Center for Judicial Accountability, Inc. v. Cuomo, et al.
(Appellate Division, Third Dept. #527081)

"Legal Autopsy/Analysis of the November 13, 2018 Oral Argument of Assistant Solicitor General Frederick Brodie

At the November 13, 2018 oral argument of the appeal, the unrepresented plaintiff-appellant Elena Sassower stated, as follows, to the appeal panel, in her rebuttal to the oral argument of Assistant Solicitor General Frederick Brodie:

> "…I made a motion, which you denied an hour ago, giving no reasons and allowing this proceeding, this appellate argument, in which Mr. Brodie repeated the outright lies and frauds already demonstrated in my papers to you, in the reply brief, in the motions. …you have allowed the most flagrant fraud, fraud, with respect to everything.
> …no bench conversant with the briefs could allow the drivel of Mr. Brodie here repeating what has already been exposed as deceits."

Here is an analysis of Mr. Brodie's oral argument, establishing that from beginning to end, his oral argument was as fraudulent as his respondents' brief – the subject of appellants' October 23, 2018 motion to strike it as "a fraud on the court" – which the appeals panel denied, without reasons, shortly before the start of the oral argument.

I.

"May it please the Court, Frederick Brodie for respondents.
I want to focus initially on the substantive issue raised by this case."

Mr. Brodie here begins by concealing that this case presents more than one "substantive issue", but, rather, a multitude of "substantive issues", most of constitutional magnitude.

II.

"The legislature's delegation of authority to the commission was permissible. The delegation contained reasonable safeguards and standards. First, the legislature gave the commission direction. It said to examine the prevailing adequacy of state judges' compensation and determine whether any of such pay levels warranted adjustment or warranted increase. Second, the legislature gave the commission standards. The commission was directed to take into account all appropriate factors, including six specific factors, like the overall economic climate and rates of inflation. Third, the legislation contained structural safeguards. It required the commission to make recommendations to the governor, legislature, and chief judge. Those recommendations would have the force of law only if the legislature did not modify or abrogate them by

statute within three months. The legislature thus retained its law-making power. It provided for a recommendation to come back to it from the commission and the legislators could reject or modify that recommendation. So the argument in plaintiff's brief and in her petition that there was an excessive delegation is not correct."

The sole support that Mr. Brodie offers for his prefatory sentence, "The legislature's delegation of authority to the commission was permissible", and his culminating sentence, "So the argument in plaintiff's brief and in her petition that there was an excessive delegation is not correct", is his summary of the statute that created the Commission on Legislative, Judicial and Executive Compensation – Chapter 60, Part E of the Laws of 2015. He does not identify that this summary is directed to the first and second sub-causes of appellants' sixth cause of action, or any of the allegations of these two sub-causes, or the state of the record with respect to them.

In similar fashion, Mr. Brodie crafted his respondents' brief pertaining to these two sub-causes. The particulars, set forth by appellants' reply brief, at pages 30-33, were as follows:

> **"Mr. Brodie's Point II-F (at pp. 32-49) 'Sixth Cause of Action: The Second Commission'** misrepresents and conceals the sworn allegations of appellants' sixth cause of action [R.109-112/R.127 (at 1H)] [R.187-201/R.222-223 (1E, G)]. He starts by purporting that appellants have 'failed to meet th[e] rigorous standard' for a declaration that Chapter 60, Part E, of the Laws of 2015 is unconstitutional – when, in fact, their sixth cause of action so resounding meets that 'rigorous standard' that he cannot and does not reveal its specifics – nor the record with respect to its five sub-causes, chronicled by appellants' brief and its culminating 19-pages under the title heading 'Judge Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action' (Br. at pp. 50-69).
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> As to appellants' first sub-cause [R.110, R.188-192], Mr. Brodie purports to address it under the heading, '1. The Legislature Permissibly Delegated the Increase of Judicial Compensation to the Second Commission' (at pp. 33-35). He conceals ALL its allegations, other than that it challenges the constitutionality of the statute giving the Commission's recommendations 'the force of law'.
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> As to appellants' second sub-cause [R.110-111, R.192-193], Mr. Brodie purports to address it under the heading '2. The Delegation of Authority to the Second Commission Contained Adequate Safeguards' (at pp. 36-38). He identifies that it challenges the statute's delegation of legislative power to the Commission as being 'without safeguarding provisions', but then distorts the only two specifics he furnishes:
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> - he misrepresents that it challenges the Commission as 'not sufficiently diverse in ideology (R192)' – when it does nothing of the sort, challenging the numeric size of the Commission [R.192];

