

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, December 14, 2012 12:37 PM  
**To:** katzs@assembly.state.ny.us; keegant@assembly.state.ny.us; keegan.taram@gmail.com  
**Subject:** Follow-up to yesterday's meeting: Leadership  
**Attachments:** 11-19-04-assemblyman-fitzpatrick.pdf; nyt-7-25-04-fake-legislature.pdf

Dear Assemblyman Katz,

Thank you for meeting with me yesterday to personally receive CJA's December 4<sup>th</sup> letter to you – and the supporting documentation that will enable you to SUCCESSFULLY lead the Assembly in ousting Speaker Silver & in rewriting Assembly rules consistent with the 2004 recommendations of the Brennan Center – FOR THE BENEFIT OF ALL NEW YORKERS.

You will be pleased to know that you can build on the work already done by the Republican Assembly minority, all 47 of whose members, in 2004, “pledged support to Assembly rules reforms recommended by the Brennan Center (with minor exceptions)”. Attached is Assemblyman Michael Fitzpatrick's November 19, 2004 press release about it, which additionally refers to the Assembly minority conference as having “offered sweeping reforms to the Assembly rules at the beginning of each legislative cycle **for the past decade**”. (emphasis added).

I'm sure you can readily obtain these from the Assembly minority conference, as likewise the referred-to “resolution sponsored by Assemblyman Scott Stringer (D-NY) and 26 other Assembly majority members”, which the Republican minority apparently supported “as a positive first step to achieving reform”. It's long past time to go beyond that “first step”. With the courageous leadership you have ALREADY shown, that can happen.

Speaker Silver's responsibility in creating the stranglehold that are the Assembly's rules and his failure to himself champion rule change over these many years so that the Assembly might function as a legitimate legislative body, rather than one beholden to him, should be a MAJOR grounds for ousting him. Attached is the NY Times' July 25, 2004 editorial “*New York's Fake Legislature*” that I showed you yesterday, identifying that Speaker Silver “could change these suffocating rules”. Indeed, he could have changed them EASILY.

Our People's lawsuit against Assembly Speaker Silver – and the Assembly – is the product of Speaker Silver's corrupt “leadership” and his democracy-perverting rules. His CRIMINAL conduct, as particularized by the Verified Complaint – imposing upon the People of New York, this year alone, \$27.7 million dollars in fraudulent, statutorily-violative, and unconstitutional judicial pay raises, while depriving them of a constitutionally-functioning judiciary -- should be deemed the final “nail in his coffin”.

Meantime, here's the direct link to CJA's “Latest News”, from which everything you need to begin your review is conveniently accessible: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>. I already left with you the April 21, 2009 Draft Report and Minority Report of the Senate's Temporary Committee on Rules and Administration Reform. I would urge you to watch the video of its February 26, 2009 New York City hearing, which began with testimony by former Senators Franz Leichter and Seymour Lachman, continued with former Senate counsel/Professor Eric Lane and the Brennan Center authors of its reports, Lawrence Norden and Jeremy Creelan, and, thereafter, NYS political science expert Professor Gerald Benjamin. Meantime, here's again the quote of Senator Lachman from the February 26, 2009 hearing, reflecting the tyrannical power of the legislative leadership, which is the product of its rules: “To say that the only vote that matters, the only one that counts, is the vote for leader is only a slight exaggeration.”

I will call you on Tuesday to follow-up. Of course, you and those to whom will be sharing review of the evidentiary materials I left with you are free to call me, anytime, with questions, etc. This would include Assemblywoman Claudia

Tenney and Assemblyman Andy Goodell, who you stated you would be contacting – and who I respectfully request that you contact without delay. Much work must be done if we are to MAKE HISTORY at the Assembly's January 9<sup>th</sup> opening session by throwing out Silver and his power-grabbing rules.

Thank you.

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Assemblyman

# Michael J. Fitzpatrick

Assembly District 7

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## Fitzpatrick Calls for Assembly to Make Reform Priority No. 1 in 2005

*Joins Assembly Minority Conference and Brennan Center to Urge Rules Changes*

*November 19, 2004*

Assemblyman Michael Fitzpatrick (R,C,I-Smithtown) and fellow members of the Assembly minority conference were joined at an Albany press conference on Nov. 17 by representatives of the Brennan Center for Justice at New York University School of Law to urge legislative reform as the first order of business when the Assembly returns for its new session in January.

