Exhibit G [R.338-373] to the September 2, 2016 verified complaint [R.87-392]. Its new second cause of action, also pertaining to the Judiciary budget [¶¶34-39 (R.103-104)], rested on that Exhibit G “legal autopsy”/analysis, stating:

“As highlighted by the analysis (Exhibit G: pp. 24-28 [R.361-365]), plaintiffs’ second and sixth causes of action...which correspond to their tenth cause of action [each in the first citizen-taxpayer action] were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on ‘documentary evidence’ that he did not identify – and which does not exist.” (underlining in the original: ¶37 [R.103]).

This was not contested by you, your “Partners” – or by Justice Hartman when, by her December 21, 2016 decision [at p. 5 (R.531, R.56)], she dismissed the new second cause of action on the pretense that it was

- your inference that the Committee’s pay raise recommendations were based on the “performance” of “elected officials”. Or do you deny that the only “elected officials” whose “performance” the Committee purported to examine was the Legislature – and that such was limited to the timeliness of the budget, as to which the evidence furnished by my testimony at the Committee’s November 30, 2018 hearing established the Legislature’s violation of Legislative Law §5.3 pertaining to “legislative passage of the budget”,¹²
- your statement as to the “constitutional responsibility of passing the budget on time”. Or do you deny that the state Constitution sets no time for passing the budget and that, pursuant to Article VII, §4, New York has a rolling budget, enacted bill by bill, which you and the Legislature are wholly violating, in collusion with the Attorney General, Comptroller, and New York’s Judiciary.¹³

As for your declaration, “I support a pay increase for the Legislature” – as if the Legislature has not already been the beneficiary of a fraudulent pay hike and should be getting an additional pay raise – a grand jury would be rightfully merciless in the charges it would return, based on CJA’s July 15, 2019 analysis and the “performance” with respect thereto of stipend-benefitting legislative leaders and of the Legislature, as a whole, in the post-pay raise 2019 and 2020 legislative sessions, including as relates to the FY2019-20 and FY2020-21 budgets.

Suffice to say that the Legislature’s Constitution-violating, substandard “performance” chronicled by CJA’s two citizen-taxpayer actions and, prior thereto, by CJA’s declaratory judgment action – each bearing the shorthand caption *CJA v. Cuomo, et al.* – has continued unabated in the wake of the pay raises and stipend-eliminations of the December 10, 2018 Report. And establishing this is the primary source evidence that CJA’s website has continuously posted, accessible from the prominent links at the center of our homepage, www.judgewatch.org, the first three reading:

“identical” to the causes of action Justice McDonough had dismissed – in other words concealing CJA’s Exhibit G “legal autopsy”/analysis. The Appellate Division replicated this concealment by its December 27, 2018 memorandum and order (at pp. 7-8) – and the particulars of what they each did with respect to the second cause of action – and, simultaneously, with respect to the first, third and fourth causes of action of the September 2, 2016 verified complaint are set forth by CJA’s March 26, 2019 “legal autopsy”/analysis (at pp. 21-23). Here, too, its accuracy was uncontested by you and your “Partners”, including the Court of Appeals.

Suffice to say that in EVERY respect the accuracy of CJA’s March 26, 2019 “legal autopsy”/analysis is uncontested, as likewise in EVERY respect the accuracy of CJA’s Exhibit G “legal autopsy”/analysis is uncontested – and with it our entitlement to summary judgment on all causes of action of our first and second citizen-taxpayer actions.

¹² See analysis at pp. 18-23, 38, 39, 41, 42-43; Exhibits C, D, J.

¹³ See analysis at p. 19.

**“CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’
& Unconstitutional ‘Three-Men-in-a-Room’ Governance –
A Paper Trail of Litigation Fraud by NY’s Attorney General,
Covered Up & Rewarded by Fraudulent Judicial Decisions**

**NY’s ‘Force of Law’ Commissions –
Unconstitutionality & Fraud IN PLAIN SIGHT**

**LEGISLATIVE SESSIONS –
Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raise”**

Pursuant to Article I, § 4, a grand jury will be entitled to your testimony and that of your “Partners in Government” with respect to CJA’s analysis and what has transpired. This is all the more reason for you to come forward now, voluntarily, with your findings of fact and conclusions of law with respect thereto, consistent with the “nothing to hide” transparency exhorted by your January 21, 2020 Executive Budget address – repeated from your January 8, 2020 State of the State address wherein, in the presence of Chief Judge DiFiore and the Court of Appeals Associate Judges, you additionally urged to “lead by example”.¹⁴

Thank you.