- he conceals what it says about the unconstitutionality of raising the salaries of judges 'who should be removed from the bench for corruption or incompetence [R.110, 193]', namely,

> 'The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are 'appropriate factors' for its consideration in making salary recommendations renders the statute unconstitutional, *as written*.' (R.110-111 (¶64), underlining in the original)."

III.

"I would note that similar commissions have been held constitutional. We cited two cases regarding the Commission on Health Care Facilities and the commission at issue here, this commission, was upheld by Nassau County Supreme Court. And that decision is in the record, reproduced at page 428. It's quite a short order, so we didn't cite it in our brief, but that does mean that two separate commissions have been upheld as constitutional, which refutes plaintiff's argument in her reply brief, at pages 31-32, that I improperly used the plural form, commissions."

This is serially deceitful.

First, the "two cases regarding the Commission on Health Care Facilities", to which Mr. Brodie refers, without identifying them, are *McKinney v. Commissioner of the State of New York* and *St. Joseph*'s *Hospital v. Novello* – and the decisions in those cases, particularly the Supreme Court decision in *McKinney*, make evident that the material differences between the statute they upheld and the statute establishing the Commission on Legislative, Judicial and Executive Compensation render the instant statute unconstitutional – and such is reflected at the outset appellants' second sub-cause [¶394 (R.192)]. This is why Judge Hartman's November 28, 2017 decision [R.36], though citing *McKinney* and *St. Joseph*, does not discuss them. Indeed, appellants' brief (at pp. 56-57) had pointed this out, stating:

> It is because plaintiffs' August 25, 2017 rebuttal [to the attorney general's cross-motion for summary judgment] [R.1308-1312] so resoundingly established no basis for anything but summary judgment to plaintiffs on their sub-causes A and B that the three paragraphs that Judge Hartman's November 28, 2017 decision offers up consist, virtually entirely, of selective quotations and paraphrasing of the statute and generic, unresponsive citations [R.35-36]. This includes her bald citation [R.36] to '*McKinney v. Commr. of the N.Y State Dept. of Health*, 41 AD3d 252, 253 [1st Dept 2007], lv denied 9 NY3d 815 [2007], appeal dismissed 9 NY3d 891 [2007]' for the proposition 'Enabling statutes even broader than this one have been found constitutional' and '*compare St. Joseph's Hospital v Novello*, 43 AD3d 139 [4th Dept

> 2007] [declining to address constitutionality of delegation of authority that allowed for de facto legislative veto]' – nowhere addressing plaintiffs' showing that these decisions establish their summary judgment entitlement, demonstrated by: (1) the very allegations of their sub-causes A and B (¶¶390-391, 393, 394-395) [R.190-192]; (2) their September 30, 201[6] reply memorandum of law [R.502-504, R.459]; (3) their May 15, 2017 reply memorandum of law [R.945]; and (4) their 'legal autopsy'/analysis of the June 26, 2017 decision [R.1308-1312], on which their August 25, 2017 reply memorandum of law additionally relied [R.1358-1362]." (underlining in the original).

