

## CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

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October 24, 2013

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

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

RE: Public Access to the Record of the Commission's September 17<sup>th</sup> and September 24<sup>th</sup> Public Hearings: Written Testimony & Other Supporting Materials

At the September 17<sup>th</sup> public hearing in Manhattan, you prevented several members of the public from finishing their reading of their written testimony because they had reached the three-minute time limit on oral presentations. You assured them that their written testimony was part of the record, reiterating what you had announced at the outset of that hearing's public participation portion:

"we received a lot of written testimony that could expand the three minutes. It is already on the record. It will be given to the transcriber. And it is in the formal record, as well." (video at 1:48:48).

On September 19<sup>th</sup>, I e-mailed the Commission, asking whether the September 17<sup>th</sup> hearing was going to be stenographically transcribed and posted on the Commission's website, <http://www.publiccorruption.moreland.ny.gov>. I received no response.

Last week, upon doing a google search, I found the transcript of the Commission's September 17<sup>th</sup> hearing, posted on the internet at the following web address: <http://publiccorruption.moreland.ny.gov/sites/default/files/PUBLIC-CORRUPTION09-17-13.pdf>. Does this reflect some publicly-inaccessible portion of the Commission's website? And why does the posted transcript not include the "written testimony" that you expressly stated "would be given to the transcriber". Shouldn't this "written testimony" have been appended at the back of the transcript?

The purpose of a public hearing is for the public to hear the testimony. As witnesses at the September 17<sup>th</sup> hearing were prevented from reading their written testimony, in whole or in part, because of the three-minute time limitation, will the Commission be affording the public access to

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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.

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the written testimony? And what about the documentation submitted by witnesses in support of their testimony? Will this be made available so that the public can better evaluate the seriousness of witness testimony and how it is being addressed by the Commission?

Will Galison, who testified at the September 17<sup>th</sup> hearing (video at 3:17:30 - 3:25:41), has posted a video on youtube, showcasing the assertion that was on the Commission's registration webpages for the September 17<sup>th</sup> and September 24<sup>th</sup> hearings: "all written testimony that is submitted will be included in the record of the proceedings". He interviewed you as to whether this meant that his corruption complaint to U.S. Attorney Preet Bharara about corruption in the nomination and confirmation of New York Court of Appeals Chief Judge Jonathan Lippman, which he submitted to the Commission in support of his September 17<sup>th</sup> oral testimony, would be posted on the Commission's website, available to the public.<sup>2</sup> You stated that the Commission would let him know whether it would be posted. That was on September 24<sup>th</sup>. It is now October 24<sup>th</sup>. What is the answer?

Among the witnesses whose reading of written testimony you curtailed at the September 17<sup>th</sup> hearing was Cynthia Nebel (video at 2:38:50 – 2:42:36). Her testimony was about Governor Cuomo's firing, without reasons, of the first Medicaid Inspector General, James Sheehan, who had recovered \$1.5 billion in improper Medicaid payments during his four-year tenure. You cut her off as she was seemingly connecting Mr. Sheehan's firing to campaign contributions made by medical providers to political party housekeeping accounts. We request access to Ms. Nebel's written testimony – and to her 10-page August 1<sup>st</sup> letter, sent to Commission Co-Chair Rice, to which she referred before leaving the witness table, asking whether all other Commission members had it. A copy of Ms. Nebel's transcribed testimony is annexed, for your convenience.

Of course, it is not just the written testimony of witnesses who orally testified at the hearings that is part of the record. Also part of the record is the written testimony of those denied the opportunity to orally testify, notwithstanding they had registered. Indeed, this is the context in which the Commission's registration webpages for both its September 17<sup>th</sup> and September 24<sup>th</sup> hearings asserted:

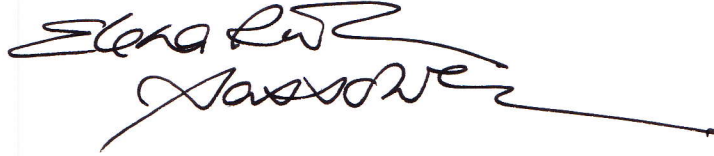
"...time constraints may require that those wishing to provide oral testimony provide written testimony only. All written testimony that is submitted will be included in the record of the proceedings." (underlining added).

