

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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

DATE: November 17, 2011

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

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

RE: Status of CJA's September 1, 2011 Complaint – & the NYT's Responsibility to Mitigate the Damage to the Public's Rights and Purse Caused by its Knowingly False and Misleading Reporting and Editorializing on NY's Judicial Compensation Issue

It is now more than 2-1/2 months since we e-mailed you our September 1, 2011 complaint, entitled:

“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”

Your September 1, 2011 automated e-mail acknowledgment, within ten minutes of our sending our complaint to you, stated, in pertinent part:

“Thank you for contacting the Public Editor. My assistant and I read every message that we receive. Please note that this office deals specifically with issues of journalistic integrity at The New York Times. Due to the number of e-mails that we receive on a daily basis, we can only respond to those e-mails that directly pertain to this office.

If a further reply is warranted you will be hearing from us in a timely manner.”

We have not heard from you since. Have we missed something? Please advise as to whether you sent us a letter or e-mail pertaining to your investigation, findings, and disposition of our complaint, as we have received nothing.

Time is of the essence. The Commission on Judicial Compensation's judicial pay raise recommendations will take effect automatically on April 1, 2012, unless overridden by legislation before then. Nevertheless, there has not been a single Times article or editorial about the Commission's judicial pay raise recommendations since Mr. Glaberson's front-page, above-the-fold August 26, 2011 article "*State Judges Get 27% Raise Over 3 Years*". This, even though the body of his misleadingly-headlined article identified:

"The raises will go into effect next spring unless they are specifically overruled by legislation passed by both houses of the State Legislature and signed by the Governor". (underlining added).

As reflected by our complaint, Mr. Glaberson and the Editorial Board have had good reason to know that action by the Legislature and Governor overruling the pay raise recommendations is warranted, as we sent them repeated correspondence in August on the statutory and constitutional issues and the outright fraud of the Commission and judicial pay raise advocates. Indeed, the final paragraph of the complaint, preceding the "Thank you", stated:

"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."

We e-mailed our complaint to Mr. Glaberson and the Editorial Board, simultaneous with e-mailing it to you. That was three days after the Commission issued its flimsy August 29<sup>th</sup> Report in support of its 27% pay raise recommendations – the facial deficiencies of which should have been evident to Mr. Glaberson, the lawyer Editorial Board members, and anyone who they might have reasonably consulted for an "expert" opinion.

So that you can see the flagrant constitutional and statutory violations of the public's rights and purse that Mr. Glaberson and the Editorial Board have been sitting on for the past 2-1/2 months since the Commission's Report, attached is the Executive Summary to CJA's October 27, 2011 Opposition Report, highlighting the respects in which the Commission's Report is "statutorily-non-conforming, constitutionally violative, and the product of a tribunal disqualified for interest and actual bias". Our Opposition Report is readily accessible from our website, [www.judgewatch.com](http://www.judgewatch.com), via the top panel "Latest News" and side panel "Judicial Compensation-NYS" – where it has been prominently posted since October 27, 2011.

Will The Times investigate, report on, and editorialize about this “game-changing” Opposition Report, now before Governor Cuomo, Senate Majority Leader Skelos, Assembly Speaker Silver, and Chief Judge Lippman in support of legislative override of the Commission’s judicial pay raise recommendations and other, equally compelled, relief? Or will it continue the pattern and practice, chronicled by our September 1, 2011 complaint, of concealing and falsifying the relevant facts and evidence on the judicial compensation issue.

We trust you will agree that The Times has a duty to the People of this State to minimize the damage caused by its knowingly false and misleading reporting and editorializing on New York’s judicial pay raise issue, whose result has been the Commission’s recommendations, automatically becoming law on April 1, 2012, absent legislative override.

To assist The Times in discharging its investigative, reporting, and editorializing responsibilities, we would be pleased to provide it with a hard copy of our October 27, 2011 Opposition Report with its two-volume Compendium of Exhibits. To whom shall it be delivered?

Thank you.

A handwritten signature in black ink, appearing to read "Edward R. Saverin". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Enclosure: Executive Summary to CJA’s October 27, 2011 Opposition Report

cc: New York Times:  
William Glaberson  
Editorial Board  
Metro Desk  
James Barron  
Michael Powell  
Albany Bureau: Danny Hakim/Bureau Chief  
The Public

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Election Day, November 8, 2011

## EXECUTIVE SUMMARY

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

On August 29, 2011, the Special Commission on Judicial Compensation rendered a “Final Report” to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman recommending a 27% salary increase for New York State judges over the next three years.

These salary recommendations will automatically become law and cost New York taxpayers hundreds of millions of dollars – unless overridden by the Legislature by April 1, 2012. Nevertheless, NONE of New York’s bar associations, scholars, funded “good government” organizations, or media have critically examined the Commission, its Report, or the Court of Appeals’ February 23, 2010 decision in the judiciary’s judicial compensation lawsuits against the Governor and Legislature that propelled enactment of the statute creating the Commission.

Such critical examination has been done, however, by the unfunded, non-partisan, non-profit citizens’ organization, Center for Judicial Accountability, Inc. (CJA). Embodied in an October 27, 2011 Opposition Report, it demonstrates that the Commission’s Report is “statutorily non-conforming, constitutionally violative, and the product of a tribunal disqualified for interest and actual bias”. Indeed, it demonstrates that the Commission’s Report is a “fraud upon the public”, achieved by concealing the citizen opposition to any judicial pay raises, championed by CJA, and all the facts, law, and legal argument presented in support.

