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Testimony of Elena Ruth Sassower Director, Center for Judicial Accountability, Inc. (CJA)

November 30, 2015 Public Hearing **Commission on Legislative, Judicial & Executive Compensation**

My name is Elena Ruth Sassower and I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a nonpartisan, nonprofit citizens' organization that for more than a quarter of a century has documented that New York's judiciary is not discharging its constitutional function to render fair and impartial justice, according to law. Rather, it is pervasively corrupt, from trial levels up through appellate and supervisory levels, "throwing" cases by fraudulent judicial decisions that falsify and omit the controlling facts and obliterate the most basic adjudicative and due process standards. And making this even more catastrophic and unconstitutional is that ALL safeguards within the judiciary and within the legislative and executive branches are dysfunctional and corrupted – not the least reason because when citizens bring suit to enforce black-letter, unambiguous law and principles of constitutional governance, judges "throw" the cases, usually with the connivance of our state's highest law enforcement officer – the New York Attorney General – who, when he has no legitimate defense, defends anyway with litigation fraud – for which he is rewarded by fraudulent judicial decisions in favor of his governmental clients.

As I stated when I testified before the Commission to Investigate Public Corruption at its September 17, 2013 public hearing, "Cases are perfect paper trails. There's a record. So it's easy to document judicial corruption." That was at the same hearing at which U.S. Attorney Preet Bharara testified. Indeed, on CJA's website, www.judgewatch.org, there is a prominent homepage link entitled "What's Taking You So Long, Preet?: CJA's Three Litigations whose Records are Perfect 'Paper Trails' for Indicting New York's Highest Public Officers for Corruption".

U.S. Attorney Bharara's prosecution of former Assembly Speaker Silver and his unrelated prosecution of former Temporary Senate President Skelos are each for small change. And establishing this, resoundingly, are those three litigations accessible from our homepage link bearing his name. These litigations, each of which we brought in the public interest, on behalf of the People of the State of New York, involve the open-and-shut, *prima facie* case of their collusion with each other and with Governor Cuomo and Chief Judge Lippman in grand larceny of the public fisc. This, with respect to the judicial salary increases recommended by the August 29, 2011 Report of their appointed Commission on Judicial Compensation – whose fraudulence, statutory violations, and unconstitutionality we proved by an October 27, 2011 Opposition

Report,¹ presented to all four of these highest constitutional officers, without response (Exhibit 7). This nonfeasance and collusion against the People was the subject of the first of the three litigations, a declaratory judgment action, which we commenced in March 2012 – and as to which we sought U.S. Attorney Bharara’s intervention as part of a fully-documented criminal complaint we hand-delivered for him on April 15, 2013 (Exhibit 2), a copy of which I handed up to the Commission to Investigate Public Corruption, in testifying before it five months later. The second litigation, a citizen-taxpayer action, as well as the third litigation, our intervention in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption, embrace the multi-billion-dollar slush-fund judiciary budget in which the judicial salary increases are embedded, with direct ramifications on the whole of the state budget, on three-men-in-a-room, behind-closed-doors governance, and the dysfunction born of Senate and Assembly rules vesting autocratic powers in the Temporary Senate President and Assembly Speaker. Both of these two subsequent litigations, commenced in March and April 2014, arose from U.S. Attorney Bharara’s nonfeasance with respect to the April 15, 2013 criminal complaint and from the corruption of the Commission to Investigate Public Corruption, which he covers up.

But for the evisceration of any cognizable judicial process in ALL three of these litigations – resulting from the double-whammy of Attorney General Schneiderman’s litigation fraud, rewarded by fraudulent judicial decisions – current judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating this Commission, would have been declared unconstitutional, long, long ago. So this Commission has U.S. Attorney Bharara to thank for the ongoing three-branch crime spree involving judicial salary increases and the secreting of them in the budget – sufficient, in and of itself, to disentitle all the constitutional officers whose compensation is before you from any increase.

The Judiciary and judicial pay raise advocates testifying here today, and by their written submissions, tout the excellence and high-quality of the Judiciary – implicitly recognizing that judicial salary increases are predicated on judges fulfilling their constitutional function of rendering justice. Plainly, they need a reality check if they are actually unaware of the lawlessness and non-accountability that reigns in New York’s judicial branch, notwithstanding our notice to them, again, and again, and again. Let them confront, with findings of fact and conclusions of law, our October 27, 2011 Opposition Report and our three litigations arising therefrom. This includes our constitutional analysis, drawn from the Court of Appeals’ February 23, 2010 decision in the judges’ judicial compensation lawsuits and from Article VI of the New York State Constitution, that:

“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.^{fn4,} (CJA’s October 27, 2011 Opposition Report,

¹ Our Executive Summary to the Opposition Report is annexed as Exhibit 1.

prefatory quote & page 12, underlining in the original).²

For your convenience, I am furnishing you with the starting point of the three litigations: our verified complaints in each – the first of which included a full copy of our dispositive Opposition Report, identical to what I handed to Chairwoman Birnbaum four weeks ago, at the conclusion of your November 3rd first organizational meeting.

