

# CENTER for JUDICIAL ACCOUNTABILITY, INC. \*

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BY E-MAIL: [public@nytimes.com](mailto:public@nytimes.com)

DATE: September 1, 2011

TO: Arthur S. Brisbane, Public Editor  
The New York Times

FROM: Elena Sassower, Director  
Center for Judicial Accountability, Inc.

RE: Complaint against Reporter William Glaberson and the Editorial Board for Injuring the People of New York and Subverting their Constitutional Rights by Knowingly False and Misleading Reporting and Editorializing on New York's Judicial Compensation Issue

This is a complaint against New York Times reporter William Glaberson for his knowingly false and misleading reporting on New York's judicial compensation issue. It is also against the New York Times Editorial Board for editorials arising from Mr. Glaberson's reporting, which it knew to be insupportable based on what was unfolding before the Commission on Judicial Compensation, unreported by Mr. Glaberson. Their willful and deliberate misconduct – the product of multitudinous conflicts of interests – has robbed the People of this State of the means provided by New York's State Constitution for securing judicial accountability<sup>1</sup>, a theft more costly than the hundreds of millions of taxpayer dollars New Yorkers will be paying for increased judicial salaries.

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<sup>1</sup> See the constitutional analysis set forth at pp. 3-4 of CJA's August 8, 2011 letter to the Commission on Judicial Compensation and at pp. 1-4 of CJA's August 23, 2011 letter to Chief Administrative Judge Ann Pfau, posted on CJA's homepage for NY's judicial compensation issue, accessible from our website, [www.judgewatch.org](http://www.judgewatch.org), via the top panel "Latest News" and left side panel "Judicial Compensation-NY". The accuracy of the analysis is completely uncontested by the Commission, Chief Administrative Judge Pfau, the judicial-legal establishment and other advocates of judicial pay raises.

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\* **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.

The news articles at issue – and the editorials they enabled – are the following<sup>2</sup>:

- July 4<sup>th</sup>/5<sup>th</sup>: Mr. Glaberson’s front-page, above-the-fold, news article, which bore three titles on the front page of the printed newspaper: “*JUDGES QUITTING AT UNUSUAL RATE AS SALARIES LAG – LAW FIRMS’ RICH OFFERS – A 12-Year Pay Freeze in New York – Exits Once Were Rare*”, departing from the more succinct website headline “*Frozen Pay: More New York Judges Leave the Bench*”;
- July 11/12<sup>th</sup>: The Editorial Board’s editorial “*New York’s Lagging Judicial Pay*”;
- July 17<sup>th</sup>/18<sup>th</sup>: Mr. Glaberson’s news article “*Commission to Set Raises for Judges in New York State Is Flooded With Suggestions*” (A13, below-the-fold);
- July 20<sup>th</sup>/21<sup>st</sup>: Mr. Glaberson’s news article “*Caution Urged on Raises for State Judges*” (A22, top page);
- July 29<sup>th</sup>/30<sup>th</sup>: The Editorial Board’s editorial “*New York Judges Deserve a Raise*”;
- August 8<sup>th</sup>/9<sup>th</sup>: Mr. Glaberson’s news article “*2 on Judicial Pay Panel Press for Big Raises*” (A16, below-the-fold);
- August 26<sup>th</sup>/27<sup>th</sup>: Mr. Glaberson’s front-page, above-the-fold news article, whose front-page title “*State Judges Get 27% Raise Over 3 Years*”, was materially different from the more accurate title of its continuation inside the newspaper “*Commission Raises New York State Judges Pay 27 Percent Over Three Years*”, essentially identical to the website title “*Commission Raises N.Y. Judges’ Pay 27% Over 3 Years*”.

Their deceptions include:

- (1) that relevant facts and evidence warrant increasing the compensation of New York State judges;
- (2) that the Commission on Judicial Compensation has been an independent, credibly functioning body, with members appropriately discharging their duties;
- (3) that the only opposition to judicial pay raises presented to the Commission was by New York’s Budget Director – on financial grounds;

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<sup>2</sup> Each article and editorial appeared first on The New York Times’ website and, the following day, in its printed newspaper. The indicated two dates reflect this.

