

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director

BY HAND

November 5, 2012

James E. Tierney, Director
National State Attorneys General Program
Columbia Law School
605 West 113 Street, #1
New York, New York 10025

RE: (1) Building Scholarship: Assessing the Performance of State Attorneys General in Ensuring Government Integrity & Constitutional Governance – Beginning with the New York State Attorney General and the case *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* (NY Co. #401988/2012)
 (2) Request for Pro Bono Legal Assistance by Columbia Law School's Social Justice Initiatives

Dear Director Tierney,

This follows up the several phone messages I left for you in June and July 2012, requesting to speak with you about *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.*, a history-making lawsuit brought by our non-partisan, non-profit citizens' organization "on behalf of the People of the State of New York & the Public Interest" against New York's three government branches and highest constitutional officers, arising from the official misconduct of a succession of New York State Attorneys General – the most recent being State Attorney General Eric Schneiderman, a named defendant.

The threshold issue – and the basis upon which Attorney General Schneiderman is a defendant – is his mandatory constitutional and statutory duty to have himself brought the lawsuit based on our showing, presented to him months earlier, as to the unconstitutionality and unlawfulness of Chapter 567 of the Laws of 2010, *as written and as applied*, pertaining to the Special Commission on Judicial Compensation and its recommendation for judicial pay raises. This pre-

* **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.

litigation showing consisted of CJA's October 27, 2011 Opposition Report to the Special Commission's August 29, 2011 "Final Report", identical to what we had previously presented to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman, without response from them. Indeed, evident from such Opposition Report is that the state would have no merits defense to a lawsuit – as Attorney General Schneiderman himself thereafter proved by engaging in flagrant litigation fraud to quash the lawsuit precisely because he had no legitimate defense.

To enable you to see for yourself the importance of *CJA v. Cuomo* to research and scholarship on how New York's Attorney General ACTUALLY operates in matters pertaining to governmental integrity and constitutional governance, I told your staff that the verified complaint with its physically-incorporated October 27, 2011 Opposition Report and the entire litigation record were posted on our website, www.judgewidth.org, accessible via the top panel "Latest News".¹ Nevertheless, and despite my several calls, including to program coordinator Frances Laviscount on June 26th and July 11th, and to staff attorney Jacob Meyer, with whom I had a lengthy substantive conversation on July 3rd, identifying that the threshold issue was our entitlement to the Attorney General's representation pursuant to Executive Law §63.1 because it was we – not the defendants – who were representing "the interest of the State", I did not hear back from you.

As would have been obvious to you upon examination of the posted lawsuit record, *CJA v. Cuomo* chronicles conduct by New York Attorney General Schneiderman and prior New York Attorneys General that is diametrically opposite from what you are teaching about the state attorneys general as champions of the rule of law, constitution, and public interest. Exemplifying this is your posted video on the attorney general's "powers & duties", wherein you state:

"The state's attorney general is the state's chief law enforcement officer. That means that armed with power from the state constitution, from common law, and from a myriad of statutes, the attorney general and his or her staff gives advice, usually confidential, to other elected officials, to state legislators, to public commissioners, and department heads and sometimes directly to the people who are impacted by the results of these decisions. And most of this work doesn't break into the open until someone gets sued. State government is sued all the time. And it is the office of the attorney general who represents the state in court and of course sometimes the state has to enforce its position and, again, it is the attorney general who makes those decisions and moves forward.

...

And the attorney general is an independent entity. With the exception of the states of Wyoming and Alaska, the attorney general is separate from the

¹ The allegations of the verified complaint pertaining to Attorney General Schneiderman are ¶¶7, 95, 120-127 – and the four causes of action, ¶¶128-172.

government. That's a little counterintuitive for people who studied our federal system. The United States attorney general is appointed by the president and can be removed at any time. It's not true with the state attorney general. They run for election: 43 statewide on a partisan ballot and they generally serve for at least four years.

The attorney general's independence is not by accident. It's by design. Ever since colonial times, the states have liked the idea of the lawyer who represents the states being a little independent, being able to push back upon an agency, or department head, or another elected official, to make sure that their behavior is within the four corners of the law and the state constitution.

