

Center for Judicial Accountability, Inc. (CJA)

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, May 25, 2021 8:29 PM
To: 'LavineC@nyassembly.gov'; 'MontesanoM@nyassembly.gov'; 'abinantit@nyassembly.gov'; 'braunsteine@nyassembly.gov'; 'brownk@nyassembly.gov'; 'byrnesm@nyassembly.gov'; 'cruz@nyassembly.gov'; 'joynerr@nyassembly.gov'; 'mcmahonk@nyassembly.gov'; 'mitavnesm@nyassembly.gov'; 'norrism@nyassembly.gov'; 'quartd@nyassembly.gov'; 'raj कुमारj@nyassembly.gov'; 'SeawrightR@nyassembly.gov'; 'SteckP@nyassembly.gov'; 'tannousism@nyassembly.gov'; 'WalkerL@nyassembly.gov'; 'wallacem@nyassembly.gov'; 'walshm@nyassembly.gov'; 'Weprin@nyassembly.gov'; 'ZebrowskiK@nyassembly.gov'; 'mushettd@nyassembly.gov'
Cc: 'lindarend@nyassembly.gov'; 'mcquairi@nyassembly.gov'; 'conroyk@nyassembly.gov'; 'soldj@nyassembly.gov'; 'fischerd@nyassembly.gov'; 'watterss@nyassembly.gov'; 'martinezga@nyassembly.gov'; 'enesr@nyassembly.gov'; 'gilkeyj@nyassembly.gov'; 'popiolj@nyassembly.gov'; 'arnonej@nyassembly.gov'; 'ad51@nyassembly.gov'; 'bolognp@nyassembly.gov'; 'slabeg@nyassembly.gov'; 'heislere@nyassembly.gov'; 'lanea@nyassembly.gov'; 'dbajath@nyassembly.gov'; 'mcintoshgreenn@nyassembly.gov'; 'torreys@nyassembly.gov'; 'agostinos@nyassembly.gov'; 'bresnane@nyassembly.gov'; 'NY.Assembly.Investigation@davispolk.com'; 'greg.andres@davispolk.com'; 'martine.beamon@davispolk.com'; 'angela.burgess@davispolk.com'; 'uzo.asonye@davispolk.com'
Subject: Emergency Action & Oversight Required: The Assembly's taxpayer-paid counsel, Davis Polk, is in breach of its contract & its publicly-made promises to safeguard vs conflicts of interest in investigating whether Gov. Cuomo committed impeachable acts
Attachments: 3-18-20-ltr-to-gov.pdf; 8-21-13-ltr-to-gov.pdf; 4-7-21-email-to-davis-polk-1.pdf

TO: Assembly Judiciary Committee Chair Lavine, Ranking Member Montesano, ALL 19 other Assembly Judiciary Committee Members, & Assembly Administrative Counsel Mushett

Since April 7th, your counsel Davis Polk & Wardwell LLP – paid for by New York's taxpayers – has had the rock-solid EVIDENCE to answer the question it was retained to investigate and answer: "whether evidence exists to support a finding that the Governor has engaged in conduct which merits impeachment under the New York State Constitution and the laws of the State of New York". April 7th was also the date that Davis Polk knew it had a multitude of conflicts of interest, arising from this EVIDENCE.

The particulars are set forth by my below e-mail to Davis Polk, sent shortly before 10 am this morning and requesting its response by 4 pm this afternoon to the various questions asked. The last of these questions was whether it did not agree that the e-mail – and Davis Polk's answers to its questions – should be on the agenda of the Committee's meeting with Davis Polk at 4 pm tomorrow. I received no response from Davis Polk.

On behalf of the taxpaying public, I request your emergency action and oversight by placing the e-mail as #1 on the agenda of the Committee's meeting – and requiring Davis Polk's response to each of its questions.

As for myself, I am available to answer your questions at any time and under oath – and would be available to do so at tomorrow's meeting, including in executive session.

