

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

**Testimony of Elena Ruth Sassower,
Director, Center for Judicial Accountability, Inc.***
Public Hearing of the Commission to Investigate Public Corruption
September 17, 2013, New York City

My name is Elena Ruth Sassower and I am Director and Co-Founder of the nonpartisan, nonprofit citizens' organization Center for Judicial Accountability, Inc. (CJA). For nearly 25 years we have been documenting that New York's judiciary is "corrupt, pervasively, systemically corrupt"¹; that such corruption involves supervisory and appellate levels and encompasses the Commission on Judicial Conduct; and that collusive in this corruption and perpetuating it are all three branches of our state government, at their highest levels, as likewise the three branches and highest public officers of our federal government. Also collusive, the "fourth branch" – the press – as well as academia, bar associations, and so-called "good government groups", all co-conspirators in the obliteration of the rule of law in our courts in case, after case, after case.

The operative word for what we have been doing is "documenting" – and we have a goldmine of documentation that could easily convict a multitude of judges and public officers for corruption and collusion, including those now members and special advisors of this Commission. Much of this documentation is posted on our website, www.judgewatch.org. Particularly important is the left sidebar panel entitled "Test Cases" – these being the cases we developed as vehicles to methodically and explicitly test the remedies and safeguards for ensuring judicial integrity, and to thereby prove their complete worthlessness.

Our "Test Case: State (*Commission*)" is the public interest Article 78 proceeding we brought against the New York State Commission on Judicial Conduct in 1999, suing it for corruption.² Its record

* This written testimony – and all the referred-to video and documentary evidence supporting it – are posted on CJA's website, www.judgewatch.org, on a specially-created webpage. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people-evidence/sassower-elena.htm>

¹ My concluding words in testifying in opposition to judicial pay raises before the Temporary Commission on Judicial Compensation at its July 20, 2011 hearing.

² The Article 78 proceeding is: *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY County #99-108551)

physically incorporates the records of two other Article 78 proceedings against the Commission³, with the records of all three cases evidencing the identical pattern: that the Commission had no legitimate defense, that it was defended by the state Attorney General who corrupted the judicial process because he had no legitimate defense – and that it was rewarded by fraudulent judicial decisions without which it would not have survived.⁴

Since the Commission on Judicial Conduct is the SOLE state agency whose duty it is to investigate complaints against New York state judges, examining the three-in one record of this “Test Case”, which went up to the New York Court of Appeals in 2002 on both an appeal of right and by leave, must be your JOB #1 in examining our state’s judicial branch and all the remedies and safeguards for ensuring its integrity. Indeed, it may truly be said that ALL the witnesses testifying before you today about the judicial abuse and lawlessness that scarred and destroyed their lives– and who will be testifying before you at subsequent hearings – and who have and will be submitting statements – would either not have been so-victimized or would have long ago secured redress, but for what a succession of corrupt New York state judges did in “throwing” these three Article 78 proceedings by fraudulent judicial decisions, aided and abetted by a panoply of state and federal public officers, all of whom we alerted to what was taking place, as likewise the press, academia, bar associations, and “good government groups”.

The record of our “Test Case” against the Commission on Judicial Conduct is a perfect “paper trail” of unabashed corruption by public officers in all three government branches, encompassing not only judicial discipline, but judicial selection at various levels, starting with “merit selection” to the New York Court of Appeals. It also materially incorporates the record of our “Test Case: Federal (*Mangano*)”, a federal civil rights action under 42 USC §1983 and §1985, challenging New York’s unconstitutional attorney disciplinary law, utilized by New York’s judiciary to retaliate against judicial whistle-blowing lawyers, aided and abetted by New York’s Attorney General whose *modus operandi* is litigation fraud.⁵

³ These two other Article 78 proceedings are: *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (New York County #95-109141); and *Michael Mantell v. New York State Commission on Judicial Conduct* (New York County #99-108655). These are also directly accessible via the sidebar panel “Judicial Discipline: State-NY”.

⁴ See, “*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)).

⁵ The full title of that federal case is: *Doris L. Sassower v. Hon. Guy Mangano, Presiding Justice of the Appellate Division, Second Department of the Supreme Court of the State of New York, and the Associate Justices Thereof, Gary Casella and Edward Sumer, Chief Counsel and Chairman, respectively, of the Grievance Committee for the Ninth Judicial District, Does 1-20, being present members thereof, Max Galfunt, being a Special Referee, and G. Oliver Koppell, Attorney General of the State of New York, all in their official and personal capacities* (US District Court/SDNY #94 Civ. 4514).

