

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: glabe@nytimes.com

DATE: August 5, 2011

TO: William Glaberson, Metro Desk
The New York Times

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

RE: 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

As the Times reporter seemingly responsible for all the Times' articles on New York's judicial compensation issue since November 2010, when a lame-duck legislature passed legislation from a lame-duck governor creating the Commission on Judicial Compensation, you surely know that your triple-headlined, front-page July 5th article:

*"JUDGES QUITTING AT UNUSUAL RATE AS SALARIES LAG –
LAW FIRMS' RICH OFFERS –
A 12-Year Pay Freeze in New York – Exits Once Were Rare" –*

whose simplified title when posted on the internet on July 4th was:

"Pay Frozen, More New York Judges Leave Bench" –

has been interpreted by other media and by advocates of judicial pay raises¹ as having found:

(1) that because salaries of New York State judges have not increased since 1999, judges have been "leaving the bench" at an increasing and accelerating rate;

¹ See, *inter alia*, NYS Bar Association President Doyle's July 20, 2011 written testimony (at p. 2); NYS Bar Association's July 15, 2011 Report & Recommendations (at p. 11); New York City Bar's July 2011 Report (pp. 3-4); Fund for Modern Court's July 18, 2011 written submission (Victor Kovner, Chair (at p. 3); NY Co. Lawyers' Association President Aaron's July 12, 2011 letter (at p. 2); July 20, 2011 testimony of Appellate Division, Second Dept. Justice John Levanthal, President of the Association of Supreme Court Justices of the City of New York; July 20, 2011 testimony of Dorchen Leidholdt, Director, Center for Battered Women's Legal Service, Sanctuary for Families.

EX H

(2) that the nearly 1 in 10 judges who are “now leaving annually” are doing so because they can make more money as “practicing lawyers”.

Examination of your July 5th article shows that these supposed facts are only inferences created by you and your editors – and that what you actually have is nothing more than “at least a dozen [judges who] have resigned and explicitly cited the pay” – an utterly puny number that should have been the subject of inquiry and comment, but was not.²

Instead you provide a mere two names of this “at least a dozen” figure, James McGuire and Robert Spolzino³ – the latter of whose remark, “I never expected to get rich as a judge, but I never expected to get poor either”, The Times featured as the “Quotation of the Day” on page 2 of its newspaper. Your article reflects no investigation of the legitimacy of Mr. Spolzino’s claimed impoverishment⁴ or of why Mr. McGuire cannot “responsibl[y] support his family with “two children, ages 5 and 3”⁵ on the \$144,000 appellate salary you identify⁶.

² As of January 9, 2008, the New York Law Journal could identify only two judges who had cited pay in resigning. These were Oneida Supreme Court Justice Robert F. Julian, then resigning, and Orange County Court Judge Stewart A. Rosenwasser, who had resigned in 2006. The Law Journal article, “*Citing Economic Hardship, N.Y. Judge Plans to Quit*”, with a subtitle “*Judge says he believes others have ‘retired premature because of this sorry situation’ judge pay in N.Y. is 49th in nation*”, also identified a third judge – Manhattan Supreme Court Justice Emily Jane Goodman – as having publicly stated that she was actively seeking another job due to pay. Presumably you were aware of this Law Journal article when you opted to include Justice Goodman in your article, without identifying that she had apparently, in 3-1/2 years, not found a more remunerative job elsewhere.

³ The Law Journal had previously identified Spolzino and McGuire as resigning on account of pay. McGuire’s resignation had been featured, at length in a November 15, 2010 article “*Family Trumps Love of Law for Departing Justice*”. The Law Journal’s front-page, lead “News in Brief” item “*Second Department Judge Quits Over Lack of a Raise*” on August 4, 2009 was about Spolzino – and a copy was annexed to CJA’s June 10th FOIL request to the OCA that I e-mailed you on June 13th.

⁴ Nor was any impoverishment – or particular hardship – borne out by Spolzino’s rather ridiculous testimony at the July 20, 2010 hearing that he resigned because he could “not accept” that in six years he would be unable to pay college costs for his 12-year old son, seemingly his only child. Contrast The Times’ publication, on July 10, 2011, of the letter to the editor of James C. Harrington, Director of the Texas Civil Rights Project, entitled “*Underpaid Judges?*”. In pertinent part, Mr. Harrington’s letter stated:

“Public-interest lawyers earn one-third to one-half of what judges do. We also have kids to support and send to college, but we manage to do it. Even so, our take-home pay is typically higher than an average American’s, for which we are grateful.”

