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January 15, 2016

TO: Temporary Senate President John Flanagan
Assembly Speaker Carl Heastie

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

RE: IMMEDIATE OVERSIGHT REQUIRED:
(1) The Commission on Legislative, Judicial and Executive Compensation and its statute-repudiating, fraudulent, and unconstitutional December 24, 2015 Report with "force of law" judicial salary recommendations;
(2) The Senate Judiciary Committee's January 20, 2016 public hearing to confirm the nomination of Westchester District Attorney Janet DiFiore as New York's Chief Judge – and the deceptive public notice concealing that oral testimony is restricted to the nominee and bar associations

The Center for Judicial Accountability, Inc. (CJA) commends you on your powerful words last week as you opened the 239th session of the Legislature, particularly those of Assembly Speaker Heastie about restoring the People's faith in government through accountability, transparency, and ethics. Doubtless you will be most concerned to learn that your appointees to the Commission on Legislative, Judicial and Executive Compensation – former Senate Judiciary Committee Chairman James Lack and Roman Hedges, formerly Deputy Secretary of the Assembly Ways and Means Committee – were lead players in the flagrant violation of ethical rules, statutory duty, and the public's trust by the seven-member Commission.

On December 24, 2015, the Commission presented you, Governor Cuomo, and then Chief Judge Lippman with a "Final Report", purporting it to be on "judicial compensation" and "Pursuant to chapter 60 of the Laws of 2015". In fact, the December 24, 2015 Report knowingly violates the statute and is a criminal fraud that could easily support felony prosecutions under such penal law provisions as "offering a false instrument for filing in the first degree" (§175.35), "grand larceny in the first degree" (§155.42), "scheme to defraud in the first degree" (§190.65), "defrauding the government" (§195.20), and "corrupting the government" (§496). This is particularized by my December 31, 2015 letter to Chief Judge Nominee/Westchester District Attorney Janet DeFiore

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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.

entitled "So, You Want to Be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?..." A copy is enclosed.[1]

Last week, Senate Judiciary Committee Chairman John Bonacic scheduled the hearing on nominee DiFiore's confirmation as Chief Judge for January 20, 2016. Notwithstanding the public notice of the hearing states "ORAL TESTIMONY BY INVITATION ONLY", Chairman Bonacic is not permitting anyone to testify, except for nominee DiFiore and the bar associations which rated her. Reflecting this is my January 11, 2016 e-mail to Chairman Bonacic's counsel, requesting to testify based on my December 31, 2015 letter. A copy of that e-mail, which I furnished on January 12th to nominee DiFiore and on January 13th to the bar associations is enclosed.

Temporary Senate President Flanagan, do you believe that it is constitutional or even proper that at the Senate Judiciary Committee's hearing to confirm New York's highest state judge, your appointed chair should restrict oral testimony to the nominee and bar associations? And, if it is constitutional and proper, why does the Committee's hearing notice deceive the public into believing that the Committee will entertain their requests to orally testify when it will not.

By copy of this letter to Senator Andrew Lanza, who you have appointed as Deputy Majority Leader for Government Oversight and Accountability, I request that he also address the matter. He is particularly well positioned to do so, as he is a member of the Senate Judiciary Committee, in addition to being a member of the Senate Ethics Committee and Co-Chair of the Legislative Ethics Commission. He is also your appointed Chairman of the Senate Committee on Investigations and Government Operations, which, as his website identifies, "serves as the Senate's primary legislative and governmental oversight committee".

Senate Rule VIII, §4(c)[2] and Assembly Rule IV, §1(d)[3] require legislative committees to engage in oversight. The most expeditious way for the Legislature to discharge its oversight duties with respect to the Commission on Legislative, Judicial and Executive Compensation's December 24,

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[1] As reflected by the letter (at p. 4), I have created a webpage for it on CJA's website, www.judgewatch.org, posting all referred-to substantiating evidence. The link to that substantiating webpage will be posted on the webpage for this letter, accessible from the prominent homepage link: "NO PAY RAISES FOR NEW YORK's CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!"

[2] "c. Committee oversight function. Each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction.

d. Each standing committee is required to file with the secretary of the senate an annual report, detailing its legislative and oversight activities."

[3] "...Each standing committee shall propose legislative action and conduct such studies and investigations as may relate to matter within their jurisdiction. Each standing committee shall, furthermore, devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction."

