

## CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

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August 5, 2013

TO: Regina Calcaterra, Executive Director  
Commission to Investigate Public Corruption

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

RE: Keeping the Commission to Investigate Public Corruption True to its Name  
& Announced Purpose

As you know, the Commission to Investigate Public Corruption is supposed to restore the public's trust in the integrity of our state government. Nonetheless, in the month since Governor Cuomo publicly announced his formation of the Commission at a July 2, 2013 press conference, surrounded by the commissioners and special advisors he had appointed, the Commission has held at least two meetings, without public notice and from which the public has been excluded.<sup>1</sup>

Making this worse, the Commission has not scheduled public hearings to take testimony from the public until September – notwithstanding it apparently needs help in either ascertaining or analyzing “flaws in the system”, such that its staff has been “quiz[z]ing” unnamed “good government groups for their analyses of flaws in the system”, behind closed doors. (fn. 1, *supra*).

Certainly if these “good government groups” have something to contribute, they could have done so at public hearings, along with the rest of the public whose trust you are trying to restore.

Please, therefore, identify which “good government groups” were interviewed by Commission staff and what their “analyses” were. Please also identify the process by which they were selected and the criteria used – so that we might understand why our good-government citizens’ organization was not included among the “good government groups” you were interviewing.

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<sup>1</sup> “A silent public start for anti-corruption panel: Panel investigating political corruption holds closed meeting”, Albany Times Union, July 11, 2013 (Jimmy Vielkind); “Watchdog panel starts digging in: Commission seeks records from agencies, listens to advocates for good government”, Albany Times Union, July 26, 2013 (Rick Karlin).

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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.



Would we be correct in surmising that the only “good government groups” interviewed were those supportive of Governor Cuomo’s agenda of public campaign financing, whose “analyses of flaws in the system” would be dominated by that issue? Or was the criteria “good government groups” which frame corruption as “flaws in the system”, thereby absolving from accountability those who should be prosecuted and removed from office? Might it also have been “good government groups” which have kept their eyes tightly shut to case file evidence of corruption infesting our state judiciary, encompassing supervisory and appellate levels and the State Commission on Judicial Conduct, to which public officers in our executive and legislative branches are collusive?

I note that the Commission’s website has a series of prominent buttons. One is for “PUBLIC COMMENT” which, without any instruction or other information, opens to a message page that can be filled out and sent. There is also an open button for “TIPS”, furnishing a phone number: “518-485-8477 (TIPS)”, with no instructions or other information.

What is your procedure for handling “PUBLIC COMMENT” and “TIPS”?

On Friday, July 19<sup>th</sup>, I furnished a substantive “tip” to your administrative assistant, Bryce Jones, when I called to reserve to testify at the Commission’s first public hearing, on September 17<sup>th</sup>, in Manhattan. I told Mr. Jones that the Commission would doubtlessly be swamped by members of the public wanting to testify about corruption<sup>2</sup>, as that was what happened in 2009 when the Senate Judiciary Committee held public hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system, at which two dozen citizens came forward with testimonial and documentary evidence so explosive that the hearings were aborted, with no investigation, no findings, and no committee report. I believe I also told him that the videos and transcripts of those 2009 hearings are posted on our website, [www.judgewatch.org](http://www.judgewatch.org), on a webpage I created, in 2009, accessible *via* our “Latest News” top panel. I know I pointed out to him the first hyperlink on our “Latest News” webpage entitled “Holding Government Accountable for its Grand Larceny of the Public Fisc and Other Corruption”. It leads to a menu of hyperlinks for our corruption complaints on that topic – the first, on April 15, 2013, to U.S. Attorney Preet Bharara, and our other complaints based thereon, most recently to Albany County District Attorney P. David Soares, a Commission member, which I told Mr. Jones we would be filing that very day. I believe I summarized for Mr. Jones that these corruption complaints were against New York’s highest public officers, starting with Governor Cuomo and including Attorney General Schneiderman, and involved fraudulent, statutorily-violative, and unconstitutional judicial pay raises, for which we are suing them for corruption and collusion against the People in a public interest lawsuit, *Center for Judicial Accountability, Inc., et al. v. Governor Cuomo, et al.*

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<sup>2</sup> Curiously, the Commission’s July 16<sup>th</sup> press release announcing its “first round of public hearings” does not ask members of the public to notify the Commission, in advance, if they wish to testify. It simply states “Doors open at 5:00 p.m.” I called the Commission, initially, on July 17<sup>th</sup>, but no one picked up and a message kicked in, identifying that the voice messaging service had not been set up. When I called again, on July 19<sup>th</sup>, Mr. Jones informed me, in response to my question, that I was the second caller requesting to testify. Do I correctly assume this means that irrespective of whether I am at the hearing room when “Doors open at 5:00 p.m.”, I will be scheduled to testify for the hearing starting at 6:00 p.m.?



