

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, January 22, 2020 5:52 PM
To: dick.tofel@propublica.org
Subject: **CLARIFICATION REQUESTED: Who are ProPublica's "editors" who did "not see" "a story for us" -- & was there any discussion of conflicts of interest impacting on judgment?**
Attachments: [8-21-19-email-gotham-gaz-city-limits.pdf](#);
[9-4-19-email-gotham-gazette-city-limits.pdf](#);
[9-6-19-email-propublica.pdf](#);
[8-21-19-nylj-ltr.pdf](#);
[9-3-19-foil-public-campaign-finance.pdf](#);
[12-3-19-handout-fairmediacouncil.pdf](#)

TO: Richard Tofel, President/ProPublica

I am at a loss to understand your e-mail – and request clarification.

Who are the unnamed ProPublica “editors” who you state did “not see” “a story for us”? Are they the topmost editors whose names and contact info appear on the ProPublica website: <https://www.propublica.org/staff/> -- Editor-in-Chief Stephen Engelberg, Managing Editor Robin Fields, and the three Deputy Managing Editors: Scott Klein, Charles Ornstein; and Eric Umansky? Or are they the roughly dozen-and-a-half other editors listed? Consistent with ProPublica’s posted Code of Ethics: <https://www.propublica.org/code-of-ethics/>, did any of the “editors” – or you – disclose and discuss conflicts of interest, impairing and impacting on judgment?

Also, did you give the “editors” ALL the “materials” I furnished you on December 3rd – none more important and revealing of conflicts of interest than my November 27, 2019 e-mail “THANKSGIVING THANKS for the Fair Media Council, its Dec 3, 2019 Conference – & for opportunities for evidence-based dialogue, scholarship – & solutions essential to our democracy”.

As you do not purport to have given the “editors” my yesterday’s e-mail to you – and I believe it will assist them in reassessing the situation and ProPublica’s civic and ethical obligations, I ask that you forward it to them. Indeed, is it possible that you yourself did not read my yesterday’s e-mail to the end?

Suffice to say that all the questions asked by my e-mail for purposes of prompting “evidence-based dialogue” – none of which you answered – will guide your “editors” to the only answers possible.

Please advise – as otherwise I will have no choice but to contact the “editors” directly.

Thank you.

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

914-421-1200

From: Richard Tofel <Dick.Tofel@propublica.org>

Sent: Wednesday, January 22, 2020 9:37 AM

To: Center for Judicial Accountability, Inc. (CJA) elena@judgewatch.org

Subject: RE: FOLLOW-UP: Dec 3, 2019 Fair Media Council conference "Real & Powerful" -- & investigative journalism consistent with ProPublica's mission "to expose abuses of power and betrayals of the public trust...to hold power to account"

Dear Ms. Sassower, Thanks for this. What I said in December was that I would take your materials to our editors, and that they would review them to see if they saw a story for us.

I did, they did, and unfortunately they did not see such a story.

I know you disagree about this.

Regards, Dick Tofel

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

Sent: Tuesday, January 21, 2020 5:05 PM

To: 'dick.tofel@propublica.org' <dick.tofel@propublica.org>

Subject: FOLLOW-UP: Dec 3, 2019 Fair Media Council conference "Real & Powerful" -- & investigative journalism consistent with ProPublica's mission "to expose abuses of power and betrayals of the public trust...to hold power to account"

TO: Richard Tofel, President/ProPublica

A belated happy new year on this historic day when, in addition to the opening of President Trump's impeachment trial in the U.S. Senate, Governor Cuomo has released his \$178 billion New York state budget for state fiscal year 2020-21. Both events are being exhaustively covered by the press – but, as to the state budget, without mention of any challenge to its constitutionality and lawfulness, let alone that such is before New York's highest state court – the New York Court of Appeals.

I would like to follow up on the question I publicly asked you, last year, when you were a keynote speaker at the opening session of the Fair Media Council's December 3, 2019 conference "Real & Powerful".

That question – whether ProPublica would be willing to investigate evidence of "fake news" and media election-rigging – was prompted by your public defense of media credibility, in which you compared poll responses about the media and Congress. You stated that just as polls show that the public has a low opinion of Congress, yet voters overwhelmingly re-elect their own members of Congress, so, too, the public's general distrust of media, reflected in polls, is counterbalanced by what the polls further reflect, namely, respondents' trust in the particular media on which they themselves rely.