"The Brennan Center report, 'The New York State Legislative Process: An Evaluation and Blueprint for Reform,' ranked our state Legislature the most dysfunctional and the least democratic in the nation," said Assemblyman Fitzpatrick. "Considering the facts and figures from the Brennan Center's analysis we, as the Legislature, need to address the problems that exclude rank-and-file lawmakers and the citizens they represent from the legislative process, and make this our priority for the 2005 legislative session."

According to the Brennan Center analysis:

- From 1997 to 2001, fewer than 5 percent of the major bills passed by the Assembly or the Senate were debated on the floor.
- From 1997 to 2001, only 0.5 percent of the major bills passed by the Assembly received a committee hearing, and only 0.7 percent of the major bills passed by the Senate were studied at a hearing.
- From 1997 to 1999, the Assembly voted on 4,365 bills, and not a single bill was voted down.
- New York is the only Legislature that routinely allows "empty seat" voting, a practice in which absent legislators have their votes automatically recorded as a "yea."

"The 2004 elections are over and I am hopeful that all of the campaign promises – in which seemingly all candidates labeled themselves as reformers – were not simply election rhetoric, but sincere commitments to reform. We urge Speaker Sheldon Silver and all of our majority colleagues to make reform the Assembly's first priority when the new legislative term begins in January," said Assembly Minority Leader Charlie Nesbitt (R,C,I-Albion).

"Since the release of the Brennan Center report in July, the people of New York state have been demanding an end to 'business as usual' in Albany," said Scott Schell, spokesperson for the Brennan Center. "We all know that bipartisan efforts are rarely seen in the Legislature, and by joining the push for reform, Leader Nesbitt and the minority conference are saying to the people of New York that this reform effort is real, it's gaining steam, and positive change is near at hand."

"It has been the minority conference who has advocated the reforms and rules changes necessary to make the Assembly less about the power of Speaker Silver and more about the role of each elected member from across the state," explained Fitzpatrick.

The Assembly minority conference has offered sweeping reforms to the Assembly rules at the beginning of each legislative cycle for the past decade. Recently, all 47 minority members pledged support to the Assembly rules reforms recommended by the Brennan Center (with minor exceptions). The members also said they will support the latest version of a resolution sponsored by Assemblyman Scott Stringer (D-NY) and 26 other Assembly majority members as a positive first step toward achieving reform.

In addition to these proposals, the Assembly minority conference are advocating a number of measures that would move further toward achieving a more open, responsible, responsive state government in New York and giving greater voice to rank-and-file legislators.

"During the 2005 legislative session, the Assembly minority conference will be bringing every one of these reform proposals to the floor of the Assembly for a full vote," said Leader Nesbitt.

Among the measures that the Assembly minority conference has long championed are those to:

- Further open the "motion to discharge" procedure to allow for consideration of bills by the entire legislative body despite inaction on the committee level.
- Require that committee membership reflect the majority to minority membership ratio in the Assembly. Under the current formula, committee membership is calculated by determining the ratio of majority to minority members in the Assembly, and giving that ratio to the majority, plus any fractions, plus one additional member. For example, the Libraries Committee currently consists of eight majority and one minority member.
- Allow the ranking minority member on each committee to call for public hearings by the committee.

- Require that when a motion to hold a bill fails in committee, an immediate motion be made to report that bill.
- Create a "member's prerogative" allowing each Assembly member to bring at least one bill of statewide implication to the floor for a vote during each legislative session.
- Require that the Rules Committee provide an agenda and that it convene regularly scheduled meetings, as is now done by the other committees.
- Require that bills with home rule requests from local municipalities be considered in committee at the first meeting that is held after the bill has been in committee for three days.
- Require a supermajority, or two-thirds, vote for final passage of all bills that impose, continue or revive taxes.
- Require that all bills on the calendar that impose a mandate on localities or school districts, as well as all bills that would require additional taxes, be specifically labeled or identified as such on the calendar.
- Enact various provisions to ensure timely passage of the state budget, including forbidding consideration of non-budget bills after April 1 if a budget is not in place and the convening of budget conference committees no later than March 15 of each year to facilitate the process of finalizing a budget before the April 1 deadline.

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## The New York Times

PAUL DANO  
ZOE KAZAN

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July 25, 2004

# New York's Fake Legislature

The most galling part of watching the New York Legislature in action is the sight of thousands of students innocently touring the State Capitol. Their teachers are usually telling them about how democracy works, how Teddy Roosevelt and Al Smith once roamed these very halls, how Mr. Bill becomes Mr. Law in Albany. In reality, what these crowds of young people see is men and women on public salaries, going through the motions. The whole place might as well be made out of cardboard.