Based thereon, CJA’s Opposition Report calls upon the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge – to whom it is addressed – to secure:

- (1) legislative override of the Commission’s judicial pay recommendations;
- (2) repeal of the statute creating the Commission;
- (3) referral of the Commissioners to criminal authorities for prosecution; and
- (4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, which the Commission unlawfully and unconstitutionally ignored,

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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.

without findings, in order to recommend judicial pay raises.

**CJA's constitutional challenge to the Commission's pay raise recommendations** is based on CJA's analysis of Article VI of the New York State Constitution, as drawn from the Court of Appeals' February 23, 2010 decision – an analysis which CJA placed before the Commission three weeks before its August 29, 2011 Report. It demonstrated that any increase in judicial compensation is unconstitutional, absent predicate findings that New York state judges are discharging their duties to render fair and impartial justice and that mechanisms are in place and functioning to remove corrupt judges. The Commission's Report makes no such findings and conceals the analysis, whose accuracy it does not dispute (at pp. 1, 3, 10-13).

CJA's raises a ***further constitutional challenge*** in questioning whether, without a constitutional amendment, it was constitutional for the legislature and executive branches to delegate judicial compensation to an appointed commission whose recommendations do not require affirmative legislative and executive action to become law – which is what they did by the statute creating the Commission (at fn. 2).

**The Commission's statutory violations**, particularized by CJA's Opposition Report, are:

- (1) ***In violation of the Commission statute***, the Commission's judicial pay raise recommendations are unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges are inadequate (at pp. 1, 16, 31);
- (2) ***In violation of the Commission statute***, the Commission examines only judicial salary, not "compensation and non-salary benefits" (at pp. 18-21, 25-31);
- (3) ***In violation of the Commission statute***, the Commission does not consider "all appropriate factors" – a violation it attempts to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (at pp. 4-5, 21);
- (4) ***In violation of the Commission statute***, the Commission makes no findings as to five of the six statutorily-listed "appropriate factors" it is required to consider (at pp. 21, 23-24);
- (5) ***In violation of the Commission statute***, the Commission does not consider and makes no findings as to "appropriate factors" presented by CJA's citizen opposition as disintitling New York's judges from any pay raise – whose appropriateness is uncontested by the Commission and judicial pay raise advocates. Among these:
  - (a) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay (at pp. 10-13); and
  - (b) the fraudulence of claims put forward to support judicial pay raises by judicial pay advocates (at pp. 13-15), including their concealment of pertinent facts, *inter alia*:

- (i) that New York’s state-paid judges are not civil-service government employees, but “constitutional officers” of New York’s judicial branch;
- (ii) that the salaries of all New York’s “constitutional officers” have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the “constitutional officers” of our executive branch – and the 62 Senators and 150 Assembly members who are the “constitutional officers” of our legislative branch;
- (iii) that the compensation of New York’s judicial “constitutional officers” is comparable, if not superior, to the compensation of New York’s executive and legislative “constitutional officers”, with the judges enjoying incomparably superior job security;
- (iv) that New York’s executive and legislative “constitutional officers” have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
- (v) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
- (vi) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York’s 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
- (vii) that New York judges enjoy significant “non-salary benefits”;
- (viii) that throughout the past 12 years of “stagnant” pay, New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there is no shortage of qualified lawyers eager to fill vacancies;
- (ix) that the median household income of New York’s 19+ million people is \$45,343 – less than one-third the salary of New York Supreme Court justices.

These concealments – hallmarks of the judicial compensation lawsuits and of the Court of Appeals February 23, 2010 decision purporting a judicial pay raise “crisis” and separation of powers violation by the Legislature and Governor in “linking” judicial salaries to legislative salaries – are all replicated by the Commission’s Report. In so doing, it simultaneously covers up the fraudulence of the lawsuits and that decision.

As set forth by the Opposition Report:

- judges have NO constitutional entitlement to cost of living increases (at pp. 34-35);
- there is NO separation of powers constitutional violation by “linkage” (at fn. 9); and
- the Commission’s recommended judicial pay raise distorts and skews the appropriate symmetry in pay of the “constitutional officers” of New York’s co-equal government branches (at pp. 36-37).

Beyond the actual bias of the Commissioners, proven by their constitutionally, statutorily, and evidentiarily-violative Report, the Opposition Report also identifies (at pp. 15-17) the disqualifying interest of several Commissioners – beginning with Chairman William C. Thompson, Jr. As highlighted (at pp. 2, 10, 13, 15), Chairman Thompson was the subject of a written application for his disqualification for interest, presented by CJA promptly upon his appointment to the Commission, which neither he nor the Commission determined in face of notice that the Commission could not lawfully proceed until that threshold issue was ruled upon. Such is itself grounds for voiding the Commission’s judicial pay raise recommendations.

So that the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge may have the assistance of the Commissioners and of judicial pay advocates in discharging their mandatory duties to protect the People of New York, CJA’s Opposition Report identifies, in its “Conclusion” (at p. 37), that it is being furnished to the Commissioners, as well as to judicial pay raise advocates, so that they may have the opportunity to rebut it, if they can.

The “Conclusion” (at p. 37) also looks ahead to the 2012 elections, when every member of New York’s Senate and Assembly is up for re-election, and lays out an agenda of citizen action to “vindicate the public’s rights by making judicial pay raises and judicial accountability the decisive election issues they rightfully are”, in the event the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge fail to act. As stated:

“Voters will find it easy to embrace so self-evident a proposition [**NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE – THE MONEY BELONGS TO THE VICTIMS!**], as likewise CJA’s further position that the money be used to rehire the hundreds of court employees terminated to save money and to staff new judgeships whose creation is warranted by caseload levels far exceeding capacity.”