In view of Davis Polk's public promises at the Committee's March 23rd meeting as to how it would be safeguarding against conflicts of interest, the public is entitled to know what a flagrant deceit this turned out to be – and to your

forceful action, on its behalf, beginning with your discharging Davis Polk, *for cause*, and disavowing any payment for services it rendered after April 7th.

For the convenience of all, a webpage will be created on CJA's website for this and other impeachment issues, to be accessible from CJA's webpage for the Assembly Judiciary Committee in the 2021 legislative session, here: <http://www.judgewatch.org/web-pages/searching-nys/leg-committees-commissions/judiciary/assembly/2021-assembly-judiciary.htm>.

Thank you.

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

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, May 25, 2021 9:52 AM

To: 'NY.Assembly.Investigation@davispolk.com' <NY.Assembly.Investigation@davispolk.com>; 'greg.andres@davispolk.com' <greg.andres@davispolk.com>; 'martine.beamon@davispolk.com' <martine.beamon@davispolk.com>; 'angela.burgess@davispolk.com' <angela.burgess@davispolk.com>

Cc: 'uzo.asonye@davispolk.com' <uzo.asonye@davispolk.com>

Subject: Tomorrow's Assembly Judiciary Committee meeting -- & your duties under your contract with the Assembly, owed to & paid by, the People of the State of New York

TO: DAVIS POLK & WARDWELL ASSEMBLY JUDICIARY COMMITTEE IMPEACHMENT INVESTIGATIVE TEAM

ATT: Greg Andres, ESQ., Angela Burgess, ESQ., Martine Beamon, ESQ.

I have received no response from you to my below April 29th e-mail – and assume it is because you did not respond. Is this illustrative of how you have treated other witnesses and “women who have come forward” to “speak their truth”?

On May 13th, the Assembly belatedly responded to my March 22nd FOIL request about its March 17th press announcement “Speaker Heastie and Judiciary Committee Chair Lavine Announce the Hiring of Davis Polk and Wardwell LLP to Lead Impeachment Investigation of Governor's Conduct” – sending me the Assembly's contract that Ms. Burgess signed on April 20th and that Assembly Administrative Counsel David Mushett signed on April 21st, retaining Davis Polk & Wardwell, LLP at rate of \$600 per hour for partners and associates and \$250 per hour for paralegals – for a maximum of \$250,000. The Assembly's FOIL response was not complete – and I filed a May 14th FOIL appeal to obtain additional records, as well as a further FOIL request yesterday.

Section O, subdivision 1 of the contract states:

“Contractor hereby covenants and represents that there are no actual or potential conflict of interest that could prevent the firm's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement and any other Contract or employment representation, and Contractor shall have the duty to notify the Assembly promptly of any actual conflict of interest in all that it does to serve the purpose of this Agreement and its intent.”

Wasn't your assertion that you had “no actual or potential conflict of interest that could prevent the firm's satisfactory or ethical performance of duties required to be performed” false?

On April 7th, I sent you the above-attached e-mail entitled "Voice mail left on your hotline, 212-450-3600, on April 5th, pertaining to impeachable acts by Gov. Cuomo, starting with insertion of the immunity provision for nursing homes/hospitals in the 2020 budget". Shortly thereafter, Mr. Andres called me back, with – as I believe – Ms. Burgess on the line. I then memorialized the content of the conversation by a second April 7th e-mail, which is below. Didn't you, at that time, recognize that you had profound and disabling conflicts of interest? Isn't that the reason Mr. Andres rather abruptly ended the phone conversation, failed to resume it upon review of the EVIDENCE my April 7th e-mail furnished, and then failed to respond to my April 29th e-mail about it? How is this consistent with the duties for which you were retained, paid for by the People of the State of New York?

