WRITTEN TESTIMONY SUBMITTED ON THE NOMINATION OF JANET DIFIORE FOR CHIEF JUDGE OF THE NEW YORK STATE COURT OF APPEALS

New York State Senate
Judiciary Committee

Senator John J. Bonacic, Chairman

Senator Ruth Hassell-Thompson, Ranking Minority Member

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New York State Senate
The Judiciary Committee
State Capital of New York

My name is Jeffrey Deskovic. I served sixteen years in prison-from age 17 to 32- for rape and murder until proven innocent nine years ago. Westchester District Attorney DiFiore rightfully did not object to a request for DNA discovery and upon identification of the actual perpetrator, dismissed my indictment. When Janet DiFiore's nomination is discussed, my case is frequently mentioned. It is in that context, I believe my views on her candidacy for Chief Judge are relevant.

I am an advocate whose back story involves wrongful conviction. I wish to share the highlights of my CV. I hold a Masters Degree from John Jay College of Criminal Justice, having produced a thesis on wrongful conviction causes and the reforms needed. In my capacity as anti-wrongful conviction advocate, I have delivered more than 100 presentations throughout the country; authored more than 200 articles in some seven different publications; and made more than 600 media appearances. Additionally, I have lobbied elected officials in New York, Connecticut, as well as Congress. I have co-taught a wrongful conviction college course as an adjunct professor. I have also given seminars before criminal justice professionals: the police and correction academy; judges; prosecutorial groups; and defense bars.

My appreciating DA DiFiore doing the right thing in my case does not mean that I turn away from or remain silent in the face of her overall abysmal record on wrongful conviction and prosecutorial misconduct. Please do not get caught up in the hype surrounding her actions in my case. I will now illustrate that my case was a very rare exception under her administration.

Kian Khatibi- DiFiore fought against exoneration despite confession of actual perpetrator; and, prosecutorial misconduct. Exonerated.

In the Khatibi case, in which he was exonerated following 9 ½ years of wrongful imprisonment for assault with a deadly weapon, her office wrongfully discouraged the actual perpetrator from testifying at the evidentiary hearing by falsely threatening him with prosecution for the crime even though the statute of limitations had run- frightening him into not testifying. Despite that prosecutorial misconduct the presiding judge exonerated him, and he was later compensated

Selwyn Days- brain damaged defendant convicted despite obvious false confession and plethora of forensic testing all of which came up negative. Remains wrongfully imprisoned.

DiFiore has fought the exoneration of Selwyn Days, retrying him a third and fourth time, with the sole evidence a demonstrably false confession, obtained after hours of interrogation. He said he broke in the side-door, there was no side door. He said he killed the victims dog. A veterinarian said the dog died of dehydration. He said he left a bloody knife in the sink. There was no blood on the knife. He said that after committing the crime he drove his girlfriend to get an abortion. Medical records show she went to the clinic a decade earlier. He said he abandoned a car in Delaware. No car was ever found. Despite voluminous forensic testing, nothing ever matched Days. Medical examiner, Dr. Roh, who admitted under oath in my case testified in the case, gave patently incredible testimony straining to support a

double murder theory rather than acknowledge this was a murder-suicide, as the defense had previously argued. Lastly, DiFiore opposed an attempt by defense to have DNA submitted to the DNA databank. Mr. Days has been through 4 trials thus far: 2 mistrials, including one that ended 9-3 toward acquittal, and two convictions. He continues to serve a 50 year prison sentence.

Edward Whitney- ***"The identification trumps The DNA"*** Despite her office's familiarity with DNA, in the Edward Whitney case DiFiore's office argued to the jury that, "identification evidence trumps DNA", in an attempt to explain how it was that the DNA found on the trigger guard of a gun didn't match the defendant, despite a police officer with personal motives claiming he saw Whitney throw it. This despite the fact that the officer said Whitney had not been wearing gloves, and that Whitney had previously filed a complaint against the office.

Richard DiGuglielmo- despite the discovery that witnesses had been intimidated by police, DiFiore appeals reversal and gets conviction reinstated Officer DiGuglielmo's conviction for murder was reversed after 11 years imprisonment, due to the defense discovery that three witnesses had been hauled into the police station four nights in a row by Dobbs Ferry Police, treating them like suspects, until they eventually changed their story from having witnessed a self defense, defense of others, justifiable homicide, to a depraved indifference murder. DiFiore appealed the reversal, got the conviction reinstated, resulting in DiGuglielmor being reincarcerated after being free for twenty months. All in contradiction of Rule 35.

DiFiore's Silence On Wrongful Conviction Prevention Legislative Measures DiFiore had a panel of four experts study went wrong in my case, in an effort to determine what could be done differently. Amongst preventive measures that study recommended was videotaping interrogations. Yet year after year, as bills have been introduced in the NY State Legislature calling for mandatory videotaping of interrogations, DiFiore offered no support. As a sitting DA, her voice would have been significant. That failure to demonstrate leadership is inconsistent with an appointment as Chief Judge. In some states, video-taping of interrogations, along with identification reform, is judicially ordered. It's apparent that DiFiore could not be counted on to do the right thing.

There is a reason why the average length of wrongful incarceration is 14 years, with exonerees frequently having had their appeals exhausted by the time of exoneration- the appeals process is not good at catching and correcting wrongful convictions in the usual course of the appellate process. DiFiore's addition to the bench will not help that, nor can we count on her as the chief judge to elevate substantive justice over proceduralism.

How can we in light of her actions in re former Westchester Medical Examiner Dr. Roh. Through my civil rights attorney, I reached out to DiFiore to either audit former Westchester County Medical Examiner Dr. Rhoh, appoint a special prosecutor to do so, or request federal authorities to do it, in light of Roh's admitted fabrications and perjury in order to fit prosecution theory in my original criminal case; 3 other criminal cases we found; and fraud in neighboring counties where authorities were complaining about him for his fraud as a moonlighting defense expert. My concern was that he committed fraud in other cases, and that this may have led to other wrongful convictions. She refused. Perhaps she did so,

wanting to cover his actions up because for approximately 14 months of her administration her office continued to use him as an expert and to do so would threaten those convictions and expose her prosecutors who used him as an expert. Apparently there was no concern for other cases he may have affected.

For all the above reasons, I therefore strongly urge you to deny DiFiore's appointment as Chief Judge of the Court of Appeals. I also ask for the opportunity to testify in person at her hearing. Given how much of my life was wrongfully taken as the result of prosecutorial misconduct in a flawed criminal justice judiciary, I now ask that I be afforded a brief opportunity to be heard in person, particularly given that my name and case continues to be raised in support of a candidate whom I oppose.

MEMORANDUM

To: The Senate Judiciary Committee:
John J. Bonacic, Chairman [District 42 - R, C, IP]
George A. Amedore, Jr. [District 46 - R, C, IP]
Tony Avilla [District 11 - D]
Phil Boyle [District 4 - R]
Neil D. Breslin [District 44 - D, IP, WF]
Leroy Comrie [District 14 - D]
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Sue Serino [District 41 - R, C, IP]
Toby Ann Savisky [District 16 - D]
Michael Venditto [District 8 - R, C, IP]

From: Samuel A. Abady, J.D., on Behalf of Jeffrey Mark Deskovic - Exoneree, Criminal Justice Reform Advocate and Director of the Jeffrey M. Deskovic Foundation for Justice, Inc.

Date: January 19, 2016

Re: Conformation Hearing for Janet DiFiore, Esq., Gov. Cuomo's Nominee for Chief Judge of the Court of Appeals

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Jeffrey Mark Deskovic submits this Memorandum to members of the Senate Judiciary Committee and requests they question Ms. DiFiore about the matters identified herein in her forthcoming confirmation hearing scheduled for Wednesday, January 20th at 1:00 P.M.

Introduction

In the Timeline of major events in Janet DiFiore's professional life, the *Journal News* lists the following:

> 2006: Ordered the retesting of DNA evidence from the 1989 rape and murder of 15-year-old Angela Correa. The results led to the exoneration of Correa's classmate, Jeffrey Deskovic, who had served nearly 16 years in prison, and the conviction of Correa's killer, Stephen Cunningham.[1]

Likewise, Albany Law School professor, Vincent Bonventre, declared Ms. DiFiore to be a "champion for the reduction and prevention of wrongful convictions," citing her actions in the Deskovic case, and the report she commissioned to identify factors that led to Mr. Deskovic's wrongful conviction and imprisonment.[2],[3]

The University of Michigan Law School maintains The National Registry of Exonerations.[4] To date, the total number of actually innocent defendants who have been

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[1] http://www.lohud.com/story/news/local/new-york/2015/12/01/cuomo-taps-difiore-chief-judge/76609496/.

[2] http://www.nytimes.com/2015/12/02/nyregion/westchester-district-attorney-nominated-for-chief-judge.html?_r=0. Ms. DiFiore's predecessor and current Fox News television personality, Jeannine Pirro, vigorously opposed DNA testing of crime scene evidence.

[3] http://www.westchesterda.net/news-and-information/deskovic-report (hereinafter as "Deskovic Report"). The authors stated "a broader understanding of his tragedy will help those who work in the criminal justice system take the steps necessary to protect others from his fate." The Innocense Project's comments about the report are found here: http://www.innocenceproject.org/news-events-exonerations/press-releases/westchester-das-report-on-jeffrey-deskovics-wrongful-conviction.

[4] Most laymen assume wrongful convictions are aberrant, unpredictable, tragic events. To the contrary, legal scholars have demonstrated they arise from systemic defects in the criminal justice process, and sometimes, several of these defects are found in the same case. Major defects include:

- Prosecutorial Misconduct;
- Failure to Preserve Biological Evidence (such evidence is available only in 10-12% of all serious felony cases, and DNA is available in only about one fifth of all wrongful conviction cases due to lax or non-existent biological evidence preservation statutes);
- Police Interrogation Techniques ("Legal academics as well as many who have scrutinized the causes of wrongful convictions have long advocated the videotaping of police interrogations ...." *Deskovic Report* at 12);

(continued...)

exonerated is 1,662. Three of them were wrongfully convicted in Westchester County on Ms. DiFiore's watch, or while she was a member of the Westchester D.A.'s office:

- Jeffrey M. Deskovic
- Kian Khatibi
- Selwyn Days

A fourth case, that of NYPD officer Richard DiGuglielmo, led one County Court judge to issue a blistering 50-page opinion cataloguing egregious, pervasive and aggressive misconduct by Ms. DiFiore's prosecutors.

These matters are described below. The Committee should inquire about them.

Kian Khatibi

On January 11, 1998, Kayvan Khatibi and his friend, Eric Freud, got into an argument with Brian Duffy and William Boyar outside the Lock, Stock and Barrel, a college bar in the Village of Pleasantville. The altercation lasted some time. Kian walked by and avoided the group, and went to the Pleasantville police station. While Kian was at the police station, Kayvan stabbed Duffy and Boyar and with a small paring knife. Both victims were so drunk they "were not aware that they had been stabbed."[5] Kayvan then fled the scene and threw his knife on the roof of the Mediterraneo Restaurant.

Kian Khatibi is sixteen months younger than his older brother, Kayvan, and much shorter. Kian was not involved in the fight or stabbing incident in any way.

His brother, the real perpetrator, later testified in Kian's successful Court of Claims wrongful imprisonment action that Pleasantville Detectives Stephen Bonura and Robert Mazzei came to his house looking to arrest Kian, but Kayvan told them that he, not Kian, stabbed Duffy and Boyar in self-defense. In response, the detectives threatened Kayvan should he give that

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[4](...continued)

• False Confessions, as happened in Mr. Deskovic's case (Police often contaminate confessions by feeding suspects non-public information about the crime. A 2010 groundbreaking study revealed "the problem of [police] contamination is epidemic, not episodic." Steven A. Drizin, *The Three Errors: Pathways to False Confessions and Wrongful Convictions*, http://www.aidwyc.org/wp-content/uploads/2014/01/Professor-Steven-Drizin-The-Three-Errors-Pathways-to-False-Confessions-and-Wrongful-Convictions.pdf

• Use of Incentivized or So-called "Snitch" Testimony; and

• Victim/Witness Misidentification.

[5] *Khatibi v. State of New York*, 35 Misc.3d 1211(A), 951 N.Y.S.2d 86, 2012 N.Y. Slip Op. 50654(U) (Ct. of Claims, 2012).

exculpatory testimony at Kian's trial. Kayvan also testified Det. Mazzei stopped him on the street the night before he was scheduled to testify at Kian's trial, ordered him into an unmarked police car, drove around the block, and "reminded Kayvan of the threats that Mazzei and Bonura had made to Kayvan about confessing to the stabbing."[6]

On May 19, 1999, Kian was convicted of his brother's crimes,[7] and despite having no prior criminal record, and having turned down a plea deal for 1-3 years because he was actually innocent, he was sentenced to 7-14 years in prison.

Kian pursued direct appeals and sought habeas corpus relief in federal court, but to no avail.[8] He filed some 30-40 FOIL requests to unearth police reports and other evidence not produced at trial, again to no avail.[9] Notably, he "refused to admit to the crimes" at a 2006 parole hearing seven years after his conviction, "despite his awareness that this would jeopardize his chances for parole because it would be considered a failure to show remorse."[10]

In May of 2003, he made a post trial motion under CPL § 440.10 to vacate his conviction because his trial counsel was ineffective by failing to obtain the Pleasantville police videotape which established his alibi. The matter was heard by Ms. DiFiore sitting as a Supreme Court judge in Westchester.

She found the fact that Kian "was in the local police station was not disputed," but refused to vacate his conviction on procedural grounds because "there is no allegation ... a demand was made for this information," even though it "would have established an alibi," and

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[6] *Khatibi v. State of New York*, 35 Misc.3d 1211(A), 951 N.Y.S.2d 86, 2012 N.Y. Slip Op. 50654(U) (Ct. of Claims, 2012). Not surprisingly, the detectives disputed Kayvan's testimony.

[7] Assault in the first degree, Penal Law § 120.20(1), and criminal possession of a weapon in the fourth degree, Penal Law § 265.01(2).

[8] *People v. Khatibi*, 289 A.D.2d 593, 736 N.Y.S.2d 238, 2001 N.Y. Slip Op. 11035 (2d Dept., 2001) (trial evidence deemed "legally sufficient to establish the defendant's guilt beyond a reasonable doubt" for assault in the first degree and criminal possession of a weapon in the fourth degree, as "verdict of guilt was not against the weight of the evidence"), *further app. den.*, 742 N.Y.S.2d 617, 97 N.Y.2d 756, 769 N.E.2d 363 (2002), and *Khatibi v. Tracy*, Case #: 7:04-cv-01509-SCR-GAY (S.D.N.Y.) (habeas writ denied by Hon. Stephen C. Robinson, March 28, 2005), *aff'd.*, *Khatibi v. Tracy*, Case Number 05-7025-PR (2d Cir., 2007) *cert denied*, 551 U.S. 1152, 127 S.Ct. 3020, 168 L.Ed.2d 740 (2007).

[9] *Khatibi v. Weill*, 8 A.D.3d 485, 778 N.Y.S.2d 511, 2004 N.Y. Slip Op. 05245 (2d Dept., 2004) (rejecting mandamus to compel disclosure in response to FOIL request because "such documents were previously furnished to the petitioner's trial attorney").

[10] *Khatibi v. State of New York*, 35 Misc.3d 1211(A), 951 N.Y.S.2d 86, 2012 N.Y. Slip Op. 50654(U) (Ct. of Claims, 2012) (Justice Ruderman noted that Kian "would rather spend his life in prison than admit to crimes he had not committed.")

because "there is no explanation offered why this was not raised at trial or on appeal." She concluded, "that the Defendant was in the local police station" when his brother stabbed Duffy and Boyar, but said this "is not newly discovered evidence," and likewise brushed aside that the video of Kian at the police station and contemporaneous audio tapes had been destroyed, "thereby preventing his use of them at trial" because Kian failed to show his lawyer made "a request ... for either of these recordings for trial."[11] Yet, she somehow found Kian's trial attorney provided him with effective representation.

Four and a half years later on November 17, 2007, Kian's siblings were having an early Thanksgiving dinner with their father, George Khatibi, at his home in White Plains. He lamented Kian's absence at the family event. Kayvan then "admitted that he was the one who had committed the stabbing." Kian's father was shocked and angry, as was Kian's sister Sheila, and two other siblings left the table in disgust.[12]

Kian moved to vacate his conviction again, this time based on his brother's confession as newly discovered evidence. The matter was heard by Justice Barbara Zambelli. She noted Kayvan admitted, "I'm the one who did the stabbing and Kian is in jail for nothing"; "Kian is in jail for something that he had not done"; and "he was responsible for Kian being in jail."[13] She ruled that Kayvan's confession represented "a new theory ... in this is a purely circumstantial case where neither victim was able to state that they (sic) observed the actual stabbings ... and no witness was able to directly identify the defendant as the perpetrator."[14]

Notably, Ms. DiFiore's prosecutors opposed vacature of Kian's conviction, and proffered an entirely new and patently risible theory of the case that "both Kian and Kayvan committed the assault."[15] Justice Zambelli gave short shrift to this argument and vacated Kian's conviction. On September 23, 2008, which was Kian's thirty-third birthday, she released Kian on his own recognizance after serving nearly ten years in prison, and ordered a new trial. Ms. DiFiore's office then dismissed the indictment against him.

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[11] *People v. Kian Daniel Khatibi*, Indictment 98-240, decision on CPL 440.10 motion dated May 19, 2003.

[12] *Khatibi v. State of New York*, 35 Misc.3d 1211(A), 951 N.Y.S.2d 86, 2012 N.Y. Slip Op. 50654(U) (Ct. of Claims, 2012).

[13] *People v. Kian Daniel Khatibi*, Indictment 98-240, decision on CPL 440.10 motion dated September 9, 2008.

