ANALYSIS OF THE APRIL 30, 2014 DECISION OF SUPREME COURT JUSTICE ALICE SCHLESINGER

This analysis constitutes a "legal autopsy" of the April 30, 2014 decision of Supreme Court Justice Alice Schlesinger, consistent with what is proposed in "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ("...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like..." (p. 53)).

It also is consistent with what the proposed intervening plaintiff stated in testifying before defendant Commission to Investigate Public Corruption at its September 17, 2013 public hearing: "Cases are perfect papers trails. There is a record. So it's easy to document judicial corruption."[1]

Unsupported by any law, the five-sentence decision conceals and falsifies all the material facts, law, and legal argument in the record before the Court. Such would be indefensible in ANY case. It is even more indefensible in a case of transcending constitutional and public importance such as this: a declaratory judgment action, purportedly by the Senate and Assembly against the Governor's Commission to Investigate Public Corruption, for separation of powers constitutional violations, wherein taxpayer-paid counsel for both plaintiffs and defendants engaged in litigation fraud as to those very separation of powers constitutional issues – and were caught at it by the proposed intervening plaintiff, whose order to show cause to intervene, on behalf of the People of the State of New York and the public interest, sought to prevent further fraud, including as to alleged mootness.

* * *

CPLR §2219(a) LISTING OF "PAPERS":

The five-sentence decision was issued on a one-page form containing a preformatted section for "papers...read on this motion". Such preformatted section, reinforcing the requirement of CPLR §2219(a) that:

> "An order determining a motion made upon supporting papers shall...recite the papers used on the motion",

is completely blank—thereby thwarting an appeal.

Treatise authority holds:

---

[1] Transcript annexed to verified complaint as part of Exhibit M; video posted on Center for Judicial Accountability's website, www.judgewatch.org, including on this webpage: http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people-evidence/hearing-9-17-13-manhattan.htm

Ex 17

> "An order must indicate papers on which the court exercised its discretion so as to subject it to meaningful appellate review. Where it fails to do so, the appeal will be dismissed."

1-3 New York Appellate Practice §3.04 "Appealable Paper", Matthew Bender & Co., citing *In re Dondi*, 63 N.Y.2d 331 (1984); *Comprehensive Foot Care Group v. Guardian Life Ins. Co. of Am.*, N.Y.L.J. May 21, 1986, p. 14, col. 6 (Sup. Ct. App. Term 1986).

The papers that should have been recited, but were not, are, in the first instance:

> (1) the proposed intervening plaintiff's order to show cause, filed on April 23, 2014, consisting of her order to show cause with TRO; her affidavit in support of e-filing; her moving affidavit and exhibits, and her proposed verified complaint with exhibits;
>
> (2) the stipulation of discontinuance, filed on April 24, 2014 by Assistant Solicitor General Judith Vale; and
>
> (3) the proposed intervening plaintiff's Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c), handed-up and accepted by the Court at the April 28, 2014 oral argument.

Additionally, the recited papers should have included plaintiffs' complaint, filed November 22, 2013 – and the record thereon. This, because caselaw holds that a discontinuance can be denied where it is to avoid an adverse determination[2]. The proposed intervening plaintiff so-stated this at the oral argument in asserting that the record of plaintiffs' declaratory judgment action established that defendant Commission was facing an adverse determination (Tr. 27-28).

Sentence 1:

> "After hearing oral argument on April 28, 2014, this Court declines to sign this Order to Show Cause and to consider the application for the relief that is being sought."

This sentence conceals everything about the order to show cause the Court "decline[d]" to sign, including its requested relief:

> "(1) permitting Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc., to intervene as a plaintiff individually, on her own behalf and on behalf of the People of the State of New York and the public interest in this declaratory judgment action, with the caption amended to so reflect;

---

[2] *Baltic Airlines, Inc. v. CIBC Oppenheimer*, 273 AD2d 55, 57 (1st Dept. 2000); *Kane v. Kane*, 163 A.D.2d 568, 570 (2nd Dept. 1990).

(2) for such other and further relief as may be just and proper, including a direction that plaintiffs and defendants respectively identify the amount of taxpayer monies expended in bringing and defending this declaratory judgment action and the related proceedings."

and its TRO relief that:

> "plaintiffs and defendants be stayed from filing a stipulation of discontinuance or agreed dismissal of plaintiffs' declaratory judgment action on the ground of mootness and from seeking a court order thereon".

