

# CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

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By Fax & E-Mail

June 13, 2013

U.S. Attorney Richard S. Hartunian  
Northern District of New York  
445 Broadway, Room 218  
Albany, New York 12207-2924

RE: Achieving “the Dream of Honest Government”:

(1) Criminal Complaint against NYS’ Highest Constitutional Officers for Grand Larceny of the Public Fisc and Additional Corrupt Acts – as, likewise, against NYS’ Other Constitutional and Public Officers and their Taxpayer-paid Counsel and Professional Staffs;

(2) Intervention in *Center for Judicial Accountability, et al. v. Andrew Cuomo, et al.* (NY Co. #401988/2012) & Transfer to the U.S. District Court, with Amendment of the Verified Complaint to Embody Additional Causes of Action and Supervening Facts, Including as to the Violations of Constitutional, Statutory, and Rule Provisions Underlying Passage of the NYS Budget for Fiscal Year 2013-2014 and Judiciary/Legislative Appropriations Bill S.2601-A/A.3001-A.

Dear U.S. Attorney Hartunian,

This follows up my June 11<sup>th</sup> phone conversation with the Chief of your Criminal Division, Steven D. Clymer, who confirmed that public corruption complaints are handled by your Criminal Division, there being no public corruption unit in your office.

As discussed with Mr. Clymer, twelve Republican members of the New York State Assembly have signed a June 4<sup>th</sup> letter to you requesting “investigation of the scandalous and allegedly criminal enterprises conducted by the Speaker of the Assembly, Sheldon Silver, and his staff.” Their concern, based on the report of the Joint Commission on Public Ethics and report of Staten Island District Attorney Daniel Donovan, is with the manner in which Assembly Speaker Silver and his staff handled sexual harassment complaints brought by the first two victims of former Assemblyman Vito Lopez, including a \$103,000 confidential settlement, paid with taxpayer money.

Yet this conduct pales in comparison to what Speaker Silver and his staff did in colluding with New York’s other highest public officers and their staffs in stealing tens of millions of taxpayer dollars for judicial pay raises they know to be statutorily-violative, fraudulent, and unconstitutional. Unless

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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.

stopped, this criminal enterprise, which is ongoing, will cost hundreds of millions and, ultimately billions, of taxpayer dollars. Nor is this an “alleged” criminal enterprise. It is proven by our October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation and by the four causes of action of the March 30, 2012 verified complaint in our People’s lawsuit based thereon, *Center for Judicial Accountability, Inc., et al., v. Cuomo, et al.*—as would be obvious from a simple subpoena to Speaker Silver and the other public officers, requiring them to produce their findings of fact and conclusions of law with respect thereto.

All of this is detailed by our April 15, 2013 corruption complaint to U.S. Attorney for the Southern District of New York Preet Bharara, which, on May 13<sup>th</sup>, we delivered to U.S. Attorney for the Eastern District of New York Loretta Lynch as a corruption complaint to her. We herewith furnish it to you – and appropriately so because you, not they, have geographic jurisdiction over Albany, where most of the corruption activity is centered and coordinated.

In speaking with Mr. Clymer, I guided him to the webpage of our website, [www.judgewatch.org](http://www.judgewatch.org), which posts our April 15<sup>th</sup> corruption complaint<sup>1</sup>, so that he could see for himself its serious and substantial nature and that it 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 others must be indicted and prosecuted, with steps taken to recover monies already disbursed and to halt further expenditures. All the massive substantiating proof is available from that webpage:

- CJA’s October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Final Report;
- the March 30, 2012 verified complaint in *CJA, et al. v. Cuomo, et al.*;
- my February 6, 2013 testimony at the Senate and Assembly joint budget hearing on “public protection” in opposition to the judicial pay raises and the judiciary budget; and
- CJA’s mountain of correspondence based thereon with Assembly Speaker Silver, his staff, and other public officers and their staffs.

I also showed Mr. Clymer the webpage posting our correspondence with legislators pertaining to our April 15<sup>th</sup> corruption complaint. This includes:

- CJA’s May 7<sup>th</sup> letter to all Senators and Assembly Members, urging them to come forward “to provide the U.S. Attorneys with information germane to our April 15<sup>th</sup> complaint...consistent with U.S. Attorney Bharara’s April 2<sup>nd</sup> and April 4<sup>th</sup> press conference remarks and his even more powerful April 22<sup>nd</sup> speech “*Public Corruption in New York: More than a Prosecutor’s Problem*”;

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<sup>1</sup> The webpage entitled “CJA’s April 15, 2013 corruption complaint to U.S. Attorney Bharara” is accessible *via* the top panel “Latest News”, by a link entitled “Holding Government Accountable for its Grand Larceny of the Public Fisc & Other Corruption”.



