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October 27, 2011

**HOLDING GOVERNMENT ACCOUNTABLE:**

***“NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE –  
THE MONEY BELONGS TO THE VICTIMS!”***

**OPPOSITION REPORT TO THE “FINAL REPORT  
OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION”**

**PRESENTED TO:**

Andrew M. Cuomo, Governor of the State of New York  
Dean G. Skelos, Temporary President of the New York State Senate  
Sheldon Silver, Speaker of the New York State Assembly  
Jonathan Lippman, Chief Judge of the State of New York

**IN SUPPORT OF:**

- (1) Legislation Voiding the Commission’s Judicial Pay Recommendations;
- (2) Repeal of the Statute Creating the Commission;
- (3) Referral of the Commissioners to Criminal Authorities for Prosecution;
- (4) Appointment of a Special Prosecutor, Task Force, and/or Inspector General to Investigate the Documentary and Testimonial Evidence of Systemic Judicial Corruption, Infesting Supervisory and Appellate Levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation Unlawfully and Unconstitutionally Ignored, Without Findings, in Recommending Judicial Pay Raises

Written by:   
Elena Ruth Sassower, Director

\* 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 appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.<sup>fin4</sup>”

<sup>fin4</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].”

(concluding paragraph of analysis of Article VI of the New York State Constitution, based on the Court of Appeals’ February 23, 2010 decision in the judicial compensation lawsuits, presented by the Center for Judicial Accountability’s August 8, 2011 letter to the Commission on Judicial Compensation (at pp. 3-4) and August 23, 2011 letter to Chief Administrative Judge Ann Pfau (pp. 2-4) – whose accuracy is uncontested by them and other judicial pay raise advocates.)

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**CJA's August 8, 2011 letter to the Commission**

Each of the three threshold issues particularized by CJA's August 8<sup>th</sup> letter (Exhibit I) are now grounds for all the relief this Opposition Report seeks: (1) overriding the Commission's recommendations; (2) repeal of the Commission statute; (3) criminal referrals of the Commissioners; (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the evidence of systemic judicial corruption which the Commission unlawfully and unconstitutionally ignored, without findings, in order to recommend judicial pay raises.

**As to the First Threshold Issue: Chairman Thompson's Disqualifying Self-Interest:**

One does not have to be a lawyer – as each of you is – to know that disqualification is a THRESHOLD issue – and that the Commission could not lawfully proceed, absent a ruling by the Commission as to Chairman Thompson's disqualifying self-interest, particularized by our June 23<sup>rd</sup> letter (Exhibit B-1).

By July 20<sup>th</sup>, with no response from the Commission to that issue, I publicly raised it at the Commission's one and only hearing, in Albany. The video establishes what took place.<sup>15</sup> The Commission cut me off and allowed Chairman Thompson to cut me off, without any ruling, over my rightful protest. CJA's August 8<sup>th</sup> letter (Exhibit I) enclosed, as its first attachment, my transcription of my videoed appearance at the hearing, stating:

“If the Commission – three of whose members are lawyers – believes that without ruling on Chairman Thompson's disqualification for interest, it can lawfully proceed to discuss ‘specific raise levels for judges’, it should state this publicly, with legal authority, disclosing the specifics of the disqualification detailed by CJA's June 23<sup>rd</sup> letter.” (CJA's August 8, 2011 letter, at p. 2, underlining in the original).

The Commission's Report conceals the disqualification issue, totally.

**As to the Second Threshold Issue: Systemic Judicial Corruption Constituting an “Appropriate Factor” for the Commission's Consideration, Having Constitutional Magnitude:** ✓

The August 8<sup>th</sup> letter (Exhibit I) presented the following constitutional analysis based on the Court of Appeals' February 23, 2010 decision:

“As set forth by CJA's June 23<sup>rd</sup> letter, ‘corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels’, disentitles it to any boost in judicial compensation.

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<sup>15</sup> CJA's September 2<sup>nd</sup> letter (Exhibit M) apprised the Commissioners that although its website posted a link for the video of its July 20<sup>th</sup> hearing, it was not, in fact, accessible. It is still not accessible.

Such corruption and lawlessness are not only ‘appropriate factors’ for your consideration under the statute requiring you to consider ‘all appropriate factors’, but your disregard of these factors would be unconstitutional pursuant to the very February 23, 2010 Court of Appeals decision in the judicial compensation cases that underlies the Commission’s creation.

In that decision – whose fraudulence was particularized by CJA’s July 19, 2011 letter to which I referred at the hearing – the Court of Appeals searched the New York State Constitution for a textual basis to reject the ‘linkage’ of judicial salaries with legislative and executive salaries and found ‘significant’ that although the legislature is vested with the power to raise salaries, the provisions relating to the compensation of judicial, legislative, and executive officers are not set forth in the legislative article of the Constitution, but within the separate articles for each branch. The Court held that it is within the separate judiciary article that determination is to be made as to whether, on ‘its own merit’, New York State judges deserve an increase in compensation.