[14] *Id.*

[15] *Id.*

As noted above, Kian won his Court of Claims action.[16] Justice Ruderman found Kian "forthright and credible" and found his "conduct of going to the police station shortly after witnessing the fight was consistent with his innocence and his lack of awareness that his brother was involved in the fight."[17]

> Surely, if claimant had in fact just stabbed two people or knew that his brother had done so, it would be highly unlikely that claimant would proceed into the nearby police station seeking a ride from a police officer. Further, claimant's physical appearance at the police station was not consistent with the appearance of someone who had just been in a physical altercation with two, very large, intoxicated men who were bleeding in several places.[18]

All this was known to Ms. DiFiore's office for many years. In 2010, Kian filed a multi-million dollar civil rights action against Pleasantville and its police department in federal court.[19] That action likely will be tried this year.

Members of the Committee are urged to press Ms. DiFiore about her conduct in this case. Specifically, she should asked the following:

- whether she regrets her judicial decision which cost Kian another four and a half years in prison, and would have cost him another decade in prison had his brother not finally confessed in 2007;

- if not, how she rationalizes her decision as just;

- why she did not move to vacate Kian's conviction after her office learned his brother confessed;

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[16] As Justice Ruderman noted, under Court of Claims Act § 8–b, a claimant must prove by clear and convincing evidence that: (i) he was convicted of one or more felonies or misdemeanors, sentenced to a term of imprisonment, and served all or part of that sentence; (ii) the judgment was reversed or vacated under a statutorily enumerated ground; (iii) he did not commit the crimes charged; and (iv) did not by his own conduct cause or bring about his conviction. These statutory requirements are strictly construed, *Torres v. State of New York*, 228 A.D.2d 579, 644 N.Y.S.2d 748 (2d Dept., 1996) and "the linchpin' of the statute is innocence." *Ivey v. State of New York*, 80 N.Y.2d 474, 479, 606 N.E.2d 1360, 591 N.Y.S.2d 969, 479 (1992).

[17] *Khatibi v. State of New York*, 35 Misc.3d 1211(A), 951 N.Y.S.2d 86, 2012 N.Y. Slip Op. 50654(U) (Ct. of Claims, 2012).

[18] *Id.*

[19] *Kian Khatibi v. Stephen Bonura, Robert Mazzei, The Village off Pleasantville, and The Village of Pleasantville Police Department*, #1:10-cv-01168-ER-PED (S.D.N.Y.)

• why instead she directed her deputies to oppose Kian's motion to vacate his conviction after his brother confessed;

• whether she believes it was appropriate for her office to argue Kian and his brother together stabbed Duffy and Boyar, when they clearly did not believe it, given that they dismissed the indictment shortly afterward rather than re-try Kian.

Her answers to these questions will reveal a great deal about whether Ms. DiFiore is qualified to be New York's most important and powerful judge.

Selwyn Days

Selwyn Days is a mentally retarded man with a long history of taking "antipsychotic medication used to treat schizophrenia and acute psychosis."[20] He was charged with a double murder. "Shortly after noon on November 21, 1996, the bodies of 79 year-old Archie Harris and 35 year-old Betty Ramcharan were discovered inside of Harris' Eastchester home. Harris had been beaten, bludgeoned and stabbed to death, while Ramcharan had been strangled and suffocated and her throat had been slit. A bloody kitchen knife was found lying near Ramcharan."[21]

More than five years later, Days was arrested on February 16, 2001, and interrogated on and off for seven hours during fourteen hours in police custody. Only the last seventy-five minutes during which he supposedly confessed was recorded. "Shortly after the killings, investigators learned that Harris had made Ramcharan the major beneficiary of his $1.6 million estate. But because she died with him, the estate went to his grown children."[22] Those with a motive to commit the murders were never pursued.

At the time of the murders, Days was 500 miles away at his home in Goldsboro, North Carolina, as established by four witnesses from Goldsboro, including a North Carolina magistrate.[23] No crime scene DNA evidence matched Days, but DNA on the knife and rope matched others. Ms. DiFiore's prosecutors claimed this evidence was "inconclusive and

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[20] *People v. Days*, 131 A.D.3d 972, 980, 15 N.Y.S.3d 823, 831 (2d Dept., 2015) ("there was little evidence to corroborate the defendant's confession in this case, and his conviction turned almost entirely on his videotaped confession (citation omitted). There was no DNA or other physical evidence linking the defendant to the crime, and there was no eyewitness testimony.")

[21] *People v. Days*, 26 Misc.3d 1205(A), 906 N.Y.S.2d 782 (West. Cnty., 2009).

[22] http://truthinjustice.org/selwyn-days.htm

[23] *People v. Days*, 26 Misc.3d 1205(A), 906 N.Y.S.2d 782 (West. Cnty., 2009).

speculative."[24]

The first trial in 2003 ended in a hung jury. Days was convicted on April 16, 2004, following his second trial and "sentenced to two consecutive terms of 25 years to life imprisonment," and that conviction was upheld on appeal.[25] Thereafter, The Exoneration Initiative together with the Manhattan firm of Paul, Weiss, Rifkin, Whaton & Garrison took over as defense counsel, and proved Days's trial lawyer failed to pursue his alibi defense and DNA evidence. As a result, the conviction was thrown out.[26]

The third trial ended with a hung jury in 2011, but Days was found guilty in his fourth trial. That conviction was thrown out because the trial judge barred expert testimony on the issue of false confessions. Police "repeatedly employed suggestive and leading questions, fed the defendant specific details related to the crime scene, and used rapport-building techniques," to exploit Days's feeble intelligence and mental illness. The appellate court found "significant concerns" that only the supposed confession during the last seventy-five minutes of the seven-hour interrogation was videotaped.[27]

In addition, "The indictment and the initial bill of particulars alleged that the victims were killed between November 19, 1996, and November 21, 1996," but for the third trial, Ms. DiFiore's prosecutors amended the bill of particulars ten years after the murders and now claimed "these murders occurred two or three days prior to the discovery of the two bodies, including and encompassing the evening hours of November 18, 1996." The Second Department rejected this shameless tactic because prosecutors knew "defendant's alibi witnesses previously indicated that the defendant was present in North Carolina beginning on November 19, 1996."[28]

His case is now headed to a fifth trial.

Ms. DiFiore should be asked why she continues to pursue Selwyn Days. She should be pressed to explain her reasoning in detail, both from the perspective of a prosecutor's duty to do justice, and the cost-benefit analysis of spending millions in public resources to pursue this mentally ill, feeble minded man with a strong alibi, instead of pursuing those with 1.6 million reasons to murder the victims.

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[24] http://www.nytimes.com/2011/02/08/nyregion/08retrial.html?_r=0

[25] *People v. Days*, 31 A.D.3d 574, 817 N.Y.S.2d 535 (2d Dept., 2006), *aff'd*, 7 N.Y.3d 811, 855 N.E.2d 802, 822 N.Y.S.2d 486 (2006).

[26] *People v. Days*, 26 Misc.3d 1205(A), 906 N.Y.S.2d 782 (West. Cnty., 2009).

[27] *People v. Days*, 131 A.D.3d 972, 15 N.Y.S.3d 823 (2d Dept., 2015)

[28] *Id.*, 131 A.D.3d at 982, 15 N.Y.S.3d at 833.

In the last appeal, the Second Department noted "False confessions that precipitate a wrongful conviction manifestly harm the defendant, the crime victim, society and the criminal justice system," citing the Court of Appeals.[29] The Committee also should ask Ms. DiFiore whether she accepts or rejects admission of expert testimony to demonstrate some confessions may be false and therefore worthless.

Richard DiGuglielmo

Perhaps no Westchester case is more notorious than that of NYPD officer Richard DiGuglielmo who shot and killed Charles Campbell outside the deli owned by DiGuglielmo's father.[30] The merits or demerits of his conviction and appellate claims are not at issue. Rather, the Committee should press Ms. DiFiore on the findings of then-County Court Justice Rory Bellantoni who vacated DiGuglielmo's conviction, but was overturned on appeal on grounds essentially unrelated to his factual findings.[31]

Justice Bellantoni presided over a lengthy post-conviction trial about Ms. DiFiore's office and the Dobbs Ferry police. He issued a blistering 50-page opinion in which he condemned Ms. DiFiore's prosecutors for their flagrant misconduct in suborning perjury, muscling a key prosecution witness to change his story and then hiding that fact from the defense, and tainting the transcript of the proceedings.[32]

Justice Bellantoni was unsparing in his condemnation of Ms. DiFiore's chief lieutenant: "When a Government lawyer, with enormous resources at ... her disposal abuses power and ignores ethical standards, ... she not only undermines public trust, but inflicts damage beyond

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[29] *People v. Days*, 131 A.D.3d at 979, 15 N.Y.S.3d at 830.

[30] *See, e.g.*, Samuel A. Abady, *Reversal of Fortune - The Deeply Troubling Case of Richard DiGuglielmo*, Westchester Guardian (July 1, 2010).

[31] DiGuglielo told the jury he did not intend to kill Charles Campbell, but instead, shot to protect his father because Campbell had hit his father twice with a baseball bat and was poised to strike his father in the head, possibly killing him. The jury acquitted DiGuglielmo of assault and intentional murder, but convicted on depraved indifference murder. Justice Bellantoni exhaustively reviewed the trial record and concluded Campbell "took a batter's stance and was about to strike the elder Diguglielmo who was trying to regain his balance when Officer Diguglielmo shot," and held a defendant can be guilty of intentional murder or depraved indifference murder, but not both. Thus, DiGuglielmo "should never have been charged with, or convicted of, depraved indifference murder." The Second Department reversed. It acknowledged the law of depraved indifference murder had changed, but DiGuglielmo could not benefit from it because the change in the law was not retroactive. Viewing that same record, the appellate judges in Brooklyn also found "the circumstances did not support an objectively reasonable inference that a deadly strike with the bat was imminent." The lynchpin of that court's decision was "defendant's ... background and training as a police officer" who knows he can "use deadly force only as a last resort." *People v. DiGuglielmo*, 75 A.D.3d 206, 902 N.Y.S.2d 131 (2d Dept., 2010), *aff'd*, 17 N.Y.3d 771, 952 N.E.2d 1068, 929 N.Y.S.2d 74 (2011).

[32] *People v. DiGuglielmo*, 21 Misc.3d 1103(A), 873 N.Y.S.2d 236, 2008 WL 4355431 (Westchester Cnty, 2008).

calculation to the system of justice."[33]

Among his many findings, Justice Bellantoni condemned Ms. DiFiore's prosecutors for:

> • their "scorched earth policy of attempting to vilify" the eyewitnesses at the hearing because they would "not go along with their program";
>
> • their deceit in arguing a witness named White was "so biased and so perjurious that his odious presence in the courtroom made a mockery of the proceedings," when Justice Bellantoni found to the contrary, "White's testimony, as the People are well-aware, was truthful and accurate";
>
> • their "win at all costs" approach to the case, ethics be damned;
>
> • one prosecutor, A.D.A. Ward, sat alone with the court stenographer, Betsy Watson, to "proofread" the hearing transcript, and then lied to Justice Bellantoni about having done so, which "damaged the integrity of the transcript, if not the proceeding itself"; and
>
> • another seasoned prosecutor close to Ms. DiFiore, A.D.A. Murphy, "was intimately involved" in directing the Dobbs Ferry Police to illegally coerce an eye witnesses "every step of the way" because his testimony was favorable to DiGuglielmo.[34]

Ms. DiFiore manages an office which employs some 230 people.[35] The above represents an extraordinary judicial condemnation of a sitting District Attorney.

Prosecutorial misconduct is not an outlier in criminal justice. To the contrary, as noted by Alex Kozinski, one of the nation's leading federal appellate judges, "violations have reached epidemic proportions in recent years" and such misconduct "erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law."[36] Justice Bellantoni attributed this to the win-at-all-costs mentality of Ms. DiFiore's office. A 2003 report from The Center for Public Integrity found prosecutorial misconduct nationwide was rampant: "Local prosecutors in many of the 2,341 jurisdictions across the nation have stretched, bent or

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[33] *Id.*

[34] *Id.*

[35] Joseph De Avila, *Westchester D.A. Is Nominated to Be State's Top Judge*, Wall Street Journal (December 1, 2015).

[36] *U.S. v. Olsen*, 737 F.3d 625 (9th Cir., 2013).

broken rules while convicting defendants.[37]

The Committee should question Ms. DiFiore about the office culture she fostered, and ask her to respond to Justice Bellantoni's findings about the flagrant misconduct of her subordinates. The Committee should explore her views generally about prosecutorial misconduct. Her answers will shed light on her fitness to be New York's top judge.

Conclusion - Atmospherics Versus Substance

Political atmospherics unavoidably surround nomination to the state's most important judicial position. For example, Ms. DiFiore was endorsed by Manhattan D.A., Cyrus R. Vance Jr., who proclaimed she has "dedicated her career to ensuring public safety and fairness," and by outgoing Chief Judge Jonathan Lippman who hailed her "intellect, integrity and collegiality."[38]

In contrast, the New York State Bar Association deemed Ms. DiFiore merely "qualified," not "well qualified," which generated the headline, "DiFiore not among top qualified candidates for chief judge, Bar Association says."[39] The New York State Trial Lawyers Association deemed her to be "highly qualified and highly recommended," while the New York City Bar Association deemed her "well qualified," but the New York State Academy of Trial Lawyers deemed her merely "recommended," but not "most highly recommended," much less "highly recommended."[40]

Media pundits have focused on Ms. DiFiore's close ties to Gov. Cuomo and questioned whether, as Chief Judge, she will be sufficiently independent when presiding over cases challenging the Governor's exercise of Executive authority. Mr. Deskovic believes that issue is presented in any nomination because governors do not nominate their political enemies to serve as the state's top judge.

To date, no media have focused on the serious issues set forth herein. Yet, these are matters that vitally affect the delivery of fair and impartial justice, the birthright of every New Yorker and every American.

Accordingly, Mr. Deskovic submits confirmation or rejection of Ms. DiFiore's

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[37] Steve Weinburg, "Breaking the rules: Who suffers when a prosecutor is cited for misconduct?", http://www.publicintegrity.org/2003/06/26/5517/breaking-rules.

[38] *Id* at footnote 1.

[39] http://www.democratandchronicle.com/story/news/politics/blogs/vote-up/2015/11/10/difiore-not-among-top-qualified-candidates-for-chief-judge-bar-association-says/75524600/

[40] *Id.*

nomination should be based on the merits and her fitness for the state's highest judicial office, not atmospherics, and specifically, her commitment to address issues pertaining to wrongful conviction described above.

New York's Chief Judge, perhaps more than any other public official, is instrumental in moving the Legislature to adopt remedial legislation. Mr. Deskovic remains grateful to Ms. DiFiore for changing course from her predecessor, as it led to his exoneration. Nonetheless, substance is what counts, and to merit the Committee's confirmation, Ms. DiFiore should be questioned searchingly about the cases summarized above. Her answers should demonstrate two things:

> (i) that she has learned from mistakes made in the wrongful conviction cases on her watch; and
>
> (ii) that she is determined, as Chief Judge, to champion remedial legislation to avoid wrongful convictions in the future.

If her answers fulfill these criteria, then she should be confirmed, per New York State Constitution, Art. VI, § 2(e).[41] If, on the other hand, her answers leave members unconvinced, then she should not be confirmed and her nomination must be rejected.

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[41] "The governor shall appoint, with the advice and consent of the senate, from among those recommended by the judicial nominating commission, a person to fill the office of chief judge ... whenever a vacancy occurs in the court of appeals."

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

PRESIDENT
THOMAS P. ZUGIBE
ROCKLAND COUNTY

January 14, 2016

Hon. John J. Bonacic
Chair, Senate Judiciary Committee
509 Legislative Office Building
Albany, NY 12247

Dear Senator Bonacic:

As president of the District Attorneys Association of the State of New York (DAASNY), I write to express our support for District Attorney Janet DiFiore's nomination to the position of Chief Judge of the state Court of Appeals.

DA DiFiore will bring an impressive breadth of experience to the position of Chief Judge. She has served as a County Court Judge and a Supreme Court Justice. She has run a large prosecutor's office for a decade. She has also served in numerous other professional capacities, such as Chair of the Justice Task Force, Chair of JCOPE, and a member of the Commission on Youth, Safety and Justice. DA DiFiore has also led the District Attorneys Association as a past President.

As Westchester County District Attorney, Janet DiFiore has shown the type of balanced approach to serving justice that she will no doubt bring to the role of Chief Judge. Consider just a few of the noteworthy contributions to justice in New York she has made in her capacity as District Attorney:

Wrongful Convictions:

DA DiFiore, early in her tenure, agreed to personally review the case of Jeffrey Deskovic, who was serving time on rape and murder convictions. After a reinvestigation, and using new DNA technology and the newly created nationwide database, she moved to dismiss the indictment based upon Deskovic's actual innocence. The following year, the Office secured a conviction of the true murderer. Not satisfied with solving a single case, DA DiFiore commissioned an independent group of outside experts to review the entire record of the case, culminating in a report made public in an effort to contribute to law enforcement's understanding of wrongful convictions.

Furthermore, she has continued her commitment to eradicating wrongful convictions as the Chair of the Justice Task Force. The Justice Task Force is examining the causes of wrongful convictions and recommends legislative and systemic changes to the criminal justice system to prevent wrongful convictions.

Vulnerable Victims:

District Attorney DiFiore was a driving force in the creation of Westchester County's Child Fatality Review Team, and the Child Advocacy Center. She expanded on the success of the Multidisciplinary Team that investigates cases of child abuse by partnering with the

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WWW.DAASNY.ORG

Weinberg Center for Elder Abuse Prevention at the Hebrew Home in Riverdale and the New York State Attorney General's Office to create the Elder Abuse Multidisciplinary Team.

Intellligence Gathering:

In order to coordinate investigative resources and maximize information sharing among Westchester County's many local police departments, the County Police, the New York State Police, and the state, federal and regional law enforcement agencies that work in the County, DA DiFiore led the effort to establish the Westchester Intelligence Center.

Recidivism Reduction:

As Co-Chair of the Westchester County Re-entry Task Force, District Attorney DiFiore collaborates with government and not-for-profit agencies to help formerly incarcerated individuals to reintegrate successfully by connecting them to substance abuse treatment, mental health treatment, educational and employment and housing.

