

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

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

February 18, 2016

TO: Senate Finance Committee
Chairwoman Catharine Young
Ranking Member Liz Krueger

Assembly Ways & Means Committee
Chairman Herman Farrell, Jr.
Ranking Member Bob Oaks

RE: Your Violation of Legislative Law §32-a with Respect to the Judiciary and
Legislative Budgets for Fiscal Year 2016-2017 – and Budget Bill #S.6401/A.9001:
Answers to Questions & Requests for:

(1) your findings of fact and conclusions of law with respect to those matters about which you reasonably knew I would be testifying at the Feb. 4, 2016 “public protection” budget hearing, had you permitted me to testify;

(2) posting of this letter on your webpages of written statements/testimonies submitted for the Feb. 4, 2016 “public protection” budget hearing – & its inclusion in the record.

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

Please advise as to what your criteria was for deciding which members of the public would be permitted to testify at the February 4, 2016 budget hearing on “public protection”.

Your list of witnesses, which I believe you did not release until the day of the hearing, numbers 37. How many of them had requested to testify before I did?

You released your joint budget hearing schedule on January 11, 2016, announcing, in pertinent part:

“...These hearings, each of which focuses on a programmatic area, are intended to provide the appropriate legislative committees with public input on the executive budget proposal...

...The respective state agency or department heads will begin testimony...followed by witnesses who have signed up to testify on that area of the budget...

Requests to testify must be made by contacting the appropriate person listed on the schedule no later than the close of business, two business days prior to the respective hearing. Because of time constraints only a limited number of witnesses

can be accommodated at any given hearing.

The agency and the departmental portion of the hearings are provided for in Article 7, Section 3 of the Constitution and Article 2, Section 31 of the Legislative Law. The state Legislature is also soliciting public comment on the proposed budget pursuant to Article 2, Section 32-a of the Legislative Law.”

I did not wait until “two business days prior” to the February 4th “public protection” budget hearing to request to testify. Rather, on January 12th (2:50 p.m.) – the day after the hearing schedule was announced – I telephoned the “appropriate person listed on the schedule”, which was Jessica Jeune, at the indicated number 518-455-3573. I left a message for her on January 12th and then again the following morning, January 13th (10:45 a.m.) – each time requesting two slots: one for testimony in opposition to the Judiciary budget, one for testimony in opposition to the Legislative budget. Indeed, before calling her a second time, I had confirmed with Chairman Farrell’s office that the Legislative budget was not in “general government” – as one might reasonably assume it to be – but, like the Judiciary budget, in “public protection”.¹

Ms. Jeune, who I subsequently learned is Chairwoman Young’s Chief of Staff, called me back after my second voice mail message, on January 13th, at approximately 5:15 p.m., and we spoke briefly. She told me that there were many people requesting to testify and that she would not be able to confirm my request until a day before the hearing. I responded that inasmuch as the Judiciary and Legislature are not agencies, but government branches, they should have their own budget hearings, especially as Legislative Law §32-a requires you to make “every effort to hear all those who wish to present statements at such public hearings” – which you plainly cannot do when you combine, in a single set of hearings, the public’s hearings pursuant to Legislative Law §32-a, with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for agency heads, to whom you give precedence – putting members of the public at the end, if there is room. I may have additionally told Ms. Jeune that I have a pending citizen-taxpayer action against the Legislature addressed to these issues, but you already know that.²

¹ This confirmation came from Clinton Freeman, *via* Ms. Powell.

² The Legislature’s evisceration of Legislative Law §32-a and disregard of other statutory, constitutional, and rule provisions with respect to the Judiciary and Legislative budgets for fiscal year 2014-2015 is the subject of the fourth cause of action of the March 28, 2014 verified complaint in the citizen action *CJA v. Cuomo, et al.* (Albany Co. #1788-2014). Excepting Senator Young, who until this past January was not the chair of the Senate Finance Committee, I furnished each of you with a copy of that fourth cause of action last year by my February 23, 2015 letter, in support of my requests to testify in opposition to the fiscal year 2015-2016 Judiciary and Legislative budgets. The February 23, 2015 letter is Exhibit 8 to the March 30, 2015 supplemental verified complaint in the citizen taxpayer action and substantiates its eighth cause of action pertaining to the Legislature’s evisceration of Legislative law §32-a and disregard of other statutory, constitutional, and rule provisions with respect to the Judiciary and Legislative budgets for fiscal year 2015-2016. As the eighth cause of action is relevant to what is now unfolding with respect to fiscal year 2016-2017, a copy is enclosed.