In 2009, when Senator John Sampson became chairman of the Senate Judiciary Committee, holding hearings on “merit selection” to the Court of Appeals, I urged him to hold hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – which he did. The first hearing was June 8, 2009, the second was September 24, 2009, and the third – at which I was to publicly present the evidence from our two “Test Cases” – was to have been on December 16, 2009, but was cancelled and never rescheduled. Here is the extensive written statement I had prepared for that hearing, intended as a roadmap to facilitate the Senate Judiciary Committee’s investigations, never conducted.⁶

The facts pertaining to our “Test Case” against the Commission and to Senator Sampson’s historic 2009 hearings, aborted, with no investigations, no findings, and no committee report, are pivotally summarized by the verified complaint in the lawsuit we commenced on March 30, 2012, expressly “on behalf of the People of the State of New York and the Public Interest” against New York’s three government branches and highest constitutional officers: Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman.⁷ Its purpose: to secure judicial accountability and void the judicial pay raises that New York’s judiciary procured by the most shameless fraud, in collusion with the executive and legislative branches. True to form, the Attorney General – here, Attorney General Schneiderman – engaged in flagrant litigation fraud and obtained from a self-interested court an order transferring the case from Bronx County to New York County where, at some point, the original verified complaint, ALL substantiating exhibits, and our order to show cause for a preliminary injunction, with TRO, to prevent the monies for the judicial pay raises from being disbursed, went missing. The New York County Clerk – whose salary is tied to judicial salaries – ignores our complaints for investigation of the record tampering, ignores our requests that he certify the missing documents, to which Judiciary Law §255 unequivocally entitles us, and ignores our requests that he take action against his Chief Deputy Clerk who has barred me from reviewing the case file under threat that he will have court officers remove me from the courthouse, which he has already done. Neither the Administrative Judge of the First Judicial Department for Civil Matters, the Inspector General of the Unified Court System, nor New York County District Attorney Vance’s “Public Integrity Unit” have done anything to help. As a result, for over a year, the case is in limbo, sitting on a shelf in the New York County Clerk’s Office.

⁶ Senator Sampson must be questioned, by subpoena if necessary, as to why the December 16, 2009 hearing was cancelled, why no further hearings on the subject were thereafter scheduled, and why the testimonial and documentary evidence of corruption that two dozen witnesses presented at the first two hearings was never investigated, never the subject of findings, never resulted in a committee report. Indeed, inasmuch as Attorney General Schneiderman was then a Senate Judiciary Committee member, he should also be questioned about this and why he and ALL white Democratic Senate Judiciary Committee members and virtually ALL Republican Senate Judiciary Committee members – were absent from the first two hearings, at which Senator Sampson sat virtually alone.

⁷ See, *inter alia*, ¶¶17-36, 47-55, 62-67, 74-75, 79-81, 86-94, 96-99, 106, 112-113, 133, 135(e), 136, 137, 158, 160, , 161-162, 164-165.

Meanwhile, approximately \$50 million has already been stolen from New York taxpayers, the cost of the fraudulent judicial pay raises since April 1, 2012. Each month, that sum grows by roughly \$3 million and, by the end of next fiscal year, the total will reach approximately \$120 million. From then on, in perpetuity, the judicial pay raises will be an annually recurring expense of \$50 million, if not more, topping a billion dollars in less than 20 years.

With the lawsuit stalled, we have taken other steps to protect the People of New York from this “grand larceny of the public fisc”—and from the additional larceny committed by the Legislature and Governor by their slush-fund judiciary and legislative appropriations for fiscal year 2013-2014, involving tens, if not hundreds, of millions of unaccounted-for taxpayer dollars. We have filed corruption complaints with investigative authorities:

- (1) with U.S. Attorney Preet Bharara (SDNY) on April 15, 2013;
- (2) with U.S. Attorney Loretta Lynch (EDNY) on May 13, 2013;
- (3) with U.S. Attorney Richard Hartunian (NDNY) on June 13, 2013;
- (4) with the Senate Committee on Investigations and Government Operations and the Assembly Committee on Oversight, Analysis, and Investigation on June 4, 2013;
- (5) with the Joint Commission on Public Ethics on June 27, 2013;
- (6) with New York State Inspector General Catherine Leahy Scott on July 11, 2013;
and
- (7) with Albany County District Attorney P. David Soares – a member of this Commission – on July 19, 2013 – for handling by his “Public Integrity Unit”.⁸

⁸ Enclosed with the mailed original of our July 19, 2013 corruption complaint to D.A. Soares’ “Public Integrity Unit” were copies of all our prior corruption complaints pertaining to the judicial pay raises. This includes our first two complaints, which were to Attorney General Schneiderman’s “Public Integrity Bureau” on November 29, 2011 and to Comptroller DiNapoli’s “Investigations Unit” on March 1, 2012.