Those duties – and your ability and willingness to fulfil them – were the subject of the Assembly Judiciary Committee's March 23, 2021 meeting. You were to assist the Committee in what Chair Lavine described as the task assigned to it by Assembly Speaker Heastie, *to wit*, "determining whether evidence exists to support a finding that the Governor has engaged in conduct which merits impeachment under the New York State Constitution and under the laws of the State of New York", with a direction "to examine all credible allegations, including, but not limited to – and here the key is included but not limited to" (at 2-3 mins). In Ranking Member Montesano's words, stated twice, "everything is on the table" (at 7 mins). The three of you participated at that 1-1/2 hour meeting – presumably billing nearly \$3,000 for your time.

My April 7th post-phone call e-mail was entitled "The mountain of open-&-shut, prima facie EVIDENCE of Gov. Cuomo's impeachable, criminal conduct, laid out by CJA's June 4, 2020 grand jury/public corruption complaint to Albany DA Soares & March 5, 2021 conflict-of-interest/ethics complaint to JCOPE" and:

- (1) furnished you links for the EVIDENTIARY webpages for these two fully-documented complaints: here & here;
- (2) furnished you a link to CJA's chronological webpage, spanning from 2011, from which the mountain of EVIDENCE substantiating the June 4, 2020 grand jury/public corruption complaint to D.A. Soares and the March 5, 2021 conflict-of-interest/ethics complaint to JCOPE and the Legislative Ethics Commission was additionally accessible; and
- (3) attached the above March 18, 2020 letter to Governor Cuomo, with the original March 18, 2020 e-mail that had transmitted it to him and legislative leaders, including Speaker Heastie, directly beneath the message of the April 7th e-mail so that you could verify, **immediately**, what I explained to you by phone as to the legislators' collusion in the unconstitutionality and fraud that enabled the immunity provision for hospitals and nursing homes to be inserted into the FY2020-21 budget.

Is there anything in the April 7th e-mail that you determined to be not TRUE – and that could not be EASILY VERIFIED by you? Indeed, with respect to the immunity provision inserted into the FY2020-21 budget, being investigated by the U.S. Attorney for the Eastern District of New York – about which legislators have blamed the Governor, as if they bear NO culpability – did you forward my April 7th e-mail to the U.S. Attorney? Wasn't this what you were required to do, consistent with Mr. Andres' assurances at the March 23rd meeting (at 47-48 mins) that you would "coordinate to the extent possible with the relevant investigators" engaged in "parallel investigations". And if you did not do so, is there any explanation other than your conflicts of interest?

Prior to your April 20th signing of the contract, did you furnish Chair Lavine, Ranking Member Montesano, and the Assembly Judiciary Committee's 19 other members with my clearly game-changing April 7th e-mail? And what about the Assembly's lawyers – as, for instance, Administrative Counsel Mushett? Did you advise them that examination of the EVIDENCE provided by the April 7th e-mail revealed a rock-solid, open-and-shut case for Governor Cuomo's impeachment and conviction – AND for his criminal indictment and conviction. And did you discuss with them **the significance of this to the contract**, namely, that you now had answered the question "whether evidence exists to support a finding that the Governor has engaged in conduct which merits impeachment under the Constitution and

under the laws of the State of New York". In other words, the job was done – and there was no need to spend further time and taxpayer money in investigating the Governor's other potentially impeachable conduct. And, if you did not have this discussion with the Committee members and the Assembly's lawyers, is it because of your \$250,000 financial interest in the contract – which was an "actual conflict of interest" that the contract's above-quoted section O, subdivision 1 required you to notify the Assembly of "promptly".

And did you discuss with the Committee's members and Assembly lawyers the multitude of conflicts of interest that Davis Polk and its lawyers have because of the HUGE reputational and criminal impact of the EVIDENCE furnished by the April 7th e-mail on a vast "who's who" of lawyers and others, in government and out, with whom the firm and its lawyers have close and long-standing personal and professional relationships.

Then, too, there is the obvious "catch 22" situation that the April 7th e-mail had created for both you and the Assembly. Did you discuss with the Committee members and Assembly's lawyers the dilemma – that the duties for which you have been retained required you to report to the Committee on the EVIDENCE of Governor Cuomo's impeachable, criminal conduct that the April 7th e-mail furnished you, but doing so would require you to expose that Assembly Speaker Heastie and the Assembly's 149 members have been his accomplices and co-conspirators – including in the pocketing of fraudulent pay raises. Likewise, Temporary Senate President Stewart-Cousins, the Senate's 62 other members, and the Court of Appeals judges who would constitute the court for the trial of an impeachment and the ENTIRE gubernatorial line of succession, beginning with Lieutenant Governor Hochul.