2015 Report is by the Senate Judiciary Committee in the context of nominee DiFiore's confirmation to be Chief Judge. Especially is this appropriate as among nominee DiFiore's immediate tasks, should she be confirmed as Chief Judge, will be submission of a supplemental Judiciary budget to fund the Report's judicial pay raise recommendation to increase judicial salaries a whopping 11% in fiscal year 2016-2017. This recommendation, which will have "the force of law" on April 1, 2016 unless overridden by the Legislature before then, was made by the Commission in the complete absence of ANY evidence that current levels of judicial "compensation and non-salary benefits" are inadequate, and, indeed, by NOT examining "non-salary benefits" or "compensation" other than salary, in willful defiance of the express and repeated mandate of the statute.

There is, of course, no shortage of legislative committees with oversight jurisdiction over the Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 Report. Apart from the Senate Judiciary Committee, chaired by Senator Bonacic, there is, in the Senate:

- the Senate Committee on Investigations and Government Operations, chaired by Senator Lanza; and
- the Senate Finance Committee, chaired by Senator Catharine Young.

In the Assembly, there is:

- the Assembly Judiciary Committee, chaired by Assemblywoman Helene Weinstein;
- the Assembly Committee on Governmental Operations, chaired by Assemblywoman Crystal Peoples-Stokes;
- the Assembly Committee on Oversight, Analysis and Investigation, chaired by Assemblywoman Ellen Jaffee; and
- the Assembly Ways and Means Committee, chaired by Assemblyman Herman Farrell, Jr.

Needless to say, the chairs and members of these committees are all afflicted by conflicts of interest, born of their friendships with Messrs. Lack and Hedges and their dependence on you, who appointed Messrs. Lack and Hedges. This, in addition to their financial interest in hiked judicial salaries resulting from the correspondence between judicial and legislative salaries in a system of three-co-equal government branches. Such must be acknowledged and overcome – and the only way to overcome it is by findings of fact and conclusions of law with respect to the evidence my December 31, 2015 letter to nominee DiFiore furnished, *to wit*, my testimony and submissions to the Commission on Legislative, Judicial and Executive Compensation:

- my November 30, 2015 written testimony, with its attached exhibits;
- my December 2, 2015 supplemental statement; and
- my December 21, 2015 further statement.

On the subject of legislative pay raises, which, together with executive branch pay raises, is next on the agenda of the Commission on Legislative, Judicial and Executive Compensation, the corruption of Messrs. Lack and Hedges and their five fellow commissioners, established by the face of their December 24, 2015 Report and the record underlying it, requires that the Commission be decommissioned by repeal of the Commission statute – Part E of Chapter 60 of the Laws of 2015.

An appropriate vehicle for repeal would be Assembly Bill #7997, first introduced on June 3, 2015 to amend the statute[4]. Enclosed is a copy of A7997, together with its extraordinary, if not unprecedented, sponsors' memo. Over and beyond its description of Part E of Chapter 60 of the Laws of 2015 as "a devious and underhanded means" for legislators to obtain "a salary increase without accepting any responsibility therefor" – and of the circumstances and timing of its introduction and passage – the sponsors' memo specifies, in seven different respects, the unconstitutionality of its provision giving Commission salary recommendations "the force of law"[5]. Last week, with the start of the new session, A7997 was recommitted to the Assembly Committee on Governmental Operations. This is where it had sat since being introduced last session – and now, because of the passage of over seven months, it will need to be amended. This must be done – and broadened to provide for the statute's repeal, with a corresponding bill introduced on the Senate side.

That Part E of Chapter 60 of the Laws of 2015 must be repealed is beyond question. Its premise was that the three-branch compensation commission it created would apolitically and objectively do what

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[4] Assembly Bill #7997 was introduced by Assemblyman Andy Goodell, with the co-sponsorship of Assemblyman Peter Lopez, Assemblywoman Janet Duprey, Assemblyman Bill Nojay, and with Assemblyman Mark Johns as a multi-sponsor.

[5] Such "force of law" provision, in the context of a prior commission statute, this pertaining to hospital closures, was described by the New York City Bar Association, in an *amicus* brief, as follows: 'a process of lawmaking never before seen in the State of New York'; a 'novel form of legislation…in direct conflict with representative democracy [that] cannot stand constitutional scrutiny'; a 'gross violation of the State Constitution's separation-of-powers and…the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws'; 'most unusual [in its]…self-executing mechanism by which recommendations formulated by an unelected commission automatically become law…without any legislative action'; unlike 'any other known law'; 'a dangerous precedent' that 'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability. See, Exhibit 4 to my November 30, 2015 written testimony to the Commission on Legislative, Judicial and Executive Compensation (at pp. 24-25), which (at pp. 20-21) also reflects other grounds upon which Part E of Chapter 60 of the Law of 2015 is unconstitutional, *as written*, arising from its material replication of Chapter 567 of the Laws of 2010.

