

# CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

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## ANALYSIS OF THE JUDICIARY BUDGET & DISTRICT ATTORNEY SALARY REIMBURSEMENT SECTIONS OF THE “WHITE”, “BLUE”, “YELLOW”, & “GREEN” BOOKS OF THE NEW YORK STATE LEGISLATURE & ITS FINANCE COMMITTEES

**To Further Demonstrate the Legislature’s Duty to Reject  
the Judiciary Budget & the Judicial Salary Increases --**

& substantiating the Center for Judicial Accountability’s March 11, 2013 letter  
to the Senate Budget Subcommittee for “Public Protection”, stating:

*“Nor have the Senate and Assembly, thus far, done better in discharging their checks and balances responsibilities with respect to the Judiciary budget. Evidence the Senate Finance Committee and Assembly Ways and Means Committee, each having budgets of more than \$5,800,000 and huge staff and counsel resources, yet producing largely duplicative volumes of statistical summaries and budget analyses – all useless as aids to the legislators in evaluating the 200-plus-page Judiciary budget and the second phase of the judicial salary increase. As may be seen from our analysis of their “White”, “Blue”, “Yellow” and “Green” Book summaries of the Judiciary budget, to be shortly supplied, their staff and counsel either do not themselves understand the Judiciary budget or they consider its examination not worth their time...” (at p. 12, underlining in the original).*

Written by:



Elena Ruth Sassower, Director

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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.

## ANALYSIS

- **The “White Book” of the Senate Majority Coalition and its Finance and Counsel Staff, entitled “Finance/Counsel Staff Analysis of the 2013-14 Executive Budget” (Exhibit A)**, is prefaced by a January 28, 2013 coverletter of Senate Judiciary Committee Chairman DeFrancisco, stating that:

“It is intended to assist the members of the Finance Committee and the Senate as a whole, in their deliberations. We hope that our readers find it useful.” (Exhibit A-1a)

Its section on the Judiciary (Exhibit A-1b) summarizes the Judiciary budget in eight sentences, with no mention of the judicial salary increase, let alone its percentage or dollar cost. This is followed by a chart of “All Funds” budgets of agencies that comprise “Public Protection” (Exhibit A-1c), containing a line about the Judiciary budget.

Of the eight sentences, four are seriously discrepant, including based on the single line of the chart.

The first sentence (Exhibit A-1b) identifies the Judiciary’s “All Funds” budget request as “\$2.6 billion” and purports, in the second sentence, that this “represents an increase of \$94.2 million, or 3.7%”. This conflicts with the chart, on the following page which, giving a more precise figure of \$2,662,000,000 for the “All Funds” budget, identifies the “Change Amount” from “Estimated 2012-13” as \$110.3 million, which it states is “4.32%”.

The third sentence purports: “Courts of Original Jurisdiction would receive a decrease of \$14.3 million, or -0.9 percent, due primarily to reductions in nonpersonal service”. This conflicts with what the Judiciary’s budget states in its “Major Purpose Summary” for “Courts of Original Jurisdiction” (Exhibit A-2), which identifies “a decrease of \$21.1 million (-1.4%) from the current year adjusted appropriation”, with approximately 35% of the reductions being personal: (\$7.4 million) and 65% being nonpersonal (\$13.7 million).

The fourth and fifth sentences read: “General State Charges would increase \$73.4 million, or 12.5 percent. This increase is the result of an additional \$86.2 million for obligations to the New York State Employees’ Retirement System”. Not only are these numbers seemingly inconsistent, but the Judiciary’s “Major Purpose Summary of General State Charges” (Exhibit A-3) identifies the increase to be not \$73.4 million, but “\$93 million”, stating this to be “16.4% over the current year adjusted appropriation”. The particulars of this are furnished on the immediately following page of “All Funds-General State Charges”, which shows the \$660,660,607 in requested 2013-2014 “General State Charges”, here called “UCS Recommended”, against the 2012-2013 “Appropriation as Adjusted” figure of \$567,639,322 – a difference stated to be \$93,021,285. As for the figure \$86.2 million pertaining to the New York State Employees’ Retirement System, no such figure appears in the Judiciary budget for “General State Charges”, which specifies “an increase of \$76.4 million (40.3%) for the New York State Employees’ Retirement System”.