That independence carries over to the personality and culture of state attorney general offices. I've known probably 2-300 men and women who have been the attorney general of their state. Some are liberal. Some are conservative. But they all share the feeling and belief that it is their job to enforce the law. So if you bring to them a series of facts and it falls within their jurisdiction, they probably are going to want to try to do something about it. It's what I call a proclivity to action...."

Indeed, obvious from the videos of your ethics training of state attorneys general – ALL of which focus on the duality and conflict that state attorneys general face in representing the state and its office holders, yet also the rule of law and constitution – is that *CJA v. Cuomo* is a powerful case study for explicating and resolving critical issues at the core of the state attorney general's function. This is also obvious from the Columbia law review article, "*State Attorneys General and the Client-Attorney Relationship: Establishing the Power to Sue State Officers*", 38 *Columbia Journal of Law and Social Problems* 365 (2005) by Justin Davids, who you and Professor Richard Briffault advised and which you use in your ethics training. Its summarizing introduction begins:

"The state attorney general stands in a rare position in the legal community. Often she is required by statute to represent the state, including its officers and agencies, before the courts. In the majority of states, however, the attorney general is a constitutional office directly elected by the people, thus mandating that she also represent the public interest. The result is that state attorneys general actually have two clients: state officers and the people. But what happens if the interests of these clients conflict in the same case?..." (at p. 365, italics in original).

At bar – and as reflected by ¶¶20 and 122 of the verified complaint – the relevant New York State statute, Executive Law §63.1, does not require that New York’s Attorney General “represent the state, including its officers and agencies before the courts”. Rather, and perhaps as prevails in other states as well, it requires that the Attorney General’s involvement in litigation be predicated on “the interests of the state.” The “interests of the state” are here NOT debatable. They are dispositively established by CJA’s October 27, 2011 Opposition Report – whose accuracy as to the constitutional and statutory violations and fraud of the Commission on Judicial Compensation’s August 29, 2011 “Final Report” was undenied and undisputed by Attorney General Schneiderman, as likewise by his co-defendant constitutional officers – all of whom have failed and refused to disgorge their findings of fact and conclusions of law with respect thereto.

CJA v. Cuomo is illustrative of what happens time, after time, after time, at the New York State Attorney General’s office. Citizens turn to the Attorney General with evidence of unlawful, if not unconstitutional, state government action, which he ignores. This then burdens the citizens with taking legal action as “private attorneys general”, suing the state and/or its culpable officials and agencies – at which point the Attorney General defends the state, etc. by dismissal motions, including dismissal motions that are frauds on the court, being based on knowing falsification and material omission of fact and law, thereupon granted by a biased and/or self-interested judiciary. In such fashion, our state’s highest law enforcement officer functions not as a safeguard of government integrity and constitutional governance, as he was intended to be – but as a perpetuator of governmental corruption and abuse.

Curiously – and I so remarked to your staff – your website, which identifies “policy areas” of the state attorneys general², does not include government integrity or constitutional governance among them, though these are core functions of the state attorneys general, deserving of research and scholarship by the National State Attorneys General Program.

CJA v. Cuomo is a perfect case study for research and scholarship on the handling of these critical “policy areas” by a state attorney general – indeed, by a succession of New York State Attorneys General, whose misfeasance, malfeasance, and nonfeasance have facilitated an ongoing parade of horrors: (1) the brazen theft of tens of millions of taxpayer dollars in fraudulent judicial pay raises this year and over the next two years, in perpetuity; (2) an unconstitutional court-controlled attorney disciplinary law, utilized to retaliate against judicial whistle-blowing attorneys; (3) a corrupt Commission on Judicial Conduct, dumping the very complaints the law requires it to investigate; (4) violative and unconstitutional state judicial selection processes, including to the Court of Appeals; (5) obliteration of state remedies against

² According to your website, these are “underdeveloped, emerging areas of jurisdiction for Attorneys General”.

official misconduct provided by Article 78 and motions for judicial disqualification and disclosure. All are chronicled, with substantiating documentary proof, by the *CJA v. Cuomo* lawsuit record.