its §2 proscribed: "examine and evaluate…adequate levels of compensation and non-salary benefits" and "make recommendations" with respect thereto, taking into account "all appropriate factors". Such premise has been blown to smithereens by how this Commission has operated – a carbon copy of how the predecessor Commission on Judicial Compensation operated under a largely identical statute. The evidentiary proof includes the videos of the hearings and meetings of both Commissions – and the written submissions they received. These establish that the commissioners made no pretense to being fair and impartial and that they demonstrated their actual bias and self-interest by utterly disregarding their sacred duty to make careful policy decisions and recommendations based on probative evidence addressed to their statutory charge. Indeed, because the citizen-opposition to the judicial pay raises was an "appropriate factor" for these Commissions' consideration – and because such opposition from citizens was founded on their fidelity to the very statutory charge that the commissioners were hell-bent on ignoring to achieve their pre-fixed judicial pay raise goals, both Commissions disregarded the citizen opposition, as if it did not exist, thereby disposing of having to reveal its basis and determining its legitimacy by findings of fact and conclusions of law. And just as neither the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, nor the August 29, 2011 Report of the Commission on Judicial Compensation disclose the existence of any opposition to judicial pay raises, so, at their meetings, not a single Commissioner discussed the opposition, presented by hearing testimony and written submission, in their headlong, unanimous pile-on to raise judicial pay.

With Part E of Chapter 60 of the Laws of 2015 repealed, the Legislature's outsourcing will come to an end *vis-à-vis* determining the salaries of the constitutional officers of our three government branches and Executive Law §169 state officers. The jurisdiction to develop legislation and policy with respect thereto will be returned to where it belongs: the appropriate legislative committees, presumably, the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations. If they engage in legitimate legislative process, *to wit*, holding hearings on salary and non-salary-benefits, taking testimony, and drafting bills based thereon, confronting and resolving issues honestly, by debates and votes in committee and on the Senate and Assembly floor, with amendments also being debated and voted upon, these committees and the Legislature as a whole will discover that the public has no objection to adequate and appropriate compensation levels for public officers discharging their duties. The public wants government to work – and it knows the difference between sham and real.

Perhaps it is your expectation that the above relevant Senate and Assembly committees will undertake oversight of the December 24, 2015 Report of their own initiative. Since last week, I have been contacting the offices of their chairs and ranking members, requesting their committee oversight. While I do so now again, by copy of this letter to them – with an additional request that they furnish this letter to all of their committee members – there can be no doubt that oversight will be more assured by your making an appropriate direction, consistent with your leadership positions. For this reason, I am also sending this letter to Senate Minority Leader Andrea Stewart-Cousins and Assembly Minority Leader Brian Kolb, for their direction, as well.

To further assist you, them, and Court of Appeals Nominee/Westchester District Attorney DiFiore – to whom this letter is also being furnished – enclosed is a supplemental statement of further particulars in support of legislative override of the Commission's judicial pay raise recommendations, repeal of the Commission statute, etc. Time permitting, more will be forthcoming.

Finally, for the convenience of all, this letter, its enclosures and the referred-to proof are all 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!"

Enclosures: (1) December 31, 2015 letter to Chief Judge Nominee/Westchester D.A. DiFiore
(2) January 11, 2016 e-mail to Senate Judiciary Committee counsel
(3) Assembly Bill #7997 & sponsors' memo
(4) Statement of Particulars in Further Support of Legislative Override, Repeal, Etc.

cc: next page

cc: Court of Appeals Nominee/Westchester District Attorney Janet DiFiore
Deputy Senate Majority Leader for Government Oversight & Accountability Andrew Lanza
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian Kolb

Senate Judiciary Committee
Chair: Senator John Bonacic
Ranking Member: Senator Ruth Hassell-Thompson
Senate Committee on Investigations and Government Operations
Chair: Senator Andrew Lanza
Ranking Member: Senator Brad Hoylman
Senate Finance Committee
Chair: Senator Catharine Young
Ranking Member: Senator Liz Krueger
Assembly Judiciary Committee
Chair: Assemblywoman Helene Weinstein
Ranking Member: Assemblyman Michael Montesano
Assembly Committee on Government Operations
Chair: Assemblywoman Crystal Peoples-Stokes
Ranking Member: Assemblywoman Janet Duprey
Assembly Committee on Oversight, Analysis and Investigation
Chair: Assemblywoman Ellen Jaffee
Ranking Member: Assemblyman Peter Lawrence
Assembly Ways and Means Committee
Chair: Assemblyman Herman Farrell, Jr.
Ranking Member: Assemblyman Bob Oaks
Sponsors of Assembly Bill #7997
Assemblyman Andy Goodell
Assemblyman Peter Lopez
Assemblywoman Janet Duprey
Assemblyman Bill Nojay
Assemblyman Mark Johns

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January 15, 2016

Statement of Particulars in Further Support of Legislative Override of the "Force of Law" Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.