Article VI is the judiciary article of the New York State Constitution and it provides not only appellate, administrative, and disciplinary safeguards for ensuring judicial integrity, but express procedures for removing unfit judges. Indeed, Article VI specifies three means for removing judges – the Commission on Judicial Conduct [§22], concurrent resolution by the legislature [§23], and impeachment [§24] – and these in the three sections that IMMEDIATELY precede §25(a) to which judges point in clamoring that inflation has unconstitutionally diminished their compensation:

‘The compensation of a judge...shall not be diminished during the term of office for which he was elected or appointed.’

Of these three means for judicial removal provided by Article VI, concurrent legislative resolution and judicial impeachment exist in name only – having given way to the Commission on Judicial Conduct, as to which, more than 22 years ago, the New York State Comptroller issued a report entitled ‘*Not Accountable to the Public*’, calling for legislation to permit independent auditing of its handling of judicial misconduct complaints.<sup>fn2</sup> Such never happened – and 20 years later, in 2009, at Senate Judiciary Committee hearings on the Commission on Judicial Conduct – the first legislative hearings on the Commission since 1987 – its corruption was attested

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<sup>fn2</sup> The Comptroller’s 1989 Report and accompanying December 7, 1989 press release, ‘*Commission on Judicial Conduct Needs Oversight*’, are posted on CJA’s website, [www.judgewatch.org](http://www.judgewatch.org), most readily accessible via the sidebar panel ‘Library’. Because of its importance – and so that they may be physically part of this Commission’s record – a copy of each is being furnished with this letter.”

to by two dozen New Yorkers who provided and proffered supporting documentation – as to which, to date, there has been NO investigation, NO findings, and NO committee report.

It was CJA's position, presented by our May 23<sup>rd</sup> and June 23<sup>rd</sup> letters and reiterated by my July 20<sup>th</sup> testimony that:

‘There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto... [and] until mechanisms are in place and functioning to remove judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of ‘judicial perjuries’, being knowingly false and fabricated.’ (May 23, 2011 letter, capitalization in the original).<sup>fn3</sup>

Our position now is stronger. The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.<sup>fn4</sup>” (CJA's August 8, 2011 letter, at pp. 2-4, underlining and capitalization in the original).

This constitutional analysis was quoted, *verbatim*, in CJA's August 23, 2011 letter to Chief Administrative Judge Ann Pfau (Exhibit K-1) – to which the Commissioners were indicated recipients. 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’ –

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<sup>fn3</sup> The correctness of this position may be seen from the federal statute for the Citizens' Commission on Public Service and Compensation, requiring that its review of compensation levels of federal judges, the Vice-President, Senators, Representatives, and others include ‘any public policy issues involved in maintaining appropriate ethical standards’ – with ‘findings or recommendations’ pertaining thereto ‘included by the Commission as part of its report to the President’ [2 U.S.C. §363].”

<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].”

and the Substantiating Evidence” (underlining in the original title),

the letter highlighted the OCA’s obligation – and that of judicial pay raise advocates – to confront the constitutional analysis and evidence of systemic judicial corruption presented by judicial pay raise opponents.

Neither the OCA nor judicial pay raise advocates have done so (Exhibits J-2, J-3, J-4, J-5, J-6, J-7, K-2). Nor has the Commission, whose Report, in addition to concealing CJA’s August 8<sup>th</sup> letter (Exhibit I), conceals the statutory language requiring the Commission to consider “all appropriate factors”.

The constitutional analysis and evidence presented by CJA and other judicial pay opponents of systemic corruption in New York’s judiciary, encompassing integrity safeguards and judicial removal provisions, is entirely uncontested.

**As to the Third Threshold Issue: The Fraud & Lack of Evidence Put Forward by Judicial Pay Raise Advocates**

CJA’s August 8<sup>th</sup> letter (Exhibit I) reiterated what I had stated at the July 20<sup>th</sup> hearing:

“this Commission has been inundated by fraud from the advocates of judicial pay raises, who have furnished a combination of no evidence and irrelevant and misleading evidence to support their claims. From my list of ‘20 specific frauds’, to which I referred, I sufficed to identify only one: their claim that we have ‘a quality, excellent, top-rate judiciary with judges discharging their constitutional duties.

The documentary evidence I left for you, on the table, at the July 20<sup>th</sup> hearing – the two final motions in CJA’s lawsuit against the Commission on Judicial Conduct<sup>[fn5]</sup> – puts the lie to the supposed ‘excellence’ and ‘quality’ of a score of judges whose fraudulent judicial decisions, protecting the Commission on Judicial Conduct, are therein demonstrated, covering up the corruption of scores of other judges – William Thompson, Sr., pivotally among them – as documented in underlying case records.

Unless you are intending to recommend judicial pay raises without predicate findings, based on evidence, that our New York State judges are doing their jobs, in compliance with the Constitution and the Rule of Law, and that safeguarding mechanisms are functioning, your obligation to the People of this State is to confront this rebutting evidence. As I reasonably suggested, *twice*, as you curtailed and concluded my presentation, you should call upon the advocates of judicial pay raises to assist you with fact-finding. ...” (CJA’s August 8, 2011 letter, at pp. 4-5, underlining and italics in the original).