- CJA's May 29<sup>th</sup> letter to Assembly Member Michael Kearns, the first Democratic Assembly Member to publicly call for Speaker Silver's ouster, based on the report of the Joint Commission on Public Ethics and District Attorney Donovan's report;
- Our May 31<sup>st</sup> letter addressed to six of the seven Republican Assembly members who signed the June 4<sup>th</sup> letter to you – to which a seventh member who signed the letter, Assemblyman Steve Katz, was also a recipient.

As I discussed with Mr. Clymer, we have received only a boiler-plate, unsigned acknowledgment of the April 15<sup>th</sup> corruption complaint from U.S. Attorney Bharara, not even bearing a personal salutation to us. From U.S. Attorney Lynch, we have not even received that.

This is all the more remarkable as our May 13<sup>th</sup> letters to U.S. Attorneys Lynch and Bharara put them on notice of the “appearance and actuality” that they might be “protecting” the political establishment, while invidiously and selectively investigating and prosecuting Black and Hispanic legislators<sup>2</sup> – a charge further developed by our May 22<sup>nd</sup> letter to all Senators and Assembly Members, to which they were indicated recipients. With every passing day, that seems more and more the case.

Promptly after my phone conversation with Mr. Clymer on June 11<sup>th</sup>, I left voice mail messages for the Chief of U.S. Attorney Bharara's Public Corruption Unit, Brendan McGuire, and for the Chief of U.S. Attorney Lynch's Criminal Intake Unit, Judy Philips, requesting that they call me back so that we could discuss arrangements for transmittal to you of the voluminous documentary evidence I had delivered to them in substantiation of our April 15<sup>th</sup> corruption complaint. I have yet to hear back from them.<sup>3</sup>

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<sup>2</sup> These May 13<sup>th</sup> letters are posted on a webpage accessible from the webpage for CJA's April 15<sup>th</sup> corruption complaint to U.S. Attorney Bharara. The hyperlink is entitled “CJA's subsequent correspondence with US Attorney Bharara, as well as with U.S. Attorneys Lynch & Hartunian” – and this letter will also be posted there.

<sup>3</sup> This is a pattern with each of them. I had precisely two phone conversations with Mr. McGuire – and each time it was because he picked up the phone when I called. The first time was on April 9<sup>th</sup> when I orally outlined the complaint which I then delivered on April 15<sup>th</sup>. Following that delivery, I called several times requesting his confirmation of receipt, but did not receive any return call. On May 7<sup>th</sup>, Mr. McGuire picked up the phone when I called. He claimed he had not yet read the complaint and that it was still in the shopping bag in which it had been delivered. I cannot recall what he said in response to my question as to whether U.S. Bharara hadn't publicly announced that more staff had been put in place to work on public corruption issues (i.e. his April 22<sup>nd</sup> speech “In the last 18 months, we have added people to our public corruption unit so that we can be more effective”). Mr. McGuire did promise me, however, that within a month the complaint would be reviewed. On June 4<sup>th</sup>, with the lapse of nearly a month, I left a voice mail message for him, offering to come to his office the following day to be interviewed and give a statement under oath, as I would be in the area. I received no return call. As for Judy Philips, I left an identical message on June 4<sup>th</sup>, offering to be interviewed and furnish a statement under oath. I received no return call from her – nor any return call in response to my prior voice mail messages for her on May 7<sup>th</sup> and May 10<sup>th</sup>.



By way of update to the April 15<sup>th</sup> corruption complaint, pages 6-7 refer to and quote our March 29, 2013 letter to Governor Cuomo's Chief of Staff – a copy of which we furnished U.S. Attorney Bharara. The letter identified that the Legislature's "General State Charges" for fiscal year 2013-2014, consisting of "fringe benefits" such as pension contributions, social security, health, dental, vision and life insurance, etc., was missing:

“...The budget that Temporary President Skelos and Assembly Speaker Silver submitted to the Governor for the Legislature under a November 30, 2012 coverletter contained no ‘General State Charges’ – and the appropriations for the Legislature in S.2601/A.3001, replicating the leadership’s budget submission, contains none.