Notably, no other judge who had already resigned from the bench on purported grounds of inadequate salary testified at the hearing.

⁵ Mr. McGuire’s wife was, and presumably still is, “a veteran prosecutor in the Southern District U.S.

As for the other ten of the “dozen” judges, you give no information whatever. Here, too, there is no indication that you investigated their circumstances to verify that other reasons did not prompt them to resign. No information is supplied as to what these former judges are making as “practicing lawyers” – if, in fact, they did become “practicing lawyers”, which your article does not state, while nonetheless making it appear that they were able to command the stratospheric pay of “partners at top firms, who can earn 10 times the salary of the judge before whom they are arguing a case”. Nor do you balance this whopping financial advantage, which you do not disclose is not reflective of the average/median compensation of New York’s private practitioners, by any mention of the real trade-offs and hazards that private practice entails.⁷

Needless to say, you furnish no evidence of the excellence of any of these judges that would make their departures from the bench a loss for the People of New York. And, of course, you do not state that you have availed yourself of credible information sources, such as CJA, or have verified from documentary records that these were worthy public servants who had not corrupted their offices.

As you know, on July 6th I filed a FOIL request with the Office of Court Administration (OCA) seeking documentary substantiation for your July 5th article – a copy of which I sent you and others at The Times, including the Editorial Board. A further copy is enclosed – as is a copy of the OCA’s responding letter, dated July 22nd, reflecting that the statistical information which the OCA furnished you as to the number of judges who had left the bench was unconnected to any

Attorney’s Office” – presumably making a handsome salary, as you reasonably would know, especially if you were familiar with The Law Journal’s November 15, 2010 article (see fn. 3, *supra*).

⁶ Undisclosed is that judicial salaries are boosted \$10,000 by an OCA supplement.

⁷ An anonymous source – quite likely a lawyer in private practice – described some of these tradeoffs and hazards as follows:

...Judges and justices want the guaranteed salaries of judicial office, the tenure of judicial offices, and the prestige of judicial offices. On top of that, they want the very-high incomes which attend upon the entrepreneurial risks of private practice, e.g., clients dumping lawyers; clients fighting billings; breakings up of partnerships.

Griping and grumbling of judges and justices overlook payment, by the State of New York, of all their office expenses – from rent to cleaning and maintenance, from electricity to water to telephone to Internet account, from furniture to computer, from records clerks to guards, and from secretary to law clerk. Attorneys in private practice must pay all their office expenses out of gross income.

Sniveling and puling by judges and justices overlook their immunity from suit, even if official conduct is patently illegal, even if official conduct is malicious. An attorney in private practice can be sued for malpractice no matter that he did no wrong, so he must carry hefty, expensive professional liability insurance.” (from CJA’s files, underlining added).

reason for their leaving. The OCA also reiterated what it had previously stated to me – and what I had quoted in CJA’s July 6th FOIL request – that it does not maintain records in a fashion enabling it to identify resignation letters based on insufficient compensation and were a request to be made for a specific judge’s resignation letter, the reason for resignation therein stated, if any, would be redacted as not subject to FOIL.

It should be obvious that the BIG STORY that your July 5th article should have been reporting, but did not, was that despite claims by the OCA and others that state judges have been leaving the bench on account of insufficient pay, the OCA – remarkably – has not compiled any substantiating documents as to their numbers and names. Indeed, that your article refers to the OCA as having “studied” “judicial attrition” in response to your “questions for th[e] article” suggests that it could not answer your “questions” – which, presumably, were as to “the number and names of New York State judges who had resigned from office on grounds of insufficient compensation – particularly during the last ten years”. Such were the questions posed by CJA’s June 10th FOIL request to the OCA – a copy of which I e-mailed you and others at The Times on June 13th. Or do you deny that your questions to the OCA mirrored our own and that the genesis of your July 5th article was our June 10th FOIL request? For your convenience, enclosed is a copy of that June 10th FOIL request, together with the June 13th e-mail that attached it, entitled “NY’s Commission on Judicial Compensation: NOT YET OPERATIONAL or ACCESSIBLE TO THE PUBLIC on day 73 of its maximum 150-day statutorily-limited existence”.

So that the public and Commission may have the EVIDENCE concealed by your July 5th article as to how few New York State judges have actually resigned since 1999 due to the supposed insufficiency of their salaries, CJA calls upon you to furnish the names of the “dozen” or so judges to whom your article refers as having “resigned...explicitly cit[ing] the pay” and to identify the evidentiary basis for your conclusion that the increased numbers of judges leaving the bench are doing so “not to retire, but to return to being practicing lawyers”. Indeed, what portion of this “judicial attrition” “increasing sharply over the last five years” is age-based mandatory retirement? Your article does not say – nor does The Times’ July 11, 2011 editorial “*New York’s Lagging Judicial Pay*”, which expressly cites to your article’s “judicial attrition” statistics.