This first conversation with Ms. Jeune was also my last. I received no return call to my subsequent messages for her: on January 22nd (10:30 a.m.), January 26th (1:25 p.m.), and February 3rd (12:30 p.m.), reiterating my request for two slots: one for my testimony in opposition to the Judiciary budget and one for my testimony in opposition to the Legislative budget. Indeed, neither Ms. Jeune nor anyone on her behalf saw fit to notify me that I would not be able to testify – or to invite me to submit written testimony for posting on the Legislature’s webpage(s) of its hearings, accessible to the public, to legislators, and made part of the record. Nor have I received a return call in response to the voice mail message I left for her on February 8th (4:30 p.m.).

Suffice to say that quite apart from your direct knowledge – from past years – of the serious and substantial nature of what I would be saying, you had a succession of correspondence from me, spanning from my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie to my February 3, 2016 “Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie”.³ From these you could easily discern that my intended testimony at the February 4, 2016 budget hearing:

- (1) in opposition to the “force of law” judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation;
- (2) in opposition to the Judiciary budget; and
- (3) in opposition to the Legislative budget

was dispositive of unlawfulness, unconstitutionality and fraud.

This correspondence included four e-mails to you identifying the February 4th “Public Protection” budget hearing in their subject lines – and which I deemed so important that you see that I telephoned your offices to confirm receipt and to expressly request that they be furnished to you – as well as to every member of your committees.

The first two of these four e-mails, on January 28th and January 29th, transmitted my January 28, 2016 letter addressed to you and the Chairs and Ranking Members of the Senate and Assembly Judiciary Committees entitled:

³ This span of correspondence – and all the substantiating proof to which it refers – is 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!” That is where this letter will also be posted.

“The Legislature’s February 4, 2016 ‘Public Protection’ Budget Hearing: Your Scrutiny of the Judiciary’s two-part budget and of the Governor’s Budget Bill S.6401/A.9001, embodying the Judiciary’s discrepant ‘single budget bill’”.

The letter began, as follows:

“To assist you in discharging your duty to meaningfully scrutinize the Judiciary’s two-part budget and its ‘single budget bill’, embodied by the Governor’s Budget Bill #S.6401/A.9001, enclosed is my January 26, 2016 letter to Chief Judge DiFiore, a copy of which I sent to Chief Administrative Judge Marks, who acknowledged receipt.

Entitled ‘...Will You Do Your Duty to Apprise the Legislature of its Own Duty?’, it specifies, as the Legislature’s duty: ‘(1) to override the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation’s December 24, 2015 Report because they flagrantly violate the commission statute, in addition to being fraudulent and unconstitutional; and (2) to strike \$33,760,000 of the Judiciary’s ‘reappropriations’ because they are uncertified/unapproved by the Chief Judge and Court of Appeals, in violation of Article VII, §1 of the New York State Constitution – and/or to strike \$13,760,000 of this sum because it violates Article VII, §7 and Article III, §16 and State Finance Law §25.’” (January 28, 2016 letter to you, at p. 1).

