

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org

Website: www.judgewatch.org

May 29, 2013

TO: Assemblyman Michael Kearns

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

RE: Making Good on Your Pledge to Your Constituents “To Do The Right Thing” and “Stand Up To Albany Politicians”:

- (1) Ousting Assembly Speaker Sheldon Silver;
- (2) Securing oversight, analysis, and investigation of CJA’s April 15, 2013 corruption complaint against Speaker Silver, *et al.* by the Assembly Committee on Oversight, Analysis, and Investigation, of which you are a member;
- (3) Building a Bi-Partisan Assembly Rules Reform Conference to achieve the nonpartisan, good-government legislative rules reforms proposed by the 2004, 2006, and 2008 reports of the Brennan Center for Justice and resisted by Speaker Silver

This follows up my phone calls to your office on Tuesday, May 21st, immediately upon reading in the New York Times that you were the only Assembly Democrat to call for Sheldon Silver’s ouster as Assembly Speaker in the wake of the report of the Joint Commission on Public Ethics about his secret settlement of sexual harassment complaints against Assemblyman Vito Lopez – and that you were refusing to caucus with Assembly Democrats until Assemblyman Silver was no longer Speaker.

The purpose of my calls was to furnish you with the means to achieve Mr. Silver’s ouster as Assembly Speaker – and to do so in the context of an issue about which you and other legislators care deeply: the \$90 million funding cut to the Office of People with Developmental Disabilities in the 2013-2014 Executive Budget.

The \$90 million funding cut to the developmentally disabled was the product of a behind-closed-doors deal between Assembly Speaker Silver, Temporary Senate President Skelos, and Governor Cuomo. Although they justified it as necessary to balance the budget, they were simultaneously colluding to fund judicial salary increases which they knew to be statutorily-violative, fraudulent and unconstitutional, costing upwards of \$27.7 million last fiscal year and another \$35.9 million-plus this fiscal year.

* **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.

This “grand larceny of the public fisc” by Speaker Silver, among others, is the subject of an April 15, 2013 corruption complaint which we filed with U.S. Attorney Preet Bharara – and forwarded to every Senator and Assembly member on May 7th with a coverletter entitled “Doing Your Part to End Public Corruption”. In pertinent part, it stated:

“...it should not be necessary for Senators and Assembly Members to be under indictment or criminal investigation to provide the U.S. Attorneys with information germane to our April 15th complaint – or to vote for basic legislative rules reform, without which New York State government will never be other than dysfunctional and corrupt. We urge you to do your part, consistent with U.S. Attorney Bharara’s April 2nd and April 4th press conference remarks and his even more powerful April 22nd speech ‘*Public Corruption in New York: More than a Prosecutor’s Problem*’.” (at p. 2).

I discussed this April 15th corruption complaint with both your legislative director, Bill LiCata, and your intern, Scott Henderson, guiding them to where it is posted on our website, www.judgewatch.org,¹ along with its underlying substantiating proof:

- (1) CJA’s October 27, 2011 Opposition Report to the August 29, 2011 Report of the Special Commission on Judicial Compensation, addressed to Speaker Silver;
- (2) CJA’s March 30, 2012 verified complaint in the lawsuit to which Speaker Silver is a named defendant, sued for corruption, based on the Opposition Report;
- (3) The video of my testimony at the Legislature’s February 6, 2013 joint budget hearing on “public protection”, at which I handed up copies of the Opposition Report and verified complaint
- (4) CJA’s correspondence based thereon.

You have only to call upon Assembly Speaker Silver to produce his findings of fact and conclusions of law with respect to our October 27, 2011 Opposition Report and the four causes of action of our March 30, 2012 verified complaint to confirm what is obvious from their most cursory examination: that there is NO defense to their showing that the Commission on Judicial Compensation’s recommendations of judicial pay raises are statutorily-violative, fraudulent, and unconstitutional and that CJA’s April 15th corruption complaint presents an open-and-shut, prima facie case of official misconduct and “grand larceny of the public fisc” by Assembly Speaker Silver – for which he and other public officers must be indicted and prosecuted, with steps promptly taken to recover monies already disbursed for judicial salary raises and halt further expenditures.