To this I answered – based on my decades of direct, first-hand experience with the media – that the re-election of members of Congress and other public officers is rigged by the media, including by not informing voters of their records in office. Surely, too, poll respondents may be presumed to have little, if any, direct knowledge about how the specific media on which they rely actually operate. This was the context of my question as to whether ProPublica would be willing to investigate evidence on the subject.

I do not recall your answer to my question – other than that it was something of a brush off. I went up to you afterwards, furnishing you with a slim folder containing a hard copy of my below November 27, 2019 e-mail to Fair Media Council Executive Director Jaci Clement, entitled “THANKSGIVING THANKS for the Fair Media Council, its Dec 3, 2019 Conference – & for opportunities for evidence-based dialogue, scholarship – & solutions essential to our democracy”, with its above five attachments – supplemented by one additional item: the above attached hand-out I was distributing at the conference – this being my letter to the editor “*A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA*”, published in the August 21, 2019 New York Law Journal, about the citizen-taxpayer action, *CJA v. Cuomo* – at the New York Court of Appeals – which I had annotated by the question:

“Why has New York’s press not reported on – let alone investigated – this major case, whose record is a *readily-verifiable* ‘paper trail’ of corruption and larceny of taxpayer monies for which the Governor, Attorney General, Comptroller, New York’s state Legislators, and top Judges must all be indicted. Check it out at www.judgewatch.org, accessible from the prominent center link ‘CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ & Unconstitutional ‘Three-Men-in-a-Room’ Governance’. I look forward to the benefit of your answer and can be reached at 914-421-1200 and *via* e-mail at elena@judgewatch.org.” (italics in the original).

It was to secure investigative reporting of this “major case” that I went to the Fair Media Council conference. Yet, the net result of my effort and \$500 expense has been ZERO, including from you. Why is that? Are you unwilling to engage in “evidence-based dialogue”? What was the outcome of your examination of the verified pleadings of the citizen-taxpayer action – and the record thereon? Do you not agree that they furnish the kind of open-and-shut, *prima facie* evidence of corruption and unconstitutionality by New York’s highest public officers – involving the entirety of the New York State budget and the pay raises it embeds – that any “real news”, honest media would have jumped to report – and investigate. And, if you agree, how do you explain the failure of New York media, large, small, statewide, regional, and local, to either report or investigate, spanning years?

And looking forward, what should happen in this 2020 election year when every incumbent New York state legislator is up for re-election? Do you agree that every day of continued media black-out of the citizen-taxpayer action fosters the notion that the incumbent legislators are discharging the duties of their office, are unbeatable, and thwarts primary and general election challengers from even entering the races, leading to noncompetitive and nominally-competitive elections and easy victories for the corruption-culpable incumbents. This will repeat what occurred in past election cycles when, among the nightmare of horrors, an election-rigging media enabled corruption-culpable state legislators to be overwhelmingly re-elected, along with the corruption-culpable governor, comptroller, and attorney general and collusive and self-interested incumbent and would-be district attorneys; or enabled corruption-culpable state legislators to be elected as judges, county executives, town supervisors, etc.;

or, as in 2018, enabled posturing attorney general candidates to freely deceive the public about their corruption-fighting commitments, both in the primary and general elections, with the victorious elected attorney general then following, lock-step, in the corruption of her predecessors – so-proven by what she has been doing, at the Court of Appeals, in the citizen-taxpayer action, throughout the past 10 months: <http://www.judgwatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-ct-of-appeals.htm>. In short, the public accountability that elections are supposed to provide for “draining the swamp” has again, and again, and again, been entirely subverted – with all the media-unreported governmental corruption continuing, unabated.