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On its Face, the Commission's December 24, 2015 Report Violates Senate and Assembly Rules Pertaining to Fiscal Impact

Whereas Senate Rule VIII, §7[1] and Assembly Rule III, §1(f)[2] would require that a bill to raise judicial salaries be accompanied by a "fiscal note" or "fiscal impact statement", the Commission's Report, whose salary recommendations have the "force of law" absent Legislative override, does not furnish the total cost of the judicial salary increases it is recommending. The Report's only cost figure is mixed into its "Finding" as to the state's currently "strong fiscal condition at the present time", wherein it asserts:

> "The projected additional cost to the state for the first phase of the Commission's recommendations is approximately $26.5 million for the next fiscal year, representing 19 one-thousandths of one percent (0.019%) of the overall state budget." (at p. 6).

In so-representing, the Report does not identify whose cost projection this is – or clarify whether the projected dollar figure is limited to salary costs or includes the additional costs that result from non-salary benefits, such as to pensions and social security, whose costs to the state are derived from salary. There is no projection of any dollar costs of the subsequent second, third, and fourth phases of proposed salary increases – and no explanation why – and as to all four fiscal years, there is no identification as to the percentage of the judicial salary increases being recommended. Only in the Dissenting Statement are these percentages revealed: "an 11 percent salary increase in 2016, followed by at least a five percent increase in 2018" – and their contextual significance:

> "far out of alignment with the fiscal restraint that has contributed to the State's improved economic outlook. Five straight state budgets have held spending growth below two percent, and inflation for the past two years has been about one and a half percent." (at p. 16).

Indeed, although the Report, over and again, refers to "restoring the parity between the salary of a New York Supreme Court Justice and that of a Federal District Court Judge" – beginning in Chair Birnbaum's coverletter – the dollar meaning of this is fairly hidden, even with respect to the 95%

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[1] "...The sponsor of a bill providing for an increase or decrease in state revenues or in the appropriation or expenditure of state moneys, without stating the amount thereof, must, before such bill is reported from the Finance Committee or other committee to which referred, file with the Finance Committee and such other committee a fiscal note which shall state, so far as possible, the amount in dollars whereby such state moneys, revenues or appropriations would be affected by such bill, together with a similar estimate, if the same is possible, for future fiscal years. Such an estimate must be secured by the sponsor from the Division of the Budget or the department or agency of state government charged with the fiscal duties, functions or powers provided in such bill and the name of such department or agency."

[2] "There shall be appended to every bill introduced in the Assembly, an introducer's memorandum setting forth...a statement of its fiscal impact on the state.... Whenever a bill is amended by its sponsor, it shall be the duty of the sponsor to file an amended memorandum setting forth the same material as required in the original memorandum. In addition, whenever a bill is reported by a committee as amended, it shall be the duty of the committee to submit an amended memorandum."

parity being recommended for New York Supreme Court justices in fiscal year 2016-2017. It is not in Chair Birnbaum's coverletter, nor in the Report's "Introduction and Summary of Recommendations". Not until page 12 of the barely 14-page Report does the information appear[3]: "The first phase of this Commission's recommendations will fix the pay of Supreme Court Justices at 95% of the pay of a Federal District Judge – or $193,000 – on April 1, 2016". As for the recommendation of 100% parity in two years' time, its dollar meaning "$203,100 in 2018 (and possibly higher if the federal judiciary receives COLAs in 2017 and 2018)", it is also on page 12. And, unlike the August 29, 2011 Report of the Commission on Judicial Compensation (at pp. 9-10), which presented a chart laying out what the dollar salaries would be for the higher and lower judges in each of the relevant fiscal years, pursuant to its recommendations, there is no such chart in the December 24, 2015 Report even as to fiscal year 2016-2017.

***On its Face*, the Commission's December 24, 2015 Report is Statutorily-Violative**

Although the Commission's Report makes it appear that the Commission has complied with Part E of Chapter 60 of the Laws of 2015 by its repeated invocations of the statute, including in Chair Birnbaum's coverletter and by its inclusion of a section entitled "Statutory Mandate", its violations of the statute's §2, which defines its mandate, are evident from the face of the Report.