CJA also calls upon you 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. Presumably, the reason there are so few such resignations is the same reason that throughout these 12 years New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – a fact you have also not reported.

.

To get you started, enclosed are statistics as to the mean/median salaries of New York lawyers in the 62 counties of this state⁸ – an appropriate juxtaposition to the OCA’s “judicial attrition” statistics. To my knowledge, Times coverage of the judicial compensation issue and its repetitive editorializing for judicial pay raises have not identified the mean/median salaries of New York’s 160,000+ lawyers – just as it has not reported on other significant non-salary benefits that come with being a judge of this state, let alone such other relevant facts as:

- (1) the median household income of New York’s 19+ million people – \$45,343;⁹
- (2) that New York’s 1,300 state judges are not government, civil-service employees, but “constitutional officers” of the judicial branch of our state government;
- (3) that the salaries of all “constitutional officers” of New York State 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;
- (4) that the compensation of the “constitutional officers” of our judicial branch – *to wit*, those 1,300 judges – is comparable, if not superior, to the compensation of New York’s executive and legislative “constitutional officers”¹⁰, with the judges enjoying incomparably superior job security;
- (5) 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

⁸ These statistics are from the website of the American Bar Association Journal, inasmuch as the New York bar leaders who testified at the July 20, 2011 hearing have not responded to my requests to them for similar statistical information – including as to their own lawyer membership. CJA’s July 26, 2011 and August 1, 2011 letters to these New York bar leaders are posted on our website, www.judgewatch.org, accessible via the top panel “Latest News” and sidebar panel “Judicial Compensation-NY” By copy of this letter to the bar leaders, I will ask them to supply The Times with the information they have not supplied us.

⁹ This statistic is from The Times’ own website on New York, whose source is indicated as “Ny.gov”.

¹⁰ To further conceal that our state judges are paid a salary that is roughly 40% higher than that paid to legislators, The Times’ April 8, 2007 editorial “*Justice on the Cheap*”, asserted, without explanation and without support in New York’s Constitution, that state legislators “work part time”. The June 2007 report of the National Center for State Courts – on which so much judicial pay raise advocacy relies – both cited and quoted from this editorial to support its own representation (at pp. 7-8) that members of New York’s legislature “serve part-time”.

and the government employees reporting to them;

(6) 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.

Then, of course, there is the THRESHOLD fact 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 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 23rd, June 6th, June 13th, June 18th, June 19th, June 24th, June 28th, and June 30th¹¹ and which, prior to the July 20th hearing, you and it suppressed in two articles and an editorial that were materially false – and knowingly so¹² – 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 20th 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*”.

¹¹ All these e-mails are posted on CJA’s website, as part of our NY judicial compensation webpages, accessible *via* the link “PRESS IN ACTION”.

¹² In addition to your July 5th article and The Times’ July 11th editorial, *supra*, was your July 17th 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 23rd, June 23rd, and other letters to the Commission.

As the Commission's statutory clock is ticking, please respond to the foregoing by Monday, August 8th.

Thank you.

Yours for a quality judiciary,



ELENA SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

Enclosures:

- (1) CJA's July 6, 2011 FOIL request, with e-mail receipt (4 pages)
- (2) OCA's July 22, 2011 response (2 pages)
- (3) CJA's June 13, 2011 e-mail, with attached June 10, 2011 FOIL request (4 pages)
- (4) ABAJournal.Com: "What America's Lawyers Earn"—NYS's 62 Counties (23 pages)

cc: New York Commission on Judicial Compensation

William C. Thompson, Jr., Chairman
Richard Cotton
William Mulrow
Robert Fiske, Jr.
Kathryn S. Wylde
James Tallon, Jr.
Mark Mulholland

New York Times recipients of CJA's May 23rd, June 23rd, & other letters,
most importantly, the Editorial Board

New York bar association leaders who testified at the July 20, 2011 public hearing

Vincent E. Doyle, III, President, NYS Bar Association
Roger Juan Maldonado, Chair, Council on Judicial Administration/NYC Bar Association
Stewart Aaron, President, NY Co. Lawyers' Association
Leslie Kelmachter, President, NYS Trial Lawyers Association
Lance D. Clarke, Past President, Nassau County Bar Association
Maureen Maney, President-Elect, Women's Bar Association of the State of NY
The Public & Press