As the Commission has taken down its registration webpages for the September 17<sup>th</sup> and September 24<sup>th</sup> hearings, copies of those webpages are enclosed in support of our request, based thereon, for access to the "written testimony" of all registrants who the Commission did not permit to orally testify at these hearings.

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<sup>2</sup> Mr. Galison's video, posted on youtube at <http://www.youtube.com/watch?v=cCUjkviJ5Do>, is also posted on our website. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people%27s%20media/people%27s-media.htm>.

Thank you.

A handwritten signature in black ink, appearing to read "P. David Soares", with a long horizontal line extending to the right.

Enclosures: (1) transcript of Cynthia Nebel's oral testimony at September 17<sup>th</sup> hearing  
(2) Commission's registration webpage for the September 17<sup>th</sup> hearing  
(3) Commission's registration webpage for the September 24<sup>th</sup> hearing

cc: Commission Co-Chairs:  
Onondaga County District Attorney William Fitzpatrick  
Nassau County District Attorney Kathleen Rice  
Milton Williams, Esq.  
Commission Member Albany County District Attorney P. David Soares  
The Public & The Press

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PUBLIC HEARING ON THE MORELAND COMMISSION  
TO INVESTIGATE PUBLIC CORRUPTION.

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One Pace Plaza  
New York, New York

September 17, 2013  
6:05 P.M.

Reported By:  
Stefanie Krut

## 1 A P P E A R A N C E S:

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## COMMISSIONERS PRESENT:

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Kathleen Rice - Co-Chair

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Milton Williams, Jr. - Co-Chair

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William Fitzpatrick - Co-Chair

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Joanne Mahoney

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Eric Corngold

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Makau Mutua

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Derek Champagne

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Patrick Barrett

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Nancy Hoppock

12

Seymour James

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Gerald Mollen

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Betty Weinberg Ellerin

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Kathleen Hogan

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David Javdan

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Benito Romano

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Kristy Sprague

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Richard Briffault

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P. David Soares

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Peter Zimroth

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Robert Johnson

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Barbara Bartoletti - Special Advisor

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Regina Calcaterra - Executive

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Director

1 it's going to be a dual, two people, who are from Americans  
2 for Legal Reform, Dale Javino and Carl Lanzisera.

3 \* MS. NEBEL: Good evening Chairwoman Rice, Chairman  
4 Fitzpatrick, Chairman Williams and distinguished members. I  
5 am Cynthia Nebel. In 2005 a New York Times expose revealed  
6 that regulators were turning a blind eye to reports of  
7 rampant fraud, waste and abuse in New York's Medicaid  
8 program. The Times found that audits of Medicaid providers  
9 were being shelved. As a result of the Times article, New  
10 York created the Office of the Medicaid Inspector General,  
11 also known as OMIG. In April of 2007, James G. Sheehan, an  
12 Associate US Attorney who specialized in healthcare fraud  
13 prosecution, was appointed to become New York's first  
14 Medicaid Inspector General. James Sheehan began auditing  
15 providers.

16 As New York's Medicaid Inspector General, James  
17 Sheehan, was tremendously successful, in four years he  
18 recovered more than 1.5 billion dollars in improper  
19 payments. Then in June 2011 Governor Cuomo fired James  
20 Sheehan. Governor Cuomo never said why he fired James  
21 Sheehan. According to the Times Union, today at OMIG new  
22 audits are rare and investigations are stalled. Ed Koch,  
23 the republican party chairman, stated, quote, "if Cuomo  
24 means what he says about reforming Medicaid, he made a  
25 serious mistake by replacing a junkyard dog<sup>n</sup> Inspector

1 General with a pet poodle," unquote. One of the greatest  
2 weaknesses of New York's campaign finance system is the  
3 loophole that allows a donor to give unlimited campaign  
4 contributions to a party's housekeeping accounts. Two of  
5 the largest contributors -

*Ms Nebel,  
can you*

6 MS. CALCATERRA: Ms. Nebel, <sup>^</sup>move to wrap up. Thank  
7 you.

*I am*

8 MS. NEBEL: I just have half a page more. I will.

9 The housekeeping accounts. <sup>^</sup>*They were* The Greater New York Hospital  
10 Association Management Corporation, a for-profit subsidiary