The express purpose of the order to show cause – identified in the very first paragraph of its moving affidavit – was to enable the proposed intervening plaintiff:

> "to intervene as a plaintiff in this declaratory action: (a) to oppose its dismissal for 'mootness'[fn2]; and (b) to secure a summary judgment declaration as to the unconstitutionality of Governor Andrew Cuomo's still-live Executive Order #106, whose establishment of the Commission to Investigate Public Corruption violated separation of powers, *as written and as applied*, including by the December 2, 2013 Preliminary Report it left behind, on which the public has been detrimentally led to rely." (¶1, April 23, 2014 moving affidavit)

As a matter of law, the proposed intervening plaintiff was a non-party, without standing to contest mootness until the Court determined her entitlement to intervene – the subject of her order to show. The Court could not entertain her challenge to mootness without first signing her intervention order to show cause – and there was no obstacle to the Court's signing it, as the declaratory judgment action was an active case before it.

Clear from the fact-specific, document-supported order to show cause is what the legally-compelled outcome would have been had the Court signed it: intervention for the proposed intervening plaintiff and summary judgment thereafter on her proposed verified complaint's three causes of action for a declaratory judgment on the constitutional, separation of powers issues (¶¶101-124; "WHEREFORE" clause: pp. 44-45) – none of them moot or, if moot, plainly within exceptions to mootness.

And the consequence of not signing? The Court would be insulated from appellate review: "No appeal lies from a refusal to sign an order to show cause because there is no appealable paper", 1-3 New York Appellate Practice §3.04 "Appealable Paper", citing *Gache v. Town/Vill. of Harrison*, 251 A.D.2d 624, 676 (2d Dept. 1998); *Ally v. Graver*, 302 A.D.2d 482 (2d Dept. 2003).

Sentence 2:

> "Counsel for all the parties have signed a Stipulation of Discontinuance confirming that the Commission has effectively been disbanded and that the subpoenas at issue have been withdrawn."

By this sentence, the Court begins to furnish its reasons for not signing the order to show cause, concealing the material fact that the proposed intervening plaintiff had already filed with the Court her order to show cause, with a TRO to enjoin plaintiffs and defendants from filing a stipulation of discontinuance[3]. The relevant dates, concealed by the Court, are: April 23, 2014, the date the order to show cause with TRO was filed with the Court; and April 24, 2014, the date counsel for the parties signed their stipulation of discontinuance and filed it.

As for the Court's assertion that the stipulation was signed by "Counsel for all the parties", the Court does not identify who these counsel are – or the parties they represent. Among them, Michael Garcia, Esq. of Kirkland & Ellis, LLP, who, according to the stipulation, was signing on behalf of "*Plaintiffs New York State Senate and Dean G. Skelos as Temporary President of the New York State Senate and Member*"; and Marc E. Kasowitz, Esq., of Kasowitz, Benson, Torres & Friedman, LLP, who, according to the stipulation, was signing on behalf of "*Plaintiffs New York State Assembly and Sheldon Silver, as Speaker and Member*".

The order to show cause expressly questioned this dual representation on conflict of interest grounds – and whether the collective plaintiffs were, in fact, parties:

> "3. …there is a question as to whether the individual plaintiffs, Temporary Senate Presidents Skelos and Klein and Assembly Speaker Silver, have standing to raise the separation of powers issue which belongs to the institutional plaintiffs, the New York State Senate and the New York State Assembly – and whether their divergent interests, including as to mootness, make it improper for Michael J. Garcia, Esq., of Kirkland & Ellis, LLP, to be representing both plaintiffs Senate and Skelos, and Marc E. Kasowitz, Esq., of Kasowitz, Benson, Torres & Friedman, LLP, to be representing both plaintiffs Assembly and Silver.
>
> 4. Certainly, it deserves note, as a threshold matter, that Mr. Garcia and Mr. Kasowitz have not established that they are entitled to represent the Senate and Assembly, let alone 'those bodies' individual members'[fn.3]. They have not alleged or furnished a resolution of either chamber[fn.4] – notwithstanding *Silver v. Pataki*, 96 N.Y.2d 532, 539 (2001). Tellingly, they have furnished no statement, sworn or otherwise, for their failure to do so. That Mr. Garcia relies, exclusively, on Senate Rule III, §5 authorizing the Temporary Senate President to engage legal representation on behalf of the Senate to enforce and defend the rights, privileges, and prerogatives of the Senate only reinforces that where the interests of the Temporary Senate Presidents diverge from those of the Senate – as at bar – the client is the Senate[fn.5].