To accomplish these deceits and advance the outcome favored by The Times, in which The Times, Mr. Glaberson, and the Editorial Board are DIRECTLY interested, the above articles and editorials all concealed the citizen opposition to judicial pay raises championed by our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA) and its factual and legal basis. That citizen opposition, presented at the Commission's July 20, 2011 hearing, began two months earlier by CJA's groundbreaking correspondence to the Commission's appointing authorities – Governor Cuomo, Senate Majority Leader Skelos, Assembly Speaker Silver, and Chief Judge Lippman – and to the Commissioners, establishing that the Commission was “Inoperative & Inaccessible to the Public” during the first half of its statutorily-fixed 150-day existence. CJA's correspondence then continued after the July 20<sup>th</sup> hearing, with results equally dramatic: establishing, as to the second half of the Commission's existence, official misconduct and criminal fraud by its Commissioners so absolute as to constitute: “grounds for repeal of the statute creating the Commission, over and beyond the voiding of any Commission recommendation to raise judicial pay”.

CJA's groundbreaking correspondence, spanning the three months from May 23, 2011 to August 26, 2011 and providing a window into the Commission's nonfeasance and misfeasance, is the documentary proof of Mr. Glaberson's willful disregard of his journalistic duty of honest reporting and of the Editorial Board's similar disregard of its duty, as copies were sent to them, concurrent with being sent to the Commission and others in positions of power and influence. Indeed, as Mr. Glaberson and the Editorial Board further knew, this correspondence was also readily-accessible to them from CJA's website, [www.judgewatch.org](http://www.judgewatch.org), on the homepage we created for New York's judicial compensation issue, aptly named: “Bringing Transparency, Evidence & Public Accountability to the One-Sided, Media-Created View (*Swallowed Whole from the Judicial-Legal Establishment*) that NYS Judges are Underpaid & Entitled to Raise”. Likewise, the video of the Commission's July 20<sup>th</sup> hearing, at which I and six other citizens testified, is documentary proof – and it, too, was accessible from a user-friendly webpage of CJA's website.

Prior to the July 20<sup>th</sup> hearing, The Times' only response to CJA's correspondence, sent to it by transmitting e-mails on May 23<sup>rd</sup>, June 6<sup>th</sup>, June 13<sup>th</sup>, June 19<sup>th</sup>, June 24<sup>th</sup>, June 28<sup>th</sup>, and June 30<sup>th</sup><sup>3</sup> – with the June 13<sup>th</sup> e-mail presenting a substantive message as to the need for an investigative story and appending a FOIL request to the Office of Court Administration for records of judicial resignations based on insufficient compensation<sup>4</sup> – was Mr. Glaberson's front-page, above-the-fold, triple-titled July 5<sup>th</sup> newspaper article: “*JUDGES QUITTING AT UNUSUAL RATE AS SALARIES LAG – LAW FIRMS' RICH OFFERS – A 12-Year Pay Freeze in*

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<sup>3</sup> These e-mails are all posted on our “Press in Action” webpage that is part of our NY Judicial Compensation webpages.

<sup>4</sup> This important June 13<sup>th</sup> e-mail is an enclosure to CJA's August 5, 2011 letter to Mr. Glaberson, *infra.*, enclosed herewith.

*New York – Exits Once Were Rare*” – posted on The Times website on the evening of July 4<sup>th</sup>, as fireworks were exploding, with a more succinct title: “*Pay Frozen, More New York Judges Leave Bench*”.

Purporting to be the product of investigation, Mr. Glaberson’s “*Pay Frozen, More New York Judges Leave Bench*” made it appear that insufficient judicial pay was causing judges to depart the bench in increasing numbers, when, in fact, the true story was that few judges had resigned because of pay. On July 11<sup>th</sup>, the Editorial Board was opining as to “*New York’s Lagging Pay*”, citing Mr. Glaberson’s article.

As The Times could reasonably anticipate, “*Pay Frozen, More New York Judges Leave Bench*” would be widely-cited by other media and relied upon by advocates of judicial pay raises.<sup>5</sup> And it was – a fact noted at the outset of CJA’s August 5, 2011 letter to Mr. Glaberson, entitled:

“Setting the Record Straight: Ensuring that the Public & New York’s Judicial Compensation Commission are Not Misled by New York Times’ Reporting & Editorializing about ‘Judicial Attrition’ and the Purportedly Insufficient Pay of New York State Judges”.

The letter, simultaneously e-mailed to the Editorial Board, the Commission, as well as to bar leaders who had testified at the Commission’s July 20<sup>th</sup> hearing, several of whom had cited Mr. Glaberson’s article, called upon Mr. Glaberson to substantiate his article, whose falsity it demonstrated, and, additionally,

“to write a clarifying, corrective investigative story, one examining whether the reason so few state judges have resigned, citing pay, is because 1999 judicial compensation levels are NOT, even 12 years later, ‘scandalous’, ‘shameful’, ‘disgraceful’, ‘demeaning’ – or any of the other disparaging adjectives favored by advocates of judicial pay raises” –

setting forth (at pp. 4-6) a succession of “relevant facts” from which this was apparent. The letter noted my belief that these “relevant facts” had not been part of Times coverage of the judicial compensation issue or of its repetitive editorializing for judicial pay raises.<sup>6</sup>

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<sup>5</sup> That this continues, to the present, may be seen by the August 26<sup>th</sup> press release of the New York State Bar Association, “State Bar Association Calls Proposed Raises Inadequate After a 12-Year Freeze on Salaries of State Judges”: “Judge are leaving the bench voluntarily in record numbers, according to a recent New York Times article. In 1999, 48 of the state’s 1,300 judges resigned. In 2011, 110 quit the bench.”