Reflected by the January 26, 2016 letter to Chief Judge DiFiore it enclosed was that I had furnished her with documentary proof as to both these issues prior to the Senate Judiciary Committee’s January 20, 2016 hearing on her confirmation so that she could demonstrate “leadership”. However, not only had she failed to show “leadership”, she had LIED at the hearing when asked about the judicial pay raises, endorsing the Commission on Legislative, Judicial and Executive Compensation as having done “a responsible job”. My January 26, 2016 letter to her, therefore, stated:

“Where are your findings of fact and conclusions of law with respect to...the... evidence my December 31, 2015 letter provided you so that you could verify that the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation is even more statutorily-violative, fraudulent, and unconstitutional than the Commission on Judicial Compensation’s August 29, 2011 Report – and that your duty is to take steps to ensure legislative override of its ‘force of law’ recommendations for judicial salary increases, whose first phase will otherwise take effect, automatically, on April 1, 2016. And where are your findings of fact and conclusions of law with respect to my 12-page ‘Statement of Particulars in Further Support of Legislative Override...’ that was an enclosure to my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, entitled ‘Immediate Oversight Required’, a copy of which I furnished you and other legislators.

On February 4, 2016, the Legislature will be holding its ‘public protection’ budget hearing – which is where the Judiciary testifies in support of its budget. Presumably, you will not be testifying personally, but sending Chief Administrative Judge Lawrence Marks as your surrogate.

To prevent Chief Administrative Judge Marks from brazenly lying at the hearing about the judicial salary increases that the Legislature is duty-bound to override – much as he is now brazenly lying by his propaganda-filled article, ‘In Pursuit of Fair Compensation For New York’s Judges’, appearing on the front page of this week’s New York Law Journal supplement in connection with the New York State Bar Association’s annual meeting – he must bring to the hearing your aforesaid findings of fact and conclusions of law – and his own^{fn}.

Additionally, Chief Administrative Judge Marks must come to the hearing with your answers to the questions about the Judiciary budget itemized at page 7 of my December 31, 2015 letter to you as follows:

- ‘(1) whether the Judiciary’s ‘single budget bill’ is encompassed within the certification of the Chief Judge and the approval of the Court of Appeals;
- (2) the cumulative dollar total of the Judiciary’s budget request in its two-part budget presentation;
- (3) the cumulative dollar total of the appropriations and reappropriations in the Judiciary’s ‘single budget bill’;
- (4) whether the reappropriations in the ‘single budget bill’ are consistent with Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25.

...
Of course, it is your duty to tell the legislators – much as it was your duty to forthrightly state to them at your confirmation – that, for all the reasons set forth by my December 31, 2015 and January 15, 2016 letters to you and them, they must override the Commission’s judicial salary increase recommendations, as a matter of law – not the least reason because the Commission flagrantly violated the commission statute.

...
Should you, instead, blithely proceed to earmark monies for this larcenous first phase of recommended judicial salary increases from the Judiciary’s constitutionally and statutorily violative ‘reappropriations’ and/or from its purported ‘itemized’ appropriations – availing yourself of the interchange/transfer provision in section 2 of Budget Bill #S.6401/A.9001 (at p. 10), taken from the Judiciary’s ‘single budget bill’ — do be sure to furnish the precise dollar amounts involved. As stated in the very

first section of my 12-page “Statement of Particulars in Further Support of Legislative Override...”, enclosed with my January 15, 2016 letter:

‘Whereas Senate Rule VIII, §7^{fn} and Assembly Rule III, §1(f)^{fn} 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...’ (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...’ (underlining in original, at p. 1).

In other words, please not only certify that \$26.5 million is the total cost of the first phase of the judicial salary increase for all covered judges – if it is, in fact – but certify the total cost of the salary-based, non-salary benefits that all the covered judges will additionally receive.” (January 26, 2016 letter, at pp. 4, 6-7, underlining in the original)

On February 2nd, to further assist you, I sent you and the Chairs and Ranking Members of the Senate and Assembly Judiciary Committees a third e-mail – this with the subject line: “Feb. 4th ‘Public Protection’ Budget Hearing: Questions for Chief Administrative Judge Marks”. Its message read:

“As an aid to the Senate and Assembly Fiscal and Judiciary Committees in discharging their constitutional duties to uphold the law and safeguard the public fisc, attached are ‘Questions for Chief Administrative Judge Lawrence Marks’. It is also 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!’