The significance of these threshold issues was reinforced at the oral argument, at which no one from Kirkland & Ellis appeared and at which the appearance of Kasowitz, Benson, Torres & Friedman

---

[3] All counsel, except one, signed the stipulation of discontinuance on April 24, 2014. The one who did not was Ruskin Moscou Faltischeck, P.C. – and it would appear that Ms. Vale was so eager to file the stipulation that she decided not to wait for the firm's signature, but, instead, used its signature page from a previous stipulation, filed on April 4, 2014. The signatures appear identical, as is the signature date, April 3, 2014.

was by Jennifer Recine who stated it was "on behalf of Sheldon Silver in his individual capacity and as member of the leadership of the Assembly"—in other words, not the Assembly (Tr. 3). This was pointed out by the proposed intervening plaintiff, whose explicating presentation at the oral argument included the following:

> Sassower: "At the outset, I must make reference to the fact that not all counsel is here represented. We have missing counsel for the Senate...
>
> ...missing is Kirkland & Ellis who represents Temporary Senate President Skelos and purportedly the New York State Senate....
>
> ...there is a fundamental issue. You asked their position and they identified that they oppose the intervention. And there is a threshold question, with all due respect, as to whether or not they are properly representing the parties that are before the Court, whether there are conflict of interest issues." (Tr. 7);

> "...there is a question as to whether or not the Senate and Assembly ever had representation. And parenthetically, Your Honor, this is where we get back to the disqualification and conflict of interest with counsel, because when you ask their positions, they're paid – this litigation, both its prosecution and defense was paid from tax dollars so that there could be a determination of the serious constitutional separation of powers issues.
>
> Does the Legislature have an ongoing interest in the determination of that issue so that never again does this Governor or any other Governor do a thing like what was done by Governor Cuomo?" (Tr. 16).

> "...you still don't have any representation of the Senate and Assembly, so I don't know how you can discontinue an action which has in the caption Senate and Assembly and they are not represented by counsel." (Tr. 23-24).

As for the stipulation "confirming that the Commission has effectively been disbanded', the Court gives no law that "effectively...disbanded" has legal weight – and, at oral argument, the proposed intervening plaintiff vigorously challenged that it did (Tr. 8, 10, 14-15, 18, 20, 22, 30).

Nor does the decision reveal what would be required for the Commission to actually be disbanded – notwithstanding, at the oral argument, the proposed intervening plaintiff repeatedly identified that the Governor would have to issue an executive order withdrawing his Executive Order #106 establishing the Commission. That Executive Order #106 is still live appeared prominently in the order to show cause, as, for instance, the first paragraph of the proposed intervening plaintiff's moving affidavit and in the title headings of the first two causes of action of her proposed verified complaint (pp. 38, 41).[4]

---

[4] The Court itself conceded that Executive Order #106 is extant, stating: "It's true that the Governor has actually not issued some sort of proclamational order disbanding the commission. That's true and I don't quite understand what he is doing that for, and who cares – not who cares, but it is not for the Court to question." (Tr. 12). Likewise, Ms. Vale: "...all the parties to this litigation, as your Honor knows, were waiting for the governor to issue an...executive order, and we don't have insight as to why that hasn't happened yet." (Tr. 25).

As for the stipulation "confirming...that the subpoenas at issue have been withdrawn", the Court falsely implies that this declaratory judgment action – which, like the stipulation, it does not identify as such – rests on the so-called "subpoenas at issue". It does not and the proposed intervening plaintiff so-stated at the oral argument, asserting that it was "bootstrapping" to purport that a mooting of the subpoenas and all the actions relating to quashing the subpoenas and motions to compel enforcement of the subpoenas mooted the declaratory judgment complaint (Tr. 10), further stating, perhaps a bit too broadly, "...the withdrawal of the subpoenas doesn't have anything to do with the declaratory judgment action that is addressed to the separation of powers constitutional violation." (Tr. 18).

That plaintiffs' complaint seeks declaratory judgments beyond the subpoenas is evident from its first requested declaration in its "WHEREFORE" clause to:

> "declare that that (sic) the Executive order empanelling the Commission violates the New York Constitution and the constitutional principle of separation of powers". (November 22, 2013 complaint, at p. 26).

Such Executive Order – Executive Order #106 – remains live, reinforcing that plaintiffs' requested declaration is not moot. Nor should the Legislature be arguing to the contrary. As stated by the proposed intervening plaintiff at the oral argument, the Legislature has an ongoing interest that there be a determination as to the unconstitutionality of what the Governor did, lest he or other governors repeat it (Tr. 16).