Enclosure: CJA’s December 31, 2015 letter to then Chief Judge Nominee/
Westchester District Attorney Janet DiFiore
“So, You Want to Be New York’s Chief Judge? – Here’s Your Test:
Will You Safeguard the People of the State of New York – & the Public Fisc?”

cc’s: see next page

¹⁴ See fn. 2, *supra*.

cc: Your Fellow Pay Raise-Benefitting "Partners in Government":

Lieutenant Governor Kathy Hochul, Esq.

Attorney General Letitia James, Esq.

Comptroller Thomas DiNapoli

Stipend Benefitting Legislative Leaders:

Senate Majority Leader Andrea Stewart-Cousins

Assembly Speaker Carl Heastie

Senate Minority Leader John Flanagan, Esq.

[Former] Assembly Minority Leader Brian Kolb

[New] Assembly Minority Leader William Barclay, Esq.

Senate Deputy Majority Leader Michael Gianaris, Esq.

Senate Deputy Minority Leader Joseph Griffo

Assembly Majority Leader Crystal Peoples-Stokes

Assembly Speaker *Pro Tempore* Jeffrion Aubry

Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq.

Finance Committee Chair Liz Krueger

Finance Committee Ranking Member James Seward

Ways and Means Chair Helene Weinstein, Esq.

[New] Ways and Means Committee Ranking Member Edward Ra, Esq.

Assembly Codes Committee Chair Joseph Lentol, Esq.

[New] Assembly Codes Committee Ranking Member Angelo Morinello, Esq.

New York Court of Appeals Judges:

Chief Judge Janet DiFiore

Associate Judge Jenny Rivera

Associate Judge Leslie Stein

Associate Judge Eugene Fahey

Associate Judge Michael Garcia

Associate Judge Rowan Wilson

Associate Judge Paul Feinman

Chief Administrative Judge Lawrence Marks

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 HAND

December 31, 2015

TO: NY Court of Appeals Chief Judge Nominee/
Westchester County District Attorney Janet DiFiore

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

RE: So, You Want to Be New York's Chief Judge? – Here's Your Test:
Will You Safeguard the People of the State of New York – & the Public Fisc?
(1) The Commission on Judicial Compensation's August 29, 2011 Report;
(2) The Commission on Legislative, Judicial and Executive Compensation's
December 24, 2015 Report;
(3) The Judiciary budgets – including for fiscal year 2016-2017

Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies as "offering a false instrument for filing in the first degree" (§175.35), "grand larceny in the first degree" (§155.42), "scheme to defraud in the first degree" (§190.65), "defrauding the government" (§195.20), and the class A misdemeanor "official misconduct" (§195).

Then, too, there is the "Public Trust Act", whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime "Corrupting the Government" – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.

ESG

* 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.

ESG 37 to March 23, 2016 verified second supplemental complaint in 1st citizen taxpayer action R. 135-225

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §1[83]-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your \$136,700 salary was increased to \$160,000 and then, in 2013, increased to \$167,000 and then, in 2014, increased again to \$174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be \$198,600, not the \$156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are “ill-gotten gains”, stolen from the taxpayers”. And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report, detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. Addressed to the Commission's four appointing authorities – Governor Cuomo, then Temporary Senate President Skelos, then Assembly Speaker Silver, and Chief Judge Lippman – the Opposition Report expressly called upon them to take the following four steps to protect the public:

- (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;
- (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.

Yet they took no steps. Indeed, they did not even respond – and their inaction and the collusion therein of Attorney General Schneiderman and Comptroller DiNapoli, “motivated by a scheme to also raise legislative and executive salaries”¹, gave rise to a declaratory judgment action against all of them, *CJA v. Cuomo, et al.*, which we commenced in March 2012, on behalf of the People of the State of New York and the public interest.