The first hyperlink on our “Holding Government Accountable” webpage, however, is for our webpage for the Commission to Investigate Public Corruption<sup>3</sup>. I guided Mr. Jones to open it as I had there posted correspondence to which the Commission was an indicated recipient, but which I had been unable to provide it because no contact information had been available.

Indeed, I told Mr. Jones that nearly two weeks before the Commission’s July 15<sup>th</sup> letters to the New York State Board of Elections and New York State Joint Commission on Public Ethics (JCOPE) to preserve their records for investigation, we had already sent a July 2<sup>nd</sup> e-mail to JCOPE asking what had become of the records of its predecessor, the New York State Ethics Commission, upon its dissolution, as these were relevant to your investigations of the Board of Elections and election law – and, specifically, the complaints we had filed with it, beginning with our complaint, in 1992, against the Board of Elections. Likewise posted, our July 3<sup>rd</sup> letter to the Office of Court Administration, inquiring about the three boxes of documents we had furnished, in 2003, to Chief Judge Kaye’s Commission to Promote Public Confidence in Judicial Elections, establishing “the corruption of ALL safeguards for ensuring the integrity of judicial elections”.

I also informed Mr. Jones that our citizens’ organization had had its beginnings in requests we had made in 1989 and 1991 to the first Governor Cuomo – Governor Mario Cuomo – for appointment of a special prosecutor to investigate the corruption of judicial elections, noting the hyperlink on our Commission webpage reading:

**“Our beginnings -- requesting a special prosecutor of the FIRST Governor Cuomo:**

Click here: [CJA's webpage of correspondence with Governor Mario Cuomo](#)”.

Mr. Jones could also see, posted on our Commission webpage, a section entitled:

**“Specific Disqualification for Interest  
of Commission Members & ‘Advisors’”**,

listing six names, with hyperlinks to webpages of our website germane to their disqualification for interest.

Perhaps aware of what I did not then know – that Commission staff was interviewing “good government groups” – Mr. Jones volunteered that you would be calling me. Yet, I received no return call from you and on Monday afternoon, July 22<sup>nd</sup>, I left a voice mail message requesting to speak with you. By then the section of our Commission webpage relating to the disqualification for interest of Commission members and advisors had been modified to add extracts from their bios from the Commission’s website, except for Co-Chair Milton L. Williams, Jr., whose Commission bio omits his chairmanship of the Fund for Modern Courts. This section of our webpage, unchanged since July 20<sup>th</sup>, appears as follows:

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<sup>3</sup> With the posting of this letter, the webpage has been renamed “Keeping the Commission to Investigate Public Corruption True to its Name & Announced Purpose”.

**"Milton Williams, Jr./Chairman, Fund for Modern Court**

**link to:** [CJA's webpage for Appellate Division, 1st Dept appeal in Mantell v. Commission on Judicial Conduct](#)

**link to:** [Fund for Modern Courts](#)

**Betty Weinberg Ellerin**

'Justice Weinberg Ellerin served for more than twenty years as a judge. During that time, she served as Deputy Chief Administrative Judge for the New York City Courts and as Associate Justice and Presiding Justice of the Appellate Division, First Department.'

**link to:** [CJA's webpage for Appellate Division, 1st Dept. appeal in Sassower v. Commission on Judicial Conduct](#)

**Richard Briffault**

'Richard Briffault is the Joseph P. Chamberlain Professor of Legislation at Columbia Law School. His primary areas of teaching, research and writing are state and local government law and the law of the political process. Prior to joining the Columbia faculty in 1983, he was an Assistant Counsel to the Governor of the State of New York. He has served as the executive director of the Special Commission on Campaign Finance Reform of the Association of the Bar of the City of New York, as well as a consultant to the New York City Charter Revision Commission and the New York State Commission on Constitutional Revisions.'

**link to:** [Building Scholarship](#)

**Daniel Castleman**

'Mr. Castleman spent nearly 30 years at the New York County District Attorney's Office. Mr. Castleman started his career there in 1979 as an appellate and street crime prosecutor. He then became a Senior Investigative Counsel in the Rackets Bureau handling political corruption and organized crime cases. After three years, Mr. Castleman became the Chief of the Rackets Bureau in 1990. In 1993, Mr. Castleman was promoted to Chief of the Investigation Division. Mr. Castleman then became Chief Assistant District Attorney in 2008.'

**link to:** [CJA's webpage for Manhattan D.A. Morgenthau](#)

**Robert Morgenthau  
(advisor)**

'Mr. Morgenthau was the District Attorney for New York County from 1975 to 2009. In his nine terms in office, his staff conducted approximately 3.5 million criminal prosecutions.... In addition, Mr. Morgenthau was known as a national leader in the prosecution of white collar crime. Prior to serving as D.A., Mr. Morgenthau...was the United States Attorney for the Southern District of New York...'