Youthful Offenders:

District Attorney DiFiore served as a member of the Governor's Commission on Youth, Safety and Justice and has been an advocate for finding a system that strikes a balance between holding offenders accountable and recognizing special needs of young offenders who have committed non-violent felony crimes.

Conclusion:

District Attorney Janet DiFiore has dedicated her career to the service of the People of New York. She has consistently striven to make our communities safer while helping those who have served their time to become productive members of society. She has done so using innovations that don't just enhance public safety, but also improve the system. Regardless of political expediency, she has shown a commitment to making the right decisions – hard decisions to vacate wrongful convictions, bold decisions to try new models of prosecution, compassionate decisions to help our must vulnerable elderly citizens, and ground-breaking decisions to integrate the use of emerging technologies in prosecution.

We commend the Governor for nominating DA DiFiore and urge the swift approval of her nomination so that the Court of Appeals can continue its important work.

Very Truly Yours,

Thomas Zugibe
President, DAASNY
District Attorney, Rockland County

cc: Jessica Cherry (cherry@nysenate.gov)

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(No response.)

CHAIR PERSON: That ends --

MS. NOE: I have not said.

CHAIR PERSON: So you have two minutes.

Carol Ann, the director of Health Watch, Public Charging Reports under Judicial Corruption and Enforcement Task Force.

MS. NOE: My name is Carol Ann Noe. The last name is spelledN-O-E.

I had Health Watch, which oversees private organization volunteer and it oversees the safety, health and rights of patients, including the protections under the New York State Human Rights Commission, as well as ADA Title Two Rehab Back 504 in state courts.

I also head -- I'm chief investigator for the Judicial Corruption Enforcement Task Force. This is the first Judicial Corruption Enforcement Task Force of its kind in the City and State of New York and this task force has gone national. We have had assistance from Washington and the federal government to ensure that New York State Supreme Court judges, both in civil and criminal courts, are not violating due process rights, civil rights and constitutional rights, and that they are not engaged in any form of depravation of rights in civil cases.

I'm going to talk firsthand about my experience in

the matrimonial part of New York County, New York County State Supreme, 60 Centre Street. The investigation that we conducted beginning August 2013 through and including November 2015 was done through the Judicial Corruption Enforcement Task Force, which is a private organization of volunteers. We sought help from various federal branches of the federal government to assist us in placing under surveillance key civil judges in New York State matrimonial courts, as well as family courts, as well as the First Department Appellate Division.

I'm going to talk about a particular judge that I had the firsthand experience in dealing with in the matrimonial part. Now, you know, I want to preface that our investigation is simply focused on matrimonial Family Court in New York County, the First Department and the First Department Appellate Division. Our public charging report will be published by a national major news organization and it covers the intensive two and a half year investigation of our findings.

The findings include firsthand accounts of pro se litigants, litigants who are also represented by counsel, counsel itself, as well as sources and whistle blowers who work in the matrimonial part, the family court and First Department Appellate Division.

Access to the courts is not a right. It is a

privilege that only I deem the litigant worthy of.

These statements are repeatedly uttered on the record and in order after order after order in over 128 cases by Justice Ellen Gesmer. Ellen Gesmer in 2016 will be removed off the bench. She will be formerly and officially federally criminally indicted.

The second judge to be removed off the bench of matrimonial part will be Matthew Cooper. The third will be Laura Drager. The fourth is Deborah Kaplan, which I believe has moved onto another area. We have judges in the First Department Appellate Division who will also be removed off the bench in 2016. All of these will be federally, criminally prosecuted as a result of the Judicial Corruption Enforcement Task Force investigation.

Ellen Gesmer began a systematic campaign against 128 litigants and their lawyers to retaliate, seek retributions, seek retaliation and punishment by systematically destroying exhibits and evidence in cases so she would be able to file false instruments. It's called destruction of evidence and filing of false instruments. In my case alone she deprived me of all statutory rights. When the legislature passed a statutory law in 2010, they did so because they did not trust the matrimonial judges would be fair, impartial and unbiased, and they were correct in their session.

Proceedings

So statutory requirements require that you receive counsel fees if you are the non-moneyed spouse. If you are indigent and permanent medical disabilities and permanent medical conditions you are required to receive payment for your medical bills. I was deprived of a trial under Ellen Gesmer where she used my disabilities and my permanent medical conditions against me and she rendered a medical opinion. So Justice Gesmer is also, as far as we know, now a doctor.

There are federal cases filed under seal because of the explosive amount of surveillance evidence that we uncovered under this judge and the other judge in the matrimonial part. Again, this is only First Department. We do not have the resources to go after every single department but at some point that will happen.

To discriminate and retaliate against any litigant under ADA Title Two Act 504 and in violation of the New York State Human Rights Disability Statutes. This is a very, very serious thing.

More importantly, we uncovered a pattern of practice of systemic ongoing retaliation, vengeance, punishment and retribution by these matrimonial judges when any litigant, whether pro se litigants or represented by counsel, files formal complaints against these judges. And the people in charge of investigating these judges on the

state level, the Appellate Division, the administrative court judge, Commission on Judicial Conduct, Attorney General, and District Attorney, all aid and abet and protect these judges from these types of egregious criminal frauds that continue. So when you dispose of litigants' exhibits and their evidence in order to justify false, fraudulent rulings, these are very, very serious charges. And the fact that people's due process rights are ignored -- I am here today under a gag order.

A judgment was entered on my case just recently when no complaint was ever filed in this case, should never had been entered because this particular judge does not want anybody exposing her ongoing patterns of practices. We are exposing them in 128 cases and thankfully we have a branch of the federal government who looked at the evidence and said, You know what? We're going to remove these judges and there's nothing the state can do about it.

Does anybody have any questions? You really should have questions.

CHAIR PERSON: Maybe not right now.

MISS NOE: I'd --

CHAIR PERSON: You had your seven minutes.

MISS NOE: I have two more minutes. I'd like to finish.

CHAIR PERSON: All of you who want to speak out

write to us, write to us. We'll be very happy to hear from you. We have heard this --

MISS NOE: I would just like to say I would like to submit --

CHAIR PERSON: Submit, submit. We'd like to see anything.

MS. REITER: Why don't you stay afterwards and you can discuss it. The person who appeared before this person was rudely interrupted repeatedly by a group of you who were sitting there to the point where this gentleman taking down the testimony was unable to hear. So could we please get real here? There are rules. You have the same amount of time to testify. You're not special. You have the same amount of time that --

MISS NOE: I think I have two more minutes left.

CHAIR PERSON: I will give it to you and that's it.

MISS NOE: Thank you.

I think it's nice for judges to talk about how great each other is, but the bottom line is what are they doing in the court of law? How are they dispensing justice? They are not above the law. They will not be above the law. And these kinds of systemic depravations of due process, constitutional and civil rights, with destruction of evidence, filing false orders, willfully excluding material information and orders in order to justify the frauds that

themselves perpetrated, luckily they were under surveillance so we have a massive amount of evidence and I think the federal government for moving on 2016 on federally criminally indicted and these judges will be removed from a bench, including a substantial amount of judges from the Appellate Division.

Thank you so much for your time.

CHAIR PERSON: Any of the commissioners anything they want to say?

(No response.)

CHAIR PERSON: This public hearing will now be ended and thanks to all of the witnesses and all written submissions that we received. We will review them all and we thank you again for your involvement and your attention.

(Whereupon, the public hearing matter was concluded.)

Dear Sirs:

I called the contact number of Jessica Cherry shown on the public notice as to the Confirmation hearing of Janet DiFiore for the position of Chief Judge of NYS Court of Appeals.

I have evidence to present that Janet DiFiore, as a District Attorney of Westchester County, committed and promoted prosecutorial misconduct in prosecution of felonies and other crimes, collusion with judges and public defenders in order to violate a criminal defendant's constitutional rights.

I represented, as a criminal defense attorney, one of the felony cases prosecuted by DA DiFiore's office in 2014, and I am a witness to those dishonest policies being implemented by her office that put in question her ability to be transformed from a dishonest prosecutor into an honest judge ruling over all state courts.

In the case where I represented a criminal defendant prosecuted by DA DIFiore's office for an A felony in 2014, DA DiFiore and/or her office which is under her control:

1) attempted to prevent my timely substitution into the case as counsel;

2) colluded with the public defender to get my young client to waive a grand jury indictment before I got substituted into the case (efforts to coerce him to waive grand jury indictment started as soon as the defendant's father showed up in jail with a substitution of counsel form that he was not allowed to give to defendant - indicating that the jail informed DA DiFiore's office, and DIFiore's office informed the public defender's office); the coercion efforts were undertaken while DA DiFiore knew that she did not have ANY evidence to indict him - or to prosecute him for ANY crime;

3) DA DiFiore routinely violates constitutional rights of criminal defendants against self-incrimination by, in collusion with local judges of justice courts, sending criminal defendants during the pendency of criminal proceedings into the so-called "TASC" programs where criminal defendants, under the threat of contempt of court, revocation of bail and incarceration, must make self-incriminating statements that then become available to the prosecution, and must pay for participation in such programs; such TASC forms are pre-printed typographically, with pre-printed signatures of judges on them.

This statement is easily ascertainable by investigating records of justice courts in Westchester County as to "TASC" orders, such orders are public records.

4) DA DiFiore routinely acts as a part of the court handling plea allocutions and advising criminal defendants of their rights in plea allocutions, as well as obtaining from criminal defendants waivers of their constitutional rights instead of the judge, and thus discharging the judges' function.

Such actions disqualify and put in disrepute justice courts as impartial adjudicators, and disqualifies DA DiFiore's office in all cases where she or her employees, obviously with her knowledge and consent, act as plea allocutors and representatives of the court.

This is not only disservice to the public, but also a waste of public money.

I had a young client charged with an A felony for alleged possession of psychedelic mushrooms.

The evidence (the alleged mushrooms) did not exist (which was revealed only after my repeated efforts to obtain that evidence), and DA DiFiore knew it.

Yet, my client was - coincidentally, at the time when defendant's father delivered to jail a drafted affidavit of substitution of counsel:

1) threatened with a violent act by a jail insider, so he was frantic to get out of there;
2) prohibited to get from his father a drafted affidavit for change of counsel; and at the same time,
3) approached by a corrupt public defender (who obviously in collusion with DA DiFiore) and after talking to me on the phone and acknowledging that I am getting into the case and the public defender is getting out of the case, the public defender rushed to jail and tried to coerce my young client in order to get him to waive his right to indictment by a grand jury while my substitution as counsel was held off by the local jail, obviously in collusion with DA DiFiore.

It took extraordinary courage and intelligence of my young client to reject the coercion efforts of his own counsel who was selling him out to DA DiFiore, corrupt efforts to drum up a wrongful conviction through a waiver of grand jury proceedings, so that the threshold of a valid grand jury indictment (which DA DiFiore could not obtain, not having any evidence against my client) would be unnecessary.

When I got my client released without bail since I requested a felony hearing, and it was denied, DA DiFiore's office started to play financial-drain game, in collusion with the presiding judge of the justice court, by requesting multiple adjournments of the felony hearing with one-week increments, knowing full well that my client and I lived over 3 hours' drive away from the court. The point of requests was to make me waive my client's speedy trial rights, which I refused to do, and to make my client financially drained and unable to finance a private counsel when trial time comes.

We came to court over 5 times based on such adjournments, with my client running legal fees for all those appearances.

Each time Janet DiFiore's office claimed that it did not have the evidence necessary for the hearing.

Each time Janet DiFiore's office did not have the elementary courtesy to call me and the court ahead of time, tell us that they did not have the necessary evidence and request further adjournment.

All adjournments were granted over my vigorous objections and requests for dismissal of the charges since DA DiFiore's office failed to produce the claimed evidence.

Felony proceedings in New York are not handled in justice courts. Justice courts can only arraign on felony charges, set initial bail, initially detain the defendant (as the justice court did), and, if a felony hearing is requested, provide the felony hearing, or release the defendant without bail if such a felony hearing was not provided.

The court, on request of DA DIFiore's office, de facto amended statutory procedure and continued to drag me and my client back to the justice court, under the threat of my client's incarceration and my own attorney discipline, despite DA DiFiore's knowledge that they do not have any evidence to indict my client.

Since in felony proceedings, I could not make discovery demands, DA DiFiore had her employee continue to harass my client and myself by having us dragged hours away from home to illegal justice court proceedings, each time claiming that do not "yet" have the evidence (which they never had).

After DA DiFiore's office drained my client enough through five appearances in justice court, after a felony hearing was denied and my client was released without bail, DA DiFiore's office substituted felony charges with misdemeanor charges, for which DA DiFiore similarly did not have evidence.

I must note that throughout all the time when the A felony charges were pending, I was repeatedly pushed by the judge of the justice court, with Janet Difiore's Assistant DA standing by with a smile on her face, to "talk" to DA DiFiore's office because of how serious were the charges.

When misdemeanor charges were substituted, I filed discovery demands, including access to physical evidence.

DA DiFiore's office refused to comply with discovery demands. It only provided to me a lab report that did not indicate that there were ever any psychedelic mushrooms involved. I was not allowed access to physical evidence in the case, which was against the law.

I had to make a motion to compel discovery and for sanctions against DA DiFiore's office.

THEN it came out that DA DiFiore's office does not have any evidence of my client's involvement in the crime of possession of psychedelic mushrooms, for which DA DiFiore prosecuted him for an A felony, put him in jail and exposed him to the risk of violence in that jail.

It is obvious that DA DiFiore's and her office's handling of that case alone necessitates severe discipline of DA DiFiore, to the point of disbarment.

It is obvious that DA DIFiore's disdain to the rule of law does not qualify her as an attorney, much less as a a judge.

I am sure that DA DiFiore is engaged in the same unlawful policies as she is being nominated and confirmed for the position of the Chief Judge of the NYS Court of Appeals, and that an investigation of her misconduct is necessary before she can be put in charge of the entire state court system.

It is obvious that, for DA DIFiore's office a conviction, even a wrongful conviction without evidence, was more important than doing justice.

It is obvious that a dishonest prosecutor will not make an honest judge.

Moreover, if DA DiFiore was unaware of the atrocious prosecutorial misconduct committed by her ADAs and allowed her employees, Assistant District Attorneys, to engage in unconstitutional conduct in felony cases which Janet Difiore must prosecute herself, Janet DiFiore is a poor administrator of the DA's office and is unfit to be the administrator of the entire NYS court system.

I wanted to testify against DA DiFiore at the confirmation hearing on January 20, 2016 hearing and to publicly impart my knowledge about DA DiFiore in a live-streamed hearing.

I checked the public notice that the NYS Senate posted.

The public notice indicated that oral testimony is by invitation only. To verify how that invitation can be obtained and based on what criteria, I called the telephone number on the notice to speak with Jessica Cherry, the contact indicated on the public notice for the confirmation hearing of Janet DiFiore. I saved the public notice and I have it on file.

A female answered the phone as "Senator Boracic' office" and told me that Jessica Cherry is speaking on the other line.

I explained the purpose of my call, to get invited to orally testify AGAINST confirmation of Janet DiFiore.

The female immediately told me that at the time of my call Jessica Cherry accepted only written submissions regarding confirmation of Janet DiFiore. I wonder if the reason for such answer was that I wanted to testify against confirmation of Janet DiFiore.

The secretary rudely talked over me and tried to prevent me from asking questions as to why the public notice did not reflect the restriction that Jessica Cherry is only considering written submissions as of today (at least), a week before the hearing, and not for oral testimony.

[1]In view of the above, I request the following as a FOIL request, within 5 business days, as required by law, to this e-mail address:

(1) copies of all applications for oral testimony at the confirmation hearing of Janet DiFiore on January 20, 2016;
(2) copies of all applications for videotaping that confirmation hearing;
(3) all notices to the public regarding possibilities of private videotaping of that hearing;
(4) all invitations sent out for oral testimony at that hearing;
(5) all acceptances of such invitations;
(6) the list of witnesses who will testify at the confirmation hearing of Janet DiFiore on January 20, 2015;
(7) all preliminary written submissions from individuals who are invited to testify at the confirmation hearing of DiFiore;
(8) all written submissions from the public for that confirmation hearing;
(9) all written policies regarding screening witnesses to be invited to testify at that hearing or at any other public hearings before the NYS Senate or its committees, including, but not limited policies regarding preferences of certain types of witnesses to be invited or not invited to testify based on their identity, background, affiliation with certain organizations or position as to the purpose of the hearing;
(10) all decisions, resolutions or rulings of NY Senate and its Committees regarding disqualification of interested witnesses from testifying, regarding this confirmation hearing and prior confirmation hearings of judges of NYS Court of Appeals going back 10 years;
(11) all decisions, resolutions or rulings of NY Senate and its Committees on the issue of disqualification of senators who are licensed attorneys to vote on legislation or at confirmation hearings that pertain to court proceedings, or provide benefits to the legal profession;
(12) all disclosures of employment and clients outside the NYS Senate submitted by NYS Senators who are licensed attorneys for the last 10 years;
(13) documents indicating authority of Jessica Cherry to set policy decisions as to how many people to invite to the confirmation hearing of Janet DiFiore;
(14) copies of policies or other public documents of New York Senate, Judiciary Committee, Senator Boracic or any other legislative officer or employee as to duration of confirmation hearings of Court of Appeals judges, number or type of witnesses to be invited to testify at such hearings, and allotted time for testimony;
(15) copies of any and all written correspondence between NYS Senate or any of its officers and employees with Governor Cuomo and Janet DiFiore in connection with her nomination and confirmation hearing;
(16) copies of any and all invitations to the confirmation hearing sent out to the press.

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[1] The Committee informed Ms. Neroni that her FOIL submission must be submitted to the New York State Senate FOIL office, pursuant to Public Officers Law Section 88 and the New York State Senate Rules, to constitute a proper FOIL request.

I expect you to comply with my FOIL request within 5 business days, as required by law.

Please, forward the copies of documents I requested, in a scanned format, to this e-mail address.