§2 consists of three paragraphs. The first requires that the Commission "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits". This charge is actually redundant as the definition of compensation is salary and non-salary benefits. However, by repeating "non-salary benefits", the statute reinforces – and leaves no doubt – that the Commission's mandate is two-fold: salary and "non-salary benefits". This two-fold mandate is carried through to the second paragraph of §2, whose subdivision (a) requires the Commission to "examine…the prevailing adequacy of pay levels and non-salary benefits". The third paragraph of §2 then specifies that the Commission "shall take into account all appropriate factors, including, but not limited to" six financial factors. Three of these six include "compensation and non-salary benefits", *to wit*:

- "the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government";
- "the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise"; and
- "the state's ability to fund increases in compensation and non-salary benefits."

Yet notwithstanding all this clear, unambiguous statutory language, the Commission's Report does not "examine and "evaluate" "non-salary benefits" – which it does not even mention, other than acknowledging that they are part of its statutory charge[4]. As for "compensation", the Report

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[3] This is reflected, as well, by the Dissenting Statement (at pp. 15-16).

[4] The Report's section entitled "Statutory Mandate" (pp. 3-4) quotes the statute as requiring the

identifies none of its components except for salary – thereby reinforcing that the term is being used as if synonymous with salary, which it is not. Even as to judicial salary, the Report makes no finding that existing salary levels are inadequate, including in its section entitled "Findings" . Nor does it identify ANY EVIDENCE from which such finding might be made. Thus, although the Report repetitively speaks of the importance of attracting highly-qualified candidates to the bench – and retaining the judges already sitting – it makes no claim that the current salary levels have created a problem in attracting a sufficient pool of qualified candidates seeking to be judges – or that even a single judge has stepped down because of the current salary.

As the Report does not reveal that the statute requires the Commission to "take into account all appropriate factors", it makes no claim that the Commission has done so.[5] It does not even purport that the Commission has taken into account the factors the statute itemizes – and it plainly has not with respect to the three factors that include "non-salary benefits". Indeed, although reciting that the statutory factors include "levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise" – which it does in the "Statutory Mandate" section of the Report (at p. 3) – the comparison identified in its "Findings" section (at p. 6) on which it bases a finding that "New York State judges are underpaid relative to the compensation of the various categories of lawyers and professionals reviewed" cannot support such finding as it is NOT compensation data but "salary data for, among others, lawyers including lawyers working in private practice and the public sector throughout New York State, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City."

The Facial Violations of the Commission's December 24, 2015 Report are Reinforced and Proven by the Commissioners' Own Words at their December 7, 2015 First Deliberative Meeting, Agreeing to Violate their Statutory Charge

Beyond the blatant statutory violations evident from the face of the Commission's Report, mandating that its judicial salary recommendations be overridden by the Legislature, are the Commissioners' own words at their first deliberative meeting on December 7, 2015 wherein, without dissent, they unanimously agreed to violate their statutory charge to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits". The colloquy was as follows:

December 7, 2015 Meeting (video at 1:10:39; transcript pp. 44-45)

Comm'r Hedges: One thing we haven't talked about that is part of the charge, but I would like to make clear that, from my point of view, I

Commission to: "'examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits" (at p. 3, underlining added).

[5] The Report's "Statutory Mandate" section does not identify the statutory language that "the commission shall take into account all appropriate factors including, but not limited to", substituting the paraphrase: "Chapter 60 sets forth a number of factors to guide the Commission's work of determining appropriate judicial salary levels, including, but not limited to…".

don't want to address except to say we are doing the right thing already, is other benefits. Pension benefits, health care benefits and the like are very costly things and in many compensation systems they are traded off one against the other.

I think that the state system of benefits is a pretty good one. I haven't heard anyone, whether a state employee, legislative employee, executive commissioners, or judges say we should have something different from that, and I guess I'd like to put that in the context of could we all agree on at least that and have that be part of the package, but done already.

Chair Birnbaum: If I understand what you're saying is that there – I didn't think there was going to be any discussion, but then whatever the benefits are, they are.

Comm'r Hedges: But the statutory charge is that we actually consider that.

Chair Birnbaum: Changing the benefits in some way?

Comm'r Hedges: It didn't say 'change'. It said consider compensation including, you know, benefits, and to my way of thinking in the normal compensation system, they are all in the mix and the employer says this cost me 'X' and the union, as it were, says No. Well, we've got to make sure – and that becomes part of the discussion– an explicit tradeoff. I don't want to have that part of the discussion. I want to assume it.

Chair Birnbaum: Is there any disagreement with Roman –

Comm'r Hedges: I don't think there is…

Chair Birnbaum: – that this is not part of our discussion, that we are really only focusing on salaries? And whatever the rest of the system is as to benefits, we are not discussing that and that will remain whatever they are. I think we have unanimity here….