<sup>6</sup> An illustrative selection of New York Times prior coverage and editorials is posted on a specially-designated webpage, accessible from our NYS Judicial Compensation “Press in Action” webpage.

The letter also identified (at p. 6) as “THRESHOLD”:

“that just as The Times and other media have editorialized against salary raises for our legislators – and presumably the governor, *et al.* – because of the deficiencies of their governance, the same standard is applicable to our ‘co-equal’ judiciary. No judicial pay raises can be given in face of documentary evidence that our state judiciary is ‘pervasively, systemically corrupt’, ‘infesting appellate and supervisory levels...and involving the New York State Commission on Judicial Conduct’ – as to which [Commission on Judicial Compensation] Chairman Thompson is disqualified for conflict of interest. This I stated loudly and clearly at the July 20, 2011 hearing, reiterating what I had set forth in CJA’s media-suppressed May 23, 2011 and June 23, 2011 letters to which I publicly referred – letters repeatedly e-mailed to you and others at The Times, including the Editorial Board, on May 23<sup>rd</sup>, June 6<sup>th</sup>, June 13<sup>th</sup>, June 18<sup>th</sup>, June 19<sup>th</sup>, June 24<sup>th</sup>, June 28<sup>th</sup>, and June 30<sup>th</sup><sup>[fn]</sup> and which, prior to the July 20<sup>th</sup> hearing, you and it suppressed in two articles and an editorial that were materially false – and knowingly so<sup>fn12</sup> – and then continued to suppress, thereafter, by a similarly fraudulent third article and second editorial.

In that connection, please confirm that you were actually in Albany at the hearing – as indicated by your July 20, 2011 article ‘*Caution Urged on Raises for State Judges*’ – and that you heard my public remarks addressed to several of the witnesses, my own public testimony, and the public testimony of the six other citizen witnesses, of which you made no mention in your July 20<sup>th</sup> article so as to make it appear that the Commission is a properly-functioning body and that the only opposition to judicial pay raises was on financial grounds by New York’s Budget Director – deceits continued by The Times’ July 29, 2011 editorial ‘*New York Judges Deserve a Raise*’.” (underlining in the original August 5<sup>th</sup> letter).

On August 8<sup>th</sup>, hours before the Commission on Judicial Compensation’s meeting in Manhattan, I again e-mailed Mr. Glaberson, the Editorial Board and others, this time with CJA’s August 8, 2011 letter to the Commission entitled:

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<sup>fn12</sup> In addition to your July 5<sup>th</sup> article and The Times’ July 11<sup>th</sup> editorial, *supra*, was your July 17<sup>th</sup> article ‘*Commission to Set Raises for Judges in New York State Is Flooded With Suggestions*’, whose pretense that the only issue before the Commission on Judicial Compensation were calculations as to how much to raise judicial salaries was accomplished by obliterating CJA’s May 23<sup>rd</sup>, June 23<sup>rd</sup>, and other letters to the Commission.”

“Threshold Issues Barring Commission Consideration of Pay Raises for Judges:

- (1) Chairman Thompson’s Disqualification for Interest, as to which there has been No Determination;
- (2) Systemic Corruption in New York’s Judiciary, Embracing the Commission on Judicial Conduct, as to which there has been No Determination; &
- (3) The Fraud & Lack of Evidence Put Forward by Advocates of Judicial Pay Raises.”

Mr. Glaberson was at the Commission’s meeting – and, at its conclusion, I attempted to speak with him, not knowing who he was, but assuming, from his notepad, that he was a reporter. Mr. Glaberson, who was then leaving the meeting room, not only refused to identify who he was, but gave me a name so palpably false that I strained to see his real name from the security badge he was wearing. Upon seeing it, I sought to discuss with him our August 5, 2011 letter pertaining to his past reporting on the judicial compensation issue. He refused. Likewise, he refused to discuss with me our August 8, 2011 letter pertaining to what was then before him for reporting – expressly including the constitutional analysis it had presented (at pp. 3-4) that:

“The appellate, administrative, disciplinary, and removal provisions of Article VI [of New York’s Constitution] 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.<sup>fn4</sup>” (at p. 4, underlining in the original).