What became of that lawsuit? For the past three years it has been in limbo, sitting on a shelf in the Clerk's Office in Supreme Court/New York County after the original verified complaint and all exhibits – including the October 27, 2011 Opposition Report – went missing upon being fraudulently transferred from Supreme Court/Bronx County (#302951-12). The particulars are recited by the March 2014 verified complaint² in a citizen-taxpayer action, also *CJA v. Cuomo, et al.*, which we commenced in Supreme Court/Albany County (#1788-2014), also on behalf of the

¹ ¶1 of the March 2012 verified complaint. See also ¶¶122, 138.

² ¶5(c), (d), (e) of the March 2014 verified complaint.

People of the State of New York and the public interest. It challenges the slush-fund Judiciary budget for fiscal year 2014-2015 in which the judicial salary increases are embedded and, by a March 2015 supplemental complaint, additionally challenges the slush-fund Judiciary budget for fiscal year 2015-2016 and its embedded judicial salary increases. This citizen-taxpayer action is live and unfolding on a record entitling us to summary judgment, *as a matter of law* – and not only with respect to the judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 Report, but as to the Judiciary budgets for fiscal years 2014-2015 and 2015-2016, whose constitutional and statutory infirmities, enabling fraud, are replicated in the Judiciary’s budget for fiscal year 2016-2017.

On November 30, 2015 – the day before the Governor announced your nomination – I testified before the Commission on Legislative, Judicial and Executive Compensation at its public hearing in Manhattan. That commission emerged from the March 2015 behind-closed-doors, three-men-in-a-room budget deal-making by Governor Cuomo, then Temporary Senate President Skelos, and Assembly Speaker Heastie, wherein – following rubber-stamping by the Legislature – the statute that created the Commission on Judicial Compensation was repealed and, in its place, a materially-identical statute creating the Commission on Legislative, Judicial and Executive Compensation was substituted. In advance of my testimony, I created a webpage for the Commission 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!” It is there that I posted the evidence supporting my testimony, beyond what I handed up at the hearing.

The focus of my testimony was CJA’s October 27, 2011 Opposition Report, the declaratory judgment action and citizen taxpayer action based thereon – as well as a third litigation, in April 2014, in which we sought to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption (*NYS Senate, NYS Assembly v. Rice, et al.*, NY Co. #160941/2013), also on behalf of the People of the State of New York and the public interest. I stated that “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 – 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 [the Commission on Legislative, Judicial and Executive Compensation], would have been declared unconstitutional, long, long ago.” (at p. 2, capitalization in original).

Indeed, I stated that the ONLY recommendation the Commission could properly make, based on CJA’s October 27, 2011 Report, was “for the nullification/voiding of the [Commission on Judicial Compensation’s August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto” – and that the “only way” the Commission could “get away with doing anything else” in its own report, statutorily-required by December 31, 2015, would be 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 [were its] duty to make with respect thereto.”

This, of course, is exactly what the Commission did by its December 24, 2015 “Final Report”. It materially replicated the fraud, statutory violations, and unconstitutionality of the Commission on Judicial Compensation’s August 29, 2011 Report – which also had been denominated a “Final Report”. Thus, identical to the August 29, 2011 Report, the December 24, 2015 Report:

- willfully concealed, as if it did not exist, the threshold issue of the Commissioners’ disqualifying interest and actual bias that had been raised, most formidably by CJA – because it was dispositive; and
- willfully concealed, as if it did not exist, the opposition to judicial salary increases that had been raised, most formidably by CJA – because it was dispositive.

This enabled it to then flagrantly and identically violate the Commission statute:

- by making no finding that current “pay levels and non-salary benefits” of New York State judges are inadequate, required by the statute;
- by examining only judicial salary, not “compensation and non-salary benefits”, required by the statute ;
- by not considering “all appropriate factors”, required by the statute – and making no claim that it had;
- by making no findings as to “appropriate factors” that CJA had identified as disintitling New York’s judges to any pay raises. 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; and
 - (b) the fraudulent claims of judicial pay raise advocates in support of judicial pay raises.