Sincerely,
Tatiana Neroni
P.O. Box 3937
Pawleys Island, SC 29585

Dear Ms. Cherry

I request the NYS Senate and its Judiciary Committee to invite Ravi Batra former commissioner of NYS Joint Commission for Public Ethics where Janet Difiore was a Chair, to testify at the confirmation hearing of Janet Difiore for the position of NYS Chief Judge

I include the link describing the scandal involving support of Governor Cuomo by the gambling industry.

http://www.syracuse.com/news/index.ssf/2012/06/new_york_ethics_commissioner_i.html

I also draw the Committee's attention to the book "The Contender: Andrew Cuomo, a Biography", by Micnael Shnayerson. A Kindle edition of the book is available on Amazon.com and is easily word-searchable for the Committee's convenience.

On pages 350-353 of the book Mr. Batra is being quoted for the description of questionable donors of Andrew Cuomo and of unlawful conduct of Janet DiFiore aimed helping Andrew Cuomo, her benefactor, who supported her for her elections as a Weschester County DA, and who nominated her for the position of a Chief Judge, in concealing the names of his anonymous private donors, including likely foreign donations, and to make possible that Andrew Cuomo, through organizations that supported him, would receive more anonymous donations that would not have to be disclosed.

The book quotes Ravi Batra's contention that it was Janet DiFiore who proposed the shifting of disclosure of identity of donors and amounts of donations from January 1, 2012, as it was required by law governing the Commission, to July 1, 2012.

Such a shift concealed the names of donors to Cuomo's lobbying group "Committee to Save New York" (CSNY) and allowed it to accept more donations backing up Cuomo for six more months without disclosure of sources, where sources, as the press started to verify, could have come from foreign companies and thus Cuomo was supported by foreign capital.

Ravi Batra reportedly reported this corruption in the Commission of Public Ethics (obviously, including Janet Difiore's misconduct) to federal authorities.

It is apparent that Ravi Batra is an important witness of corruption orchestrated by Janet DiFiore in order to help her benefactor Andrew Cuomo conceal his donors, get more questionable anonymous donations and obscure the connection between Cuomo's "decision to push Gentings $4 billion convention center in his State of the State speech"? (p. 350).

Janet DiFiore corrupt behavior, as described in the book, raises the issue whether Cuomo nominated her to the Committee for public ethics in order to guard his interests rather than to do a job enforcing ethics in the government. If Janet DiFiore acted not as a public servant on the Commission for Public Ethics, but as her benefactor Cuomo's emissary, nothing can or will prevent her from acting in the same manner once she is put at the head of New York court system.

It is obvious that Andrew Cuomo did not forget the favor janet DiFiore secured for him by breaking the law and influencing the Commission for public ethics to have six extra months of donations to Cuomo's lobbying group blocked from public scrutiny.

Promoting Janet DiFiore to the position of the Chief Judge is apparently how Andrew Cuomo pays his debt to Janet DiFiore for her corrupt conduct.

I demand that Ravi Batra is called as a witness to testify regarding Janet DiFiore's fitness to be the Chief Judge of the Court of Appeals, and that Janet DiFiore is asked question at her confirmation hearing as to her behavior to unlawfully push forwarrd the disclosure date of donors for CSNY.

I also request that, if the Senate and the Committee does not have enough time to investigate this possible corrupt scheme between Cuomo and DiFiore, the confirmation hearing should be delayed until full investigation into this issue is had.

It is a disgrace that New York cannot clean up its own corruption in the government and that the only people who can do it are the feds. We do not need Preet Bharara to descend upon Cuomo and DiFiore after she is confirmed by the NYS Senate (that just lost a leader of Assembly and the leader of the Senate to convictions for corruption) and to drag them into prison for corruption.

Investigation of corruption of this proportion must certainly take time, and not enough time is left before the confirmation hearing, and the hearing itself is scheduled for just one hour and, most likely, what is scheduled is some congratulatory speeches and some brown-nosing by bar associations.

I will certainly go public with this apparent quid pro quo and I will certainly notify the feds as to the connection that is traceable between Janet DiFiore unlawful conduct in the Ethics Commission and her nomination by Cuomo in return for that.

It is apparent that if Janet DiFiore is shifting the law for the benefit of her promoters even as a Chair of a Commission of Public Ethics, she lacks any integrity and should be impeached from her position as the Westchester County District Attorney, disbarred and criminally prosecuted for corruption, not elevated to the position of Chief Judge of New York State Court system. It is a disgrace that she was nominated. It is a disgrace that she was endorsed by bar associations.

I insist that Mr. Ravi Batra is called to testify at the confirmation hearing. He can bring a lot of light as to Janet DiFiore's behavior. I insist that the Committee contact federal authorities to verify the extent of their investigations into DiFiore's and Cuomo's corruption as reported by Ravi Batra.

And, of course, I insist on posting this submission on the Senate's website before the confirmation hearing.

Thank you.
Tatiana Neroni

Ms. Cherry

Please, find enclosed a link to my blog where I published additional concerns about clear unfitness of nominee Janet DiFiore to become New York Chief Judge (or even to keep her current position, law license and remain free from incarceration). Apparently, there is a lot of information that the NYS Senate was supposed to investigate before it even scheduled the confirmation hearing. The information I provided in that blog post, is obtained from public sources. I also point out how many witnesses of Janet DiFiore's likely criminal conduct that went on for years, are available, including those who were intimidated during the "nanny investigation", which was quashed by such intimidation, and thus, the results of such investigation may not be valid. NYS Senate has the power to conduct the necessary investigations, invite or subpoena necessary witnesses in order to make sure that the individual NYS Senate is putting on top of New York Court system, a system greatly suffering from judicial corruption, cronyism and nepotism, would come there to help resolve these problems, not contribute to them, as Janet DiFiore undoubtedly will, given her record of participation in what looks like multiple corrupt acts.

If NYS Senate did not, will not and/or would not conduct this elementary due diligence before confirming Janet DiFiore for the position of Chief Judge of New York State court system, there will be a clear appearance that the confirmation process is rigged, and rigged for personal reasons of Senator Bonacic and other Senators-attorneys whose livelihood and private businesses depend on keeping the good graces of the judiciary, while Janet DiFiore has ties to NY Corrupt court system and is supported by many high-standing officials within NY corrupt court system. Janet DiFiore did not contest claims in the press that she got her previous promotion within the judiciary system to oversee criminal courts in the 9th Judicial District, through social connections with the Administrative judge who appointed her. The same is happening here. Governor Cuomo is, most likely, promoting DIFiore because she appears to have saved him from criminal corruption investigation and, possibly, conviction, when she moved the time of disclosure for donors to his organization as the Chair of Commission for Judicial Ethics.

Janet DiFiore's family has already been rewarded by Governor Cuomo for her corrupt behavior as Chief of Judicial Ethics Commission by having her husband appointed to the casino and racetrack-siting board, which appointment should also be investigated for corruption. The second favor, by putting Janet DiFiore at the top of New York State Court, after Governor Cuomo fought to vacate that position for her against the previous Judge Lippman in preventing his efforts to extend his retirement age, is simply too much of even an appearance of corruption to be tolerated.

Parties and litigants in New York court cases are entitled to have the highest court of the state deciding their cases not to be presided over by a likely criminal who escaped criminal prosecution only because of the nature of favors she provided to high-standing officials.

http://attorneyindependence.blogspot.com/2016/01/did-cuomo-nominate-criminal-to-head-new.html

I insist that this e-mail be posted on NY Senate's website as opposition to confirmation of Janet Difiore before the confirmation hearing.

I stand by each word I said in that blog and request to incorporate that blog post as my statement to the NYS Senate against confirmation of Janet DiFiore.

I insist that, before even considering to confirm DiFiore, NYS Senate should ADJOURN the confirmation hearing and use its resources and power to conduct a thorough investigation of the following episodes of Janet DiFiore's history and background, for which multiple witnesses and documentary evidence is available:

1) welfare fraud with her nanny, including, but not limited to:

(a) employing an illegal alien in 1980s for her 3 children - for which multiple witnesses should be available, as described in the blog post interlinked above;
(b) having that illegal alien, and then resident alien, apply for welfare benefits while being employed by Janet Difiore and her husband;
(c) having Janet diFiore's husband submit a perjured affidavit that the nanny was employed by Difiore and Glazer only since 2009;
(d) misusing the power of her office to intimidate the DSS Department, remove from her position the DSS investigator who commenced and handled the investigation into welfare fraud, and to ultimately quash the investigation;

(2) the history of DiFiore's referrals of police shootings to the culprit police departments to be investigated, an thus gaining the loyalty of local police departments not to investigate her own criminal conduct and criminal conduct of her husband and employee;

(3) the history of misconduct of DiFiore as Westchester County DA in obtaining the highest rate of felony convictions through coerced waivers of grand jury indictments, proceeding without evidence and hiding lack of evidence through coerced pleas, and coercing such pleas through court-ordered self incrimination through the TASC program in violation of criminal defendants' 5th Amendment rights;

(4) promotion to the position of supervising judge over criminal courts of the 9th Judicial Distrtict through the use of her friendship with the Administrative judge;

(5) providing a favor to Governor Cuomo as the Chair of Join Commission for Public Ethics, for which favor her husband was given an appointment to the casino and racetrack-siting board;

(6) appointment of Janet DiFiore's husband to the casino and racetrack-siting board after DiFiore's favor to Cuomo through the Commission for Public Ethics.

(7) whether DiFiore got support for this nomination from Washington D.C. through the lobbying help and connections of powerful father-n-law and mother-in-law of her daughter Alexandra Murphy.

This information is sent to you as a written submission, because this is the only avenue left to me by you, since you and your employer refused to let me testify at the confirmation hearing. The fact that I sent you any written statements because you refused to let me testify does not constitute a concession or waiver of my intent to testify.

Tatiana Neroni

P.O. Box 3937
Pawleys Island, SC 29585

Center for Judicial Accountability

From:	Center for Judicial Accountability <elena@judgewatch.org>
Sent:	Monday, January 11, 2016 4:34 PM
To:	'cherry@nysenate.gov'
Subject:	Testing the Fitness of Chief Judge Nominee/D.A. DiFiore -- CJA's December 31, 2015 letter
Attachments:	12-31-15-ltr-to-difiore.pdf

TO: Senate Judiciary Committee Counsel/Jessica Cherry

Following up our 1-1/2 hour phone conversation this morning, for which I thank you, attached, as you requested, is my December 31, 2015 letter to Chief Judge Nominee/Westchester County District Attorney Janet DiFiore pertaining to her Senate confirmation. It is 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?" . CJA's webpage for the letter, which I showed you as we spoke, posts all the substantiating evidentiary proof. Here is the direct link: http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm.

Please furnish this e-mail with the letter and webpage link, as soon as possible, to Senate Judiciary Committee Chairman Bonacic and all members of the Senate Judiciary Committee, in support of my request to testify at the Committee's January 20, 2016 confirmation hearing. Whether my testimony will be in favor of D.A. DiFiore's confirmation – or opposed – depends entirely on her response to the December 31, 2015 letter – and my letter to her so-states (p. 7).

Indeed, D.A. DiFiore's response to the letter should be dispositive of how the Senators vote -- as the supervisory and administrative issues the letter presents will be before her, IMMEDIATELY, should she be confirmed as head of New York's court system – and are NOW before the Senate Judiciary Committee and Legislature:

> (1)the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, whose judicial pay raise recommendations for fiscal year 2016-2017 will take effect automatically on April 1, 2016 unless overridden by the Legislature before then; and
>
> (2) the December 1, 2015 Judiciary budget for fiscal year 2016-2017, on which the Legislature must vote, by April 1, 2016 and which will need to be supplemented, if it is to include the judicial pay raises for fiscal year 2016-2017 recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation.

Inasmuch as Chairman Bonacic is currently NOT allowing anyone to testify at the Senate Judiciary Committee's January 20, 2016 confirmation hearing except for the bar associations which rated the Commission on Judicial Nomination's list of seven nominees – D.A. DiFiore, among them – I request that you forward this e-mail to those same bar associations so that they can comment as to whether any nominee for the Chief Judge position may be deemed "qualified" who fails to respond to the December 31, 2015 letter.

If, based upon my December 31, 2015 letter, Chairman Bonacic nonetheless does not permit me to testify at the January 20, 2016 confirmation hearing – and the members of the Senate Judiciary Committee do not vote to override him – the letter must be the basis of the Committee's interrogation of D.A. DiFiore at the hearing, including as to her findings of fact and conclusions of law with respect to the evidence the letter presents. First and foremost, CJA's October 27, 2011 Opposition Report and its constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judge' judicial compensation lawsuits and from Article VI of the New York State Constitution that:

> "The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just 'appropriate factors', but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay." (CJA's October 27, 2011 Opposition Report, prefatory quote & page 12, underlining in the original).

Certainly, too, if the bar associations do not furnish their comment about my December 31, 2015 letter to the Senate Judiciary Committee in advance of the January 20, 2016 hearing – and fail to do so in their testimony at the January 20, 2016 hearing – the Committee members must grill them about the December 31, 2015 letter at the hearing, including as to their findings of fact and conclusions of law with respect to its referred-to evidence.

Suffice to note, that Legislative Law, Article 4 empowers the Committee to compel the testimony of witnesses and require the production of records, including by subpoena. In other words, the Committee could subpoena records of the nominee and bar associations reflecting their findings of fact and conclusions of law.

Finally, and bearing upon the accuracy – or lack thereof – of the bar associations' rating of D.A. DiFiore and the other six nominees, this is to reiterate my statement to you that shortly after the Commission on Judicial Nomination announced its list of seven nominees, I telephoned the bar associations to furnish them with information germane to their screening, but received no call backs in response to the messages I left.

In that connection, I would note that more than 15 years ago, CJA presented the Senate Judiciary Committee, under the chairmanship of then Senator James Lack, with a formal report on the bar associations' complicitous role in the corruption of "merit selection" appointment to the New York Court of Appeals. This November 13, 2000 Report, detailing how the bar associations rigs their ratings by "screening out" information adverse to the nominees, can be readily accessed, as it is among the evidence I provided to the Commission on Legislative, Judicial and Executive Compensation by a December 2, 2015 supplemental submission to substantiate that former Senate Judiciary Committee Chairman Lack was disqualified from serving on the Commission by reason of his actual bias and interest. The link to CJA's webpage for the December 2, 2015 supplemental submission, from which the November 13, 2000 Report is accessible *via* links, is http://www.judgewatch.org/web-pages/judicial-compensation/2015/dec-2-2015-supplemental-statement.htm -- and is also accessible from the webpage of my December 31, 2015 letter to D.A. DiFiore. For your further convenience, the direct link to CJA's webpage posting the November 13, 2000 Report is here: http://www.judgewatch.org/web-pages/judicial-selection/nys/lack-2002substantiating-docs.htm.

Tomorrow, I will hand-deliver a copy of this e-mail to D.A. DiFiore so that she may advise when her response to my December 31, 2015 letter will be forthcoming.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

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

BY HAND

December 31, 2015

TO: NY Court of Appeals Chief Judge Nominee/
Westchester County District Attorney Janet DiFiore

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

RE: 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?
(1) The Commission on Judicial Compensation's August 29, 2011 Report;
(2) The Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report;
(3) The Judiciary budgets – including for fiscal year 2016-2017

Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies 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 the class A misdemeanor "official misconduct" (§195).

Then, too, there is the "Public Trust Act", whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime "Corrupting the Government" – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.

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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.

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §168-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your $136,700 salary was increased to $160,000 and then, in 2013, increased to $167,000 and then, in 2014, increased again to $174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be $198,600, not the $156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are "'ill-gotten gains', stolen from the taxpayers". And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report, detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. Addressed to the Commission's four appointing authorities – Governor Cuomo, then Temporary Senate President Skelos, then Assembly Speaker Silver, and Chief Judge Lippman – the Opposition Report expressly called upon them to take the following four steps to protect the public:

(1) legislation voiding the Commission's judicial pay raise recommendations;

(2) repeal of the statute creating the Commission;

(3) referral of the Commissioners to criminal authorities for prosecution;

(4) appointment of a special prosecutor, task force, and/or inspector general to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Yet they took no steps. Indeed, they did not even respond – and their inaction and the collusion therein of Attorney General Schneiderman and Comptroller DiNapoli, "motivated by a scheme to also raise legislative and executive salaries"[1], gave rise to a declaratory judgment action against all of them, *CJA v. Cuomo, et al.*, which we commenced in March 2012, on behalf of the People of the State of New York and the public interest.

What became of that lawsuit? For the past three years it has been in limbo, sitting on a shelf in the Clerk's Office in Supreme Court/New York County after the original verified complaint and all exhibits – including the October 27, 2011 Opposition Report – went missing upon being fraudulently transferred from Supreme Court/Bronx County (#302951-12). The particulars are recited by the March 2014 verified complaint[2] in a citizen-taxpayer action, also *CJA v. Cuomo, et al.* which we commenced in Supreme Court/Albany County (#1788-2014), also on behalf of the

[1] ¶1 of the March 2012 verified complaint. See also ¶¶122, 138.

[2] ¶5(c), (d), (e) of the March 2014 verified complaint.

People of the State of New York and the public interest. It challenges the slush-fund Judiciary budget for fiscal year 2014-2015 in which the judicial salary increases are embedded and, by a March 2015 supplemental complaint, additionally challenges the slush-fund Judiciary budget for fiscal year 2015-2016 and its embedded judicial salary increases. This citizen-taxpayer action is live and unfolding on a record entitling us to summary judgment, *as a matter of law* – and not only with respect to the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report, but as to the Judiciary budgets for fiscal years 2014-2015 and 2015-2016, whose constitutional and statutory infirmities, enabling fraud, are replicated in the Judiciary's budget for fiscal year 2016-2017.

On November 30, 2015 – the day before the Governor announced your nomination – I testified before the Commission on Legislative, Judicial and Executive Compensation at its public hearing in Manhattan. That commission emerged from the March 2015 behind-closed-doors, three-men-in-a-room budget deal-making by Governor Cuomo, then Temporary Senate President Skelos, and Assembly Speaker Heastie, wherein – following rubber-stamping by the Legislature – the statute that created the Commission on Judicial Compensation was repealed and, in its place, a materially-identical statute creating the Commission on Legislative, Judicial and Executive Compensation was substituted. In advance of my testimony, I created a webpage for the Commission 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!" It is there that I posted the evidence supporting my testimony, beyond what I handed up at the hearing.