You may be sure that none of the prime legislative culprits are sweating over their 2020 re-election prospects – as, for instance:

- (1) Temporary Senate President/Majority Leader Andrea Stewart-Cousins – and Chair of the Senate Rules Committee;
- (2) Assembly Speaker Carl Heastie – and Chair of the Assembly Rules Committee;
- (3) Senate Minority Leader John Flanagan, ESQ. – and Ranking Member of the Senate Rules Committee;
- (4) Assembly Minority Leader William Barclay, ESQ. – and member of the Assembly Rules Committee;
- (5) Senate Finance Committee Chair Liz Krueger – and whose other relevant Senate committee memberships include Budget and Revenue; and Rules;
- (6) Assembly Ways and Means Committee Chair Helene Weinstein, ESQ. – and whose other relevant Assembly committee memberships include Rules;
- (7) Senate Judiciary Committee Chair Brad Hoylman, ESQ. – and whose other relevant Senate committee memberships include Finances; and Rules;
- (8) Assembly Judiciary Committee Chair Jeffrey Dinowitz, ESQ. – and whose other relevant Assembly committee memberships include Ways and Means; Rules; and Election Law.

Nor are other legislative culprits sweating that their Albany crimes will catch up to them as they make upward-mobility runs in 2020 for open congressional seats, as, for instance:

- (9) Assemblyman David Buchwald, ESQ. – Chair of the Legislature’s 10-member Commission on Government Administration, of which he is the only member; and whose relevant Assembly committee memberships include Judiciary; Governmental Operations; Corporations, Authorities and Commissions; Local Governments; and Election Law;
- (10) Assemblyman Chris Jacobs, ESQ. – Ranking Member of the Senate Committee on Investigations and Government Operations;
- (11) Assemblywoman Nicole Malliotakis – former New York City mayoral candidate in 2017, whose relevant Assembly memberships include Ways and Means; and Rules.

And further noteworthy – and bringing the number of legislators here enumerated to a “baker’s dozen” of New York’s 213 state legislators (5-plus%) – are:

- (12) Deputy Senate Majority Leader Michael Gianaris, ESQ. – and member of the Senate Rules Committee;
- (13) Assemblyman Phil Steck, ESQ. – whose relevant Assembly committee memberships include Judiciary; and Oversight, Analysis and Investigation; and who was the only legislator to testify before the 2016 Commission on Legislative, Judicial and Executive Compensation in favor of legislative pay raises.

Each of these thirteen legislators – nine of whom are lawyers, three with Harvard law degrees, eight of whom are within New York City limits – is fully knowledgeable of the citizen-taxpayer action, to which they are defendants, sued for corruption and constitutional violations. Where are the journalists in New York’s “media mecca”, or is it “news desert” – https://www.cjr.org/tow_center_reports/local-news-deserts.php – who will ask these legislators for their answers to the 110 numbered paragraphs of the September 2, 2016 verified complaint: <http://www.judgewidth.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/9-2-16-osc-verified-complaint.htm> and the 265 additional numbered paragraphs of the March 29, 2017 verified supplemental complaint: <http://www.judgewidth.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/3-29-17-osc.htm> – and to comment on what took place in Albany County Supreme Court, in the Appellate Division, Third Department, and at the New York Court of Appeals with respect to these 375 numbered paragraphs, constituting ten landmark causes of action: <http://www.judgewidth.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>.

Needless to say, the media cannot now investigate and report on the citizen-taxpayer action – including the responses of the legislative defendants to the verified pleadings and the course of the proceedings – without exposing what they have concealed, for years, both by their regular and election reporting and by their columns and editorials, including endorsements. Among the journalists and media, Ben Max, Executive Director of the Gotham Gazette, a panelist at the December 3, 2019 conference session “Behind the Coverage: Money, Power & Politics” – where I publicly raised the question as to why a major lawsuit that was all about “Money, Power, & Politics” could garner no coverage – a conversation I also had privately with him, furnishing him, *in hand*, with a folder whose contents were identical to that which I had furnished you. Another is Harry Siegel, a former Daily News editorial board members and now columnist there, a senior editor at The Daily Beast, and FAQ NYC podcast creator and co-host. He was also a panelist at that same “Behind the Coverage: Money, Power, & Politics” session – and I also spoke with him and furnished him with his own folder containing illustrative e-mails of past contacts about the electoral significance of the citizen-taxpayer action. Not only has neither followed up with me since, but both have ignored my several e-mails to them, without so much as the courtesy of a response: <http://www.judgewidth.org/web-pages/press-suppression/2019/log-nov-dec-2019.htm>.