Faced with my April 7th e-mail, did you activate the firm's conflict-of-interest protocol which you had identified at the March 23rd meeting, most specifically by this exchange:

[audio, at 35 - 40 minutes]

Committee Member Cruz, ESQ.:

So, when you talked initially... about conflicts of interest. I have to be honest, I am a lawyer myself and it felt like the biggest lawyer answer. And so I would love a little bit of an expansion, for the folks who are not lawyers who are possibly listening in and for the press who I am sure is crazy tweeting about it right now, in explaining not only how you made sure before that there were no conflicts of interest, and, as we are moving forward with the investigation there is a possibility that a new allegation might come out, a new witness might come out, a new issue might come out where there may be a conflict of interest with an issue within your firm. How is the firm prepared or what steps are set up in place to deal with a new conflict of interest that could arise?...

Angela Burgess, ESQ.:

With respect to the conflict of interest process, as you can imagine, as any large firm would have, we have a conflict system that information is entered into that searches basically all matters of the firm, both past and present, with respect to identifying any conflicts that could arise. And so, we did that here, on an expedited basis, when we were asked about potentially taking on this role. We also have a management committee and a general counsel group that also reviewed the information and we looked at our contacts and conflicts and determined that there was none. I hope that helps

provide a little bit more information, but that's the process that we go through for any matter.

Committee Member Cruz, ESQ.: And what are you going to do. I'm sorry, my time has expired, but I didn't hear an answer. What happens now if, through the process, a conflict arises, what are the steps that the firm is going to take to safeguard the investigation?

Angela Burgess, ESQ.: Yes. Thank you for that. We will have a process in place we do, ordinarily, if there is a different, something should come up where we would think that there is another party, or person or entity that would be relevant in our investigation, we would search our conflicts data base again and go through effectively the same process that we did as we commenced.

Committee Member Cruz, ESQ.: Will the Committee be informed, right away if that should arise because I would assume that we, as a committee, would want to have input on what steps you take.

Angela Burgess, ESQ.: Of course, we would absolutely do that and certainly notify you in the event there was anything at all that was creating a conflict.

What did your management committee and general counsel group direct you to do – or had you not consulted them?

Please let me hear from you by no later than 4 p.m. today. As you know, the Assembly Judiciary Committee will be meeting with you tomorrow at 4 p.m. Would you not agree that this e-mail should be on its agenda, with your responses to my above questions. I will wait to hear from you until 4 p.m. today before sending this e-mail to the 21 members of the Assembly Judiciary Committee and Assembly Administrative Counsel Mushett.

Thank you.

Elena Sassower, Director
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, April 29, 2021 11:14 AM
To: 'NY.Assembly.Investigation@davispolk.com' <NY.Assembly.Investigation@davispolk.com>; 'greg.andres@davispolk.com' <greg.andres@davispolk.com>; 'martine.beamon@davispolk.com' <martine.beamon@davispolk.com>; 'angela.burgess@davispolk.com' <angela.burgess@davispolk.com>
Cc: 'uzo.asonye@davispolk.com' <uzo.asonye@davispolk.com>

Subject: STATUS: Your investigation of CJA's April 7, 2021 e-mail, furnishing open-&-shut, prima facie EVIDENCE of Gov. Cuomo's impeachable, criminal conduct

TO: DAVIS POLK WARDWELL ASSEMBLY JUDICIARY COMMITTEE IMPEACHMENT INVESTIGATIVE TEAM

I received no follow-up from you to my below April 7, 2021 e-mail, with the above two attachments. Is this correct?