The focus of my testimony was CJA's October 27, 2011 Opposition Report, the declaratory judgment action and citizen taxpayer action based thereon – as well as a third litigation, in April 2014, in which we sought to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption (*NYS Senate, NYS Assembly v. Rice, et al.*, NY Co. #160941/2013), also on behalf of the People of the State of New York and the public interest. I stated that "But for the evisceration of any cognizable judicial process in ALL three of these litigations – resulting from the double-whammy of Attorney General Schneiderman's litigation fraud, rewarded by fraudulent judicial decisions – judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating [the Commission on Legislative, Judicial and Executive Compensation], would have been declared unconstitutional, long, long ago." (at p. 2, capitalization in original).

Indeed, I stated that the ONLY recommendation the Commission could properly make, based on CJA's October 27, 2011 Report, 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" – and that the "only way" the Commission could "get away with doing anything else" in its own report, statutorily-required by December 31, 2015, would be by "obliterating the existence of our Opposition Report, the record of our three litigations based thereon – and all findings of fact and conclusions of law that [were its] duty to make with respect thereto."

This, of course, is exactly what the Commission did by its December 24, 2015 "Final Report". It materially replicated the fraud, statutory violations, and unconstitutionality of the Commission on Judicial Compensation's August 29, 2011 Report – which also had been denominated a "Final Report". Thus, identical to the August 29, 2011 Report, the December 24, 2015 Report:

- willfully concealed, as if it did not exist, the threshold issue of the Commissioners' disqualifying interest and actual bias that had been raised, most formidably by CJA – because it was dispositive; and

- willfully concealed, as if it did not exist, the opposition to judicial salary increases that had been raised, most formidably by CJA – because it was dispositive.

This enabled it to then flagrantly and identically violate the Commission statute:

- by making no finding that current "pay levels and non-salary benefits" of New York State judges are inadequate, required by the statute;

- by examining only judicial salary, not "compensation and non-salary benefits", required by the statute ;

- by not considering "all appropriate factors", required by the statute – and making no claim that it had;

- by making no findings as to "appropriate factors" that CJA had identified as disentitling New York's judges to any pay raises. Among these:

  (a) evidence of systemic judicial corruption, infesting appellate and supervisory levels and the Commission on Judicial Conduct – demonstrated as a constitutional bar to raising judicial pay; and

  (b) the fraudulent claims of judicial pay raise advocates in support of judicial pay raises.

All the foregoing is readily-verifiable from the Commission on Legislative, Judicial and Executive Compensation's website and from CJA's own webpage for the Commission. Links for both are posted on the webpage I've created for this letter on CJA's website, www.judgewatch.org. You can reach it easily *via* the top panel "Latest News", which will bring you to a link bearing the title of this letter: "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?"[3]

[3] The letter is also accessible *via* the left sidebar panel "Judicial Selection-State-NY", which leads to a menu page containing a link for "Merit Selection" to the New York Court of Appeals.

The Judiciary has, at least, three copies of CJA's October 27, 2011 Opposition Report: the one I originally delivered for Chief Judge Lippman on October 27, 2011 at the Office of Court Administration in Manhattan, and the two full copies that accompanied the two copies of the verified complaint in the *CJA v. Cuomo, et al.* declaratory judgment action that I delivered in Albany on April 5, 2012 to the Clerk of the Court of Appeals, who accepted service for Chief Judge Lippman and the Unified Court System, each named defendants therein. Nevertheless, because the October 27, 2011 Opposition Report is so dispositive, I am herewith furnishing you with your own full copy – by which I mean the included October 15, 2002 and October 24, 2002 two final motions that were before the Court of Appeals in CJA's monumental 3-in-1 lawsuit against the Commission on Judicial Conduct, about which I testified on July 20, 2011 before the Commission on Judicial Compensation, handing up a copy of each motion to substantiate my words, publicly-stated:

> "...you can verify that the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived, including four of the Court of Appeals....the Commission has been the beneficiary of fraudulent judicial decisions. The *modus operandi* in this state, fraudulent judicial decisions. The judiciary of this state is corrupt, pervasively, systemically corrupt."[4]

I am also furnishing you with my written 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.

From these, you can speedily verify the fraudulence, statutory violations, and unconstitutionality of BOTH the Commission on Judicial Compensation's August 29, 2011 Report and the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report – each the product of tribunals disqualified for interest and actual bias – and that your duty is to take steps to protect the People of the State of New York, be it as the district attorney you currently are or the chief judge you aspire to be.

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[4] See transcription of my July 20, 2011 testimony, annexed as part of Exhibit I to CJA's October 27, 2011 Opposition Report – and, additionally, the further substantiating documents I handed up to the Commission on Judicial Compensation on July 20, 2011: Exhibit F-1 (hand-out: "No Pay Raises for NYS Judges who Corrupt Justice: The Money Belongs to the Victims"); Exhibit F-2 (CJA's draft statement for the Senate Judiciary Committee's aborted December 16, 2009 hearing on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system); Exhibits F-3 and F-4 (written statements for the Senate Judiciary Committee's March 6, 2007 hearing in opposition to confirmation of Chief Judge Kaye to the Court of Appeals).

Indeed, your disregard of that duty would make you an accessory and criminally liable[5] for the felony crimes here at issue: "offering a false instrument for filing in the first degree" (Penal Law §175.35), "grand larceny in the first degree" (Penal Law §155.42), "scheme to defraud in the first degree" (Penal Law §190.65), "defrauding the government" (Penal Law §195.20), "corrupting the government in the first degree" (Penal Law§496.05), "public corruption" (Penal Law §496.06), and, of course, the misdemeanor of "official misconduct" (Penal Law §195)?

The People of New York cannot suffer yet another constitutional officer compromised by pecuniary and other interests and relationships, who corrupts his public office as a result. Will you do what is right and what the law and ethics require, notwithstanding you are a beneficiary of the judicial salary increases and have personal, professional, and political relationships with those involved in the felonies now before you and who are responsible for your Court of Appeals nomination and control your confirmation?

On the subject of conflicts of interest – and because, in December 2011, Governor Cuomo appointed you to chair the then-newly created Joint Commission on Public Ethics,[6] whose jurisdiction includes conflict of interest complaints against him and other constitutional officers of the executive and legislative branches – I am enclosing the June 27, 2013 conflict-of-interest ethics complaint that we filed with JCOPE, two months after you resigned as chair – and which JCOPE has been sitting on ever since. It is against Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, legislators and their culpable staff and is based on their conflicts of interest that are the ONLY explanation for their knowing and deliberate failure to protect the public from the Commission on Judicial Compensation's fraudulent, statutorily-violative and unconstitutional August 29, 2011 Report.[7]

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[5] As illustrative, Penal Law §105.15 "conspiracy in the second degree".

[6] In the words of the Governor's December 12, 2012 press release: "'The Joint Commission on Public Ethics is an independent monitor that will aggressively investigate corruption and help maintain integrity in state government,' Governor Cuomo said. 'I am confident that under the leadership of Chair DiFiore and the other board members, the Commission will be the toughest ethics enforcer in our state's history.'" http://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-appoint-members-joint-commission-public-ethics.

[7] At the November 30, 2015 hearing, I furnished this June 27, 2013 conflict-of-interest ethics complaint – and CJA's related December 11, 2014 conflict-of-interest ethics complaint that JCOPE has also been sitting, also against the Governor, *et al.* – to Commissioner Mitra Hormozi, one of the Governor's three appointees to the Commission on Legislative, Judicial and Executive Compensation and his appointed chair of the Commission on Public Integrity, when JCOPE replaced it, under your chairmanship. CJA's webpage for my November 30, 2015 testimony posts this additional December 11, 2014 complaint. The direct link is: http://www.judgewatch.org/web-pages/judicial-compensation/2015/testimony.htm. CJA's subsequent correspondence pertaining to the JCOPE/LEC Review Commission – and my October 14, 2015 testimony before the JCOPE/LEC Review Commission about the conflicts of interest of executive and legislative constitutional officers with respect to the judicial pay raises and the Commission on Judicial Compensation's August 29, 2011 Report is posted here: http://www.judgewatch.org/web-pages/searching-nys/commission-to-

As I greatly prefer to testify in support of your nomination at the Senate Judiciary Committee's upcoming hearing on your confirmation, rather than in opposition, please confirm, as soon as possible, that based on your findings of fact and conclusions of law with respect to the foregoing, you will be taking steps, as Chief Judge, to:

(1) void the judicial pay raise recommendations;

(2) repeal the commission statute;

(3) refer the commissioners to criminal authorities for prosecution; and

(4) investigate the systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Legislative, Judicial and Executive Compensation – like the Commission on Judicial Compensation before it – unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

Further, please advise, with respect to the Judiciary's budget for fiscal year 2016-2017, transmitted to Governor Cuomo and legislative leadership, including Senate Judiciary Committee Chairman Bonacic, on the day you were nominated, December 1, 2015:

(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.

Insofar as the Executive Summary to the Judiciary's budget for fiscal year 2016-2017 states (at fn. 4) that the Judiciary's budget does not include the Commission on Legislative, Judicial and Executive Compensation salary recommendations – as they were not then made – but that "If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment", do you not agree that any such supplemental budget request would be – like the Commission's December 24, 2015 Report – fraudulent, statutorily-violative, and unconstitutional.

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investigate-public-corruption/holding-to-account/exposing-JCOPE.htm.

I would welcome your invitation to meet together in advance of your Senate Judiciary Committee confirmation hearing so that we may discuss these and other issues germane to the top leadership position to which you have been nominated. This would include CJA's constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits and from Article VI of the New York State Constitution – highlighted by my November 30, 2015 testimony before the Commission on Legislative, Judicial and Executive Compensation (at p. 2) and annexed as its Exhibit 3 – that:

> "The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just 'appropriate factors', but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.[fn4]" (CJA's October 27, 2011 Opposition Report, prefatory quote & page 12, underlining in the original).

May I hear from you soon – and may the New Year be the beginning of respect for law, evidence, and honesty, under your leadership.

Thank you.

Enclosures

Center for Judicial Accountability

From:	Center for Judicial Accountability <elena@judgewatch.org>
Sent:	Friday, January 15, 2016 3:11 PM
To:	'flanagan@nysenate.gov'; 'speaker@assembly.state.ny.us'
Cc:	Andrew J. Lanza (lanza@senate.state.ny.us); 'scousins@nysenate.gov'; Assembly Minority Leader Brian M. Kolb; 'bonacic@nysenate.gov'; 'hasselit@senate.state.ny.us'; hoylman@nysenate.gov; 'cyoung@nysenate.gov'; 'lkrueger@senate.state.ny.us'; 'weinstH@assembly.state.ny.us'; 'montesanoM@assembly.state.ny.us'; 'peoplec@assembly.state.ny.us'; 'DupreyJ@assembly.state.ny.us'; 'JaffeeE@assembly.state.ny.us'; 'LawrenceP@assembly.state.ny.us'; 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; 'goodella@assembly.state.ny.us'; 'LopezP@assembly.state.ny.us'; 'NojayW@assembly.state.ny.us'; 'JohnsM@assembly.state.ny.us'; garvey@nysenate.gov; 'grelick@nysenate.gov'; 'Jessica Cherry'; 'j.deskovic@hotmail.com'; tatiana.neroni@gmail.com
Subject:	Immediate Oversight Required: Jan. 20, 2016 Senate Judiciary Confirmation Hearing of Chief Judge Nominee DiFiore AND "Force of Law" Judicial Salary Recommendations of Dec. 24, 2015 Report of Commission on Legislative, Judicial & Executive Compensation
Attachments:	1-15-16-letter-with-statement-of-further-particulars.compressed.pdf; 1-11-16-email-to-cherry.compressed.pdf; 12-31-15-ltr-to-difiore.compressed.pdf

Attached is the Center for Judicial Accountability's letter of today's date requiring IMMEDIATE ATTENTION & LEGISLATIVE OVERSIGHT, particularly as it involves the January 20th Senate Judiciary Committee confirmation hearing of Chief Judge Nominee Janet DiFiore, at which NO ONE OTHER THAN THE NOMINEE & THE BAR ASSOCIATIONS IS BEING PERMITTED TO TESTIFY – a fact deceptively not revealed by the Senate Judiciary Committee's public notice that "ORAL TESTIMONY IS BY INVITATION ONLY". Among those being denied the opportunity to testify, in addition to myself, are Jeffrey Deskovic, whose name and case are used as if he supports her nomination, when he does NOT, and Tatiana Neroni, Esq. Each have devastating things to say about how the nominee has conducted her office as Westchester County District Attorney, as may be seen from the Senate Judiciary Committee's pdf compilation of their requests to testify: http://www.nysenate.gov/newsroom/press-releases/john-j-bonacic/current-written-testimony-submitted-court-appeals-nominee

The attached letter is also posted, with all substantiating exhibits, 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!" The direct link to the webpage is here: http://www.judgewatch.org/web-pages/judicial-compensation/2015/legislative-oversight.htm. Additionally, the referred-to Assembly Bill #7997 is here: http://assembly.state.ny.us/leg/?default_fld=&bn=A07997&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y

As requested by the letter, please forward & furnish to all members of the referred-to relevant oversight committees.

Thank you.

Elena Sassower, Director

Center for Judicial Accountability, Inc. (CJA)
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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

* **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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Elena Ruth Sassower, Director

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.

Contents

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:

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.

Center for Judicial Accountability

From:	Center for Judicial Accountability <elena@judgewatch.org>
Sent:	Tuesday, January 19, 2016 2:59 PM
To:	'flanagan@nysenate.gov'; 'speaker@assembly.state.ny.us'; lanzisera@msn.com; scousins@nysenate.gov; Assembly Minority Leader Brian M. Kolb; 'bonacic@nysenate.gov'; 'hasselit@senate.state.ny.us'; hoylman@nysenate.gov; cyoung@nysenate.gov; 'lkrueger@senate.state.ny.us'; 'weinstH@assembly.state.ny.us'; 'montesanoM@assembly.state.ny.us'; 'peoplec@assembly.state.ny.us'; 'DupreyJ@assembly.state.ny.us'; 'JaffeeE@assembly.state.ny.us'; LawrenceP@assembly.state.ny.us; 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; 'goodella@assembly.state.ny.us'; 'LopezP@assembly.state.ny.us'; 'NojayW@assembly.state.ny.us'; 'JohnsM@assembly.state.ny.us'; grelick@nysenate.gov; 'Jessica Cherry'
Cc:	'rkennedy@nysba.org'; bmahan@nysba.org; smattei@nystla.org; mharris@nycbar.org; mcilenti@nycbar.org; ekocienda@nycbar.org; j.deskovic@hotmail.com; tatiana.neroni@gmail.com
Subject:	Tomorrow's SJC hearing on the confirmation of D.A. DiFiore as Chief Judge -- & Request for Deferment of Senate floor proceedings pending a written committee report containing findings of fact & conclusions of law as to the citizen opposition
Attachments:	1-15-16-ltr-to-flanagan-heastie-with-statement-of-particulars.compressed.pdf; 1-11-16-email-to-cherry.compressed.pdf; 12-31-15-ltr-to-difiore.compressed.pdf; 1-15-16-email-to-bar-associations.pdf

TO: Temporary Senate President Flanagan, Assembly Speaker Heastie – & other Legislators in positions of leadership and oversight, particularly in the Senate:

This is to advise that on Friday, January 15th, promptly after sending you the below e-mail, I forwarded it to the New York State Bar Association and the New York State Trial Lawyers Association – both invited by the Senate Judiciary Committee to testify at its tomorrow's hearing to confirm D.A. DiFiore's nomination as Chief Judge. My succinct message to them was as follows:

> "Please forward this e-mail to whatever bar representatives will be testifying before the Senate Judiciary Committee at its January 20th hearing to confirm the nomination of District Attorney DiFiore as Chief Judge.".

A copy is attached.

I then printed out the January 15th e-mail and hand-delivered it for Chief Judge Nominee DiFiore, at her district attorney headquarters in White Plains, which is her main office. My accompanying handwritten note stated, in pertinent part:

> "Enclosed is the e-mail of today's date with the letter to Temporary Senate President Flanagan and Assembly Speaker Heastie it transmitted, including the four indicated enclosures of the letter...This e-mail has also been furnished to the bar associations. Please advise as to your response to the Dec. 31, 2015 letter, as I have as yet received none. As stated in that letter, I would greatly prefer to testify in favor of your confirmation than against. Also, I would hope that you would join in seeking to have the Senate Judiciary Committee allow testimony from members of the public, as is customary & appropriate, if not constitutionally-mandated."

You can see a photo of this January 15th handwritten note – as well as photos of my prior January 7th and January 12th handwritten notes to her – as they are posted on CJA's webpage of my December 31st letter to her. The direct link is here: http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-difiore.htm.

I have received no response from Chief Judge Nominee DiFiore. Consequently, my January 11th e-mail to the Senate Judiciary Committee requesting to testify at tomorrow's hearing on her confirmation, based on my December 31st letter to Chief Judge Nominee DiFiore, should now be deemed a request to testify in opposition. As reflected by that January 11th e-mail – a copy of which I had furnished to Chief Judge Nominee DiFiore on January 12th and to the bar associations on January 13th – the bar associations must be asked "whether any nominee for the Chief Judge position may be deemed 'qualified' who fails to respond to the December 31, 2015 letter". By the same token, the bar associations must be asked whether it is fitting and proper, let alone constitutional, for the Senate Judiciary Committee to insulate her from scrutiny by holding a confirmation hearing where only bar associations who have supported her nomination by bare-bones (and inconsistent) ratings are invited to testify, NOT members of the public whose requests to testify in opposition are buttressed by particularized facts and evidence of unfitness. The same questions must be asked to Chief Judge Nominee DiFiore, as well.