Of these three litigations, only the citizen-taxpayer action is live and unfolding. As to it, I am also furnishing you with our supplemental verified complaint and the very last submissions in the case: our November 5, 2015 reply papers in further support of our cross-motion for summary judgment and other relief, laying out the state of the record before the judge. Highlighted therein are the uncontested facts and law entitling us to declarations that the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report are fraudulent, statutorily-violative, and unconstitutional – and that the statute that created that Commission, materially replicated in the statute that created this Commission, was unconstitutional, *as written and as applied*.³

The judge to whom the case was assigned, who got a \$40,000 salary increase as a result of the Commission on Judicial Compensation's Report, does not have to be excellent to render those requested declarations of fraud, unlawfulness, and unconstitutionality. He does, however, need to earn his \$174,000 yearly salary, by at least being competent and honest – as that is all that is necessary for rendering the declarations, as you can readily verify from the dispositive presentation in our reply papers.

Such declarations, mandated by law and the most basic adjudicative principles, will restore judicial salaries to their 2011 levels and preclude any increase until the systemic corruption infesting New York's judiciary is rectified, including by a lawfully-functioning Commission on Judicial Conduct – not the sham that currently exists. It will also require the shutdown of this Commission on multiple grounds of unconstitutionality – with the "*as written*" grounds being reinforced by those "*as applied*", manifested by how this Commission has been operating in this statutorily-violative first month of its operations⁴, including at this hearing, conducted as if the

² A copy is annexed as Exhibit 3, together with the constitutional analysis appearing at pages 10-13 of the Opposition Report.

³ Pages 19-25 of our November 5, 2015 memorandum of law are annexed as Exhibit 4.

⁴ The Commission was statutorily-required to be established on June 1, 2015. However, none of its four appointing authorities – not the Governor, not the Temporary Senate President, not the Assembly Speaker, and not the Chief Judge – made appointments by June 1st. It appears that the Governor did not even make his appointments to the Commission until October 30, 2015 – in apparent response to CJA's filing of a FOIL request for documents pertaining to the appointments made to the Commission and the Commission's functioning (Exhibit 5). My subsequent e-mail chain to the Commission (Exhibit 6), spanning from November 2, 2015 to November 18, 2015, reflects its non-response to my request that it hold more than a single hearing and issue press releases about the hearing and written submissions. My attachments to those e-mails were, in addition to the October 30, 2015 FOIL request (Exhibit 5), the Executive Summary to the Opposition Report (Exhibit 1), and CJA's October 28, 2011 e-mails and letters

current judicial salary levels are not – as each of the Commissioners must by now know them to be – “ill-gotten gains”, stolen from the taxpayers.

Indeed, based upon my communications with you over the past month, your verification should largely be done. As I stated to you on November 3rd, in my e-mail requesting to testify at this hearing, the four weeks until the hearing were ample time for each Commissioner to individually verify the accuracy of our October 27, 2011 Opposition Report:

“thereby requiring that this Commission’s recommendations – having ‘the force of law’ – be for the nullification/voiding of the [Commission on Judicial Compensation’s] August 29, 2011 Report AND a ‘claw-back’ for the \$150-million-plus dollars that the judges unlawfully received pursuant thereto.” (Exhibit 6)

The only way you can get away with doing anything else in your own report, which is statutorily-required by December 31, 2015, is by obliterating the existence of our Opposition Report, the record of our three litigations based thereon – and all findings of fact and conclusions of law that are your duty to make with respect thereto. This kind of fraudulent concealment is precisely how the Commission on Judicial Compensation operated – and how judges operate when they “throw” cases by fraudulent judicial decisions.

This Commission’s threshold duty is, of course, to address issues of the disqualification of its members for actual bias and interest – and my November 3rd e-mail requesting to testify, set that forth, stating:

“...should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA’s citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well...” (Exhibit 6).

Time does not permit me to furnish the particulars. Suffice to say, that all three have demonstrated their utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption they have perpetuated.

All documentary proof supporting this testimony, including as relates to the disqualifying bias and interest of Commissioners Cozier, Lack, and Birnbaum will be posted on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs To Their Victims!”.

to the Judiciary and judicial pay raise advocates and to the Commission on Judicial Compensation, furnishing them the opportunity to contest the accuracy of the Opposition Report, also furnished to the Commission’s four appointing authorities (Exhibit 7).