Nor was he inclined toward any discussion when I told him that I would file a complaint with the Public Editor, as well as bring his misconduct to the attention of his superiors at The Times.

Mr. Glaberson’s article about the Commission’s August 8<sup>th</sup> meeting, “*2 on Judicial Pay Panel Press for Big Raises*”, was written and posted later that day, recounting the meeting as if there was no problem in how the Commission was proceeding, disregarding the contrary facts that were all before him by the August 8<sup>th</sup> letter he had refused to discuss with me. The only break from his past reporting in this article was his reference to the Commission having “also heard from critics who have argued that no increase is warranted” – with no particulars as to who these “critics” might be and the basis for their “argu[ment]”.

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<sup>fn4</sup> Such safeguards are properly viewed as comparable to the ‘good Behaviour’ provision of the U.S. Constitution, immediately preceding – and in the same sentence – as the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].”

The official misconduct and criminal fraud by the Commission that Mr. Glaberson – a lawyer – witnessed at the August 8<sup>th</sup> meeting, but had not reported, was the subject of CJA’s August 17, 2011 letter to the Commission entitled:

“Protecting the People of this State from Fraud: The Commission on Judicial Compensation’s Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities”.

On August 17<sup>th</sup> and thereafter I e-mailed this letter to Mr. Glaberson, the Editorial Board, and others, including advocates of judicial pay raises, highlighting its concluding paragraph:

***“IF*** you believe that the Commission can lawfully ignore CJA’s August 8<sup>th</sup> letter without its members incurring liability for official misconduct and criminal fraud and without furnishing grounds for repeal of the statute creating the Commission, over and beyond the voiding of *any* Commission recommendation to raise judicial pay, you should secure an advisory opinion from the judges and lawyers who have made the supposedly ‘compelling case’ for judicial pay raises. Indeed, CJA calls upon you to seek their opinion – and to include it in your upcoming ‘report to the governor, the legislature and the chief judge’. (capitalization, italics, bold, underlining in the original, at p. 5).

Additionally, on August 23<sup>rd</sup>, I e-mailed to Mr. Glaberson, the Editorial Board, and others, including the advocates of judicial pay raises, CJA’s August 23, 2011 letter to Chief Administrative Judge Pfau, also sent to the Commission, entitled:

“Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court Administration’s ‘Memorandum discussing constitutional considerations in establishing pay levels’ – and the Substantiating Evidence”.

The “Constitutional Error” and “Substantiating Evidence” there detailed concerned the Commission’s anticipated disregard of its obligation to make findings as to the evidence which opponents of judicial pay raises had placed before it that the appellate, administrative, disciplinary and removal provisions of Article VI of New York’s Constitution had been corrupted. This was then followed, on August 26<sup>th</sup>, hours before the Commission’s final meeting by my e-mailing of a further identically-addressed August 26, 2011 letter, also identically-titled except for the addition of the words: “PART 2”.

Yet, once again, following the Commission’s August 26<sup>th</sup> meeting, Mr. Glaberson walked away from me, as I sought to speak with him about the Commission’s fraudulent and unconstitutional

conduct he had witnessed and which he would completely conceal in the article he would shortly write and whose front-page print headline “*State Judges Get 27% Raise Over 3 Years*” would convey the misimpression that the raise was a *fait-accomplis*. Here, too, Mr. Glaberson was not the slightest bit concerned by the prospect of my filing a complaint against him with you or anyone else at The Times.

It deserves note that after Mr. Glaberson’s article about the Commission’s August 26<sup>th</sup> meeting was posted on The Times’ website late in the afternoon or early evening of August 26<sup>th</sup>, he apparently continued to work on it – as it was subsequently replaced by a more expansive article, essentially the same as would appear in print. Among the changes, the article clarified the sentence about the Commission’s “4 to 3 vote to approve the increase” to identify that “The dissenters said the raises were too small” – thereby correcting a misimpression reasonable from the initial posting that the dissenters had objected that the raises were too large. The article also now included reactions of judges – reinforcing the view that the increases were not only small, but actually unfair to the judiciary:

“On Friday, some judges said the decision would amplify dissatisfaction in the judiciary. ‘I think it’s very demoralizing’ said Judge Margaret Parisi McGowan of Queens Family Court.

Phillip R. Rumsey, president of the state association of Supreme Court justices, said the salary levels in New York ‘will continue to reflect the low regard that other branches of state government apparently have for the judiciary.’

Judge Lippman said that he was disappointed that the raise was not larger and that it would be phased in over three years...”