If, notwithstanding my January 15th letter for your "IMMEDIATE OVERSIGHT", tomorrow's confirmation hearing is NOT postponed so that invitations can be extended to opposition witnesses, the members of the Senate Judiciary Committee must act as our surrogates, grilling Chief Judge Nominee DiFiore and the bar associations about the particulars of our written requests to testify. By virtue of my below January 15th e-mail, identifying the written requests of Jeffrey Deskovic and Tatiana Neroni to testify in opposition, contained in the Senate Judiciary Committee's pdf'd record whose link I furnished, neither Chief Judge Nominee DiFiore nor the bar associations can plead ignorance about the serious and substantial basis upon which Mr. Deskovic and Ms. Neroni have requested to give live opposition testimony. And, of course, Chief Judge Nominee DiFiore and the bar associations possess ALL the particulars and evidence substantiating my opposition testimony, whose DISPOSITIVE nature is highlighted by my January 11th e-mail request to testify – and which, by now, the Senate Judiciary Committee should already have verified as such.

This citizen opposition – and any other received by the Senate Judiciary Committee – must be embodied in a committee report to the full Senate, with findings of fact and conclusions of law as to each. Doubtless Temporary Senate President Flanagan has the power to ensure that Senate floor proceedings on the confirmation are held in abeyance until such committee report is rendered, in writing. By this e-mail, I so request – and ask that the other Senate recipients of this e-mail, all holding positions of leadership and oversight, exercise their own powers to that end.

By copy of this e-mail to Chief Judge Nominee DiFiore, which I will immediately hand-deliver to her White Plains district attorney headquarters, I expressly request that she bring with her, to tomorrow's hearing, ALL the documentary proof I transmitted with the December 31st letter – and which the letter reflects as being transmitted. Indeed, on December 31st, upon my giving this voluminous documentation, *in hand*, to her First Deputy District Attorney, John George, he asked me whether I would want it back. My response to him was that under no circumstances should it be discarded and that Chief Judge Nominee DiFiore should be sure to bring it with her to the Senate Judiciary Committee hearing on her confirmation.

Needless to say, I request that this e-mail be included in the record of both the Senate Judiciary Committee and Senate proceedings on her confirmation as Chief Judge.

Finally, please note that my January 15th letter and its attached statement of particulars as to the statutory violations and fraud committed by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation contained some non-substantive, typographical errors. These have been corrected by the attached – and on CJA's webpage for the letter: http://www.judgewatch.org/web-pages/judicial-compensation/2015/legislative-oversight.htm. Apologies for any inconvenience.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: Center for Judicial Accountability [mailto:elena@judgewatch.org]
Sent: Friday, January 15, 2016 3:11 PM
To: 'flanagan@nysenate.gov'; 'speaker@assembly.state.ny.us'
Cc: Andrew J. Lanza (lanza@senate.state.ny.us); 'scousins@nysenate.gov'; Assembly Minority Leader Brian M. Kolb; 'bonacic@nysenate.gov'; 'hasselit@senate.state.ny.us'; hoylman@nysenate.gov; 'cyoung@nysenate.gov'; 'lkrueger@senate.state.ny.us'; 'weinstH@assembly.state.ny.us'; 'montesanoM@assembly.state.ny.us'; 'peoplec@assembly.state.ny.us'; 'DupreyJ@assembly.state.ny.us'; 'JaffeeE@assembly.state.ny.us'; 'LawrenceP@assembly.state.ny.us'; 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; 'goodella@assembly.state.ny.us'; 'LopezP@assembly.state.ny.us'; 'NojayW@assembly.state.ny.us'; 'JohnsM@assembly.state.ny.us'; garvey@nysenate.gov; 'grelick@nysenate.gov'; 'Jessica Cherry'; 'j.deskovic@hotmail.com'; tatiana.neroni@gmail.com

Subject: Immediate Oversight Required: Jan. 20, 2016 Senate Judiciary Confirmation Hearing of Chief Judge Nominee DiFiore AND "Force of Law" Judicial Salary Recommendations of Dec. 24, 2015 Report of Commission on Legislative, Judicial & Executive Compensation

Attached is the Center for Judicial Accountability's letter of today's date requiring IMMEDIATE ATTENTION & LEGISLATIVE OVERSIGHT, particularly as it involves the January 20th Senate Judiciary Committee confirmation hearing of Chief Judge Nominee Janet DiFiore, at which NO ONE OTHER THAN THE NOMINEE & THE BAR ASSOCIATIONS IS BEING PERMITTED TO TESTIFY – a fact deceptively not revealed by the Senate Judiciary Committee's public notice that "ORAL TESTIMONY IS BY INVITATION ONLY". Among those being denied the opportunity to testify, in addition to myself, are Jeffrey Deskovic, whose name and case are used as if he supports her nomination, when he does NOT, and Tatiana Neroni, Esq. Each have devastating things to say about how the nominee has conducted her office as Westchester County District Attorney, as may be seen from the Senate Judiciary Committee's pdf compilation of their requests to testify: http://www.nysenate.gov/newsroom/press-releases/john-j-bonacic/current-written-testimony-submitted-court-appeals-nominee

The attached letter is also posted, with all substantiating exhibits, 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!" The direct link to the webpage is here: http://www.judgewatch.org/web-pages/judicial-compensation/2015/legislative-oversight.htm. Additionally, the referred-to Assembly Bill #7997 is here: http://assembly.state.ny.us/leg/?default_fld=&bn=A07997&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y

As requested by the letter, please forward & furnish to all members of the referred-to relevant oversight committees.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

Center for Judicial Accountability

From:	Center for Judicial Accountability <elena@judgewatch.org>
Sent:	Tuesday, January 19, 2016 3:31 PM
To:	Andrew J. Lanza (lanza@senate.state.ny.us)
Cc:	lanzisera@msn.com
Subject:	Tomorrow's SJC hearing on the confirmation of D.A. DiFiore as Chief Judge -- & Request for Deferment of Senate floor proceedings pending a written committee report containing findings of fact & conclusions of law as to the citizen opposition
Attachments:	1-15-16-ltr-to-flanagan-heastie-with-statement-of-particulars.compressed.pdf; 1-11-16-email-to-cherry.compressed.pdf; 12-31-15-ltr-to-difiore.compressed.pdf; 1-15-16-email-to-bar-associations.pdf

Inadvertently, I sent this e-mail NOT to Senator Lanza, as intended, but to Carl Lanzisera, who heads Americans for Legal Reform.

It is now e-mailed to the Senator.

Apologies.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

From: Center for Judicial Accountability [mailto:elena@judgewatch.org]
Sent: Tuesday, January 19, 2016 2:59 PM
To: 'flanagan@nysenate.gov'; 'speaker@assembly.state.ny.us'; lanzisera@msn.com; scousins@nysenate.gov; Assembly Minority Leader Brian M. Kolb; 'bonacic@nysenate.gov'; 'hasselit@senate.state.ny.us'; hoylman@nysenate.gov; cyoung@nysenate.gov; 'lkrueger@senate.state.ny.us'; 'weinstH@assembly.state.ny.us'; 'montesanoM@assembly.state.ny.us'; 'peoplec@assembly.state.ny.us'; 'DupreyJ@assembly.state.ny.us'; 'JaffeeE@assembly.state.ny.us'; LawrenceP@assembly.state.ny.us; 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; 'goodella@assembly.state.ny.us'; 'LopezP@assembly.state.ny.us'; 'NojayW@assembly.state.ny.us'; 'JohnsM@assembly.state.ny.us'; grelick@nysenate.gov; 'Jessica Cherry'
Cc: 'rkennedy@nysba.org'; bmahan@nysba.org; smattei@nystla.org; mharris@nycbar.org; mcilenti@nycbar.org; ekocienda@nycbar.org; j.deskovic@hotmail.com; tatiana.neroni@gmail.com

Subject: Tomorrow's SJC hearing on the confirmation of D.A. DiFiore as Chief Judge -- & Request for Deferment of Senate floor proceedings pending a written committee report containing findings of fact & conclusions of law as to the citizen opposition

TO: Temporary Senate President Flanagan, Assembly Speaker Heastie – & other Legislators in positions of leadership and oversight, particularly in the Senate:

This is to advise that on Friday, January 15th, promptly after sending you the below e-mail, I forwarded it to the New York State Bar Association and the New York State Trial Lawyers Association – both invited by the Senate Judiciary Committee to testify at its tomorrow's hearing to confirm D.A. DiFiore's nomination as Chief Judge. My succinct message to them was as follows:

January 19, 2016

Mr. James H. Brady
450 West 31st Street
12th Floor
New York, NY 10001
bradyny@gmail.com
201-923-5511

Dear Mr. Bonacic and the other members of the Senate Judiciary Committee:

For over 7 years I have suffered as the State of New York's Judicial employees repeatedly rewrote or permitted other Judicial employees to unlawfully rewrite the Offering Plan contract description of my commercial apartment in the Hudson Yards District of New York

The unlawful rewritings of my contract were done in attempts to void the hundred million dollars in air rights air expressly and exclusively given to my commercial apartment through the seventh paragraph footnote to the schedule of units in the amended Offering Plan named 450 West 31st Street Owners Corp. The corruption would not have continued a fraction as long but for the dishonesty and corruption of the last chief justice Jonathan Lippman. I demand that the same type of dishonesty and lack of integrity is not found in the next Chief Justice of the Court of Appeals.

The unlawful rewritings of the contract description of my apartment were blatantly corrupt and done for the benefit of rich and powerful deep pocketed developers. The blatant corruption by the State of New York's Judicial employees was do to the fact that the States judicial employees were well aware that under chief Justice Jonathan Lippmann corruption was permitted to go unchecked.

This committee must not make that same mistake again and must make sure this time the chief Justice has the right moral and ethical values to stop the corruption.

Ms. DiFlore must be asked to explain her understanding of the meaning and intent of the one sentence long Seventh paragraph Footnote provision

As page 2 of the attached Second Amendment shows, the one sentence provision she must be asked to interpret is the "Seventh Paragraph Footnote" to "the Schedule of Units," which reads as follows:

> "Seventh Paragraph - New- The 12th Floor and Roof Unit shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof, or above the same, to the extent that may from time to time be permitted under applicable law."

The Amended footnotes are attacked so Ms. DiFlore can see the whole communication as well as its tone and intended purpose. It should be noted that the second amendment to the Offering

Plan was also the final amendment and the final terms in which the sponsor would agree to declare the offering plan effective. In the Offering Plan it was revealed that the sponsor, Arthur Green was keeping this apartment for himself. it was also reviewed that Mr. Green measured the lot and building down to the square foot. the building was reviewed to be 104,000 square feet in size. Thus according to the express terms of the offering plan any floor area ratio above the 104,000 utilized by the existing structure was to be conveyed to and reserved for the utilization of the 12th floor and roof unit.

Does Ms. DeFlore construe the seventh paragraph footnote as giving permissible air rights "that may from time to time be given" to the premise"s to the 12th floor and Roof Unit, for its exclusive utilization?

This is a Yes or No question. Former Chief Justice Lippman and the other justices of the Court of Appeals repeatedly refused to answer this yes or no question because they know the answer was " YES"

The answer is clearly Yes, yet for over 7 years I have had to suffer as corrupt justices kept rewriting the contract description of my commercial apartment in repeated attempts to void my contract rights for the benefit of rich and powerful deep pocketed New York city developers. This was blatantly corrupt since the alternative meanings that the courts kept creating 1) made no sense, 2) created internal inconsistencies, and 3) were not supported by any legal authority.

The evidence of corruption was laid out in a website that I created called www.bullyjudges.com (also named www.thecriminaljusticessystem.com and www.blackrobecrimes.com, which is no longer live)

In all, over 12 times I have been forced to fight for my rights as corrupt justices kept rewriting or permitting other justices to rewrite the contract description of my New York apartment in attempts to void my apartment rights. My pleads for help and justice were continually discarded in a word " Denied' by Chief Justice Jonathan Lippman and the other justices under his control.

It was not until a Supreme Court Justice Shirley Kornreich took out every word of the contract and replaced it with her own words in a July 15, 2014 Decision that the corrupt Justices were able to finally then claim that the intent of the seventh paragraph footnote to the schedule of units was not to convey air rights to my 12th Floor and Roof Unit.

The Appellate Division, First Department Justices, and the past and current justices of the Court of Appeals, are in on the fraud and collusion and have done nothing when shown that the contract description of my apartment was unlawfully rewritten to void the $100 million dollars worth of air rights that became appurtenant to my 12th Floor and roof Unit when the area was rezoned in 2005.

As my evidence proves, under Johnathan Lippman, the State of new York's Judicial employees were free to be as corrupt as they like without any fear of being held liable for their actions. Justices that make or permit knowing wrong decisions must be removed and Ms. DeFlore must swear to that she will do that if she is selected to be the Chief Justice of the State of New York.

I do plan on attending the public hearing and do expect Ms. DeFiore to be asked to explain what the seventh paragraph footnote means to her, and to explain if she believes any alternative meaning is possible other then what the footnote says on its face. She can then be asked what she thinks of the fact that its meaning and intent was repeatedly rewritten by the state of New York's judicial employees.

As a prosecutor, would she agree that there should have been a criminal probe into why the justices repeatedly rewrote the contract? If the answer is yes, she should recommend that a probe be initiated immediately.

More information can by provided by contacting me at bradyny@gmail.com or by calling my cell number 210-923-5511.

Thank You

James Brady

Dear Ms. Cherry

My name is James Brady

For years I have suffered as Justices of the State of New York repeatedly rewrote or permitted other justices to rewrite the one sentence long contract description of my commercial Manhattan apartment to void the air rights expressly and exclusively given to my apartment through the Seventh Paragraph footnote to the schedule Units in the amended offering plan for a co-op named 450 West 31st Street Owners Corp.

The rewritings shown below were done for the benifit of rich and powerful New York City developers who wanted the air rights appurtenant to my unit so that they could utilize them to build a much much larger, taller structure on their abutting parcel of land.

The 450 West 31st Street Offering Plan contract as written, promised my 12th Floor and Roof Unit apartment the following way

Seventh Paragraph - The 12th Floor and Roof Unit shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof, or above the same to the extent that may from time to time be permitted under applicable law'

On its face this means any permissible development rights that may from time to time be permitted were to be conveyed to and reserved for the exclusive utilization of the 12th floor and roof unit.1) NO ALTERNATIVE MEANING EXISTS 2) THAT IS WHAT THE UNDISPUTED EXPERT TESTIMONY SAYS IT MEANS 3) THAT IS WHAT THE PARTIES TO THE CONTRACT AGREE IT MEANS.

HOWEVER, after i refused Supreme CourtJustice Marcy Friedman's May 6, 2008 threat to waive my rights for the $500,000 offered by the Co-op Corporation (the air rights were appraised by co-op in 2005 for 44 million) she followed through on her threat " to make me sorry" by rewriting the contract description of my apartment in an attempt to void the rights given in the contract. This fact is clear as day below

As written
Seventh Paragraph - The 12th Floor and Roof Unit shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof, or above the same to the extent that may from time to time be permitted under applicable law'

In the July 2 2008 decision the words " to the extent that may from time to time be permitted under applicable law was taken out" and the rewritten contract said the following

Paragraph Seven is not ambiguous and it gives plaintiff the right to construct or extend structures on the riif or above the same " but does not convey air rights to plaintiff"

The unlawful rewriting made no sense and was not supported by any legal authority . The builder, Extell Development rejected the internal inconsistent decision and demanded and

received its deposit back based on the co-op breach of contract for falsely claiming they had the right to sell the development rights

A re-argument motion was made demanding the contract be enforced as written and in a March 2009 Decision Justice Friedman justice Friedman put all her powers into an ORDER, ADJUDGE and DECLARED interpretation that she knew was another false interpretation of the seventh paragraph footnote . This time she left the contract description in tact but added her own provision at the end of the contract in another attempt to void its contract rights. This corrupt fact is proven in the March 13 2009 Decision

Paragraph seven gives plaintiff, in addition to the utilization of the roof, the right to construct or extend structures on the roof, or above the same to the extent that may from time to time be permitted under applicable law. Provided that nothing herein shall be construed as giving plaintiff the right to use any of the premise TDR's in connection with he construction.

Her actions were criminal and corrupt. Justice Friedman knew she had no right adding her own " Provision" to the end of my contract. But rather then the Appellate Division First Department Justices having integrity and fixing her decision, they themselves rewrote the description of my apartment yet again in their own 1) unlawful, 2) internally inconsistent , and 3) illogical decision.

Note since Justice Friedman gave two different interpretations of Paragraph Seven both were appealed to the Appellate Division - these Justices are friends of Marcy Friedman and certainly were retaliating for my complaints to Jonathan Lippmen and the Commission on Judicial Conduct that I made after her March 13 2009 second deliberately deceptive decision . Retaliation rather then justice was certainly part of the motive for the Appellate Devision Justices deliberately deceptive interpretations of Paragraph Seven.

The February 11,2010 Decision shows that on one side of their mouth the Appellate Devision justices admitted that paragraph seven gave my apartment the premises development rights. This is shown in the first February 11 2010 interpretation that ended with the words in tact and without the unlawful added provision . The affirmed March 13 2009 decision it ended with the words
paragraph seven " gives plaintiffs the right to construct or extend structures on the rootf or above the same to the extent that may from tome to time be permitted under applicable law unanimously affirmed without costs" These words can only be construde as giving me the right to have the use of the premises permisable developement rights

Then on the other side of their mouths, after dismissing the July 2 2008 Decision as academic they make statements that it does not give plaintiff any express ownership or veto power over the sale of the development rights and then they argue that the paragraph only permutes plaintiff " to build structures that can be built without the use of the buildings development rights" They certainly knew this statement was false. They certainly knew if the contract was only to permit me to build structures " without the use of the premises development rights" that is what the contract would have said. Also its crazy they make this claim when the perties to the contract agree it gives me the right to use the premises permissible development rights

The Apellatte division justices know this statement is false. They then will not let me Appeal to the Court of Appeals but I do anyway . The Court of Appeals Justices see the corruption and send a letter in 2010 saying they are considering hearing the appeal. However, after they secure a stipulation that the co-op stating that the co-op will drop its counterclaims the court denies the motion and leaves me stuck with a decision that was later proven to make no sense because it was internally inconsistent and illogical . The website I created called bullyjudges.com shows the unjust hell i went through during this first round of litigation over the meaning of a ONE sentence contract provision

In a reargument motion in 2010 I pleaded with Justice Lippman and the other Justices of the Court of Appeals to answer with a "yes" or a "no" wether the seventh paragraph should be consuetude as conveying air rights to my 12th floor and roof unit.