Second, the unidentified "Nassau County Supreme Court" decision upholding the Commission on Legislative, Judicial and Executive Compensation – to which Mr. Brodie refers the appeal panel – is fraudulent. Appellants' above-cited September 30, 2016 reply memorandum of law detailed this fraudulence, in response to Assistant Attorney General Kerwin's furnishing the decision to Judge Hartman with her September 15, 2016 cross-motion to dismiss appellants' causes of action. The paragraph of appellants' September 30, 2016 reply memorandum of law, discussing the decision and supplying the underlying complaint in that case [R.459-462], was as follows:

> "As for AAG Kerwin's reliance on the Nassau County Supreme Court decision in *Coll v. NYS Commission on Legislative, Judicial and Executive Compensation; NYS Legislature; NYS Governor*, which she purports 'recently dismissed a challenge to the present Commission on Legislative, Judicial and Executive Compensation' (at p. 10, underlining added) – implying, by the word 'present', that the challenge was to the commission statute, *as applied* – and as to which she annexes the paltry three-sentence decision purporting that the action was 'to declare that the Commission on Legislative, Judicial and (sic) Compensation acted in an unconstitutional manner', this is false. Indeed, had AAG Kerwin furnished any details of the challenge in that case – which, considering the defense was handled by the Attorney General's office, she readily could have done – it would have been evident that the case had nothing to do with the Commission on Legislative, Judicial and Executive Compensation 'act[ing] in an unconstitutional manner'. Rather, and as may be seen from the complaint therein (Exhibit P) [R459-462], it challenged the commission statute, *as written* – and, in particular, the 'force of law' power that the statute confers on commission salary recommendations."

Thirdly, although taking issue with the fact that pages 31-32 of appellants' reply brief stated had stated that his respondents' brief provided "only a single example" to support his claim that "Similarly-structured commissions have been held constitutional", Mr. Brodie concedes its truth in acknowledging that his brief had not cited the Nassau County Supreme Court decision [R.428], giving as an excuse that "It's quite a short order". However, even had Mr. Brodie cited to the *Coll* decision [R.428], it would not have supported his claim that "similar commissions have been held constitutional" since – by his own admission – it does not concern any "similar commissions", but the SAME commission as here at issue, as to which the decision furnishes NO facts and NO law to support its granting of "the motion to dismiss".

IV.

"Also the enabling law was budgetary in nature. Plaintiff argues that it shouldn't have been included in an appropriations bill. But when applying Article VII, Section 6 of the Constitution, the test is whether a provision in an appropriations bill is essentially non-budgetary. A budgetary measure is one designed to allocate the state's resources. Here, the commission was charged to determine what additional state resources should be allocated to paying judges. In fact, the budget bill's title stated that the commission would provide periodic salary increases. And salary increases have already been appropriated based on the actions of the first commission, so you have an ongoing series of salary increases and this legislation that created the commission was intended to provide for more. It didn't address the power of judges, it didn't address any particular judicial decision. It didn't address court procedure. It addressed money."

Mr. Brodie here shifts to the fourth sub-cause of appellants' sixth cause of action – although not identifying this – or that he is addressing but a single aspect of that sub-cause. As to this single aspect, Mr. Brodie engages in outright fraud. The "test" for "applying Article VII, Section 6 of the Constitution" is emphatically NOT "whether a provision in an appropriations bill is essentially non-budgetary" – as is evident from the clear, unequivocal language of Article VII, Section 6, which states, in pertinent part:

> "No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation." (underlining added).

And proving that the "test" of Article VII, Section 6 derives from this language is Judge Hartman's November 28, 2017 decision [R.39] purporting "The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay". To this, appellants' brief stated (at pp. 63-64):

> "This is false – and Judge Hartman conspicuously does not identify where in the budget the purported 'items of appropriation' might be found. There are no such 'items of appropriation', none were alleged by defendants, and sub-cause D, by its ¶407 [R-194], contains the admission of the six legislative defendants who sponsored A.7997 that there was 'no appropriation in the budget bill relating to the salary commission' – quoting their introducers' memorandum to A.7997, as follows:
>
> > '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.'

> Judge Hartman's citations to *Pataki*, 4 NY3d at 98-99, and *Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969], reinforce the violation of Article VII, §6, which the six legislative sponsors of A.7997 themselves revealed."

Mr. Brodie's respondents' brief (at p. 42) did not respond by identifying any appropriation in the fiscal year 2015-2016 budget to which Chapter 60, Part E, of the Laws of 2015 related – the true "test" of whether it is an unconstitutional rider. Instead, he advanced the brazen falsehood – which he repeated at the oral argument – that because salary increases recommended by the Commission would appropriate money from the budget, it was therefore not violative of Article VII, Section 6.