Did you believe it did not furnish open-&-shut, *prima facie* EVIDENCE of Governor Cuomo's impeachable, criminal conduct? What investigation did you undertake? And did you apprise all 21 Assembly Judiciary Committee members of it – and supply them with such findings of fact and conclusions of law as you made with respect to the Governor – and those collusive with him, such as themselves?

Please advise as, until now, I have kept my April 7, 2021 e-mail and prior contacts with you completely confidential.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Wednesday, April 7, 2021 6:13 PM

To: 'greg.andres@davispolk.com' <greg.andres@davispolk.com>

Cc: 'NY.Assembly.Investigation@davispolk.com' <NY.Assembly.Investigation@davispolk.com>;

'martine.beamon@davispolk.com' <martine.beamon@davispolk.com>; 'angela.burgess@davispolk.com' <angela.burgess@davispolk.com>

Subject: The mountain of open-&-shut, *prima facie* EVIDENCE of Gov. Cuomo's impeachable, criminal conduct, laid out by CJA's June 4, 2020 grand jury/public corruption complaint to Albany DA Soares & March 5, 2021 conflict-of-interest/ethics complaint to JCOPE

TO: **Greg Andres, Esq.**

Thank you for your prompt call, in response to my e-mail sent minutes earlier.

As discussed, the immunity provision for nursing homes and hospitals, inserted into the FY 2020-21 budget, was accomplished by subverting the New York State Constitution and a succession of safeguarding statutory and legislative rule provisions – which is what Governor Cuomo has been wilfully and deliberately doing, for years, in concert with Senate Majority Leader Stewart Cousins and Assembly Speaker Heastie, the Legislature's 211 other members, Attorney General James, Comptroller DiNapoli, and the Judiciary's top judges, including those of the NY Court of Appeals – all of whom have been rewarding themselves for their corrupting of state governance with statutorily-violative, fraudulent, and unconstitutional pay raises -- the product of "force of law" commission/committee reports that are "false instruments". This conduct is not just impeachable – which, of course it is – but criminal – and the best overview of the situation, as it relates to the FY2020-2021 budget and my March 18, 2020 letter to Governor Cuomo (to whose significance, vis-à-vis the immunity provision, I alerted you) – is set forth in the FULLY-DOCUMENTED June 4, 2020 grand jury/public corruption complaint I filed with Albany County District Attorney Soares – which, on March 5, 2021, at his direction/advice, I filed with the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC), updated to encompass the FY2021-2022 budget and the newbie state legislators elected in November 2020. The open-and-shut, *prima facie* EVIDENCE substantiating the March 5, 2021 JCOPE/LEC complaint, including the VIDEO of my testimony at the Legislature's February 10, 2021 "public protection" budget hearing before Assembly Judiciary Committee Chair Lavine AND the VIDEO of my February 16, 2021 budget testimony before my own state senator, Senate Majority Leader Stewart-Cousins, is accessible from CJA's EVIDENTIARY webpage for the March 5, 2021 complaint, here: <http://www.judgewatch.org/web-pages/searching-nys/jcope/3-5-21-complaint-to-jcope-lec.htm>.

Suffice to add – and I tried to quickly explain this to you – the March 5, 2021 JCOPE/LEC complaint – like the June 4, 2020 grand jury/public complaint to D.A. Soars on which it principally relies -- EVIDENTIARILY establishes that the

state Senate and Assembly members clamoring for Cuomo's resignation and/or impeachment – and the senators and Court of Appeals judges who would constitute a court of impeachment (NYS Constitution, Article VI, §24) -- must themselves resign and/or be impeached – and that everyone in a line of gubernatorial succession, beginning with Lieutenant Governor Hochul, must be criminally prosecuted – and will be convicted.

Above attached is my March 18, 2020 letter to Governor Cuomo – and below is my e-mail transmitting it to him and to the Legislature's 15-stipend-receiving leaders, starting with Senate Majority Leader Stewart-Cousins and Assembly Speaker Heastie, entitled "GOOD NEWS DURING THE CORONOVIRUS EMERGENCY: You Can Chuck 6 of the 7 'Article VII BILLS' Because They are Unconstitutional. Here's why...". The substantiating EVIDENTIARY webpage for it is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm>. For your convenience, my August 21, 2013 letter to Governor Cuomo entitled "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for 'Government Working' & 'Working for the People'", enclosed with the March 18, 2020 letter, is also above-attached.