Please forward to ALL members of the Senate and Assembly Fiscal and Judiciary Committees so that they can be informed as to the serious and substantial issues before them.

So that Chief Administrative Judge Marks may be fully prepared to respond to these questions at the Legislature's February 4th 'public protection' budget hearing, this e-mail is being simultaneously furnished to him – and to Chief Judge DiFiore. Needless to say, if Chief Judge DiFiore sends someone other than Chief Administrative Judge Marks, that person should be supplied with these questions, in advance, so that there is no excuse for not responding at the hearing.

Thank you.”

The next day, on February 3rd, I sent you and the Chairs and Ranking Members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations, an e-mail bearing the subject line: “Feb. 4th ‘Public Protection’ Budget hearing: Questions for Temporary Senate Pres. Flanagan & Assembly Speaker Heastie”. Its message read:

“As an aid to the Senate and Assembly Fiscal Committees – and to the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations, which are the ‘appropriate committees’ with jurisdiction over, if not responsibility for, the Legislature’s budget – attached are ‘Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie’. It is also 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!’

Please forward to ALL members of the Senate and Assembly Fiscal Committees, and to ALL members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations, so that they can be informed as to the serious and substantial issues before them.

So that Temporary Senate President Flanagan and Assembly Speaker Heastie may be fully prepared to respond to these questions at the Legislature’s February 4th ‘public protection’ budget hearing – at which I was told the Legislature’s budget would be considered – this e-mail is being simultaneously furnished to them.

Thank you.”

Did you forward these e-mails to the members of your fiscal committees, as requested?⁴ How about to the members of the Senate and Assembly Judiciary Committees, the Senate Committee on Investigations and Government Operations, and the Assembly Committee on Governmental Operations?

At the February 4th “public protection” budget hearing, only Senate Finance Committee Ranking Member Krueger, among you, questioned Chief Administrative Judge Marks (video, at 1:24 hours), the first witness called (video, at 1:40 mins - 1:41:45 hours). Neither of her two questions were from my “Questions for Chief Administrative Judge Marks” or reflective of my prior correspondence. Rather, their purpose, as likewise her remarks, were solely so that the Judiciary’s \$85 million budget request for civil legal services would remain untouched, including its \$15 million increase over last fiscal year – which various legislators, Senate Judiciary Committee Chairman Bonacic, among them, believed should be diverted “to make sure the judges get their raises which we all think they are entitled to” (video, at 25:15 mins.). As for Chairman Bonacic’s questioning, none were from my “Questions for Chief Administrative Judge Marks” or reflective of my prior correspondence. Likewise, the questioning of Senate Judiciary Committee Ranking Member Hassell-Thompson, Assembly Judiciary Committee Chairwoman Weinstein, Assembly Ranking Member Montesano – and the other Senate questioners: Nozzolio, Savino, Squadron, Golden, Montgomery, Croci, and the Assembly questioners: Lentol, Graf, O’Donnell, Peoples-Stokes. In fact, a fair number of their questions – and remarks – were not even appropriate for a budget hearing, which should be a careful number-crunching examination. In the main, their policy questions, concerns, and comments, to the extent they were not posturing, are properly the subject of hearings by the relevant Senate and Assembly committees, in discharge of their law-making and oversight functions.⁵ Of course, for that to happen, there would need to be constitutionally-functioning legislative committees, rather than the unfunded shells that presently exist, resulting from the leadership takeover of the Legislative budget, aided and abetted by the rank-and-file.

By contrast, my “Questions for Chief Administrative Judge Marks” were largely about number-crunching – beginning with the cumulative dollar total of the Judiciary’s budget – and certification of those amounts. As stated in my preface to the “Questions”:

⁴ The rank and file members of the Senate Finance Committee are: Bonacic, Boyle, Breslin, Diaz, Dilan, Espallat, Farley, Gallivan, Golden, Griffo, Hannon, Hassell-Thompson, Kennedy, Lanza, Larken, LaValle, Little, Marcellino, Marchione, Martins, Montgomery, Nozzolio, O’Mara, Parker, Peralta, Perkins, Ranzenhofer, Richie, Rivera, Robach, Savino, Seward, Squadron, Stavisky, Valesky.