Appellants' reply brief (at p. 35) identified this falsehood, stating:

> "The Commission's earliest salary increases would NOT take effect until April 1, 2016 and, therefore, would be part of the budget for fiscal year 2016-2017, not fiscal year 2015-2016." (capitalization in the original).

This true and correct factual statement requires a declaration that Chapter 60, Part E, of the Laws of 2015 is an unconstitutional rider – and that the judicial salary increases resulting therefrom are unconstitutional by reason thereof.

V.

> **"That's correct. So there was subsequently summary judgment on that. And on summary judgment we demonstrated that the sixth cause of action, we demonstrated that all the i's were dotted and the t's were crossed in the legislative process. So the legislation that established the commission was correctly passed and correctly implemented."**

This was Mr. Brodie's fraudulent response to the interjection of Associate Justice Rumsey: "Initially the judge did not dismiss the sixth cause of action." Appellants' brief – particularly its section entitled "Judge Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action" (at pp. 50-69) – chronicles that respondents had not "demonstrated" their entitlement to summary judgment on the sixth cause of action – nor that "all the I's were dotted and the t's were crossed in the legislative process", with the legislation establishing the commission was "correctly passed" – issues embraced by the fourth and fifth sub-causes of the sixth cause of action [R.111 (R.194-196); R.112 (R.197-201)].

Indeed, as to the fourth and fifth sub-causes, appellants' brief detailed that respondents – represented by the attorney general – committed outright fraud.

- As to the fifth sub-cause [R.112 (R.197-201)], Assistant Attorney General Lynch – and then Assistant Attorney General Kerwin – advanced the fraud that Judge Hartman's December 21, 2016 decision had not preserved the fifth sub-cause of appellants' sixth cause of action [R.532]– which Judge Hartman then adopted by her June 26, 2017 decision [R.77] and her November 28, 2017 decision [R.34];

- As to the fourth sub-cause [R.111 (R.194-196)], although Assistant Attorney General Lynch advanced the same fraud that the December 21, 2016 decision had not preserved it [R.532], Judge Hartman ignored this in her June 26, 2017 decision [R.76], which substituted her own *sua sponte* grounds for depriving appellants summary judgment on that sub-cause. Assistant Attorney General Kerwin then rested on Judge Hartman's June 26, 2017 decision in cross-moving for summary judgment to respondents on the fourth sub-cause. Judge Hartman again ignored this – now by her November 28, 2017 decision, which in awarding summary judgment to respondents on the fourth sub-cause, put forward new *sua sponte* grounds for doing so [R.37-40].

As for Mr. Brodie's fleeting claim that the statute establishing the commission was "correctly implemented"—which is what appellants' seventh and eighth causes of action challenge – so devastating are their allegations of unlawful implementation that respondents could fashion no demonstration whatever. This was why the December 21, 2016 decision [R.531]dismissed those causes of action on Judge Hartman's own *sua sponte* ground – a single sentence that the Commission on Legislative, Judicial and Executive Compensation was "not a party to this action", unsupported by any law, or a single allegation of those two causes of action.

VI.

"Let me now, having made the substantive point that I wanted to make, the substantive points that we wanted to make in the argument, let me address the points that plaintiff made regarding disqualification. Justice Hartman properly denied plaintiffs' motion for disqualification. Judiciary Law Section 14 lists various grounds for disqualifying judges, one of those is interest, but the rule of necessity overrode interest in this case. Under *Maron against Silver* which is the Court of Appeals case that held the freeze on judicial salaries to be unconstitutional, under that case, if there is no other body that can decide a matter, then the judge has to take it on herself to do it. And that's what Justice Hartman did."