The “White Book” also has a “Public Protection Fact Sheet” (Exhibit A-1d) with an item on “District Attorney Salaries”, which, referencing “Judicial salaries”, states:

“The Executive includes an appropriation of \$3.8 million for District Attorney salary reimbursement including \$700,000 from SFY 2012-13 and adds \$350,000 to fund the April 2013 increase related to Judicial salaries. This additional funding provides mandate relief to counties.” (underlining added).

Further particulars – though no identification of any judicial salary increase – appears in its section on the Division of Criminal Justice Services (Exhibit A-1e) which states:

“The Executive proposes an increase of \$1.8 million in General Fund Local Assistance and Probation Programs, primarily in the District Attorney Salary Reimbursement appropriation. The Executive eliminates the \$700,000 Legislative appropriation, and combines it with the original District Attorney Salary Reimbursement appropriation and adds \$350,000 to fund the April 2013 increases related to Judicial salaries. This additional funding provides mandate relief to counties.”

In other words, the “White Book” does not identify the dollar cost of the “original District Attorney Salary Reimbursement appropriation” – or the cumulative figure for this year.

- **The “Blue Book” of the Senate Democratic Conference and its Finance Committee staff, entitled “Staff Analysis of the 2013-14 Executive Budget” (Exhibit B)**, is prefaced by a January 23, 2013 coverletter of Senate Finance Committee Ranking Member Liz Krueger stating:

“The data and analyses prepared by Finance Committee staff and included in this document will provide insights into...the Executive Budget which can inform the difficult decisions the Senate faces.” (Exhibit B-1a)

Its section on the Judiciary (Exhibit B-1b) presents a chart comparing the budgets this year and last, an italicized, six-sentence paragraph about the Judiciary, and two paragraphs totaling seven sentences about the Judiciary budget, whose passing mention of the judicial salary increase is without furnishing its percentage or dollar amount.

### **The Chart Comparing the Budgets, This Year & Last**

The chart erroneously tallies the “Total All Funds” for both the “Executive Recommendation 2013-2014” and the “Adjusted Appropriation 2012-2013”. The “Total All Funds” tally for 2013-2014 is not \$2,660,128,900. Simple addition gives a figure \$29,232,424 less, to wit, \$2,630,896,476. Likewise the “Total All Funds” tally for 2012-2013 is not \$2,639,583,337. Simple addition gives a figure \$99,850,000 less: \$2,539,633,337. Needless to say, the corresponding “Change” figure relative to these two tallies is comparably erroneous. As for the “Percentage Change”, it makes utterly no sense – on its face.

The problem, however, goes beyond simple addition. The chart is incomprehensibly erroneous and incomplete as to the figures comprising the “Total Operating Funds”. This is evident from comparison to the Judiciary’s “All Funds Appropriation Requirements Major Purpose by Fund Summary” (Exhibit B-2a).

Starting with the “General Fund”, the Judiciary’s “Summary” for 2013-14 is \$1,753,915,368. The chart figure is an inconsistent \$1,756,360,952. The figure in the Judiciary’s “Summary” for 2012-13 is \$1,754,127,381. The chart figure is an inconsistent \$1,756,572,965.

The “Special Revenue-Fed” is consistent with the Judiciary’s “Summary”: \$9,000,000 for 2013-14; \$10,500,000 for 2012-13.

As for “Special Revenue-Other”, the Judiciary’s “Summary” for 2013-14 is \$107,943,006. The chart figure is an inconsistent \$204,874,917. The figure in the Judiciary’s “Summary” for 2012-13 is \$105,722,594. The chart figure is an inconsistent \$204,921,050.