This shocking unanimity was in the context of discussion of benchmarking the salaries of supreme court judges to those of federal district court judges at maximum levels of 95-100%:

December 7, 2015 meeting (video at 1:18:45, transcript at p. 49)

Comm'r Hedges: I would like to limit our discussion, this is my

recommendation, to a someplace between 95% of the federal number and 100% of the federal number. And for purposes of argument because I want to phase it in, I would say in year four. By the way, if we were to say in year one, 95%, what would that look like compared to other states? It would look like the highest nominal salary of any judge in the other states, according to the chart that the court system gave us –

Chair Birnbaum: Yes. Again –

Comm'r Hedges: which is $193,000 –

Chair Birnbaum: – we don't know if there are any. We haven't looked at the other compensation in those states. We are just looking at salaries in those states.

Comm'r Hedges: Just looking at salaries. And as a 'by the way', in my world, I would like the current other than salary considerations to be what they currently are, which is the state pension system, the state health system, and the like.

Comm'r Reiter: Right. I'd be surprised if any state were more generous than we are in those areas –

Comm'r Hedges: Me too.

Comm'r Reiter: – and we could certainly find out, I guess, and that data probably exists somewhere, but generally speaking, our benefit packages in this state have been pretty rich and in fact is, I think, one of the reasons quality people go into the Judiciary even though the salary isn't as high as we might think it ought to be. So, I'd be surprised if we were lagging behind any other state in that regard.

In other words, with knowledge that "pension benefits, health care benefits and the like are very costly things"; that New York's non-salary benefits are "pretty rich" and perhaps unequalled by other states, all seven Commissioners intentionally violated their statutory duty to "examine" and "evaluate" "non-salary benefits" – whose obvious statutory purpose is, as in a "normal compensation system" to offset salary increases.

The same December 7, 2015 meeting also furnishes revealing colloquy as to the hardscrabble life of lawyers outside the metropolitan New York City area, giving perspective to the absence of any finding in the Commission's Report as to the inadequacy of current salary levels:

December 7, 2015 meeting (video at 1:37:00; transcript at p. 62)

Comm'r Reiter:	My town judge is my electrician. Went to law school, decided he could make more money upstate being an electrician than he could being a lawyer –
Chair Birnbaum:	He's probably right.
Comm'r Reiter:	– and I'm pretty sure, based upon what he charged me, that he's absolutely correct.
Comm'r Lack:	I know some plumbers doing the exact same thing.

The Unanimity of ALL Seven Commissioners in Support of Judicial Salary Increases at their December 7, 2015 First Deliberative Meeting was in Face of CJA's December 2, 2015 Supplemental Statement Detailing that they had NO EVIDENCE upon which to Found Judicial Salary Increase Recommendations

At the Commission's December 7, 2015 meeting, Chair Birnbaum stated that the "first issue" was "if there is going to be an increase, what should that increase be, and when should it take place" – and presented the following juxtaposition in opening discussion:

> "Number 1, there are those who testified that there should be no pay increases for any judiciary members. Number 2, there are those that testified and gave us reports and papers on the fact there should be an increase and it should be to the federal district court increase." (video, at 0:2:40; transcript, p. 3, underlining added).

In other words, she was purporting that those opposing pay raises had not supported their position with "reports and papers", whereas those in favor had. This was false – and the video of my testimony before all seven commissioners at the November 30, 2015 hearing shows the HUGE volume of "reports and papers" I was furnishing to them in support of my testimony and which I described by my testimony and before leaving the witness table:

(1) another full copy of CJA's October 27, 2011 Opposition Report – identical to the full copy I had furnished Chairman Birnbaum on November 3, 2015 at the conclusion of the Commission's first organizational meeting;

(2) the verified complaints, with exhibits, in CJA's three lawsuits arising from the October 27, 2011 Opposition Report, including the supplemental verified complaint in the citizen-taxpayer action;

(3) CJA's last court papers submitted in the citizen-taxpayer action, reflecting the state of the record therein entitling plaintiffs to the granting of their cross-motion for summary judgment;

(4) my written testimony, with attached exhibits

As to these, I stated that the Commission could readily determine that the August 29, 2011 Report of the Commission on Judicial Compensation was fraudulent, statutorily-violative, and unconstitutional,

> "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." (written statement, at p. 4, capitalization in the original; video at 2:08:26; transcript, at p. 79).