In response to our request, the Secretary of the Senate purported that the leadership’s budget submission is ‘not available pursuant to Senate Rules’. The Assembly’s Public Information Office furnished the budget submission, but without ‘General State Charges’, thereafter stating that it has ‘no records that are responsive’.” (CJA’s March 29<sup>th</sup> letter, at p. 3, underlining in original).

The March 29<sup>th</sup> letter requested that Budget Director Robert Megna identify where the Legislature’s “General State Charges” were and that the Governor’s records access officer supply same and the certifications thereof by Temporary Senate President Skelos and Assembly Speaker Silver.

To date, we have received NO response from Budget Director Megna. As for the Governor’s records access officer, he has not furnished the Legislature’s “General State Charges”, let alone their certifications by Temporary Senate President Skelos and Assembly Speaker Silver.<sup>4</sup> In other words, where are the Legislature’s “General State Charges” for fiscal year 2013-2014 – and how much are they costing taxpayers? Indeed, it appears that the appropriations in S.2601/A.3001 – which is now Chapter 51 of the Laws of 2013 – is as big a “slush fund” for the Legislature, as it is for the Judiciary – and our March 29<sup>th</sup> letter to the Governor’s Chief of Staff gave notice of that, stating:

“Needless to say, the fact that the Governor provided no ‘Commentary’ to the Legislature’s budget, in contrast to his superficial ‘Commentary’ to the Judiciary’s budget, only underscores that IF his Division of the Budget examined the Legislature’s budget, it was with even less care than its palpably deficient examination of the Judiciary’s budget, endorsed by the Governor’s ‘Commentary’. Such makes it all the more appropriate that the Governor now discharge his check-and-balances duty with respect to the budgets of these two separate branches, which should not have been, but were, joined on the same bill.” (CJA’s March 29<sup>th</sup> letter, at p. 3, capitalization in original).

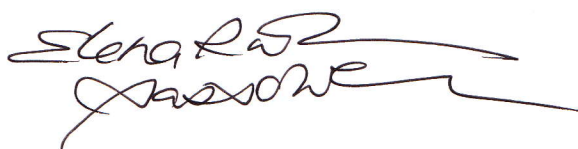
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<sup>4</sup> Our March 29<sup>th</sup> letter to Governor Cuomo’s chief of staff and the May 7<sup>th</sup> response of the Governor’s records access officer are posted on the same webpage as our April 15<sup>th</sup> corruption complaint to U.S. Attorney Bharara – indeed, directly under the complaint.

Finally, with respect to the request for the U.S. Attorney's intervention in *CJA, et al. v. Cuomo, et al.* – contained within our April 15<sup>th</sup> corruption complaint – to the extent the case is not transferred to U.S. District Court, defendant Attorney General Schneiderman has argued that it must be transferred to Albany County because it seeks to enjoin the Comptroller from disbursing taxpayer monies, citing, *inter alia*, CPLR §506(b)(2), *Silver v. Pataki*, 179 Misc.2d 315 (1999). This is yet another reason why the April 15<sup>th</sup> corruption complaint is properly before you.

Please confirm that you will be taking jurisdiction of the April 15<sup>th</sup> corruption complaint, or advise how you will be coordinating with U.S. Attorney Bharara and U.S. Attorney Lynch with respect thereto.

Thank you.



Enclosures: (By E-Mail)

- (1) CJA's April 15, 2013 corruption complaint to U.S. Attorney Bharara
- (2) CJA's May 13, 2013 letter to U.S. Attorney Lynch
- (3) CJA's March 29, 2013 letter to Governor Cuomo's Chief of Staff

cc: U.S. Attorney for the Southern District of New York Bharara  
U.S. Attorney for the Eastern District of New York Lynch  
Assembly Members who signed the June 4<sup>th</sup> letter to you  
&/or called for Speaker Silver's ouster:

- Assemblyman Michael Lalor
- Assemblyman Marc Butler
- Assemblyman Steve Katz
- Assemblyman Christopher Friend
- Assemblyman Philip Palmesano
- Assemblyman Raymond Walter
- Assemblyman Steven McLaughlin
- Assemblyman Andy Goodell
- Assemblyman James Tedisco
- Assemblyman Bill Nojay
- Assemblywoman Claudia Tenney
- Assemblyman David DiPietro
- Assemblyman Michael Fitzpatrick
- Assemblywoman Jane Corwin,
- Assemblywoman Nicole Malliotakis
- Assemblywoman Annie Rabbitt
- Assemblyman Michael Kearns
- Assemblywoman Inez Barron

The Public & The Press