The article ended with Assembly Speaker Silver now saying that “an independent commission was created to take the decision away from the Legislature and away from political finger-pointing” – in other words, that the public should have confidence in the Commission’s determination – a deceit which the balance of Mr. Glaberson’s article fostered, as likewise his prior articles.

Suffice to say, neither this slanted article nor Mr. Glaberson’s prior slanted articles contained comment from anyone opposing ANY judicial pay raises or anyone who might depart from the deceit that the Commission was an apolitical body, examining the judicial pay issue with impartiality, objectivity, and relevant evidence. As Mr. Glaberson well knew, no one could better furnish him with first-hand, informed comment as to both of these than I.

How ironic that The Times featured Mr. Glaberson’s front-page August 26<sup>th</sup> and July 5<sup>th</sup> articles on its website with an invitation to readers to “comment” and “share [their] thoughts”. The vibrant discussion there generated belonged in the articles, not outside. However, as Mr.

Glaberson knew, citizen voices had to be excluded from his articles or they would blow away the rhetoric of the judicial-legal establishment in support of judicial pay raises, uncritically adopted by him, the Editorial Board, and the Commission as truths.

I do not believe it necessary to elaborate on Mr. Glaberson's multitudinous conflicts of interest. Sufficient to note that our first fully-documented misconduct complaint against him was more than 19 years ago – and his blackballing of us then and thereafter continued, unabated, as he wrote cover-up stories on issues about which, as he has known, we have expertise and evidence. Consistent with The Times' pattern and practice, Mr. Glaberson's stories have concealed systemic corruption in New York's judiciary, involving appellate and supervisory levels and the Commission on Judicial Conduct – the basis of our opposition to ANY judicial pay raises and a constitutional bar to them. So that you can evaluate for yourself the succession of one-sided and misleading stories that Mr. Glaberson wrote about the Commission earlier this year – and his failure to respond to our written proposal that he balance his coverage with "The public's 'views' of the NYS Commission on Judicial Conduct, expressed at the NYS Senate Judiciary Committee hearings in 2009 – as to which neither the Senate Judiciary Committee, bar associations, nor advocacy organizations favored by The Times have rendered ANY report or made ANY findings" – a copy of our so-entitled February 21, 2011 proposal to him is enclosed. Such story proposal was additionally sent to the Editorial Board, under a February 21, 2011 coverletter requesting a meeting, to which, likewise, we received no response. This is consistent with the Editorial Board's long history of ignoring our requests – while, apparently, always ready to meet with such representatives of the judicial-legal establishment as former Chief Judge Judith Kaye, whose campaign for judicial pay raises, beginning in 2005, involved meetings with editorial boards of newspapers throughout the state, feeding them the script they have parroted ever since.<sup>7</sup>

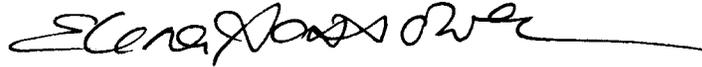
In the interest of moving constructively forward, I will defer setting forth anything further. Much will be evident to you from CJA's website, with its side panels marked "Press Suppression" and "Suing The New York Times", and from the files of your Public Editor predecessors.

You may be assured of our complete cooperation as you meet your duties to the People of New York as The Times' Public Editor. Since Mr. Glaberson is a lawyer – as are at least three of the Editorial Board's 18 members – we respectfully request that you secure their response to the constitutional analysis presented by our correspondences (see fn. 1, *supra*), for which they can avail themselves of assistance from former Chief Judge Kaye and other constitutional experts in the judicial-legal establishment with whom they enjoy personal and professional relationships.

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<sup>7</sup> "aggressive steps were taken to secure strong editorial support in many of the State's newspapers", Attachment #5 to the Supplemental Appendix to Chief Administrative Judge Pfau's Submission to the Commission, entitled "History of judicial salary reform in New York" (at p.18), whose results were Attachment #31: The OCA's 2008 public relations compendium "*They Deserve Better – Unanimous Support for Judicial Compensation Reform*". Its presentation of "unanimous" media support included five New York Times editorials.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Novak", with a long horizontal line extending to the right.

Enclosures: (1) CJA's August 5, 2011 letter to Mr. Glaberson, with enclosures  
(2) CJA's February 21, 2011 letter to Mr. Glaberson, with enclosures  
(3) CJA's February 21, 2011 letter to the Editorial Board

cc: New York Times recipients of CJA's various May 23, 2011 – August 26, 2011 correspondence:

William Glaberson

Editorial Board

Metro Desk

James Barron

Michael Powell

Albany Bureau: Danny Hakim, Nicholas Confessore

The Public