**link to:** [CJA's webpage for Manhattan D.A. Morgenthau](#)

**Babara Bartoletti/Legislative Director, League of Women Voters  
(advisor)**

'Barbara Bartoletti has been the Legislative Director for the League of Women Voters of New York since 1988, and a member of the League of Women Voters since 1978.'

**link to:** [League of Women Voters](#)".



Shortly after leaving my July 22<sup>nd</sup> voice mail message, I e-mailed the Commission's generic [comments@moreland.ny.gov](mailto:comments@moreland.ny.gov), transmitting the July 19<sup>th</sup> corruption complaint we had filed with Commissioner D.A. Soares, a complaint which itself identified (at p. 6) his "own financial interest" in handling the complaint – also shared by this Commission's nine other sitting district attorneys, including its two district attorney co-chairs: Onondaga County District Attorney William Fitzpatrick and Nassau County District Attorney Kathleen Rice. The transmitting e-mail furnished a direct hyperlink to our webpage for the July 19<sup>th</sup> complaint, <http://www.judgewatch.org/web-pages/judicial-compensation/albany-da.htm>, identifying that it posted not only the complaint, but "substantiating evidentiary proof".

I received no return call from you or other response from Commission staff.

Is this standard procedure for the "TIPS" and "PUBLIC COMMENT" you are receiving – or only for those furnishing readily-verified evidentiary proof of public corruption in which commissioners, special advisors, and staff are interested? Or do you dispute that that is what is presented by the MOUNTAIN of documentation posted on our website?

In the interest of transparency – and public confidence – will you be posting the written "TIPS" and "PUBLIC COMMENT" that members of the public are supplying you, where no confidentiality is requested and where it is clear that wide dissemination is preferred?

Perhaps some of this is governed by such "procedures and rules" as the Commission's three co-chairs may have unanimously approved, pursuant to Executive Order #106, which states:

"the Co-Chairpersons shall unanimously approve such procedures and rules as they believe necessary to govern the exercise of the powers and authority given or granted the Commissioners pursuant to Section Six and Subdivision Eight of Section Sixty-Three [of the Executive Law], including rules designed to provide transparency while protecting the integrity of the investigation and rights to privacy." (§V, §2)

Kindly provide a copy of all such "procedures and rules" – and, in any event, furnish the Commission's protocol for dealing with conflicts of interest, whether of Commission members, special advisors, or staff.

In that regard, is there a reason the Commission's website has a button for "COMMISSIONERS AND SPECIAL ADVISORS", supplying their names and brief bios, but no button for Commission staff with their names and bios? Indeed, the only place on the website where your name can be found – and the names of other staff, Danya Perry, Chief of Investigations; Kelly Donovan, Chief Counsel; and John Amodeo, Legislative Director – is on the only press releases you have posted: the Governor's July 2<sup>nd</sup> press release announcing the Commission and the Commission's undated (July 16<sup>th</sup>) press release announcing its public hearings in September.<sup>4</sup>

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<sup>4</sup> Strangely, the Commission has not posted its July 17<sup>th</sup> press release of its preservation letters to the



Kelly Donovan and John Amodeo are part of Attorney General Schneiderman's senior staff, are they not? How then will they be handling complaints against Attorney General Schneiderman and the Attorney General's office for corrupting their duty to safeguard government integrity and constitutional governance?

Certainly, concealing that New York's Attorney General has always had the power and duty to safeguard against public corruption was part of the run-up to the creation of this Commission. For instance, this April 18, 2013 news report:

"Attorney General Eric Schneiderman says he'd love to have more authority to pursue public corruption cases, which even in the face of recent scandals, no one is pushing to give him.

'The debate is on now for the next round of reform, and you have to understand that one aspect of that is strengthening our ability to fight corruption, strengthening the ability of prosecutors like my office....', Schneiderman, a Democrat, told Susan Arbetter on 'The Capitol Pressroom.'"<sup>5</sup>

It appears that the Commission is also concealing the Attorney General's powers and duties by its website and letterhead, wherein it calls itself "Moreland Commission to Investigate Public Corruption". This is not the Commission's name. The Governor's Executive Order #106 creating the Commission could not be clearer in announcing that the Commission is "to be known as the Commission to Investigate Public Corruption" (at ¶I). This is understandable as the Commission's sweeping power to investigate public corruption in all three government branches actually comes not from the Moreland Act (Executive Law §6), but Executive Law §63 pertaining to the "General duties" of the Attorney General.<sup>6</sup> Tellingly, the Commission's website neither posts Executive

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State Board of Elections and Joint Commission on Public Ethics. It has, however, been posted by media: "*Moreland panel sends preservation letters to JCOPE, Board of Elections*" Capitol Confidential/Albany Times Union, July 17, 2013 (Casey Seiler); "*Moreland To BoE And JCOPE: Preserve Records*", State of Politics, July 17, 2013 (Nick Reisman).