Sentence 3

> "As all motions have been withdrawn and counsel have stipulated to discontinue all proceedings, no viable action exists in which this petitioner can intervene."

Here is the Court's implied reason for not signing the order to show cause: its assertion that "no viable action exists in which this petitioner can intervene" – for which it creates the false illusion that the stipulation of discontinuance preceded the order to show cause. This is utterly false – perverting the true facts that the Court itself recognized at the oral argument in stating to the proposed intervening plaintiff: "...you brought your motion by Order to Show Cause before I received the stipulation" (Tr. 5, underlining added).

Moreover, because the proposed intervening plaintiff's order to show cause was filed first, counsel for the supposed parties could not, thereafter, stipulate to discontinue the declaratory judgment action without a court order, pursuant to CPLR §3217 – and this was pointed out by the proposed intervening plaintiff at oral argument (Tr. 23).

CPLR §3217 governs "Voluntary discontinuance" and states:

> (a) Without an order. Any party asserting a claim may discontinue it without an order

> 2. by filing with the clerk of the court before the case has been submitted to the court or jury a stipulation in writing signed by the attorneys of record for all parties, provided that...no person not a party has an interest in the subject matter of the action;
>
> (b) By order of court. Except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper...."

The Court makes no mention of CPLR §3217, in implying, as it does, that the signed stipulation in and of itself discontinued the action, such that "no viable action exists in which this petitioner can intervene". Again, utterly false.

Sentence 4

> "This Court is accepting the Stipulation that was submitted."

The Court's supposed "accepting the Stipulation that was submitted" is not what CPLR §3217(b) mandates. It mandates an "order of the court and upon terms and conditions, as the court deems proper".

The Court has imposed no "terms and conditions"[5], including as minimal as requiring an executive order from the Governor withdrawing his still-live Executive Order #106. Nor does it reveal the "terms and conditions" the proposed intervening plaintiff suggested at the oral argument – whose easy-solution to how the declaratory action could continue with appropriate parties neither counsel nor the Court contested:

> Sassower: "I am looking for an intervention. Under 3217, the order of the Court is upon terms and conditions that the Court deems proper. I am proposing one possibility...

---

[5] *Tucker v. Tucker*, 55 N.Y.2d 378, 383 (1982):

> "...ordinarily a party cannot be compelled to litigate and, absent special circumstances, discontinuance should be granted (4 Weinstein-Korn-Miller, NY Civ Prac, par 3217.06). Particular prejudice to the defendant or other improper consequences flowing from discontinuance may however make denial of discontinuance permissible or, as the Appellate Division correctly held in this case, obligatory.
>
> ...fn. 2: the court might...impose appropriate terms and conditions on a discontinuance (CPLR 3217, subd [b])" (underlining added).

NY Bank National Association v. Gioia, 42 Misc. 3d 947, 951 (Queens Co. Supreme Court 2013):

> "[neither CPLR 104 nor CPLR 3217 (b) supports the grant of a discontinuance by the court if unfair prejudice results to the adversary]; *St. James Plaza v Notey*, 166 AD2d 439, 560 N.Y.S.2d 670 [2d Dept. 1990][if the party opposing the motion can demonstrate prejudice if the discontinuance is granted, discontinuance must be denied])."

...this is a situation where, if the Legislature represented by the leadership wanted to drop out as plaintiffs, fine, and in its stead Elena Sassower, individually and a director of the Center for Judicial Accountability, acting on her own behalf and on behalf of the People of the State of New York, be substituted as the plaintiff.

And for the defendants, because your Honor is concerned that the Commission is defunct, notwithstanding there is no death certificate and we don't rule anyone dead until there is a death certificate –"

Court: "Well, sometimes."

Sassower: "Well, I'm sorry. These are not circumstances where that would be applicable. There is no order withdrawing Executive Order 106. And we have also on record a preliminary report which constitutes an ongoing danger to the public. If instead of the Commission, we substitute the Governor and possibly the Attorney General – and I will quote for you in concluding Crain's Business Week or maybe it's a daily now, and the Daily News and New York Times, actually – and this is last Thursday and Friday – what is regarded as a tantrum, in the words of Eleanor Randolph of the New York Times, the tantrum of Governor Cuomo before the Crain's editorial board where he says, 'This is my commission. I make it. I unmake it.' And he goes on 'I am the commission,' although at the same time purporting that it was independent.