Three days later, on December 2, 2015, to ensure that the Commission fully understood that pursuant to its statutory charge – and quite apart from anything having to do with the Commission on Judicial Compensation's August 29, 2011 Report – it had NO EVIDENCE on which to found any recommendation to raise judicial salary levels, I furnished a supplemental submission, whose first half was devoted to that issue. Picking up on my last words to the Commissioners at the November 30, 2015 hearing, I stated:

> "This supplemental submission is necessitated by the Commission's shameful performance at its one and only November 30, 2015 public hearing, at which not a single Commissioner asked a single question of a single witness. This notwithstanding each Commissioner is presumed to know – from the statute defining the Commission's charge – that the oral and written presentations of the Judiciary and other judicial pay raise advocates were misleading and unsupported by probative evidence. This, I tried to communicate to you at the conclusion of my testimony, only to be abused by Chairwoman Birnbaum and Commissioner Reiter, without a single Commissioner taking exception:
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> Sassower: You have no evidentiary presentation –
>
> Chair Birnbaum: Ms. Sassower, we're done. Please. We have –
>
> Sassower: by judicial pay raise advocates –
>
> Comm'r Reiter: You are done.
>
> Chair Birnbaum: We have other people. Please.
>
> Sassower: – as to the inadequacies of current salaries–
>
> Chair Birnbaum: Will you give up the microphone –

Sassower: –as to any problem in attracting qualified candidates to the bench or –

The Commission's charge is to 'examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits' (§2.1) and 'the prevailing adequacy of pay levels and other non-salary benefits' (§2.2a(2)). None of the judges and other pay raise advocates testifying before you identified this. Instead, they misled you with rhetoric that the levels you should be setting are the ones they view as 'fair', 'equitable', and commensurate with their self-serving notions of the dignity and respect to be accorded the judiciary, furnishing NO EVIDENCE as to the inadequacy of current judicial salary levels – bumped up $40,000 by the Commission on Judicial Compensation's August 29, 2011 Report. They did not even assert that current salary levels are inadequate, let alone after the addition of non-salary benefits. In fact, and repeating their fraud at the Commission on Judicial Compensation's July 20, 2011 hearing, they made no mention of non-salary benefits – or their monetary value – a concealment also characterized by their written submissions before you.

In face of this, and making your non-questioning of them the more egregious, as likewise your disrespectful treatment of me, is that CJA's October 27, 2011 Opposition Report – which I furnished you nearly four full weeks before the hearing – highlighted (at pp. 1, 17-18, 22, 31) that among the key respects in which the Commission on Judicial Compensation's August 29, 2011 Report was statutorily-violative and fraudulent is that its salary increase recommendations were 'unsupported by any finding that current 'pay levels and non-salary benefits' [were] inadequate' – reflective of the fact that the judges and judicial pay raise advocates had not furnished probative evidence from which such finding could be made. Such finding, moreover, would require an articulated standard for determining adequacy, such as had been enunciated nearly 30 years earlier by the Temporary State Commission on Judicial Compensation, chaired by William T. Dentzer:

> ''the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes.'' (Opposition Report, at p. 22).

This is the same Commission as had wisely stated:

> '...there are significant differences in the cost of living in various areas of the State; and [] it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office,

> which, while perhaps adequate in part of the State, might be inadequate or excessive in the rest of the State.[fn]' (Opposition Report, at p. 30).

The judges who testified before you at this past Monday's hearing surely consider themselves well-qualified. Yet, not one stated that he/she would be resigning from the bench, if no salary increase was forthcoming. Indeed, it was most telling that Supreme Court Justice William Condon identified that he sits in Long Island and had been elected in 2008. That was nine years into the so-called 'salary freeze', hitting hardest judges in the high-cost-of-living metropolitan New York City area, where he would be. Yet, he plainly had not considered it cause for not joining the bench. Likewise, First Department Appellate Division Justice Paul Feinman, who identified that he had come to the bench in 1997. This was before the 1999 judicial pay raises, in other words, during a prior 'salary freeze' period. Yet, that also did not seem to dampen his judicial aspirations – and he sought re-election, twice, in 2006 and also 2007 – which were subsequent 'salary freeze' years.

Any legitimate inquiry by this Commission would rapidly disclose that there is no shortage of experienced, well-qualified New York lawyers who would make superlative judges – and who would embrace the current $174,000 Supreme Court salary level as a HUGE step up from what they are currently making. For that matter, there is also no shortage of experienced, well-qualified lawyers who would embrace the prior $136,700 Supreme Court salary level as a HUGE step up. Certainly, had the Commission questioned Adriene Holder, Attorney-in-Charge for Civil Practice at the Legal Aid Society, about her support for judicial salary increases, it would have learned that the $136,700 prior salary level is more than $20,000 beyond the maximum salary paid to Legal Aid's TOP, most senior attorneys, which is what I learned upon questioning her following her testimony. Indeed, Exhibit L to CJA's October 27, 2011 Opposition Report furnishes relevant figures from 2009 as to what attorneys make in each of New York's 62 counties from which it is evident that neither the current $174,000 Supreme Court salary level or the prior $136,700 Supreme Court level are remotely inadequate for most of the state, and especially when considered with the non-salary benefits, as to which there has been no disclosure as to their cost to the taxpayers. Presumably, you would have learned a lot more about salaries and costs-of-living in the vast areas of upstate and western New York had you held hearings in those parts, which you did not do.