Thereafter, on August 21, 2013, I hand-delivered to D.A. Soares’ office a hard copy of the enclosures that had substantiated our April 15, 2013 corruption complaint to U.S. Attorney Bharara, plus one additional item: our April 2, 2013 letter to the Senate Finance Committee and Assembly Ways and Means Committee entitled:

“GIVING NOTICE: (1) The Mandatory Statutory Duty of the Legislature’s Fiscal Committees to Preserve Evidence, Pursuant to Legislative Law §67; (2) CJA’s Request to Testify in Opposition at Next Year’s Legislative Hearings on the Budget for Fiscal Year 2014-2015, Pursuant to Legislative Law §32-a”.

We have also requested important additional relief from U.S. Attorneys Bharara, Lynch, and Hartunian and from District Attorney Soares: their intervention in the lawsuit, *CJA v. Governor Cuomo, et al.*

All these complaints, resting on the rock-solid *CJA v. Cuomo* verified complaint, on our correspondence based thereon, and on the video of my testimony at the Legislature's February 6, 2013 budget hearing on "public protection", provide a *prima facie, open-and-shut case* to not only indict, but to convict, all the named *CJA v. Cuomo* defendants for corruption. Likewise, a who's who of other powerful public officers in our state's three government branches, colluding with them.

So that you can do your job of investigating public corruption and referring wrongdoers for criminal prosecution, here is a copy of all the corruption complaints we filed with these public prosecutors, agencies, and legislators – whose volume is attributable to the exhibits substantiating the *CJA v. Cuomo* verified complaint. Among these: our final two motions to the Court of Appeals in our "Test Case" against the Commission on Judicial Conduct, dated October 15, 2002 and October 24, 2002, and our October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 "Final" Report, also furnished. From these exhibits, it takes but minutes to verify the essential facts on which to rest criminal indictments.

That all these public officers, agencies, and legislators have been sitting on the complaints for so many months – and not responding to our phone messages or e-mails – provides this Commission with a window into how they and other officials and authorities react, routinely, when citizens turn to them with evidence no less damning, if less far-reaching, for investigation and prosecution.

Since Co-Chair Onondaga County District Attorney Fitzpatrick has pledged to "follow the money", these complaints furnish lots of money for the Commission to follow – *en route* to its cleaning up of our state's demonstrably corrupt judiciary, and those who have aided and abetted it.

Time does not permit me to detail the conflicts of interest that afflict members of this Commission, its advisors, and its staff with respect to these corruption complaints – and with respect to the serious and substantial issues pertaining to the Commission's jurisdiction, which is essentially that of a functioning legislature, and whose utter dysfunction – a euphemism for corruption – must, therefore, be high on the Commission's agenda.

Suffice to say, we have received no response from the Commission to our August 5, 2013 letter entitled "Ensuring the Commission to Investigate Public Corruption is True to its Name & Announced Purpose", requesting, *inter alia*, "a copy of all [the Commission's] 'procedures and rules' – and...protocol for dealing with conflicts of interest, whether of Commission members, special advisors, or staff". A copy of that letter and of our repeated follow-up e-mails is furnished with this statement so that each Commission member may be on record – and held accountable – for his views as to the public's right to that information – and to the other information therein sought.

Also furnished is a copy of my August 22, 2013 e-mail to Commission Special Advisor Barbara Bartoletti. Entitled “Achieving BOTH a Properly Functioning Legislature & the Public Trust Act (Gov Program Bill #3 – the *Sine Qua Non* for ‘Government Working’ & ‘Working for the People’”, it attached our August 21, 2013 letter to Governor Cuomo, similarly entitled, as to which I asked Ms. Bartoletti whether she did not agree:

“that each of the Commissioners should be furnished a copy of the letter for their evaluation – beginning with its assertion that ‘high on the agenda of the Commission to Investigate Public Corruption’ must be the question as to what the legislative committees have been doing by way of ‘oversight’?”

I received no response from Ms. Bartoletti – and, on September 10, 2013, called her on her cellphone to discuss it with her. She told me she was in a meeting and that I should call her back in an hour. However, when I did so, she did not pick up – and I received no return call or e-mail responding to the voice mail message I left.