And of course the intervention motion and the verified complaint was all about the Commission being a front for the Governor and the Attorney General. Fine. They pulled the curtain back. They disbanded the Commission without any death certificate. Fine. We will substitute for the Commission and the Co-Chairs, we will substitute the Governor and the Attorney General and this case continues.

With all respect, this case is a live case, and I refer you to the three causes of action." (Tr. 30-31).

Sentence 5:

> "As the situation here is unique and not likely to recur in precisely the same manner, no exception to the doctrine of mootness exists."

This conclusory assertion, unsupported by facts or law, is entirely *sua sponte*. Ms. Vale was the only counsel arguing at the oral argument[6] – and she did not purport that the facts of this case were unique

---

[6] The silence of the two other counsel present at oral argument was remarked on by the Court at the end of the proceeding – and the colloquy was as follows:

> Court: "...So let me just ask the two attorneys, other than giving their notices of appearance, I have not heard from, do you wish to say anything further?"
>
> Musoff: "No, Your Honor. We believe this case is moot and there is no live case or controversy."
>
> Recine: "Correct. Agreed." (Tr. 34).

and not likely to recur, even in face of the particularized facts as to why it was likely to recur, asserted by the proposed intervening plaintiff:

> Sassower: "...the transcending issue here, is whether what the Governor did was a profound, far-reaching violation of the constitutional separation of powers. That was the basis of the declaratory judgment action; that what the Governor had done was extremely dangerous and the Governor continued to act and Co-Chairman Fitzpatrick, for example, continued to herald what was done as perfectly appropriate and – " (Tr. 15);
>
> "Does the Legislature have an ongoing interest in the determination of that issue so that never again does the Governor or any other Governor do a thing like what was done by Governor Cuomo?" (Tr. 16);
>
> "What the Governor did is still being promoted by him as right and proper...." (Tr. 19);
>
> "...what are we trying to accomplish? We are trying to assure that never again – this is not a one-time it's over situation. We have a Governor who said he did right, he would do it again and he is inviting other Governors to do it again." (Tr. 20-21, underlining added).

Ms. Vale contested none of this. Nor did she argue that this case would not fall within exceptions to mootness – even in face of the proposed intervening plaintiffs' assertions with respect thereto:

> Sassower: "It is not moot, your Honor. There are, as Your Honor is aware, exceptions to the doctrine of mootness. And this should be briefed on papers if they are going to make a representation of mootness, let the defendants do so on papers, not before the Court, Your Honor, orally.
>
> This case I would argue, falls into any – well recognized exceptions to mootness." (Tr. 27).

43 New York Jurisprudence §25, entitled "Exceptions to mootness doctrine", states:

> "Even though the dispute involved in a particular declaratory judgment action may have become technically moot, the court may yet entertain the action if it determines that certain factors are present. The most common of these factors are:
>
> (1) there is a likelihood of repetition of the controversy either between the same parties or among other members of the public;[n1]
>
> (2) the case involves a phenomenon typically evading review;[n2]

> (3) the case involves a novel issue[n3] or significant or important questions not previously passed upon;[n4] and
>
> (4) the case involves a matter of widespread public interest or importance[fn5] or of ongoing public interest.[n6]
>
> These factors are generally considered in combinations of all or less than all of them, depending on the importance placed on each of them by the particular court....most courts have appeared to adopt a balancing approach, entertaining the declaratory judgment action where a majority, but less than all, of the factors considered significant are found to exist,[n7]"

No "balancing approach" was taken by the Court, whose decision does not even recite the factors to be balanced in determining an exception to mootness, let alone reveal that this is a declaratory judgment action, a remedy which:

> "does not entail coercive relief, but only provides a declaration of rights between parties that, it is hoped, will forestall later litigation (see *New York Public Interest Group v Carey*, 42 NY2d 527, 530-531; Borchard, Declaratory Judgments, 1939, 9 Bklyn L Rev, at p 4; Note, Developments In the Law – Declaratory Judgments – 1941-1949, 62 Harv L Rev 787, 787-790; Note, Effect of Availability of Coercive Relief Upon the Declaratory Judgment, 8 Bklyn L Rev 321).", *Morgenthau v. Ehrlbaum*, 59 N.Y.2d 143,147 (1983).[7]

As the particulars of the order to show cause make evident, any balancing would be lopsided for an exception to mootness – if, in fact, an exception were necessary.[8] Tellingly, the Court, in addition to not identifying that this is a declaratory judgment action, does not state, except by inference, that it is moot:

> "[A] controversy is not moot where a judicial determination carries 'immediate, practical consequences for the parties'", *Skelos v. Paterson*, 25 Misc. 3d 347, 349 (Nassau S. Ct. 2009), citing *Saratoga County Chamber of Commerce v Pataki*, 100 N.Y.2d 801, 812 (2013).