I am available to assist you, to the max, with the mountain of open-&-shut, *prima facie* EVIDENCE of impeachable, criminal conduct you now have – whose chronological webpage, spanning from 2011, is here: <http://www.judgewatch.org/web-pages/judicial-compensation/menu-ny-judicial-compensation.htm>.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: elena@judgewatch.org <elena@judgewatch.org>

Sent: Wednesday, March 18, 2020 11:52 AM

To: records.access@exec.ny.gov

Cc: David.Poleto@budgetny.gov; perez@lbdc.state.ny.us; scousins@nysenate.gov; grelick@nysenate.gov; speaker@nyassembly.gov; vargash@nyassembly.gov; flanagan@nysenate.gov; cmills@nysenate.gov; BarclaW@nyassembly.gov; herricks@nyassembly.gov; engelk@nyassembly.gov; skypej@nyassembly.gov; gianaris@nysenate.gov; weintrau@nysenate.gov; griffo@nysenate.gov; kinderma@nysenate.gov; PeoplesC@nyassembly.gov; haltonl@nyassembly.gov; aubryJ@nyassembly.gov; hernandezd@nyassembly.gov; goodella@nyassembly.gov; lkrueger@nysenate.gov; usher@nysenate.gov; seward@nysenate.gov; davie@nysenate.gov; [WeinstH@nyassembly.gov](mailto>WeinstH@nyassembly.gov); wamchair@nyassembly.gov; ancowitzr@nyassembly.gov; beavers@nyassembly.gov; peakec@nyassembly.gov; rae@nyassembly.gov; derocht@nyassembly.gov; lentolj@nyassembly.gov; morinelloa@nyassembly.gov; webere@nyassembly.gov

Subject: ...Executive Budget...GOOD NEWS DURING THE CORONOVIRUS EMERGENCY: You Can Chuck 6 of the 7 "Article VII BILLS" Because They are Unconstitutional. Here's why....

TO: Governor Andrew Cuomo, Esq.
Budget Director Robert Mujica, Esq.
Legislative Bill Drafting Commission
15 Stipend-Benefitting Legislative Leaders
Senate Majority Leader Andrea Stewart-Cousins
Assembly Speaker Carl Heastie
Senate Minority Leader John Flanagan, Esq.
Assembly Minority Leader William Barclay, Esq.

Deputy Senate Majority Leader Michael Gianaris, Esq.
Deputy Senate Minority Leader Joseph Griffo
Assembly Majority Leader Crystal Peoples-Stokes
Assembly Speaker *Pro Tempore* Jeffrion Aubry
Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq.
Senate Finance Committee Chair Liz Krueger
Senate Finance Committee Ranking Member James Seward
Assembly Ways and Means Committee Chair Helene Weinstein, Esq.
Assembly Ways and Means Ranking Member Edward Ra, Esq.
Assembly Codes Committee Chair Joseph Lentol, Esq.
Assembly Codes Committee Ranking Member Angelo Morinello, Esq.

Attached is my above-entitled letter of today's date to Governor Cuomo, the original of which will be mailed to him. All others are indicated recipients, for the reasons stated in the last paragraph (at p. 13).

Due to a catastrophic computer breakdown, on this end, I am presently unable to post the letter on CJA's website, www.judgewatch.org and to update the site. The webpage for the letter – which had been prepared two days ago, before the breakdown – is here – reflecting the letter's then March 16, 2020 date: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-16-20-ltr-to-gov.htm>. From the webpage you can access the letter's referred to-documentary proof – and its sole enclosure: my August 21, 2013 letter to the Governor, entitled "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for 'Government Working' & 'Working for the People'", to which I received no response.

Thank you.

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