ProPublica can do much to help, consistent with its mission as “*an independent, nonprofit newsroom that produces investigative journalism with moral force*” “*to expose abuses of power and betrayals of public trust by government, business, and other institutions...to spur reform through the sustained spotlighting of wrongdoing*” “*to hold power to account.*” Putting aside whether ProPublica will engage in investigative journalism about “fake news” and media election-rigging – a question requiring you to rise above what are plainly insurmountable personal and professional conflicts of interest – do you not agree that the citizen-taxpayer action is a breathtaking roadmap of “abuses of power and betrayals of

public trust” at the highest levels of all three branches of New York state government – eviscerating constitutional governance and the rule of law – injuries compounded by a sustained and ongoing “grand larceny of the public fisc”? And wouldn’t you agree that investigation and report by ProPublica will not only have sweeping impact in “hold[ing] power to account”, but end, virtually overnight, New York’s so-called “culture of corruption”. Isn’t this precisely the kind of impactful story that ProPublica prides itself with investigating and reporting? And isn’t it perfect for your Local Reporting Network focused on state government: <https://www.propublica.org/article/expanding-propublica-local-reporting-investigating-state-government> – excepting that the story has no newsroom or journalist proposing it. Fortunately, this is no obstacle for ProPublica, whose wealth of connections surely can produce, in short order, quantities of struggling newsrooms and journalists to investigate and report on what is probably the most explosive and far-reaching case to ever confront the New York Court of Appeals: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-ct-of-appeals.htm> – a fact you could easily confirm with such few scholars as there are of New York’s highest state court.

As ProPublica’s Local Reporting Network has a January 31st deadline for projects beginning April 1st: <https://propublica.forms.fm/local-reporting-network-april-2020/forms/7565> – and each passing day is a day lost to government accountability and competitive elections – time is of the essence. When can I expect your call?

With sincerity,

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: Wednesday, November 27, 2019 1:55 PM
To: 'jaci@fairmediacouncil.org' <jaci@fairmediacouncil.org>

Subject: THANKSGIVING THANKS for the Fair Media Council, its Dec 3, 2019 Conference -- & for opportunities for evidence-based dialogue, scholarship -- & solutions essential to our democracy

Dear Jaci,

Yes, the ticket is for me – so we’re set.

Most importantly – and appropriately for Thanksgiving – thank you for putting together such an important conference – and for being CEO & executive director of the Fair Media Council. I did not know about either the Fair Media Council or the December 3rd conference, until the wee hours of this morning, while patrolling the internet for media coverage of New York’s Public Campaign Financing and Election Commission. Did you place an announcement about the conference on the Gotham Gazette’s website? That’s where I saw it – abutting this Gotham Gazette article: <https://www.gothamgazette.com/state/8960-state-legislators-criticize-campaign-finance-commission-outcomes-while-legislative-leaders-mum-cuomo-heastie>.

As co-founder and director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), I have 30 years of in-the-trenches, direct, first-hand experience with the media, evidenced by a treasure trove of documentary evidence, including TWO major lawsuits, brought in the public interest, to establish some semblance of First Amendment responsibility and journalistic accountability by causes of action for "journalistic fraud" and "reckless institutional disregard for truth", the first lawsuit, against The New York Times, the second lawsuit, against Gannett. CJA's website, www.judgewatch.org, posts this 30-year archive of documentary evidence, accessible from the left sidebar panel "Press Suppression". The direct link is here: <http://www.judgewatch.org/web-pages/press-suppression/press-suppression.htm>.

As illustrative of how the media operates, including Gotham Gazette, here's the direct link to our menu page of the "Press in Action/Inaction" relating to the Public Campaign Financing and Election Commission. From it you can examine my exhaustive outreach this past August and September to New York media, big and small, statewide, regional, and local: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/press-force-of-law-commissions/press-part-xxx-menu.htm> -- and the ZERO results it produced, other than my own published letter to the editor in the New York Law Journal, on August 20th and 21st, as to which there has been NO follow-up, including by the New York Law Journal.