I do not need Ms. Bartoletti’s answer to my question to know the answer myself—and to know how Ms. Bartoletti would have responded were she not – as she is – a partisan of public campaign financing as Legislative Director of the New York State League of Women Voters, who, with other “good government groups”, have been hijacking the broad corruption mandate of the Commission to achieve, with the Governor, a predetermined result: Commission recommendations for public campaign financing – much as, before the Commission was created, they saw nothing wrong with the Governor dispensing with legitimate legislative process in favor of behind-closed-doors negotiations with Senate Coalition Leaders Skelos and Klein and Assembly Speaker Silver in the hope of reaching a deal on public campaign financing legislation, for the Legislature’s rubber stamp.

Suffice to say, back in 2009, Ms. Bartoletti not only testified, with other “good government groups”, before the Senate’s Temporary Committee on Rules and Administration Reform as to the importance of a legitimate legislative process,⁹ but brought 29 students to its April 21, 2009 final meeting as part of the League of Women Voters’ “Students Inside Albany Day” so they could see how their government works.

The only way government will work and the integrity of its operations safeguarded is by a functioning legislature whose committees engage in ongoing and continuous oversight of the areas within their jurisdiction and whose law-making is based thereon.

⁹ Ms. Bartoletti testified at the February 10, 2009 hearing of the Senate Temporary Committee on Rules and Administration Reform – the same hearing at which NYPIRG’s Blair Horner testified and Common Cause’s Susan Lerner testified. The Brennan Center’s testimony by Professor Eric Lane, Lawrence Norden, and Jeremy Creelan, was at the February 26, 2009 hearing. These hearings, the Commission’s meetings, and all other materials relating to them – including the Brennan Center’s 2004, 2006, and 2008 reports on New York’s dysfunctional Legislature, born of its legislative rules, are posted on our website’s “Senate Rules Reform Resource Page”. Here’s the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/rules-reform-resource-page-senate.htm>.

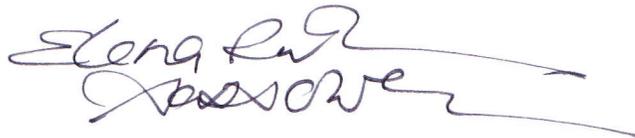
As the Senate and Assembly each have Judiciary Committees whose principle oversight responsibility is this state's judiciary, this Commission must call upon their chairs, ranking members, and committee members to account for how they handle complaints of citizens beseeching them to do something about the corruption in the courts by judges and lawyers – and to justify their willful nonfeasance with respect to Senator Sampson's 2009 hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system: failing to continue those hearings, failing to investigate the evidence that two dozen witnesses presented and proffered at the two hearings held, not to mention the evidence of the witnesses scheduled to testify at the aborted third hearing or of the witnesses who had been promised they would be scheduled to testify at subsequent hearings, and failing to make any findings of fact and recommendations based thereon, let alone by committee reports. Let them also justify their willful failure to discharge any oversight over Chapter 567 of the Laws of 2010, *as written and as applied*, allowing a corrupt judiciary to steal from New York taxpayers judicial pay raises which are not only fraudulent, but unconstitutional, and to which they have not a shred of legal entitlement: the 'Final' Report of the Commission on Judicial Compensation being, *on its face*, violative of the express requirements of the statute.

Certainly, too, this Commission must call upon the chairs, ranking members, and the committee members of the Senate Committee on Investigations and Government Operations and of the Assembly Committee on Oversight, Analysis, and Investigation to identify what their intentions are with respect to our June 4, 2013 letter requesting their oversight and investigation of the facts and evidence presented by our April 15, 2013 corruption complaint to U.S. Attorney Bharara, and, specifically:

“(1) of Chapter 567 of the Laws of 2010, *as written and applied* – as to which, to date, there has been no oversight, analysis, and investigation; and

(2) of the Commission on Judicial Conduct & court-controlled attorney disciplinary system – as to which, in 2009, the Senate Judiciary Committee held oversight hearings that were aborted, with no analysis, investigation, findings, or committee report of the document-supported testimony of witnesses” (“RE” clause, at p. 1).

There is no reason why, with this Commission's prompting, the Legislature should not put its own house in order by a functioning committee structure – and by legislative rules and administration reform that make that happen.

A handwritten signature in blue ink, appearing to read "Steven R. L. Passow". The signature is written in a cursive style with a long horizontal line extending to the right.