---

[7] *Cf. Group House of Port Washington, Inc. v. Board of Zoning and Appeals of the Town of North Hempstead*, 45 N.Y.2d 266, 271 (1978):

> "To dismiss this matter as moot would be unrealistic in the extreme, since the question then would simply have to be relitigated in another form. Rather than countenancing such an unnecessary waste of both parties' time and money, as well as increasing the ever heavy calendars of the courts, we have determined to convert this article 78 proceeding into an action seeking declaratory relief (see CPLR 103, subd [c])."

[8] *Winner et al., as Members of the New York State Assembly v. Mario M. Cuomo*, 176 A.D.2d 60, 63 (3rd Dept. 1992): "Even if we were to decide that the issue is moot, we would nonetheless find that this case falls within the well-settled exception to the mootness doctrine (*see, Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715)."

Nor is this case moot – as the Court may be presumed to recognize in not identifying the proposed intervening plaintiff's three declaratory judgment causes of action, particularly the third addressed to the Commission's most tangible and dangerous continuation: its December 2, 2013 Preliminary Report (¶¶118-126; p. 44-45: "WHEREFORE", at #3).

As stated by that third cause of action – without contest from the Court or any counsel:

> "120. The Commission lives on by its December 2, 2013 Preliminary Report on which the public is being detrimentally led to rely.
>
> ...
>
> 123. A declaration is required to protect the public from such a Preliminary Report, whose most endangering aspect is its praise of 'Federal prosecutors like United States Attorneys Preet Bharara and Loretta Lynch' as 'root[ing] out and punish[ing] illegal conduct by our public officials' (p. 87) and of district attorneys as 'up to the job' (p. 86) – when the very opposite was attested to, again, and again, and again, by the ordinary citizens who managed to testify in the last 1-1/2 hours of the Commission's September 17, 2013 Manhattan hearing and, with respect to district attorneys, by former assistant district attorney Mar[k] Sacha at the Commission's September 24, 2013 Albany hearing – and evidentiarily-proven by Sassower's July 19, 2013 corruption complaint.
>
> 124. To date, Albany County District Attorney Soares has been 'sitting on' Sassower's July 19, 2013 corruption complaint (Exhibit B-1). Likewise, all other investigative, supervisory, and prosecutorial authorities have been 'sitting on' the corruption complaints that Sassower filed with them (Exhibits B), including three federal prosecutors: U.S. Attorneys, Bharara, Lynch, and Hartunian (Exhibits B-2, B-3, B-4).
>
> 125. The Governor's forceful, unequivocal directive to the Commission at his July 2, 2013 press conference was:
>
> > '...Your mission is to put a system in place that says, A. we're going to punish the wrongdoers and to the extent that people have violated the public trust they will be punished. Two, there is a system in place so that the public should feel confident that if there is wrongdoing going on, there's a system in place that will catch those people and make sure it doesn't happen again.
> >
> > ...
> >
> > there is no substitute for enforcement. ...there is no substitute for effective enforcement. And any system, and any set of laws are only as good as the enforcement mechanism behind them.' (Exhibit A-2).
>
> 126. The Commission – filled with district attorneys; former assistant district attorneys, former federal prosecutors, assistant and deputy attorneys general, all having personal and political relationships with Governor Cuomo, himself a

> former state Attorney General, and with its current occupant, Attorney General Schneiderman – were duty bound to investigate and report on the efficacy of those offices with respect to public corruption complaints. Instead, and to cover-up the nonfeasance, misfeasance, and actual corruption of those primary 'enforcement mechanisms' in their handling of public corruption complaints – to which the September 17, 2013 hearing witnesses gave voice – they put their names to a Preliminary Report that misled the public as to what it most needed to know, betraying not only their trust, but well-being."

Having concealed all the specifics presented by the proposed intervening plaintiff by her order to show and oral argument, the Court does not identify the remedy by which the public's rights – and those of the Legislature – might be vindicated with respect to the three causes of action of the proposed verified complaint – and, plainly, it is a declaratory judgment action, such as presented by the proposed verified complaint.