From that link you can access my August 21st and September 4th e-mails to Gotham Gazette, which, for your convenience, I've attached. You can also access my September 6th e-mail to ProPublica, pleading for its help in getting news reporting/investigation for the "MAJOR, MAJOR news story" reflected by my August and September media outreach. This I am also attaching, inasmuch as ProPublica President Dick Tofel is a featured speaker at the December 3rd conference -- and I sent my September 6th e-mail to him, among other ProPublica recipients.

I received no response from ProPublica to my September 6th e-mail, nor from Gotham Gazette to my August 21st and September 4th e-mails, nor from virtually every other media and reporter to whom I reached out. I would, therefore, greatly appreciate if -- after you read the September 6th e-mail I sent to Mr. Tofel and its above two attachments -- that you forward him this e-mail so that he can advise as to what I needed to do differently to garner a response from ProPublica and other media to the still unreported, readily-verifiable, politically-explosive story of the unconstitutionality of the Public Campaign Financing and Election Commission -- and of the "force of law" commissions on legislative, judicial and executive compensation -- established by the record of CJA's citizen-taxpayer action, at the Court of Appeals -- the subject of my New York Law Journal letter.

That citizen-taxpayer action, *CJA v. Cuomo, et al.*, which we brought "on behalf of the People of the State of New York & the Public Interest", sues the highest constitutional officers of New York's three government branches for collusion against the People, corruption, and "grand larceny of the public fisc" with respect to these "force of law" commissions -- and challenges the constitutionality and lawfulness of the whole of the state budget. On top of this, it is the first lawsuit, ever, to challenge the constitutionality of New York's "three-men-in-a-room" budget deal-making and the Legislature's closed-door party conferences that substitute for open legislative deliberation and functioning committees.

The record of the citizen-taxpayer action, at the Court of Appeals, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-ct-of-appeals.htm> -- and includes CJA's final November 25th motion. My most recent testimony about the

lawsuit, was on November 4th, before the current Commission on Legislative, Judicial and Executive Compensation, which has been operating “under the radar”. Here’s the direct link to the VIDEO of my testimony– and the evidence I furnished the Commission in substantiation, beginning with my published New York Law Journal letter: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/cja-nov4-2019-testimony.htm>.

Obviously, I have Mr. Tofel’s e-mail address. Although I would ordinarily cc him on this e-mail, I have not done so in deference to what I believe the role of the Fair Media Council is, or should be: a forum for dialogue about how the media actually operates based on evidence, not platitudes – and for building honest, non-partisan scholarship about that evidence, which, *if it exists*, I have not found.

Again, thank you. I am so looking forward to next week’s conference. It is absolutely critical to our democracy that there be “fair media” – and media investigation and reporting, as immediately as possible, of CJA’s landmark citizen-taxpayer action, whose only media report, to date, more than three years after it was commenced, was by the Law Journal’s publication of my letter.

Sincerely,

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

From: Jaci Clement <jaci@fairmediacouncil.org>
Sent: Wednesday, November 27, 2019 8:09 AM
To: elena@judgewatch.org

Subject: Your ticket to The News Conference

Hi Elena,

We have received your ticket purchase and as long as the ticket should be in your name, you are all set for the Dec. 3 event. (If you purchased it for someone else, we'll need that name for the registration desk. We don't issue hard tickets.)

Please let me know if you have any questions.

Thank you.

All the best,

Jaci Clement | CEO & Executive Director
[Fair Media Council](#) | **Advocating for Quality News & Creating a Media Savvy Society.**
501c3 nonprofit since 1979 | O: 516.224.1860, ext. 701 | C: 516.318.2531

RESERVE NOW FOR TUESDAY, DEC. 3: "The News Conference: Real & Powerful" brings national, regional & local news together with the public to increase your media savvy.

Breakfast with BuzzFeed News Editor in Chief Ben Smith, ProPublica President Richard Tofel and Sree Sreenivasan.

Luncheon fireside chat with CNN Senior Political Analyst John Avlon & Margaret Hoover, CNN Political Correspondent & Host, PBS' Firing Line (& great granddaughter of the 31st president of the United States).

PLUS 12 panel discussions, amazing networking.

It happens Tuesday, Dec. 3 at The Garden City Hotel, 8 am - 4 pm.