As a report released last week from the Brennan Center for Justice at N.Y.U. School of Law has documented, New York's Capitol houses a Potemkin legislature. The Capitol's splendid chambers are for show; voting is automatic once a legislator swipes a card or waves at a clerk at the beginning of each putative workday. Legislation that goes to the floor always passes -- always -- because the leader in each house has more power than most dictators. The other 210 members either follow their leaders or watch their backs.

Public debate is rare. When Assembly members began a verbal exchange on the floor last month about the horrors of junk food versus the joys of chocolate, the moment was viewed by Albany veterans as an extremely good day for democracy.

It is not hyperbole to say that New York's Legislature is one of the least democratic in the country. The Brennan Center has done the math and suggested changes in the rules that would help. Here are a few of their numbers, with a little explanation about how New York's strange legislative beast really works.

### The Busywork of Bill-Making

New York's legislators do not actually enact many laws. They do, however, introduce more bills than any other state legislature in the Union. Two years ago, 16,892 bills were introduced in New York's two houses. That's almost twice as many as in the Illinois General Assembly, which ranks second. But how many of Albany's bills actually become law? About 4 percent, the third-lowest percentage in the country. (Illinois may have started out with only half as many proposals, but it managed to enact 746 laws compared with 693 in New York.)

What about the other 16,199 bills that did not make it into law? Most are for the record only. Some bills are meant to allow legislators to boast to voters (in state-paid mailings) that they "tried" to do something for them. Other bills are meant to convince Albany's flush lobbyists

that a legislator did enough to earn a nice, fat campaign contribution.

All these bills do accomplish one thing, however. They waste reams of paper and hours of time and overtime and an unbelievable amount of money, considering the final product. To do all that extra work, Albany's legislators apparently need a lot of people -- more than any other state legislature in the country. Last year, for example, New York had 3,428 people on the Legislature's payroll. Pennsylvania was in second place with 2,947 and California came in third with 2,359. In 2001, the New York Legislature cost the taxpayers \$197 million or about \$333,000 per actual law.

Obviously, a lot of legislative ideas deserve a swift death, and there is serious work that requires skilled staff members. Even though the lawmakers have not passed a budget on time in two decades, the budget bills still need to be put together by experts. But sometimes the budget is virtually the only legislation of substance that survives. An accounting of bills enacted in 2001 shows that few had statewide impact. (One did ban drivers from talking on hand-held cellphones, even though that change apparently is still news to a lot of New York motorists.) In general the new laws were narrow, pegged to some very parochial need. Many offered tax breaks to churches, synagogues and, in one case, to anyone in the business of handling manure. Others tweaked the state legal code: podiatrists won the right to be certified as acupuncturists, for example, and loitering on school buses was prohibited.

Perhaps the statistic that speaks loudest about the meaninglessness of a legislator's job is the number of bills defeated on the floors of the Assembly and Senate -- a whopping zero. And nobody can remember the last time an amendment to a bill was added on the floor. Joseph Bruno, the Senate majority leader, and Sheldon Silver, the Assembly speaker, decide which bills make it to the floor of their respective chambers, and their blessing makes the legislation invulnerable. Whatever hits the floor is a done deal. For example, from 1997 to 2001, the Senate approved 7,109 bills and defeated none. The Assembly, in a three-year period, passed 4,365 bills and defeated none. It is a record that the Kremlin of yore could admire.

### Committees Everywhere

In a normal, modern legislature, the committee is where bills are drafted, after research by the staff, public hearings and consultations with the experts. New York's committees are not normal or modern. They are set up to rubber-stamp bills drafted in the many backrooms of the State Capitol. Most committee meetings last less than a few minutes. They are so brief that when the Brennan Center tried to find records for committee meetings in the Senate, they were told such documents mostly do not exist. Votes are recorded; that's about it.

Still, New York's Legislature has a lot of committees. The Senate has 32 -- more than the upper houses of any other state except Mississippi. The Assembly has 37, ranking third for number of committees in the nation's lower houses. Experts say that having too many

committees is not good; it leads to overlap and forces members to run from one meeting to another rather than do real work on legislation. At this point, that doesn't matter in Albany, of course. The legislators are hardly involved in the process anyway. The committee staff does the legislation, and the staff works for Mr. Bruno or Mr. Silver, not for the committee members.

Lawmakers in other states find public hearings provide a good chance to get input from state residents on legislation they are considering -- even if they complain that sitting through them takes a lot of time. No problem in Albany. In a five-year period, the Brennan Center found that the Assembly committees held only 10 hearings on matters that inspired major laws. The Senate's many committees held nine such hearings. Committee chairmen who do hold hearings -- like Assemblyman Richard Brodsky of Westchester, who has been vigorously pursuing missteps by state authorities -- are generally considered by their colleagues to be publicity hounds or spoilers trying to make everybody else look bad.