¹ See top panel “Latest News”, with hyperlinks to CJA’s April 15th corruption complaint and all substantiating documentation and correspondence.

To assist you in coming to that readily-reached conclusion, I have arranged with my Assemblyman, David Buchwald, to bring from his district office to his Albany office the copy of the Opposition Report, verified complaint, and correspondence that I had furnished him back in February, so that it can be picked up by your office.

Following your review of these substantiating documents, I request that you furnish them to the Assembly Committee on Oversight, Analysis, and Investigation, of which you are a member, in support of its oversight, analysis, and investigation of the April 15th corruption complaint – beginning with oversight, analysis, and investigation of the implementation of Chapter 567 of the Laws of 2010, on which the judicial salary increases rest.

Finally, with respect to your announcement that you will form an “independent caucus”, open to all Assembly Members who recognize the need for change, I respectfully propose that your caucus be a “Bi-Partisan Rules Reform Conference”, dedicated to overhauling the Assembly rules which Speaker Silver has inexcusably perpetuated to maintain power, with knowledge of how destructive they are to our democracy and a functioning government.

In 2004, 2006, and 2008, the Brennan Center for Justice issued reports detailing that New York’s Legislature – under Mr. Silver’s Assembly leadership – was the most dysfunctional in the nation, largely because Assembly and Senate rules give inordinate power to the Assembly Speaker and Temporary Senate President. These reports, entitled:

- “*The New York State Legislative Process: An Evaluation and Blueprint for Reform*” (2004);
- “*Unfinished Business: New York State Legislative Reform*” (2006); and
- “*Still Broken: New York State Legislative Reform*” (2008).

are “a must read”² – substantiating what you said at your May 20th press conference about Speaker Silver’s control of everything, “from the person who cleans the bathroom to the highest level”, having power over legislation, staffing, office assignments, using these to reward those who keep in line and punish those who don’t. Assemblyman Buchwald will also be furnishing you with the copies of the three Brennan Center reports which I had left him.

² The Brennan Center reports spurred the beginning of major reform in the Senate in 2009. Senator Malcolm Smith was elected Temporary Senate President on a pledge to advance legislative rules reform and his first resolution was a Temporary Senate Committee on Rules and Reform Administration. It held four hearings around the state – including in New York City, where the authors of the Brennan Center reports testified – as well as four committee meetings. It produced two final reports, dated April 21, 2009 – one of the Democratic majority; one of the Republican minority. These both underlay, and fell victim to, the Senate coup in June 2009. The videos, transcripts, reports, and press releases pertaining to the Temporary Senate Committee on Rules and Reform Administration are all posted on a “Rules Reform Resource Page” of our website. Here’s the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/rules-reform-resource-page.htm>.

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Armed with these three Brennan Center reports and the scandal that Assembly Speaker has brought on the Assembly by his “top down” governance, operating by “three men in a room” deals – to which legislators are expected to, and do, “follow the leader” even in the larceny of tens of millions of taxpayer dollars for blatantly unlawful judicial pay raises – you can easily fulfill your election promise to your constituents of ending Mr. Silver’s reign and bringing “a bottom up approach to Albany”.

With your inspiring words that you were “brought here to stand up to Albany politicians”, that “we should lead by example”, “do things for the right reasons”, “can’t be complicit”, and your invocation of Edward Burke, “the only thing necessary for the triumph of evil is for good men to do nothing”, may you be – as you seem – the courageous champion of good government that the long-suffering People of this State have been awaiting.

I would consider it a privilege to travel to Albany to meet with you, other legislators, and the press, to discuss CJA’s April 15th corruption complaint, the Brennan Center reports, and to answer questions. Until then, I am available by phone.

Thank you.

A handwritten signature in black ink, appearing to read "Steven L. Nassower". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

cc: Assemblyman David Buchwald
The Public