The reality is that judicial turnover is not great. Overwhelmingly New York's judges seek re-election and re-appointment, if not to the same judicial positions, than to higher ones. The Judiciary could certainly have provided the statistics – but has not, presumably because the statistics would not show any significant departure from the bench, let alone attributable to pay. And apart from statistics, the Judiciary does not even furnish the names of judges who have stepped down for the self-described reason of salary, thereby precluding any examination as to whether their departure is

a loss.

> An example of a judge who New York is best rid of is Commissioner Barry Cozier, who stepped down from the Appellate Division, Second Department in 2006. To the best of my knowledge, the Judiciary and judicial pay raise advocates never identified him in their 2011 advocacy before the Commission on Judicial Compensation as a judge who left the bench due to inadequate pay. Nevertheless, the Unified Court System's June 30, 2015 press announcement that Chief Judge Lippman had appointed him to this Commission stated that after two decades as a judge, serving 'with distinction', he had 'decided to leave the bench in large measure due to the lengthy pay freeze — from 1999 through 2011 — endured by New York State's judges' – thereby making him 'acutely aware of the importance of setting a fair judicial pay scale to reduce turnover and ensure New York's citizens access to a high quality bench.'
>
> Apart from the fact that "a fair judicial pay scale" is not this Commission's charge – but one that is 'adequate' – and that his impartiality might reasonably be questioned if – as purported – he left the bench 'in large measure due to the lengthy pay freeze', his departure is to be celebrated, not mourned. He was a corrupt judge who perpetuated the systemic judicial corruption, involving the court-controlled attorney disciplinary system and Commission on Judicial Conduct...."

It was with this massive presentation of fact and evidence before them that not a single Commissioner discussed, or even mentioned, the opposition to judicial pay raises – nor, for that matter, the threshold issues of the disqualification of Commissioners Lack, Cozier and Birnbaum for actual bias and interest, whose evidence-supported particulars were furnished by the second half of the December 2, 2015 supplemental statement.

Chair Birnbaum's words, at the December 7, 2015 meeting, after a half-hour discussion, were as follows:

> Chair Birnbaum: All right. Everybody has at least spoken once. And if I can just try to get us to the next step, I think there's unanimity that there should be an increase. And we can take the fact that there shouldn't be any increases at all off the table, if I'm wrong in that, please let me know. So, if that's the case, I think the issues as we are hearing them expressed is the commissioners are in favor of an increase for the judiciary. The question is how fast and to what amount..." (video at 0:36:48; transcript at p. 23).

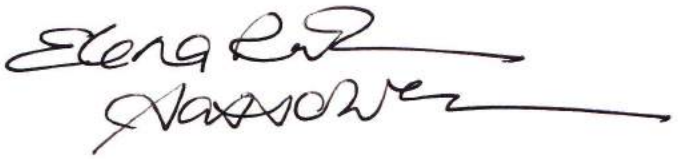
At no point thereafter, either at the December 7, 2015 meeting or at the December 14, 2015 meeting, was there the slightest mention of the opposition to judicial pay raises that had been presented. Nor is there any mention of the opposition in the Commission's December 24, 2015 Report, whose

coverletter, signed by Chair Birnbaum, states:

> "The Commission carefully reviewed the public testimony and extensive written submissions received in connection with the question of appropriate compensation for New York State judges."

Suffice to say, the only testimony and submissions whose review is evidenced by the December 24, 2015 Report are those supportive of judicial salary increases. Those alone are cited to by the Report, primarily in the footnotes to its so-called "Findings"[6] (pp. 5-8). These "Findings", of which there are nine, are essentially bald conclusions that are irrelevant and diversionary, where not outrightly fraudulent. There is not one that "levels of compensation and non-salary benefits" are inadequate or that the Commission had taken into account "all appropriate factors" – as to which, on December 21, 2015, I had sent the Commission yet a further submission, highlighting the statutory requirement of both, including by its title:

> "Assisting the Commission in discharging its statutory duty of 'tak[ing] into account all appropriate factors' as to 'adequate levels of compensation and non-salary benefits".



[6] The submissions cited are of the Chief Administrative Judge at footnotes 4, 9, 10, 11, 14, 17 and the Associations of Justices of the Supreme Court of the State of New York and the City of New York at footnotes 8, 16. "[T]he business community" is cited in the body of finding #7.