Rather then answering the question with a yes (since that is the only possible answer) they answered with the words " denied" That is what the court was like under Jonathan Lippman. The senate Judiciary committee cannot make the same mistake again

This shameful behavior caused me another round of suffering when the co-op again wanted to sell the air rights appurtenant to my apartment.

This time the year was 2012 and the new developer wanting the air rights was Sherwood Equities. At first they said they wanted to pay us then they turned to threatening that we would be subjected to great legal fees if we did not agree to waive our rights for free.

They closed after we refused to waive our rights

In 2013 I contacted the Court of Appeals and the First Department demanding they follow contract law and protect my rights as written without giving me their own unlawful interpretation of my contract. They refused with their usual one word answer ' Denied"

Next I was subjected to another corrupt Justice named Shirley Kornrich.

The transcript from the oral argument from March 18 2014 prove everything I said about the decisions in my website bullyjuges.com is true.

1. Oral Arguments with the July 15, 2014 decision:

THE COURT: How would you deal with the decision of the Court and say he has no development rights, he has no air rights, yet he has the right to build? What does that mean? (Transcript p. 9:17-20).

THE COURT: The courts said that he has no air rights, but he has the right. But I think, perhaps, the courts didn't understand that air rights, FAR, all of that is probably the same things, development rights, so – (Transcript p.12:9-13).

THE COURT: I don't know what you said. Nor do I know what the Court said. (Transcript p. 14:12-13)

THE COURT: But I'm asking you because I have to in this action decide what the contract means, and I'd like your – you to weigh in on that. (Transcript p. 15:25-p. 16:2).

THE COURT: The decisions don't – don't address this, because, at least in this Court's mind, I don't see how you can build and build up without going into air rights or – you know, so ***I don't understand the decisions***. I'm asking you for guidance. (Transcript p. 17:18-22).

THE COURT: And the Appellate Division and lower court doesn't say, "You can only build to a certain height," they said **"Yeah, he has the right to build up and out but he can't use the air rights,"** ***which is really an enigma.*** **(Transcript, p. 27:3-29:3).**

THE COURT: **I don't understand how you can build a structure on a roof if you have no air rights.** (Transcript p. 28:4-5).

MR. BRADY: **So the correct reading it's an inconsistent decision. Please square the two, Your Honor. Square –**

THE COURT: **I don't know how.** (Transcript p. 53:17-19).

THE COURT: – it was the sponsor who put this in, it was the sponsor who owned the penthouse and roof. ***Perhaps that was his intent.*** However, I can't rule that way because the Supreme Court already ruled and the Appellate Division already ruled that you do not own those air rights. (Tr. p. 54:11-20).

MR. BRADY: So the correct reading it's an inconsistent decision. Please square the two, Your Honor. Square –

THE COURT: I don't know how. (Transcript p. 53:17-19).

In the July 15, 2014 decision, Justice Kornreich completely flipped from all of her admissions and stated the following

"It is clear from the papers and the transaction's history that Brady acted in bad faith in bringing the instant cases."

"His misinterpretation of prior judgment, his feigned ignorance or the origin or the meaning of the phrase "transferable development rights," and his argument that a decision, which he appealed to no avail, is not binding are but a few examples of the frivolous arguments made in the instant actions."

"In short, Brady has dragged more than twenty parties into court to litigate matters that have already been determined and claims that lack any substance."

"The trial court and the appellate court courts in the Prior Action have denied him such control. Undeterred, he has ignored these courts' rulings and brought these meritless actions, abusing the judicial process."

"This is a near perfect example of frivolous conduct that warrants defendants request for the imposition of sanctions."

The members of the Senate Judiciary review Board must review the re-argument motion that was made in 2015 to Jonathan Lippmann because it proves that the coronet new justices are just as bad as the justices back in 2010

The current justices complete lack of integrity and disregard for justice needs to be addressed by Ms DeForie before considering her for the possition as the State of New York's highest ranking justice. My pleads for help and justice are shown in the attached motion. Their answer to my motion was another corrupt one word answer " denied" None of them have the integrity or honestly to be on the Court of Appeals

Ms DeFlorie must be asked tomorrow what the Seventh Paragraph Footnote means to her and ask if she will permit Justices to rewrite contract descriptions of apartments to void them the way her predecessor Jonathan Lippmann and the other Justices of the Court of Appeals are currently doing for the benefit of wealthier and more powerful deep pocketed individuals.

Please call me at 201-923-5511 if you have any questions or email me at bradyny@gmail.com

I am planning on attending tomorrows hearing and would be happy to speak if permitted.

Attached are the following

1)The latest re-argument motion to Court of Appeals from May 2015

2) The Second Amendment to the offering plan

3) the Appellate Division February 11,2010 Decision

Thank you

James Brady

COURT OF APPEALS
STATE OF NEW YORK

----------X

JAMES BRADY,

Plaintiff-Appellant,

-against-

450 WEST 31ST STREET OWNER'S CORP., DESIREE GREENE, individually and as President of the Board for 450 West 31st Street Owner's Corp, JIM FRANCO individually and as a member of the Board of 450 West 31st Street Owner's Corp., KAREN ATTA, individually and as a member of the Board, of 450 West 31st Street Owner's Corp., MOLLY BLIENDEN, individually and as member of the Board of 450 West 31st Street Owners Corp., PRISCILLA MCGEEHON, individually and as a member of the Board of 450 West 31st Street Owners Corp., BILL SMITH, individually, and a member of the Board of 450 West 31st Owners Corp., OWAIN HUGHES, individually, LINDA KRAMER, individually, and as a member of the Board of 450 West 31st Owners Corp., JON CHODOSH, Chodosh Realty Services Inc., STANLEY KAUFMAN, ESQ., Kaufman Friedman Plotnicki & Grun, LLP, Deirdre A. Carson, Esq., Greenberg Traurig, LLP, Vincent Hanley, Hanley & Goble.

Defendants-Respondents.

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Action One

Index No. 157779/2013

MOTION FOR REARGUMENT FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

----------X

JAMES BRADY,

Plaintiff-Appellant,

-against-

JEFFREY KATZ, individually and as CEO and principal owner of Sherwood Equities, Inc., LONG WHARF REAL ESTATE PARTNERS, LLC., CHICAGO TITLE INSURANCE CO., DENNIS W. RUSSO, ESQ., HERRICK, FEINSTEIN, LLP., FRANK MCCOURT individually, and as Chairman & CEO of McCourt Global LP,

Defendants-Respondents.

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Action Two

Index No. 654226/2013

1. On May 5, 2015, this Court denied my Motion for Leave to Appeal to the Court of Appeals. The decision stated the following:

> Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the actions within the meaning of the Constitution. Motion for a stay dismissed as academic.

2. This decision is inaccurate, unjust and unacceptable.

3. This Court has appellate jurisdiction over orders and decisions from the State's Appellate Divisions. A stay of sanctions would still have been needed until a Final Determination is made. This Court knows this. How can it now be dismissed as "academic" by this Court?

4. This Court can very simply make a final determination under the Constitution on all issues which were denied in the January 22, 2015 Appellate Division decision: 1) stay enforcement of the sanctions imposed by Justice Kornreich in the July 15, 2014 Decision; 2) a reversal of the July 15, 2014 Decision in its entirety; 3) renewed a request that Justice Kornreich recuse herself by introducing newly available evidence; and 4) a change of venue.

5. There are no appeals pending because this appeal would render an appeal of the July 15, 2014 decision moot.

6. Notwithstanding procedural excuses this Court may use, this Court must answer: did the sale of the air rights to Sherwood violate my rights in the February 11, 2010 final determination?

7. Justice Kornreich had initially denied Plaintiff's unopposed OSC at a September 10, 2014 hearing / bench decision. That alone showed the degree of her prejudice. When seven major law firms make a determination not to oppose the relief granted, there is something very twisted when the judge denies that relief.

8. Unless this Court can identify which of these issues it cannot make a final determination on, it must reverse its decision. Furthermore, in the meantime this Court has a duty to immediately stay sanctions unless this Court can identity a single reason to not do so.

9. As this Court fully knows, I am the victim in this case and I demand to finally be treated as such. This Court cannot again put its solidarity with a Supreme Court justice and the Appellate Division judges over being just. This Court was presented with evidence that Justice Kornreich completely rewrote the February 11, 2010 Appellate Division decision. The Appellate Division knows this, knows she had no right to do so, yet went along with her and did nothing.

10. Justice Kornreich herself also knows the rewriting of a court decision is illegal. She stated at the March 18, 2014 Oral Arguments:

> And because the Supreme Court is a court of collateral – I mean, it – not collateral, coordinate jurisdiction and because the appellate court is above me, it's an appellate court, I am bound to follow their rulings. I can't not follow those rulings. That is clear as a bell. They are the rulings. (Transcript p. 50:24-25, 51:1-3).

11. The Appellate Division judges obviously showed solidarity with Justice Kornreich over being just. They had no problem with her rewriting their decisions to void the rights of the contract, and they had no problem with $400,000 worth of sanctions that each of the Appellate Division judges know are wholly unwarranted and abusive. The fact that this happened is part of the reason Plaintiff sought a change of venue. If this Court is not going to take appropriate action and remove these justices, the least the Court can do is grant me the relief I seek.

12. I have a Constitutional right to sue the people that seized and sold the development rights that according to the Offering Plan and the affirmed February 11, 2010 Appellate Division decision were expressly and exclusively given to my 12th Floor and Roof Unit.

13. The transcript of the March 18, 2014 Oral Arguments prove that all of the defense attorneys understood that the decision gave me the right to use the premise's permissible development rights.

> MR. BRADY: They said I have a right to build structures as long as zoning said so. All of these attorneys said it. You can ignore that, pretend they didn't make those acknowledgments?
>
> THE COURT: They did make those acknowledgments. (Transcript p. 70:21-25).

14. This exchange proves that defendants and their attorneys understood that the sale of the premise's development rights violated the contract and the February 11, 2010 decision. In order to make the unjust decision of July 15, 2014,

Justice Kornreich completely ignored those acknowledgments. Why would a court deny an OSC that was unopposed by seven major law firms representing defendants, and not grant the relief sought?

Final Determination

15. The Appellate Division, First Department's January 22, 2015 decision from which appeal to the Court of Appeals is being sought stated:

> Plaintiff *pro se* having moved pursuant to CPLR 5704(a) for certain relief denied by a Justice of the Supreme Court, New York County, on or before September 10, 2014,
>
> Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is
>
> Ordered that the motion is denied.

16. The Appellate Division took four months to deliberate and issue its decision. The decision was decided "on the merits," not on a procedural technicality for lack of jurisdiction.

17. The OSC which Supreme Court Justice Kornreich denied at the unopposed hearing on September 10, 2014 sought to 1) stay enforcement of the sanctions imposed by Justice Kornreich in the July 15, 2014 Decision; 2) a reversal of the July 15, 2014 Decision in its entirety; 3) renewed a request that Justice Kornreich recuse herself by introducing newly available evidence; and 4) a change of venue.

18. All of the evidence provided to this Court proves Plaintiff's relief should have been granted by Justice Kornreich and the Appellate Division.

19. It is impossible for this Court not to see that Justice Kornreich was being deliberately deceptive when the Court compares the transcript of the March 18, 2014 Oral Arguments with the July 15, 2014 decision:

> THE COURT: How would you deal with the decision of the Court and say he has no development rights, he has no air rights, yet he has the right to build? What does that mean? (Transcript p. 9:17-20).
>
> THE COURT: The courts said that he has no air rights, but he has the right. But I think, perhaps, the courts didn't understand that air rights, FAR, all of that is probably the same things, development rights, so – (Transcript p.12:9-13).
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> THE COURT: I don't know what you said. Nor do I know what the Court said. (Transcript p. 14:12-13)
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> THE COURT: But I'm asking you because I have to in this action decide what the contract means, and I'd like your – you to weigh in on that. (Transcript p. 15:25-p. 16:2).
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> THE COURT: The decisions don't – don't address this, because, at least in this Court's mind, I don't see how you can build and build up without going into air rights or – you know, so ***I don't understand the decisions***. I'm asking you for guidance. (Transcript p. 17:18-22).
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> THE COURT: And the Appellate Division and lower court doesn't say, "You can only build to a certain height," they said **"Yeah, he has the right to build up and out but he can't use the air rights,"** ***which is really an enigma.*** **(Transcript, p. 27:3-29:3).**
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> THE COURT: **I don't understand how you can build a structure on a roof if you have no air rights.** (Transcript p. 28:4-5).

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THE COURT: – it was the sponsor who put this in, it was the sponsor who owned the penthouse and roof. ***Perhaps that was his intent.*** However, I can't rule that way because the Supreme Court already ruled and the Appellate Division already ruled that you do not own those air rights. (Tr. p. 54:11-20).

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In the July 15, 2014 decision, Justice Kornreich completely flipped from all of her admissions and stated the following

"It is clear from the papers and the transaction's history that Brady acted in bad faith in bringing the instant cases."

"His misinterpretation of prior judgment, his feigned ignorance or the origin or the meaning of the phrase "transferable development rights," and his argument that a decision, which he appealed to no avail, is not binding are but a few examples of the frivolous arguments made in the instant actions."

"In short, Brady has dragged more than twenty parties into court to litigate matters that have already been determined and claims that lack any substance."

"The trial court and the appellate court courts in the Prior Action have denied him such control. Undeterred, he has ignored these courts' rulings and brought these meritless actions, abusing the judicial process."

"This is a near perfect example of frivolous conduct that warrants defendants request for the imposition of sanctions."

20. The July 15, 2014 decision is contradicted by other admissions Justice Kornreich made in the decision:

> "Brady correctly notes" that the issue of whether the sale to Extell violated his rights was never reached, and that the issue of whether the sale of the air rights by 450 Owners Corp. to Sherwood violated Brady's rights could not have been reached in the prior actions."
>
> "Strictly speaking, Brady is correct that the question of whether such an easement interferes with his right to build structures on the roof otherwise permitted by applicable law has never been determined and so is not barred."

21. Further, the March 18, 2014 Oral Arguments prove that what Justice Kornreich stated in her decision is deceptive:

> THE COURT: So, basically they affirmed and nobody really explained what the use of the building's – what Paragraph 7 – strike that – what Paragraph 7 meant and how plaintiff would have the right to construct or extend structures upon the roof or above and yet not have any right to the air rights. The Appellate – the Court of Appeals, as I said, did not grant leave. (Transcript p. 7:1-7).
>
> THE COURT: They acknowledge that you have something. The question is what is that something.

22. The Co-op's litigation attorney, Joseph Augustine, acknowledged what that "something" is:

> THE COURT: And what I'd like to know is what is your interpretation of Paragraph 7?
>
> MR. AUGUSTINE: He has – our understanding he has a right to build structures. That's what it says. No one disagrees. The courts all said the same thing. He has a right to build structures. (Transcript p.12:5-8)
> ...
> THE COURT: - which means you're going to have to commit the coop board to tell me: What does Paragraph 7 mean?

> Mr. AUGUSTINE: It means he has the right to build structures once he submits a plan. And if those structures are permissible by law, such as Department of Buildings, and those plans do not pose a structural risk or any other risk to the building and it doesn't pose undue burden to the building in order to – for him to service the space that he has there, then the board would be inclined to approve it. (Transcript p. 13:9-19).

23. During the first round litigation, Stanley Kaufman, the Co-op's then-litigation lawyer, confessed to the clear and logical meaning of the Paragraph Seven Footnote:

> "A clear and logical meaning of the added footnote number seven of the second amendment was to grant the 12th floor owner some latitude in adding additional structures, so long as in doing so, the owner did not endanger anyone else's health or safety or violate the Building Code, Zoning Law or any other laws and ordinances."

24. If the parties to the contract agree to its terms and agree on the meaning of the contract, who are the courts of New York State to argue otherwise?

25. The current and past litigation attorney for the Co-op Corporation admitted that the contract gave me the use of the premise's development rights. That is why the Co-op offered me $500,000 to waive my rights in 2008, and why they demanded a waiver from me in 2012. Now, pursuant to Justice Kornreich's July 15, 2014 decision, and the Appellate Division's failure to protect me, now I am stuck paying $400,000 for not waiving my rights for free. This Court has a duty to reverse its decision and grant the relief Plaintiff seeks.

A Blatant Rewriting of the Appellate Division's February 11, 2010 Affirmed Decision and the Offering Plan Contract Prove that Plaintiff Deserves the Relief that the Appellate Division Denied in its January 22, 2015 Decision

26. This Court must look at the Offering Plan contract and the words used in the affirmed decision and compare it to what was said in Justice Kornreich July 15, 2014 decision. If the Court sees that there was deliberate deception and unlawful rewriting of the contract then this Court has a duty to immediately protect me and throw out the July 15, 2014 decision.

The Offering Plan Contract said the following:

> "[Seventh Paragraph – New] The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law."

27. The Appellate Division, First Department February 11, 2010 affirmed decision stated:

> "that plaintiffs have the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law, unanimously affirmed, without costs." *Brady v. 450 W. 31st St. Owners Corp.*, 70 AD3d 469 (2010).

28. Justice Kornreich rewrote the Appellate Division and contract to say the following:

> "It has already been adjudged that while the owners of the unit *may* have the right to erect additional structures on the roof, that right does not entitle them to use any floor area in doing so." (emphasis added).

29. Does the Court see how Justice Kornreich deliberately rewrote the contract to void the rights given to my Unit? This is a Yes or No question which this Court has a duty to answer pursuant to its oath of office and the canons of law governing its behavior. If the answer is Yes, this Court must grant the relief requested.