<sup>5</sup> "Schneiderman: We'd love more anti-corruption mojo", Capitol Confidential/Albany Times Union, April 18, 2013 (Jimmy Vieldkind). Attorney General Schneiderman's quoted remarks on The Capitol Pressroom's April 18, 2013 shows are at 49.18 mins: <http://www.wcny.org/radio/capitolpressroom/>.

<sup>6</sup> "The Moreland Act authorizes the Governor, in establishing a Commission, to investigate the management and affairs of any department, board bureau, or commission of the state – not other branches of government, however. N.Y. Exec. Law §6. Under Section §63, subdivision 8 of the Executive Law, the Governor may direct the Attorney General to inquire into matters concerning the public peace, public safety, and public justice and to appoint deputies to do so....Moreland Act Commissions...have been granted powers at times under both Sections.", "*Reflections on Chairing the Commission on Government Integrity*", John Feerick, Fordham Urban Law Journal, Volume 18, Issue 2 (1990), at footnote 4, underlining added): <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1340&context=ulj>;

See also, "NY Gov's corruption probe of lawmakers questioned", Associated Press, June 20, 2013,



Order #106, nor Executive Law §6, nor Executive Law §63.

Clear from Executive Law §63 is that the Attorney General is an essential safeguard to ensuring governmental integrity in this state. Is that essential safeguard functioning? Such must top the Commission's investigative agenda.

Examining how Attorney General Schneiderman and prior Attorneys General ACTUALLY discharge their powers and duties under Executive Law §63 was the subject of a proposal for scholarship embodied in a November 5, 2012 letter that I personally delivered to Professor Briffault on that date at his comfortable office at Columbia University Law School and which he personally received from me, *in hand*. It identified that *CJA, et al. v. Cuomo, et al.* was the perfect case for such scholarship, that it arose “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. (at p. 1); and that it is “a powerful case study for explicating and resolving critical issues at the core of the state attorney general's function” (at p. 3). The letter stated:

“*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...

[Here demonstrated is how the Attorney General's] 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 whistleblowing 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 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.” (at pp. 4-5, underlining in the original).

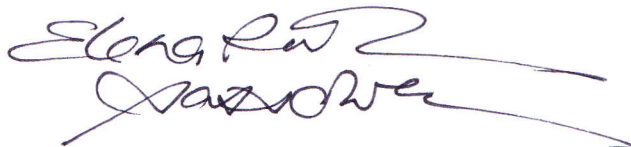
Our follow-up January 24, 2013 letter further reinforced this scholarship proposal and identified that *CJA v. Cuomo* establishes the necessity of crafting legislation to not only rectify the perversions wrought in Executive Law §63, but for developing “a powerful *qui tam* statute to protect the People from the Attorney General’s derelictions and misfeasance” (at p. 6).

These two letters – and the July 9, 2012 letter we previously provided Professor Briffault, also resting on *CJA v. Cuomo* and proposing “scholarly analysis of ‘court interpretation’ of constitutional questions” (at p. 3)<sup>7</sup> – additionally reflect the corruption of yet another essential safeguard to protecting against public corruption: that furnished by academia through honest, evidence-based scholarship. Such scholarship does NOT exist for huge and critical areas to which your investigations must reach.

Needless to say, if, in addition to “quiz[zing] “good government groups” for their “analyses of flaws in the system”, you are also “quiz[zing] so-called scholars, institutions of scholarship, and “think tanks” for their “analyses”, we request their names and “analyses”, and especially if they touch upon the judiciary and judicial selection and discipline.

As the issues here presented are threshold – the integrity of the Commission and its ability to be true to the announced purpose for which it was established – we trust you, if not the Commission’s three co-chairs, will be responding without delay.

Thank you.



cc: Commission Co-Chair Onondaga County District Attorney William Fitzpatrick  
Commission Co-Chair Nassau County District Attorney Kathleen Rice  
Commission Co-Chair Milton L. Williams, Jr.  
Commissioner Albany County District Attorney P. David Soares  
New York State Committee on Open Government  
The Public & the Press

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<sup>7</sup> The July 9, 2012 letter asserts “our state courts are eviscerating the constitution to protect a corrupt status quo against meritorious citizen challenge” (at p. 2) – and is posted, with substantiating proof, on the same “Building Scholarship” webpage as our November 5, 2012 and January 24, 2013 letters. The hyperlink is beneath Professor Briffault’s name on our “Keeping the Commission to Investigate Public Corruption True...” webpage – and has been added beneath our posting of this letter.