Although the complete record of *CJA v. Cuomo* is accessible from CJA's website, www.judgewatch.org, via the top panel "Latest News" – as it has been throughout these many months that I have not heard back from you – I am, nonetheless, furnishing you with a hard copy, excepting the complete record of the separate case, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*, which I had filed in Bronx Supreme Court on April 16, 2012 in opposition to the Attorney General's April 13, 2012 cross-motion to transfer *CJA v. Cuomo* to New York Supreme Court on the ground that it needed to be there determined whether a January 31, 2000 filing injunction by then Acting New York Supreme Court Justice William Wetzel against me and CJA in that case barred us from bringing the instant action.

The brazen frivolousness and fraud of the Attorney General's cross-motion for transfer – which Bronx Supreme Court Justice Mary Ann Brigante-Hughes nonetheless granted – are evident from the verified complaint in *CJA v. Cuomo* and its substantiating exhibits and further highlighted by my April 16, 2012 opposition affidavit. If you have not already done so, it will take you virtually no time to discern this about the Attorney General's cross-motion, especially after you conclude – based on CJA's October 27, 2011 Opposition Report – that it was his obligation to have commenced legal action against his prospective clients – the Governor, Temporary Senate President, Assembly Speaker, and Chief Judge – if they failed to follow what should have been his advice to them. Even for first-year law students, these threshold determinations can be speedily accomplished.

I highly recommend to you and other Columbia Law School faculty and students the law review article "*Legal Autopsies: Assessing the Performance of Lawyers and Judges Through the Window of Leading Contract Cases*", 73 *Albany Law Review* 1 (2009), by Professor Gerald Caplan, who, proposing scholarship that does "not presently exist", enunciates that evaluating the performance of lawyers and judges "is not possible without access to the record" (at p. 3) and "cannot occur without close examination of the trial record, briefs, oral argument, and the like" (at p. 53). I trust you would not disagree.

Similarly, I highly recommend "*Legal Ethics in an Adversary System: The Persistent Questions*", 31 *Hofstra Law Review* 641 (2006), by Professor Deborah L. Rhode, which pertinently states:

"Finally, law schools need to be more accountable for their own efforts, or lack of efforts, concerning professional responsibility. ...troubling gaps are apparent in research priorities. On key questions involving professional roles, rules, and regulation, our knowledge base is shamefully thin. We are awash in theory and starved for facts. Too much professional responsibility scholarship is data-free

doctrinal analysis, the functional equivalent of ‘geology without the rocks.’^{fn}” (at p. 659).

I look forward to discussing with you – and with Columbia Law School Social Justice Initiatives Dean Ellen Chapnick – an agenda of research and scholarship about the job performance of the New York State Attorney General that begins with the *CJA v. Cuomo* record. That the case is yet unfolding – in New York Supreme Court – with plaintiffs desperately in need of *pro bono* legal assistance in upholding the rights of “the People of the State of New York & the Public Interest” against an attorney general who has jettisoned his constitutional, statutory, and ethical duties, furnishes Columbia Law School students with a powerful opportunity to fulfill their mandatory 40-hour *pro bono* requirement for graduation, while making an invaluable contribution and acquiring invaluable litigation experience.

Needless to say, the threshold legal issue to be researched by Columbia Law School students, for a memorandum of law to be submitted by plaintiffs in support of a motion, is Attorney General Schneiderman’s disqualification for conflict of interest and plaintiffs’ entitlement to his office’s representation pursuant to Executive Law §63.1.

Yours for a quality judiciary,



ELENA RUTH SASSOWER

Director, Center for Judicial Accountability, Inc. (CJA)
& individual plaintiff *pro se*

Enclosures

cc: Ellen P. Chapnick, Dean/Social Justice Initiative, Columbia Law School
Professor Richard Briffault, Joseph P. Chamberlain Professor of Legislation
& Director/Legislative Drafting Research Fund, Columbia Law School
Professor Gerald Caplan, University of the Pacific/McGeorge School of Law
Professor Deborah L. Rhode, Director/Center on the Legal Profession,
Stanford Law School