

Elena Sassower

From: Elena Sassower <elenaruth@aol.com>
Sent: Saturday, June 08, 2013 3:00 PM
To: 'eric.lane@hofstra.edu'
Subject: Ending "Albany's Travesty of Democracy" by Legislative Action & Litigation Challenge
Attachments: 5-29-13-ltr-to-assemblyman-kearns.pdf

Dear Professor Lane,

Thank you for your prompt call back yesterday. As discussed, I have been working hard to achieve the nonpartisan, good-government reforms of the Brennan Center's 2004, 2006, and 2008 reports on NY's Legislature – set in motion by your groundbreaking 1997 article "*Albany's Travesty of Democracy*". I have approached Assemblyman Michael Kearns about building an Assembly Bi-Partisan Rules Reform Conference and, after several lengthy conversations with his Legislative Director, Bill Licata, to whom I provided your 1997 article, the three Brennan Center reports, and your 2010 Pace law review article "*Albany's Dysfunction Denies Due Process*", I was asked for further information:

- (1) has the Brennan Center done any updates to its 2008 Report?;
- (2) has the Brennan Center compiled a list of rule changes made by the Assembly since the 2008 Report;
- (3) how does an Assembly Member go about introducing rule changes?

I have stated to Bill, based upon my prior inquiries, that I believe the Brennan Center has done no updates since 2008 – and that Rule IX of the Assembly Rules would seem to indicate that an Assembly member can proceed by motion to amend the rules, on three days' notice. Is this correct? For your convenience, here's the Assembly's current rules: <http://www.nyasembly.gov/Rules/>.

Prior to calling you, I telephoned the Brennan Center twice. Thus far, I have received no call-back from Larry Norden, who is surely equipped to respond to these questions – and to my corresponding questions as pertains to the Senate: has the Brennan Center compiled a list of rule changes made by the Senate since its 2008 report and how does a Senator go about introducing rule changes? [see current Senate Rules here: <http://open.nysenate.gov/legislation/rules>]. Although I hope to hear from Mr. Norden, I am not encouraged by the fact that last August, after a first phone conversation with him, I was never thereafter favored with being able to speak with him.

Indeed, because the Brennan Center has, for the past decade and a half, REFUSED TO ENGAGE IN ANY DIALOGUE with me about EVIDENCE that runs counter to its establishment-backed & funded advocacy on issues of judicial selection, discipline, the judicial process, and governance – and has seemingly abandoned legislative rules reform since shortly before or, in the period of, the 2009 Senate coop – perhaps because it believes that it will not be able to secure, through reformed legislative rules, its "liberal" and "progressive" substantive agenda, as for instance, campaign finance reform, which it is happy to achieve *via* legislation emanating illegitimately from the governor and legislative leadership, without committee exploration, including through public hearings, etc. – I am especially grateful for your return call. I realize you are very busy now, as Dean of Hofstra Law School, and I thank you, sincerely, for agreeing to examine the important question as to how Assembly members and Senators would introduce such legislative rules reforms as are identified by the Brennan Center reports.

Certainly, other than yourself, I do not know of one other scholar of the New York Legislature's rules to whom I could refer Assemblyman Kearns. Do you know of any other scholars? How about scholars studying other aspects of the Legislature's functioning – as, for instance, the operations of its committees or the functioning of staff within members' offices. How about the Legislature's discharge of its duties with respect to the budget or nominations and confirmations, particularly for the judiciary, and on issues of oversight? WHERE IS THE SCHOLARSHIP, including at

Hofstra? The situation is DIRE – and embraces not only our dysfunctional state Legislature, but creates and perpetuates the dysfunctional other branches of our state government, as well.

It is this DIRE state of affairs – dysfunction, indeed, corruption, that is pervasive and interrelated within the three branches of our NYS government -- that is chronicled by the March 30, 2012 verified complaint in our People's lawsuit against our three government branches & highest constitutional officers that I briefly spoke to you about. At issue is Chapter 567 of the Laws of 2010, *as written and as applied*, which established a special commission on judicial compensation whose recommendations would become law without requiring any subsequent affirmative legislative action – and, of course, Chapter 567 was introduced and passed by a message of necessity, that was never the product of committee hearings.

Last summer, immediately upon reading your 1997 article and, thereafter, the Brennan Center reports, I recognized that the verified complaint of our lawsuit, largely focused on the Legislature and Chapter 567 of the Laws of 2010, chronicled the dysfunction and corruption that was the result of the leadership-dominating Senate and Assembly rules and that the lawsuit presented a powerful opportunity to challenge those rules as unconstitutional. This was without having read – or even knowing about -- your 2010 Pace Law Review article "*Albany's Dysfunction Denies Due Process*", which identifies that a successful challenge could be made with "the proper plaintiffs and claims". Our People's lawsuit is unquestionably that – and at a stage where the verified complaint could be amended, of right – and/or transferred to federal court.

The verified complaint – and the record to date – are posted on our website, www.judgewatch.org, accessible *via* the top panel "Latest News".

That is where you'll also find a hyperlink for our webpage: "Holding Government Accountable for its Grand Larceny of the Public Fisc and Other Corruption", which contains our April 15, 2013 corruption complaint to US Attorney Bharara, thereafter furnished to U.S. Attorney Lynch. In addition to summarizing the lawsuit – including its status – the April 15th corruption complaint provides the subsequent information that would be embodied in an amended lawsuit complaint about the constitutional abomination and violation of legislative rules that took place with respect to the Legislature's passage, and Governor's approval, of the judiciary appropriations bills in the 2013-2014 budget. Here's the direct link: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>.

There is much more to say – and about which scholarship is urgently required – including as pertains to the 2009 Senate coop, as to which I believe there are significant errors in your 2010 Pace law review article. For immediate purposes I will attach nothing more than my May 29th letter to Assemblyman Kearns, whose RE: clause proposed "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". Virtually everything you'll want to see is accessible *via* our website's top panel, "Latest News". If there is something that you wish to find & cannot, just e-mail me and I'll promptly respond.

Finally, here are two video links that I think you'll find of interest:

The first, the video of my exchange on November 29, 2012 with Assembly Minority Leader Brian Kolb at the Rockefeller Institute of Government, when, holding up the three Brennan Center reports, I asked him about securing implementation of their rules reforms. *click here for* [VIDEO posted on Rockefeller Institute website](#) (my exchange at 17:45 minutes)

The second, the video of my 10-minute testimony on February 6, 2013 at the Legislature's joint budget hearing on "public protection", at which I testified about and handed up a copy of the verified complaint in our People's lawsuit, including its most important exhibit – our October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Final Report. *Click here for* [VIDEO posted on Assembly website – my testimony at 7:21:50](#)

In deference to your position as Hofstra Law School Dean and because of the politically-explosive nature of our People's lawsuit and April 15th corruption complaint based thereon and pertaining to the budget, I will keep this e-mail and all subsequent conversations between us confidential, unless you indicate otherwise.

Most respectfully & hopefully,

Elena Sassower, Director
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