The chart then goes directly to a tally for “Total Operating Funds” – which makes no sense because such total, as reflected by the Judiciary’s “Summary”, includes “Aid to Localities”, which the chart omits. Nevertheless, the chart’s “Total Operating Funds” figure for 2012-13 is \$1,971,994,015 – the same as the “Grand Total All Funds” figure in the Judiciary’s “Summary” – which had included

“Aid to Localities. As for the chart’s “Total Operating Funds” figure for 2013-14, it is identical to the Judiciary’s figure in its “Summary of “Grand Total All Funds”, except that the chart transposes the last two digits of the Judiciary’s tally for 2013-14 so that instead of \$1,973,235,869, the chart has \$1,973,235,896.

### **Italicized Paragraph**

The six sentences of the italicized paragraph about the Judiciary are exported from the first two paragraphs of the “Introduction” to the Judiciary’s “2013-14 Budget Request” (Exhibit B-2b), largely *verbatim*, except for the single sentence that reads: “Pursuant to the Unified Court Budget Act, the cost of operating the UCS, excluding town and village courts, is borne by he that State”.

### **Two Paragraphs about the Judiciary Budget**

The seven sentences that follow, ostensibly about the Judiciary budget, are all taken uncritically from the “Executive Summary” of the Judiciary budget (Exhibit B-2c). Only the first two of these seven sentences contain any figures. They read:

“The Judiciary’s General Fund Operating Budget request is \$1.75 billion. The request is a decrease of \$212,013 from the current fiscal year budget, a reduction of .012%”

These sentences parrot back, *verbatim*, the first two sentences in the third paragraph of the Judiciary’s so-called “2013-2014 Budget Request Executive Summary” – and conceal what is the chart makes evident: that the “General Fund Operating Budget” is not the full budget – and that the full budget, according to the chart, is \$2,660,128,900, which, according to the chart, is a 78% increase.

As for the third sentence, which follows the second without a separating a period, it states:

“This is the second negative budget request in two years that is being presented in the face of a number of cost increases, including the second phase of the judicial salary increase, and contractually-required increments for eligible non-judicial employees.”

This replicates, largely *verbatim*, the third sentence of the third paragraph of the “Executive Summary” – and, like it, creates a false inference that “the second phase of the judicial salary increase” are, like “contractually-required increments for eligible non-judicial employees”, beyond the Legislature to prevent.

Of the remaining four sentences, all derive from the “Executive Summary”, including the fifth sentence, which is transformed into something ungrammatical and confusing, including by the addition of the clause “many of whom are required by law to maintain open courtrooms, which makes absolutely no sense. It reads:

“Since the vast majority of the Judiciary budget supports personnel, many of whom are required by law to maintain open courtrooms, the Early Retirement Incentive, a hiring freeze and targeted layoffs, the non-judicial workforce of the court system has been reduced by almost ten percent to a level that is below the staffing levels of a decade ago despite an increased workload.”

As for the district attorney salary increases, the “Blue Book” makes no mention of their tie to judicial salary increases in its section on the Division of Criminal Justice Services, which states:

“An additional \$350,000 is provided to fully fund statutory increases to district attorney salaries.” (Exhibit B-1c).

This description, the most minimal as compared to the “White Book”, the “Yellow Book”, and the “Green Book” is plainly inconsistent with all three.

- **The “Yellow Book” of the Assembly Ways and Means Committee’s Democratic Majority (Exhibit C)** is prefaced by a January 28, 2013 coverletter of its Chairman, Assemblyman Herman Farrell, Jr., (Exhibit C-1), stating:

“The ‘Yellow Book’ is intended to provide the Members of the Committee, the Members of the Assembly, and the public with an overview of the fiscal and policy proposals made by the Governor in the bills submitted as his Executive Budget on January 22, 2013....