The rank and file members of the Assembly Ways and Means Committee are: Aubrey, Barclay, Benedetto, Braunstein, Cahill, Colton, Cook, Corwin, Crouch, Cusick, Duprey, Fitzpatrick, Gantt, Glick, Hawley, Hooper, Lentol, Malliotakis, Markey, Moya, Nolan, Ortiz, Perry, Pretlow, Ramos, Rodriguez, Saladino, Schimminger, Thiele, Walter, Weinstein, Weprin, Wright.

⁵ This includes the Judiciary’s “civil legal services”, which, consumed so much of the questioning and conversation and which, upon information and belief, having never been the subject of dedicated Senate or Assembly Judiciary Committee hearings – and legislation resulting therefrom – is rife with deceit, fraud, and self-dealing, both in concept and operation. See, *inter alia*, written testimony of Michael P. Friedman, at p. 4.

“Examination of the Judiciary’s proposed budget for fiscal year 2016-2017 must begin with its total cost, especially as it is not contained within the budget – and the Governor’s Commentary, his Division of the Budget website, and the Legislature’s ‘White’, ‘Blue’, ‘Yellow’ and ‘Green’ Books diverge as to the relevant figures.”

Tellingly, Chief Administrative Judge Marks did not identify the total cost of the Judiciary’s proposed budget in his oral testimony – or in his largely identical written testimony. Yet none of the legislators commented upon this. The closest any came to inquiring about total cost was Senator Bonacic by his sham first question: “Your budget, I think for court administration, is between 2.8 and 2.9 billion, would I be correct?” (video, at 13:50 mins.) – a question so imprecise as to allow tens of millions of taxpayer dollars to be unaccounted for.

As for the \$27 million dollars that Chief Administrative Judge Mark identified as the cost of the “first phase-in of the judicial salary increase, beginning on April 1st of this year” (written testimony, at p. 5), not a single legislator questioned him about it – although #22 of my “Questions for Chief Administrative Judge Marks” furnished the question, ready-made:

“As for the Commission on Legislative, Judicial and Executive Compensation’s December 24, 2015 Report, where did it get the figure of ‘approximately \$26.5 million’ for the first phase of its judicial salary increase? Did the Judiciary furnish that estimate and does such cost projection include all covered judges and the additional costs that result from non-salary benefits, such as pensions and social security, whose costs to the state are derived from salary?”

Of course, the most important question relating to the Commission on Legislative, Judicial and Executive Compensation was my Question #20:

“Is the Commission’s December 24, 2015 Report in conformity with the commission statute, and is it substantiated by any finding, let alone evidence, as to the inadequacy of compensation and non-salary benefits? Where are your findings of fact and conclusions of law with respect to the particularized showing, made by the non-partisan, non-profit citizens’ organization, Center for Judicial Accountability, Inc. (CJA), in correspondence furnished to Chief Judge DiFiore and yourself in advance of this hearing, that the December 24, 2015 report is statutorily-violative, fraudulent, and unconstitutional – and that the ONLY recommendation that the Commission could lawfully make was ‘for the nullification/voiding of the [Commission on Judicial Compensation’s] August 29, 2011 Report AND a ‘claw-back’ of the \$150-million-plus dollars that the judges unlawfully received pursuant thereto’?” (underlining and capitalization in original).

And reinforcing the importance of this question was Chief Administrative Judge Marks’ succession of deceptions at the February 4th budget hearing, starting off with his fraudulent concealment. To begin with, he concealed that for four fiscal years the Judiciary has been funding judiciary salary increases

in its budget, that those increases resulted from the August 29, 2011 Report of the Commission on Judicial Compensation, and that the Judiciary's cut of 2,000 staff positions was done to procure and fund those judicial salary increases. Thus, he stated:

“The Judiciary absorbed hundreds of millions of dollars in higher costs, including mandated employee salary increases, increased contractual expenses, funding for indigent criminal defense to meet statutory caseload standards, and funding for civil legal services” (written testimony, at p. 2).⁶

Deceitfully omitted were the approximately \$150 million in “higher costs” of the judicial salary increases embedded in the Judiciary’s budget since fiscal year 2012-2013 – and their recurring cost of \$50 million annually.