This is utter fraud. Appellants made two motions for Judge Hartman's disqualification. The first was by their February 15, 2017 order to show cause [R.536-612], denied by her May 5, 2018 decision and order [R.49-51]. The fraudulence of that decision was detailed by their June 16, 2017 order to show cause for reargument [R.997-1068], constituting their second motion for Judge Hartman's disqualification, with further proof from subsequent events furnished by their August 25, 2018 reply papers [R.1276-1334]. This was denied by Judge Hartman's November 28, 2017 decision and judgment [R.31-41] – whose fraudulence is the subject of this appeal, chronicled by the brief.

The brief identifies that the "rule of necessity", which the November 28, 2017 decision cites [R.32-33], in passing, in connection with *Maron v. Silver*, has no applicability to this case, for three separate reasons. Among these, because Judge Hartman's May 5, 2017 decision purported she had NO financial interest [R.50], thereby making it inapplicable to the HUGE financial interest she shares with other judges. Tellingly, in arguing before the panel, Mr. Brodie made no claim that

Judge Hartman, in fact, invoked "rule of necessity"—and her November 28, 2017 decision, the only decision referring to it, shows she did not.

Finally, as pointed out by appellants' reply brief (at p. 5), Mr. Brodie's respondents' brief (at p. 58), in its first paragraph under the title heading "Justice Hartman Properly Denied Plaintiff's Disqualification Motion", concealed that Judiciary Law §14 was even at issue in this case, outrightly lying that no "statutory ground for recusal exists", notwithstanding "interest" is a "statutory ground", proscribed by Judiciary Law §14.

VII.

"The other ground advanced by plaintiff is actual bias. But there is no evidence of actual bias. Plaintiff says Justice Hartman was biased because she ruled against them and those rulings were wrong. But, well, for one thing, we think, the respondents think, that those rulings were right and, secondly, this court has held that bias will not be inferred, will not be inferred, from adverse decisions. That's the *Knight* case, cited in our brief, at page 59. When a litigant alleges subjective bias, without evidence, the presiding judge is the sole arbiter, the sole arbiter of recusal. That's the *Moreno* case, cited on page 2 of our opposition memorandum in reargument. The decision not to recuse is a matter of conscience for the judge. Here, Justice Hartman was satisfied that she could serve impartially and once she was satisfied that she could serve impartially, she had an obligation not to recuse herself and therefore she acted wholly correctly."

This is utter fraud – repeating Mr. Brodie's lies from his respondents' brief, whose cited page 59 had stated:

> "…plaintiff has tendered no 'demonstrable proof of bias,' *see Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep't 2005), beyond Justice Hartman's rulings (*See, e.g.*, R1009.) Bias 'will not be inferred' from adverse decisions. *Knight v. N.Y. State & Local Ret. Sys.*, 266 A.D.2d 774, 776 (3d Dep't 1999); *accord S.L. Green Props., Inc. v. Schaoul*, 155 A.D.2d 331 (1st Dep't 1989). '[T]he fact that a judge issues a ruling that is not to a party's liking does not demonstrate bias or misconduct.' *Gonzalez v. L'Oreal USA, Inc.*, 92 A.D.3d 1158, 1160 (3d Dep't), *lv. dismissed*, 19 N.Y.3d 874 (2012)."

Appellants' response, by their reply brief (at pp. 3-4) rebutted this, decisively, stating:

> "This is utter fraud. The standard for disqualification for actual bias is, as Mr. Brodie's cited cases reflect, 'demonstrable proof of bias' – and appellants' 70-page brief furnished same, in abundance, with respect to Judge Hartman's 'rulings' – as to which nothing need be 'inferred' about her 'adverse decisions' because it is spelled out, with virtual line-by-line precision, including by 'legal autopsy'/analyses that appellants furnished Judge Hartman in support of their motions for her disqualification for demonstrated actual bias [R.554-577; R.1002-1008 (at ¶¶5-8, 10-

> 11); R.1293-1319, R.9-30], each establishing her decisions to be objectionable NOT because they are 'adverse' and 'not to [appellants'] liking', but because they are 'so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – each one 'a criminal fraud', 'falsifying the record in <u>all</u> material respects to grant defendants relief to which they were <u>not</u> entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*' (underlining in the original) [R.554; R.1293; R.9-10].
>
> As highlighted by appellants' brief, the accuracy of their 'legal autopsy'/analyses was uncontested below, both by Assistant Attorneys General Kerwin and Lynch and by Judge Hartman – and Mr. Brodie's brief does not deny this or even attempt to belatedly show any inaccuracy in a single one, instead concealing all of them, while citing to cases which, in fact, all support appellants' entitlement to Judge Hartman's disqualification for demonstrated <u>actual</u> bias, as to which appellants' showing of PROOF is uncontested and incontestable." (underlining and italics in the original).