All the foregoing is readily-verifiable from the Commission on Legislative, Judicial and Executive Compensation’s website and from CJA’s own webpage for the Commission. Links for both are posted on the webpage I’ve created for this letter on CJA’s website, www.judgewatch.org. You can reach it easily *via* the top panel “Latest News”, which will bring you to a link bearing the title of this letter: “So, You Want to be New York’s Chief Judge? – Here’s Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?”³

³ The letter is also accessible *via* the left sidebar panel “Judicial Selection-State-NY”, which leads to a menu page containing a link for “Merit Selection” to the New York Court of Appeals.

The Judiciary has, at least, three copies of CJA's October 27, 2011 Opposition Report: the one I originally delivered for Chief Judge Lippman on October 27, 2011 at the Office of Court Administration in Manhattan, and the two full copies that accompanied the two copies of the verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action that I delivered in Albany on April 5, 2012 to the Clerk of the Court of Appeals, who accepted service for Chief Judge Lippman and the Unified Court System, each named defendants therein. Nevertheless, because the October 27, 2011 Opposition Report is so dispositive, I am herewith furnishing you with your own full copy – by which I mean the included October 15, 2002 and October 24, 2002 two final motions that were before the Court of Appeals in CJA's monumental 3-in-1 lawsuit against the Commission on Judicial Conduct, about which I testified on July 20, 2011 before the Commission on Judicial Compensation, handing up a copy of each motion to substantiate my words, publicly-stated:

“...you can verify that the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived, including four of the Court of Appeals...the Commission has been the beneficiary of fraudulent judicial decisions. The *modus operandi* in this state, fraudulent judicial decisions. The judiciary of this state is corrupt, pervasively, systemically corrupt.”⁴

I am also furnishing you with my written submissions to the Commission on Legislative, Judicial and Executive Compensation:

- my November 30, 2015 written testimony, with its attached exhibits;
- my December 2, 2015 supplemental statement; and
- my December 21, 2015 further statement.

From these, you can speedily verify the fraudulence, statutory violations, and unconstitutionality of BOTH the Commission on Judicial Compensation's August 29, 2011 Report and the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report – each the product of tribunals disqualified for interest and actual bias – and that your duty is to take steps to protect the People of the State of New York, be it as the district attorney you currently are or the chief judge you aspire to be.

⁴ See transcription of my July 20, 2011 testimony, annexed as part of Exhibit I to CJA's October 27, 2011 Opposition Report – and, additionally, the further substantiating documents I handed up to the Commission on Judicial Compensation on July 20, 2011: Exhibit F-1 (hand-out: “No Pay Raises for NYS Judges who Corrupt Justice: The Money Belongs to the Victims”); Exhibit F-2 (CJA's draft statement for the Senate Judiciary Committee's aborted December 16, 2009 hearing on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system); Exhibits F-3 and F-4 (written statements for the Senate Judiciary Committee's March 6, 2007 hearing in opposition to confirmation of Chief Judge Kaye to the Court of Appeals).

Indeed, your disregard of that duty would make you an accessory and criminally liable⁵ for the felony crimes here at issue: “offering a false instrument for filing in the first degree” (Penal Law §175.35), “grand larceny in the first degree” (Penal Law §155.42), “scheme to defraud in the first degree” (Penal Law §190.65), “defrauding the government” (Penal Law §195.20), “corrupting the government in the first degree” (Penal Law §496.05), “public corruption” (Penal Law §496.06), and, of course, the misdemeanor of “official misconduct” (Penal Law §195)?

The People of New York cannot suffer yet another constitutional officer compromised by pecuniary and other interests and relationships, who corrupts his public office as a result. Will you do what is right and what the law and ethics require, notwithstanding you are a beneficiary of the judicial salary increases and have personal, professional, and political relationships with those involved in the felonies now before you and who are responsible for your Court of Appeals nomination and control your confirmation?

On the subject of conflicts of interest – and because, in December 2011, Governor Cuomo appointed you to chair the then-newly created Joint Commission on Public Ethics,⁶ whose jurisdiction includes conflict of interest complaints against him and other constitutional officers of the executive and legislative branches – I am enclosing the June 27, 2013 conflict-of-interest ethics complaint that we filed with JCOPE, two months after you resigned as chair – and which JCOPE has been sitting on ever since. It is against Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, legislators and their culpable staff and is based on their conflicts of interest that are the ONLY explanation for their knowing and deliberate failure to protect the public from the Commission on Judicial Compensation’s fraudulent, statutorily-violative and unconstitutional August 29, 2011 Report.⁷

⁵ As illustrative, Penal Law §105.15 “conspiracy in the second degree”.