He then used the harm to the public caused by the Judiciary's staffing cuts, largely preventable but for the judicial salary increases, as the reason why, to prevent further harm to the public by more staffing cuts, the Judiciary should get, if not \$27 million to fund the first phase of the Commission on Legislative, Judicial and Executive Compensation's judicial salary increases, then \$19.6 million of it. He stated:

“In an effort to live within our means... a decrease in our employment levels (personnel costs, including fringe benefits, account for about 90 percent of our budget) was necessary.

Indeed, the number of non-judicial employees in the court system has decreased by about 2,000 since 2009. Today the court system has fewer court officers, court clerks, court reporters, court interpreters, court attorneys, and back office staff than it did in 2009...it cannot be contested that the public has felt the consequences of our reduced staffing levels. These consequences include delays on some days in opening courtroom parts, delays in entering judgments, lines to get into courthouses, and lines in the clerk's offices, to name a few.

...In the coming year, we again face increased costs. We are seeking an increase in our budget so we can meet these new costs without having to reduce our workforce to make ends meet.

But this year, our situation is more complicated as a result of the recommendations of the Salary Commission...

But because of the additional cost of judicial salary increases, a cost we could not estimate when we submitted our budget request on December 1st, we are now seeking additional funding to meet that cost...

...Without that funding, it will be increasingly difficult to replace employees when they leave the court system, further decreasing our employment levels and resulting in the consequences that entails...” (written testimony, at pp. 2-6).

⁶ His oral testimony specified the “hundreds of millions of dollars” as “nearly \$400 million” (video, at 4:40 mins.).

And, of course, Chief Administrative Judge Marks concealed what the new judicial salary level would be: \$193,000 for Supreme Court justices – an 11% jump over the \$174,000 current Supreme Court justice salary, itself a 27% jump over the 2011 Supreme Court justice salary of \$136,700. None of this relevant information he saw fit to mention – and none of the legislators inquired about any of it even as they voiced concern about the effect of staffing cuts on the public and about the delays and injustice resulting therefrom. Indeed, with knowledge, from past years, that subsequent witnesses at the “public protection” hearing would be pleading for more money for their funding-starved “public protection” agencies and services⁷ and that witnesses representing court officers and court employees would be testifying about the effect of the staffing cuts on them and on the inadequacy of their contracts or the fact that they were working without contracts,⁸ not a single legislator raised a single question about either the size of, or fact of, the impending judicial salary increase – or about where in the Judiciary’s budget the Judiciary would take its proposed \$19.6 million to pay for the judicial salary increases. Was it from the statutorily and constitutionally-violative slush-fund Judiciary reappropriations?

Chief Administrative Judge Marks then shifted to outright LYING as he touted the Commission’s legitimacy, praising its “findings” as “fully supported by the Legislature’s two representatives on the Commission”, which, with minor variations, he repeated three times – knowing that this in no

⁷ Illustrative, the Commission on Judicial Conduct, whose Administrator, Robert Tembeckjian, testified – and for a mere \$186,000 (video, at 8:08 hours). Notwithstanding, the Commission on Judicial Conduct is a corrupt façade, focusing on low level judges, while protecting higher and politically-powerful judges – as the Senate Judiciary Committee knew more than six years ago when it aborted its 2009 joint hearings on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, without investigation of the testimony and documentary proof presented and proffered, without findings, and without a committee report – the Commission on Judicial Conduct certainly cannot do the minimal job it does without proper funding.