As for Mr. Brodie's referred-to "page 2 of our opposition memorandum in reargument", this was his September 24, 2018 memorandum in opposition to appellants' September 12, 2018 order to show cause to disqualify this Court for the actual bias demonstrated by the August 7, 2018 decision and order on motion of the motion panel. Its pertinent text read:

> "Absent a ground for legal disqualification under Judiciary Law §14, the judge presiding over a matter 'is the sole arbiter of recusal.' *People v. Moreno*, 70 N.Y.2d 403, 405 (1987). The decision to recuse, or to continue presiding over a case is a 'matter of conscience' for the Court…."

This is deliberately misleading, by its implication – which Mr. Brodie also intended at the oral argument – that where no Judiciary Law §14 disqualification exists, the judge is the first and last word as to whether he should recuse. This is utterly false – and so-reflected by *People v. Moreno* and by appellants' own memoranda of law that are part of the record on appeal [R.516; R.974], citing *People v. Moreno* in a sentence reading:

> "Although recusal on non-statutory grounds is 'within the personal conscience of the court', a judge's denial of a motion to recuse will be reversed where the alleged 'bias or prejudice or unworthy motive' is 'shown to affect the result', *People v. Arthur Brown*, 141 AD2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 NY2d 403, 405 (1987)…"

Likewise misleading was Mr. Brodie's inference at the oral argument that Judge Hartman had not recused herself because she was "satisfied that she could serve impartially". There is no evidence in the record that Judge Hartman was "satisfied that she could serve impartially" – and she made no assertion to that effect in any of her decisions. Nor did the record before her furnish evidence on which she could found a determination of fairness and impartiality.

VIII.

"And I would like to finally address the multiple allegations of fraud that have cast a pall over this litigation. Plaintiff complains essentially about instances where the attorney general disagreed with her legal position, but did not repeat the exact words of her arguments. That's not fraud. It's the adversary system. The way the system works, as your Honors know, plaintiff makes her best arguments, we make our best arguments, the respondents, and then, after reviewing both sides' arguments and the relevant parts of the record, the court makes a decision. Nothing is concealed because the court has the full record and it has both sides' briefs."

This is utterly fraudulent. Appellants have not made "multiple allegations of fraud", nor have they complained about "instance where the attorney general…did not repeat the exact words of [their] arguments". Rather, by their reply brief and motion papers, appellants meticulously documented Mr. Brodie's flagrant falsification and material omission of fact and law, violating express prohibitions of New York's Rules of Professional Responsibility, 22 NYCRR §130-1.1 *et seq.*, Judiciary Law §487, and penal law provisions. The way "the adversary system" is supposed to "work" is by the court making a responsive ruling, with findings of facts and conclusions of law, which was not done by either the appeals panel or the prior motion panel – just as, likewise, it had not been done by Judge Hartman who gave a "green light" to the litigation fraud of Assistant Attorneys General Kerwin and Lynch, meticulously documented in the record before her.

IX.

"Here on full review of both sides' submissions should lead to affirmance for the reasons stated in respondents' brief. And I will rest on that brief for the remainder of the arguments."

This, too, is utterly fraudulent. No "full review" could "lead to affirmance for the reasons stated in respondents' brief", as the respondents' brief is – as demonstrated by appellants' reply brief and further supplemented by appellants' October 23, 2018 motion – "from beginning to end, a 'fraud on the court'". That Mr. Brodie rests on that brief, notwithstanding, bespeaks his confidence that he is not before a fair and impartial tribunal that will enforce the most rudimentary standards of conduct – and that he can continue to get away with every perversion of fact and law.