The ‘Yellow Book’ marks the beginning of the Legislature’s public review of the Governor’s proposed budget. It is the Assembly’s preliminary response to the budget, as required by Section 53 of the Legislative Law. Joint legislative fiscal committee hearings on the budget proposal will be the next step in our efforts to ensure public accessibility and accountability.

...

I would like to convey to the Ways and Means Committee staff my gratitude for their outstanding efforts to produce this document, which is tremendous resource for the Members of the Assembly.”

Its section on the Judiciary budget (Exhibit C-2) is a single page containing a perfunctory chart, four sentences under the heading “Agency Mission”, and three sentences under the heading “Budget Summary”, with no mention of the judicial salary increase, its percentage, or dollar cost.

The chart gives totals of “Adjusted Appropriation 2012-13” and “Executive Request 2013-14” based on two categories “State Operations” and “Aid to Localities”. These totals are \$1,971,994,015 and \$1,973,235,869, which are then presented in the first sentence of its three-sentence “Budget Summary” as follows: “The Executive proposes All Funds appropriations of \$1.97 billion, an increase of \$1.24 million or 0.1 percent, over the State Fiscal Year (SFY) 2012-13 level.” It thus makes it falsely appear, both from the chart and text, that this is the totality of the Judiciary’s budget – \$1.97 billion dollars – because it has omitted the \$660,660,607 of “General State Charges”.

It must be noted that the chart in last year’s “Yellow Book” (Exhibit C-4) had different categories, entitled “General Fund”, “Special Revenue Other”, “Special Revenue Federal”, whose figures for the first two were incorrect and which, without identifying “General State Charges” nonetheless gave figures for “Adjusted Appropriation 2011-12” and “Executive Request 2012-13” that were \$2,551,023,170 and \$2,554,633,337, respectively. These were identified to be “All Funds” appropriations in the first of the four sentences that followed under the heading “Budget Detail”. The fourth sentence, which does not appear in this year’s “Yellow Book”, was:

“The Judiciary’s budget request also provides for a judicial salary increase as determined by the Special Commission on Judicial Compensation.”

It must be further noted that this year’s “Yellow Book” mentions the “increases in judicial compensation” in a completely separate section pertaining to the Division of Criminal Justice

Services (Exhibit C-3). There, under the heading “District Attorney Salary Reimbursement” appears the following:

“The Executive proposes a total of \$3.9 million, an increase of \$1.05 million from SFY 2012-2013 levels, to support the full cost of local district attorney increases that are tied to scheduled increases in judicial compensation.”

This is disingenuous, as it implies that \$2.85 million was appropriated for fiscal year 2012-2013 in connection with the first phase of increase in judicial salary. Last year’s “Yellow Book” contradicts this. Its section on Division of Justice Services (Exhibit C-5) identifies:

“an increase of \$530,000 in General Fund support to provide payments to counties for costs associated with district attorney salary increases which would be tied to judicial compensation that is scheduled to take effect on April 1, 2012.”



- **The “Green Book” of the Assembly Ways & Means Republican Minority**, headed by Ranking Member Robert Oaks, is not publicly circulated. The page pertaining to the Judiciary (Exhibit D-1) expressly identifies “A.3001” – the number, in the Assembly, given to the appropriations bill submitted by the Governor for appropriations for both the Legislature and Judiciary. Its single sentence reads:

“Significant increases include: \$40 million for implementation of recommendations of the Chief Judge’s taskforce to expand civil legal services in New York, \$15 more than last year”

No mention of the judicial salary increase, let alone its percentage or dollar cost.

As for the page pertaining to Criminal Justice Services (Exhibit D-2) referring to district attorney salaries, it refers to the appropriations bill “Aid to Localities - A.3003”, and, without identifying the judicial salary increases, states:

“\$3.9 million for District Attorney salaries, \$350,000 more than last year. This is intended to cover 100% of the District Attorney salary increases expected in April 2013.”

This description is plainly inconsistent with the Senate Majority’s “White Book” and the Assembly Majority’s “Yellow Book”.