⁶ In the words of the Governor’s December 12, 2012 press release: “‘The Joint Commission on Public Ethics is an independent monitor that will aggressively investigate corruption and help maintain integrity in state government,’ Governor Cuomo said. ‘I am confident that under the leadership of Chair DiFiore and the other board members, the Commission will be the toughest ethics enforcer in our state’s history.’” <http://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-appoint-members-joint-commission-public-ethics>.

⁷ At the November 30, 2015 hearing, I furnished this June 27, 2013 conflict-of-interest ethics complaint – and CJA’s related December 11, 2014 conflict-of-interest ethics complaint that JCOPE has also been sitting, also against the Governor, *et al.* – to Commissioner Mitra Hormozi, one of the Governor’s three appointees to the Commission on Legislative, Judicial and Executive Compensation and his appointed chair of the Commission on Public Integrity, when JCOPE replaced it, under your chairmanship. CJA’s webpage for my November 30, 2015 testimony posts this additional December 11, 2014 complaint. The direct link is: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/testimony.htm>. CJA’s subsequent correspondence pertaining to the JCOPE/LEC Review Commission – and my October 14, 2015 testimony before the JCOPE/LEC Review Commission about the conflicts of interest of executive and legislative constitutional officers with respect to the judicial pay raises and the Commission on Judicial Compensation’s August 29, 2011 Report is posted here: <http://www.judgewatch.org/web-pages/searching-nys/commission-to->

As I greatly prefer to testify in support of your nomination at the Senate Judiciary Committee's upcoming hearing on your confirmation, rather than in opposition, please confirm, as soon as possible, that based on your findings of fact and conclusions of law with respect to the foregoing, you will be taking steps, as Chief Judge, to:

- (1) void the judicial pay raise recommendations;
- (2) repeal the commission statute;
- (3) refer the commissioners to criminal authorities for prosecution; and
- (4) investigate the systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Legislative, Judicial and Executive Compensation – like the Commission on Judicial Compensation before it – unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Further, please advise, with respect to the Judiciary's budget for fiscal year 2016-2017, transmitted to Governor Cuomo and legislative leadership, including Senate Judiciary Committee Chairman Bonacic, on the day you were nominated, December 1, 2015:

- (1) whether the Judiciary's "single budget bill" is encompassed within the certification of the Chief Judge and the approval of the Court of Appeals;
- (2) the cumulative dollar total of the Judiciary's budget request in its two-part budget presentation;
- (3) the cumulative dollar total of the appropriations and reappropriations in the Judiciary's "single budget bill";
- (4) whether the reappropriations in the "single budget bill" are consistent with Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25.

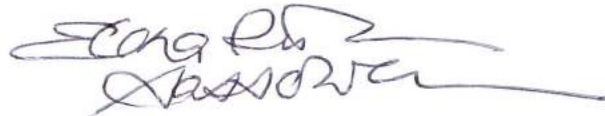
Insofar as the Executive Summary to the Judiciary's budget for fiscal year 2016-2017 states (at fn. 4) that the Judiciary's budget does not include the Commission on Legislative, Judicial and Executive Compensation salary recommendations – as they were not then made – but that "If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment", do you not agree that any such supplemental budget request would be – like the Commission's December 24, 2015 Report – fraudulent, statutorily-violative, and unconstitutional.

I would welcome your invitation to meet together in advance of your Senate Judiciary Committee confirmation hearing so that we may discuss these and other issues germane to the top leadership position to which you have been nominated. This would include CJA's 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 – highlighted by my November 30, 2015 testimony before the Commission on Legislative, Judicial and Executive Compensation (at p. 2) and annexed as its Exhibit 3 – 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, prefatory quote & page 12, underlining in the original).

May I hear from you soon – and may the New Year be the beginning of respect for law, evidence, and honesty, under your leadership.

Thank you.

A handwritten signature in black ink, appearing to read "Eric Lipton". The signature is stylized with a large, sweeping initial "E" and a long horizontal line extending to the right.

Enclosures