As for the court-controlled attorney disciplinary system which, unlike the Commission on Judicial Conduct, is funded through the Judiciary budget, there was not a single question by any legislator on the subject, although it was not only the focus of my January 28, 2016 letter to you and the Chairs and Ranking Members of the Judiciary Committees, transmitted by my January 28th and January 29th e-mails, but the subject of #24 of my “Questions for Chief Administrative Judge Marks”:

“Can you explain why notwithstanding the September 24, 2015 Report of former Chief Judge Lippman’s Commission on Statewide Attorney Discipline recommending an ‘Increase to funding and staffing across-the-board for the disciplinary committees’ (Executive Summary, at p. 4), stating ‘Additional funding and staffing must be made available to the disciplinary committees’ (at p. 57), the Judiciary’s proposed budget for fiscal year 2016-2017 essentially seeks no increase for its ‘Attorney Discipline Program’?”

⁸ Testimony of: New York State Supreme Court Officers Association President Patrick Cullen (at 10:28 hours); New York State Court Clerk’s Association President Pamela Browne (at 10:37 hours); Court Officers Benevolent Association of Nassau County President Billy Imandt (at 10:45 hours); Suffolk County Court Employees Association President Bill Dobbins (at 10:58 hours).

substitute for being “fully supported” by the requirements of the commission statute and by evidence consistent therewith, which, as my January 26, 2016 letter to Chief Judge DiFiore fully apprised him, they were not. His words about the Commission included the following, prefaced by an invitation for your questioning:

“Now I am not planning on going into the details of the salary commission’s findings now in my prepared remarks, but I’ll certainly answer any questions that you may have about that this morning. But what I will say, however, is that we are extremely pleased with what the Commission did and I would note that *its findings and determinations were fully supported by the Legislature’s two representatives on the Commission.* ...

Indeed, this Commission has finally and essentially resolved what has been a decades-long haphazard, inadequate, and frankly unfair process for setting judicial salaries. So we’re extremely grateful for *the Commission’s findings and for the support of the Legislature’s representatives on the Commission* and through them, we are extremely grateful to you for those findings.

We firmly believe that what we are seeking is fair and reasonable. The newly arising cost of the judicial salary increase has resulted from a statutory process that was designed to inject fairness, objectivity, and transparency into the method for determining judicial salaries. That statutory process worked, and the salary commission’s determinations were *fully supported by the Legislature’s two representatives on the Commission.*

We respectfully submit that the fair thing to do now is to provide the funding to implement those results. ...” (video, at 8:29 mins.; also written statement, pp. 4-6, which omits underlined invitation for questioning).

Yet, there was no questioning by legislators, only acceptance, where not support, of the Commission and its recommended judicial salary increases, whose statutory-violations, fraudulence, and unconstitutionality was comprehensively detailed by the correspondence I had furnished you, beginning on January 15th – and to the Senate Judiciary Committee four days earlier in support of my request to testify at its January 20, 2016 hearing to confirm Chief Judge DiFiore as this state’s highest judge. And leading the endorsement at the February 4th budget hearing: Senate Judiciary Committee Chairman Bonacic, a member of the Senate Finance Committee, in addition to being a member of the Senate “Public Protection” Budget Subcommittee. He stated:

“It appears to me that the priorities are to take care of the judicial salaries, which we’re all supportive of. We think that the judges are deserving of raises.” (video, at 14:55 mins)

“...to make sure that the judges get their raises, which we all think they are entitled to.” (video, at 25:15 mins.).

Also, Senator Nozzolio, a member of the Senate Judiciary Committee, a member of the Senate Finance Committee, a member of the Senate Committee on Investigations and Government

Operations, in addition to Chair of the Senate “Public Protection” Budget Subcommittee. He stated:

“...The judicial pay commission was a commission established by the Legislature because we believed there was a need to have judicial salaries increased and we look to be a partner with you and the court system in meeting the obligations established by the Commission. That’s public policy. We need to do that...” (video, at 35:25 mins.)

“Yes, we need to be partners with you on the salary increases that judges will be receiving...” (video, at 37:35 mins.)

“...we believe, strongly, that the issues of judicial salary increases have to be met, can’t totally be met within the traditional court, judicial budget. . . So expect you will have advocates to help in that endeavor...” (video, at 40:12 mins.).