11 of the New York Greater Hospital Association and the  
12 Healthcare Association of New York State, <sup>^</sup>*HANYS* From 2006 to July

13 of 2013, the Greater New York and HANYS gave more than 3.5  
14 million and more than 1.1 million respectively. In giving  
15 these donations, they get a tremendous voice with elected

16 officials. They get access. The Greater New York Hospital  
17 Association made false, <sup>^</sup>*deceptive, + misleading to elected officials* ~~conceptive~~ statements, and <sup>^</sup>*They told*  
18 elected officials *That James Sheehan was -*

19 MS. CALCATERRA: Ms. Nebel, can you wrap up?  
20 Because we have your testimony here too.

21 MS. NEBEL: Okay. They told elected officials that  
22 look, James Sheehan is recovering money from mistakes and  
23 errors, but they withheld material information from elected  
24 officials. They withheld, I believe -

25 MS. CALCATERRA: Ms. Nebel, we have your testimony.

*Ms Nebel - Okay*

1 We gave you two and a half minutes over the three minutes.  
2 I just want to make sure <sup>*we have others,*</sup> ~~we~~ give others the opportunity to  
3 ~~talk~~ speak <sup>*as well.*</sup> as well. Thank you so very much. Really appreciate  
4 it.

*Do you also have my August,*

5 MS. NEBEL: <sup>*1*</sup> I ~~is~~ mailed Kathleen Rice my August 1st  
6 letter, the 10 page letter. Does have everybody have it?

7 MS. RICE: Yes.

8 MS. NEBEL: Thank you. *//*

9 MS. CALCATERRA: Up next is Michael Krichevsky. We  
10 want to do our best to get to everyone we have on our list  
11 who is going to be speaking tonight. So next on our list is  
12 Michael Krichevsky. So we are asking that also, let's do  
13 our best to see if we can wrap up testimony as soon as we  
14 can. Michael Krichevsky, and then afterwards, Americans for  
15 Legal Reform, Dale Javino with Carl Lanzisera. Thank you.

16 MR. KRICHEVSKY: I'm here for judicial tyranny and  
17 corruption in Kings County Family Court. It operates as  
18 nothing more than a huge scam fraud racket used to break the  
19 public and control its victims. Women and children, but  
20 mostly men, through profitable title four federal funding.  
21 In 2008 I was paralegal, raising my son with good paying job  
22 and I was driven to by price hunting lawyer (inaudible). I  
23 have evidence that he coached my ex-girlfriend Elena Swenson  
24 on how to extort money from me, and when extortion failed,  
25 how to file false family petition and ask for order of



# THE MORELAND COMMISSION

## TO INVESTIGATE PUBLIC CORRUPTION

### MORELAND COMMISSION PUBLIC HEARING TESTIMONY PROCEDURES

The Crossings at Colonie Meeting House

580 Albany Shaker Road, Loudonville, NY

Tuesday, September 24, 2013

Doors open at 5:00pm; hearing begins at 6:00pm

Persons wishing to present testimony to the Commission at the hearing must complete and return the attached reply form no later than 12:00pm on Monday, September 23, 2013. The Commission will strive to schedule as many participants as possible, but time constraints may require that those wishing to provide oral testimony provide written testimony only. All written testimony that is submitted will be included in the record of the proceedings. ✓

Oral testimony will be limited to three minutes, except in response to subsequent questions from the Commission, if any. Please note that the Commission may request that you speak at an approximate time or with an issue orientated panel.

A copy of prepared testimony must be submitted to the Moreland Commission via email ([comments@moreland.ny.gov](mailto:comments@moreland.ny.gov)) by noon on Monday, September 23, 2013.

In order to meet the needs of those who may have a disability, the Commission will ensure that hearing facilities are accessible to individuals with disabilities and are provided accommodations, upon reasonable request, to afford such individuals access and admission to Commission activities.

#### PUBLIC HEARING REPLY FORM

First Name	
Last Name	
Title	
Organization	
Subject Matter To Be Addressed *	
Address	
Email Address	
Telephone Number	
Preferred Contact Method	- None -