The real reason Albany has so many committees is to provide patronage for Mr. Bruno and Mr. Silver, who dispense the chairmanships to grateful soldiers in their respective armies. Committee chairmen get bonuses of \$9,000 or more to add to their salary of \$79,500 for what is essentially a part-time job.

#### Failing to Read the Fine Print

The Citizens Budget Commission sent letters earlier this month to all members of the Legislature, pleading with them to insist on having three full days to review the budget. New York's budget, due on April 1, is habitually late. Allowing three more days for legislators, staff members and especially the public to study the budget will not make much difference in the long run.

The goal of the letter was to head off the usual scene in Albany when legislators wind up voting to commit the entire state -- all 19 million people -- to a budget that is basically still wrapped in plastic. The State Constitution requires a three-day "aging process" for any bill, but it made a loophole for emergencies. So, as anybody who knows governments could have predicted, there are now a lot of emergencies in Albany.

The emergencies have grown so routine, in fact, that over a five-year period, almost 27 percent of the bills that were passed in at least one chamber came hot, often literally, off the Capitol presses. After almost seven months of backroom negotiations by Gov. George E. Pataki, Mr. Bruno and Mr. Silver, it would be unconscionable for these three to argue that this year's \$100 billion budget must be passed right away. Another three days will not matter in a rigged system like Albany's.

But it will give the public interest groups a chance to see what horrors are being committed in the name of urgency. And of course, that's one of the reasons the leaders prefer to see the budget documents pass unread.

## Changing the Autocratic Rules

Perhaps the worst part of this long list of failings is that New York's Legislature could improve its performance -- and its standing among legislatures in this country -- fairly easily. The people who make the rules, mainly Mr. Bruno and Mr. Silver, could simply change them. The Brennan Center study has come up with a good working list of improvements that could be made at the beginning of the next legislative session. The center's authors are handing out the list now because they want voters to start demanding that their local representatives push for changes that could make them more than figureheads in Albany. It's a good list, and one every voter should bring along when preparing to meet the candidates this fall.

Put an end to empty-seat voting. The Assembly should junk its EZ-voting machines, which allow members or sometimes even someone on their staff to swipe their cards every morning and thus vote yes automatically until the close of business. The Senate, where a member can walk in, wave at the front desk and then leave for the day, will merely have to change the rules. No other state allows such nonsense.

Make it easier for legislators to bring bills to the floor. Right now, if a bill is on the Senate calendar scheduled for debate, Mr. Bruno need only add a star next to it to put the legislation in limbo indefinitely. Mr. Silver has much the same power, just achieved more indirectly.

Convene conference committees more often to iron out differences in bills from both houses. That would cut down on the passage of mock bills that die of inaction because they are passed in different versions by the two chambers -- Albany's favorite way of getting the credit without actually passing the law.

Limit bills to 20 for each member of the Assembly and 30 for each senator. It's time to focus on what matters, not what fills the air, the member's newsletter and the campaign treasury.

Assign no member to more than three standing committees. These should be real legislative committees that have actual power and responsibility for passing serious legislation. (Check California for an example of how it can work.) Minutes and attendance should be taken by a stenographer and proxy voting should be prohibited. The fact that none of that exists now raises a question: if these legislators are not on the floor and they are not burdened by long committee meetings, where are they? Do voters need some version of a parolee's anklet for their elected representatives?

Require that all legislation sent to the floor be accompanied by a committee report of some depth. If no decent report is attached to the bill, members on the floor should start challenging the sponsor for details. As the idea catches hold, perhaps some members will begin to realize that it is actually possible to vote no when your party proposes a real stinker



of a bill.

Allow each committee to hire and fire its own professional staff. This is basic; the committees will never work properly without some financial independence.

The Brennan Center report concludes that on most important counts, New York has the worst legislature in the country -- one that deprives the public of any real representation, because legislators obey their leaders more than voters. The people have almost no access to the real process of lawmaking, which goes on behind closed doors among the two leaders and the governor. And it is inefficient. We have only to look at this year's stalled budget to see a glaring example of inefficient autocracy.

Mr. Bruno and Mr. Silver, who could change these suffocating rules, were dismissive of the very idea. Mr. Bruno called the proposals "third world country stuff." Clearly New York's leaders need to get around more -- especially to other statehouses in the United States.

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