As for the Legislature’s own budget, neither Temporary Senate President Flanagan, Assembly Speaker Heastie, nor anyone on their behalf, appeared to testify in support – and you refused to allow me to testify in opposition. This, where my “Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie” exposed constitutional and other infirmities, creating a slush fund, evident from the preface to those “Questions”, itself posing three questions:

“Examination of the Legislature’s proposed budget for fiscal year 2016-2017 must begin with inquiry as to whether it is ‘certified’ ‘itemized estimates of financial needs of the legislature’, as Article VII, §1 of the New York State Constitution requires. Where are the ‘General State Charges’? – and what about the tens of millions of dollars in untallied legislative reappropriations that are not part of the Legislature’s proposed budget, but which the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001 includes in an out-of-sequence section at the back?”

There is only one conclusion that can be drawn from what transpired at the February 4, 2016 non-hearing on the Legislative budget and sham hearing on the Judiciary budget– and from your non-responsiveness and that of every legislative recipients to whom I e-mailed my correspondence from January 15th to February 3rd or to whose staff I spoke by phone, apprising them of the issues and the correspondence. That inescapable conclusion is that individually and collectively you are embarked upon yet another “grand larceny of the public fisc” for the upcoming fiscal year with respect to the newest round of judicial salary increases and the slush-fund Judiciary and Legislative budgets, paralleling your “grand larceny of the public fisc” in prior fiscal years with respect to the first round of judicial salary increases and the slush-fund Judiciary and Legislative budgets.

If this conclusion is incorrect, then prove it by discharging your duty to come forward with findings of fact and conclusions of law with respect to those matters about which you reasonably knew I would have testified at the February 4, 2016 “public protection” budget hearing – had I been permitted to testify:

- (1) the showing made by my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, including by its most important three enclosures: my “Statement of Particulars in Further Support of Legislative Override of the ‘Force of Law’ Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.”, my December 31, 2015 letter to Chief Judge Nominee DiFiore, and the sponsors’ memo to Assembly Bill #7997, that the judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional;
- (2) the showing made by my January 28, 2016 letter to you and the January 26 letter to Chief Judge DiFiore it enclosed;
- (3) my “Questions for Chief Administrative Judge Lawrence Marks”;
- (4) my “Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie”

For your convenience, all this dispositive documentation is posted, with the substantiating proof to which it refers, on CJA’s website, www.judgewatch.org, accessible *via* our prominent homepage link: “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!”. That is where this letter will also be posted, on its own webpage, with other further proof, hereinabove referred to.

Additionally, I am furnishing, a summary/analysis of the Governor’s Commentary, of his Division of the Budget webpages for the Legislative and Judiciary budgets, and of your “White”, “Blue”, “Yellow”, and “Green” Books, as these underscore the substandard, minimal workproduct of those whose duty it is to safeguard the public fisc, so sharply contrasting with the “heavy lifting” being done by citizens like myself.

So that I may be guided accordingly, please furnish your aforesaid findings of fact and conclusions of law by a week from today, February 25, 2016. That should also be more than enough time for you to add this letter to your webpages of written statements/testimonies for the February 4, 2016 “public protection” budget hearing so that it will be accessible to members of the public and other legislators and be part of the record.⁹

Thank you.

⁹ Among the excellent written statements I was pleased to find on such webpages was that of Michael P. Friedman, presenting powerful opposition to both the increases in the Judiciary budget and judicial salary, prefaced by concern that he might be “the lone voice” in opposition. [*see* also fn. 5, *supra*].

- Enclosures: (1) Eighth Cause of Action: “Nothing Lawful or Constitutional Can Emerge from a Legislative Process that Violates its Own Statutory & Rule Safeguards”,
March 30, 2015 supplemental verified complaint, citizen taxpayer action,
CJA v. Cuomo, et al. (Albany Co. #1788-2014);
- (2) Summary/Analysis of the Governor’s Commentary, of his Division of the Budget webpages of the Legislative and Judiciary Budgets, & of the Legislature’s “Color Books”