30. Only by answering "No," by not seeing that the contract and affirmed decision were unlawfully rewritten by Justice Kornreich, can this Court justify not protecting me and granting the relief sought in my motion for leave to appeal. This Court can and must answer this question since the Appellate Division has already denied my plea for protection on January 22, 2015.

Justice Kornreich Did Not Deny She Falsified the Prior Decision, Thus the Appellate Division should not have denied Plaintiff the Relief He Sought

31. At the September 10, 2014 hearing for the unopposed OSC which is being appealed herewith, Justice Kornreich was confronted with the fact that she falsified and rewrote the Appellate Divisions February 11, 2010 decision:

> THE COURT: So, I have read your papers, and let me say that I stand by my decision. I think my decision is legally required.
>
> The same request, the same legal request, really, was made in another action in front of another judge, and I am bound by that decision. It went all the way up to the Court of Appeals, so I stand by my previous decision.
>
> I am not going to stay enforcement of the sanctions. I believe, I really believe that bringing the action over and over and over again both wastes the court's time, counsel's time, and your time, and it is frivolous. (Transcript p. 4:16-26, 5:1-6).

THE COURT: So, I don't believe that there is any reason for me to recuse myself. I don't believe that any decision I made previously was tainted in any way. I believe this case is over at this point, so I am denying your application –

BRDAY: It figures.

THE COURT: - for your order to show cause.

BRADY: That figures, your Honor.

THE COURT: Pardon?

BRADY: I said that figures. Of course you would do that. So why don't we address the fact that it's undisputed that you falsified the prior decisions.

THE COURT: That I falsified?

BRADY: You falsified the prior decisions.

THE COURT: Sir, at this point I would admonish you.

BRADY: I'd like it to be on the record, you took out the part, your Honor, that said that "pursuant to paragraph 7, plaintiff has, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the roof to the extent that may from time to time be permitted under applicable law." This Court took that out of its decision to square it against me.

THE COURT: Sir, you can say whatever you wish to say at this point. You've said it. At this point the record is closed. Your application is denied. Please step back.

BRADY: Thank you, your Honor. More evidence.

32. The fact that Justice Kornreich completely rewrote the decision February 11, 2010 decision and took out all the words that granted me rights

proves I was correct that she should have recused herself when I made a March 2014 motion for recusal, several months prior to the July 15, 2014 decision. It also shows that I should been granted the relief sought in September 10, 2014 OSC.

33. If I had lost the prior litigation, Justice Kornreich would not have had to resort to remove 37 words from the Appellate Division decision that affirmed my rights and replaced them with her own words that voided the rights.

34. The Court of Appeals has determined that removal was warranted for a single instance of "deliberately deceptive conduct," since such behavior is "antithetical to the role of a judge who is sworn to uphold the law and seek the truth," *Matter of Heburn*, 84 NY2d 168, 171 (1994).

35. It is clear that this Court of Appeals will not follow their own case law in this instance. The Court's solidarity

36. But at the very least, even if this Court is unwilling to remove Justice Kornreich, they least they could do is grant the relief I seek.

37. The Court of Appeals cannot sit by and watch false statements being made by a sitting Supreme Court judge and not do anything to protect Plaintiff.

Sanctions

38. Unless this Court believes they were just and warranted, then this Court has a duty to immediately stay and reverse the sanctions, as this Court knows that the sanctions would destroy me and my family. No human being, let alone the

seven Justices of New York's highest court, can sit idly by and watch a family be destroyed.

39. Under New York Law, sanctions are punitive in retribution for past conduct. Under 22 N.Y.C.R.R. § 130-1.1, "conduct is frivolous if:"

> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.
>
> In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the (1) circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

40. Does this Court think that any of this criteria apply to me? This is another Yes or No question that this Court must answer. The Appellate Division has already denied my motion to stay the sanctions even though they are well aware that the sanctions are not even remotely just.

41. Only by saying Yes, by stating that you believe sanctions are warranted, can this Court justify taking no action to protect me. No other reason would be acceptable. If it is clear to this Court that I do not deserve the sanctions,

which are meant to destroy me, then this Court has a duty to protect me since my motion for protection was already denied by the Appellate Division.

Change of Venue

42. For the past eight years, I have been the victim of gross injustice at the hands of the judges of New York State. Only the Justices of this state and no one else on earth denied the undisputable fact that the meaning and intent of the Seventh Paragraph Footnote to the Schedule of Units was to convey air rights to the 12th Floor and Roof Unit.

43. A change of venue is needed because the judges of New York County have ignored undisputed, unimpeached expert testimony stating that the meaning and intent of the Offering Plan is to convey the utilization of the air rights to the 12th Floor and Roof Unit. The courts have also systematically ignored all of the admission made by defendants as to what the contract means. *Supra*.

44. From the start of this litigation, the courts of this State have couched the issues as one of "ownership" of the "TDRs." This has been the strategy of the corporate defendants, which the courts have followed unquestioningly. As this Court knows, ownership and the leased utilization of the air rights are two distinct issues that the courts, following corporate defendants lead, have conflated in order to obscure my claim.

45. The judges of this State surrounded the paragraph with their own terms and limitations in order to void the rights of the contract.

46. In the July 15, 2014 decision, Justice Kornreich took out the entire grant of rights she repeatedly affirmed I had at the March 18, 2014 Oral Arguments. The court pieced together a new rewriting of the contract to void the rights conveyed in it. The Court states on page 14 of the July 15, 2014 decision that:

> "It has already been adjudged that while the owners of the unit "may" have the right to erect additional structures on the roof, that right does not entitle them to use any floor area in doing so."

47. In addition to the evidence that Justice Kornreich unlawfully rewrote the contract and decision to void my rights, this Court was given way more than enough evidence to finally determine under the Constitution that Justice Friedman's entire decision needed to be thrown out since the decision was corrupt and deliberately deceptive statements.

This Court must make a Final Determination of the relief sought

48. On February 9, 2015, in letter from the Clerk of the Court of Appeals, Appellant was told specifically that he could appeal the January 22, 2015 decision.

> If you wish to seek review of the Appellate Division's order dated January 22, 2015, you must serve and file motion papers that comply with Court of Appeals Rules of Practice sections 500.21 and 500.22. Upon receipt of such motion, your papers will be submitted to the Court of Appeals
>
> Very truly yours,

John P. Asiello
Deputy Clerk

49. Since this OSC was permitted to be appealed, there was no reason to perfect and appeal the July 15, 2014 decision because the September 10, 2014 OSC sought to void the entire July 15, 2014 decision based on Justice Kornreich unlawful rewriting of the Appellate Division's February 11, 2010 decision.

50. I should not have to spend thousands of dollars for a transcript to appeal the July 15, 2014 decision before the Appellate Division because that decision is subsumed in the September 10, 2014 OSC.

51. This Court has a duty to fix a problem they helped cause five years ago.

James Brady submits this reply affidavit in support for Appellant Brady's motion for reargument.

A reading of Stanley Kaufman's AFFIRMATION IN OPPOSITION TO APPELLANT JAMES BRADY'S MOTION FOR REARGUMENT shows that according to the Co-op, the only issue between the parties comes down to the interpretation of a one sentence paragraph found in the amended footnotes to the schedule of units of the Offering Plan for 450 West 31st Owners Corp. I agree.

I ask this Court to settle the argument within the meaning of the constitution by answering the one single question listed below.

Does the Seventh Paragraph Footnote convey development rights to the 12th Floor and Roof Unit?

I thank this honorable Court for the time you have given me. I also want this honorable Court to know that despite my repeated feelings of disappointment in the fairness of New York State Judicial System, I have never given up hope that the New York Judicial System will protect me and my rights from being seized by the Co-op Corporation.

Sincerely,

James Brady
December 2, 2010

52. This Court had Kaufman's full admission from the Co-op Opposition to Reargument:

> "A clear and logical meaning of the added footnote number seven of the second amendment was to grant the 12th floor owner some latitude in adding additional structures, so long as in doing so, the owner did not endanger anyone else's health or safety or violate the Building Code, Zoning Law or any other laws and ordinances."

53. This Court was furnished with the following definitions of air rights:

> "The rights to develop further the heretofore unused space above a building or other structure." The American Heritage College Dictionary (3rd Ed. 1993).
>
> "The right to use all or a portion of airspace above real property." Black's Law Dictionary (5th Ed. 1979)"

54. The only answer to the question is Yes. This Court put its solidarity with Justice Marcy Friedman and the Appellate Division justice, both of whom left me with an internally inconsistent decision

55. Rather than answering Yes or No, this Court replied "denied." The Court denied my motion and refused to answer the one question because the

answer is Yes. This Court could have said No – but how awkward that would be given that the *Defendants* have said Yes.

56. While five years ago I said that I had never given hope that the NY will protect me and my assets from being seized by the Co-op, that is certainly not the case now. I am fiercely fighting back against the justices that are making or permitting to make deliberately false decisions.

57. Of course a copy of this is going to United States Attorney for the Southern District of New York, Preet Bahara. I will be asking that office to conduct an investigation into the how the State is allowing judges to rewrite affirmed decisions and contracts.

58. I have already filed a complaint against the District Attorney's Office for failure to protect me and for allowing judges to make deliberately deceptive opinions.

59. I also filed a Notice of Claim against the Commission on Judicial Conduct, the Attorney General's Office and the State of New York for failing to take appropriate action. The State is responsible for its employees.

60. In conclusion, I hope that this Court does the right thing and grants the relief I seek, and finally answers the question of whether Paragraph Seven Footnote of the Schedule of Units conveys air rights to the 12th Floor and Roof Unit. If this Court simply denies my request, it will further prove that the State's

judges are making and allowing deliberately deceptive decisions without any fear that law enforcement does anything about it.

Dated: May 13, 2015
New York, NY

James H. Brady, *Pro se* Plaintiff
450 West 31st Street
New York, NY 10001
(201) 923-5511

SECOND AMENDMENT TO OFFERING

PLAN TO CONVERT TO COOPERATIVE OWNERSHIP

PREMISES AT:
450 West 31st Street
New York, New York

The following amendments are hereby made in order to clarify and modify certain provisions of the original Offering Plan in the above-titled conversion:

COVER PAGE

[Lines 16-23] NAME AND ADDRESS OF SPONSOR:	31st Street Realty Associates c/o Bachner, Tally & Mantell 850 Third Avenue New York, New York 10022
NAME AND ADDRESS OF SELLING AGENT:	31st Street Realty Associates c/o Bachner, Tally & Mantell New York, New York 10022

INTRODUCTION

[Sixth Paragraph] The Subscription Agreement (hereinafter referred to as "Subscription Agreement," "Purchase Agreement" or "Agreement"), may be found on page 101.

[Thirteenth Paragraph] Sponsor will not sell any units for the following uses:

(1) Medical or drug treatment centers; (2) heavy stamping, pressing or vibrating equipment; (3) storage of explosive or corrosive chemicals; (4) commercial animal breeding; (5) wholesale food processing.

DESCRIPTION OF PROPERTY

[First Paragraph] Fee title to the land and building was acquired on November 30, 1979. The aforesaid land and building were subsequently leased to the Tenant Corporation on May 30, 1980. The building is in an M1-5 manufacturing zone.

[Fourth Paragraph] Upon closing of title with the co-operative corporation, the following contracts will exist and be binding upon the co-operative corporation:

B. Ready Alarm - 11/1/80 - 10/31/81 - Sprinkler Alarm

Footnotes

[First Paragraph] The gross footages set forth herein are approximate and there will be no adjustments in the purchase price if the square footage varies less than 5%. If the actual square footage of the unit is less than the square footage set forth above by more than 5%, then in that event, a proportionate adjustment will be made in the purchase price based upon the percentage difference in the two amounts. The preceding sentence is limited, however, by the Lessor's right to exclude from the unit whatever square footage is necessary for the installation of new water, waste, electrical and ventilation risers.

[Sixth Paragraph - New] The Boiler Room shall, in addition to the square footage set forth herein, include that portion of the existing parking lot for a distance of approximately twenty-five (25) feet extending from the boiler building. The Boiler Room may be extended within such area and appropriate fences erected.

[Seventh Paragraph - New] The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law.

CHANGES IN PRICES, LAYOUT & SIZE OF UNITS

[First Paragraph] In order to meet possible varying demand for number and type of Units, or to meet particular requirements of prospective purchasers, or for any other reasons, the Sponsor reserves the right at any time and from time to time before and after declaring the Plan effective without the consent of the Board of Directors or other tenant-shareholders to: (i) change the layout of the Units; (ii) change the number of Units by subdividing one or more Units into separate units or combining separate Units into one or more Units and (iii) change the size of Units by subdividing or combining Units as aforesaid or by altering the boundary walls of Units or otherwise. If the size of a Unit is changed either as a result of any said subdivision, combination, alteration of boundary walls or otherwise, the number of shares allocated to such Unit may be increased or decreased accordingly. No such reallocation of shares, however, will increase or decrease the total number of shares allocated to all Units in the Building, nor shall any shares be reallocated unless an independent qualified real estate consultant is of the opinion that the aforesaid reasonable relationship is preserved (as determined on the date the change is made). Any reallocation of shares will vary the estimated monthly maintenance charges for the Unit or Units affected thereby from the amounts in the "Schedule of Units"; however, such a change shall not affect the proportion or amount of maintenance charges to be paid by purchasers of Units which are not the subject of such change. Any change in the size,

layout or number Units or in the number . shares allocated thereto may be made without amendment to the Plan; provided, however, that (i) any change in the size or layout of a Unit shall be disclosed to the purchaser thereof by a notice affixed to the inside cover of this Plan, (ii) the Department of Law of the State of New York has received a copy of such notice, and (iii) a copy of such notice shall thereafter be affixed to the inside cover of each Plan presented to any party who had not received a Plan prior to the aforesaid changes.

[Fifth Paragraph] A purchaser will not be excused from purchasing his Unit if the dimensions of his Unit vary from the plans set forth herein by less than five percent and will not have any claim against the Sponsor, except that any diminution in the square footage resulting from the installation of new water, waste, electrical and ventilation risers shall not affect the purchaser's obligation to purchase his Unit. All such work shall be performed by the Tenant-Shareholders Corporation at the expense of the Tenant-Shareholders, which expense shall, in turn, be borne by the Lessees proportionately.

PROCEDURE TO PURCHASE

[First Paragraph] Any person who desires to purchase shares of the Cooperative and the attendant right to a Proprietary Lease will be required to execute a Subscription Agreement in the form that has been appended hereto at page 101. An executed Subscription Agreement would be furnished to the Sponsor together with a check representing the down payment which check would be drawn to the order of Bachner, Tally & Mantell as Escrow Agents for 31st Street Realty Associates.

OPTION TO PURCHASE

Lessee has an option to purchase the land and building for the sum of $1.00 at any time during the term of the Ground Lease.

SUMMARY OF PROPRIETARY LEASE

[Paragraph Four - New] The Proprietary Lease may vary from Tenant to Tenant based upon the use to which the Unit is put.

UNSOLD SHARES

[Third Paragraph] Sponsor shall have the right to change the layout, size and number of Units as provided in the Section entitled "Changes in Prices, Layout & Size of Units" herein.

IDENTITY OF THE PARTIES

[First Paragraph] Sponsor is a partnership formed in the State of New York for the purpose of purchasing the property at 450 West 31st Street, New York, New York, and for the purpose of presenting this offering. The principal assets of the partnership are the fee title to the land and building and ownership of all of the shares of capital stock of the Tenant Corporation.

DOCUMENTS ON FILE

In accordance with Section 353-e(9) of the General Business Law, copies of this Offering Statement-Plan of Cooperative Organization and all exhibits or documents referred to herein shall be available for inspection by prospective purchasers and by any purchaser who shall have purchased securities offered by this Plan or shall have participated in the offering of such securities, at the office of Sponsor's attorneys, Bachner, Tally & Mantell, 850 Third Avenue, New York, New York, and shall remain available for such inspection for a period of six years.

ATTORNEYS FOR SPONSOR

Sponsor has retained the law firm of Bachner, Tally & Mantell, 850 Third Avenue, New York, New York, as counsel. (The law firm of Baskin & Sears, 1350 Avenue of the Americas, New York, New York drafted the By-Laws, the Articles of Incorporation, Subscription Agreement, the Lease, and all other documents relevant to the formation of the Tenant Corporation.) The Tenant Corporation will be represented at closing by Counsel, consequently the Tenant-Corporation should not consider Bachner, Tally & Mantell to be its independent counsel and prospective purchaser should consult with their own counsel on all matters concerning the Tenant-Corporation.

GENERAL

[Fourth Paragraph] This Offering Plan was prepared by the law firm of Baskin & Sears, 1350 Avenue of the Americas, New York, New York, which law firm is no longer counsel to the Sponsor herein. Sponsor has subsequently retained the law firm of Bachner, Tally & Mantell, 850 Third Avenue, New York, New York, as its Counsel.

SUBSCRIPTION AGREEMENT

[Paragraph 3A] Herewith is my check to the order of Bachner, Tally & Mantell as Escrow Agent for 31st Street Realty Associates for the amount of the above stated Down Payment. I agree that, if and after the Plan becomes effective, as herein provided, I will pay the above stated balance of the said Purchase Price within fifteen days after written notice and demand by Escrow Agent, Sponsor or the Tenant Corporation (which notice shall state that the date of closing title has been specified to be not later than 60 days thereafter), such payment to be by personal certified check or official check drawn on a New York bank to the order of 31st Street Realty Associates, and that I will sign the proprietary lease for said Unit promptly upon presentation to me in the form contained in the Plan. The Escrow Agent will give me prompt written notice thereof when the Plan either becomes effective or is abandoned.

[Paragraph 4A] The Sponsor will hold all monies received by it through its agents or employees in trust until actually employed in connection with the consummation of the transaction as provided in Section 352-h of the General Business Law. All such monies will be deposited in a non-interest bearing account with Bank Leumi Trust Company of New York and will be held in the Escrow Account referred to above. The funds so deposited will be disbursed only at the closing and only for the purposes of the consummation of this Plan or returned to me as herein provided.

[Signature Line] Bachner, Tally & Mantell, as Escrow Agent

The Offering Plan for the premises at 450 West 31st Street is effective.