

ORIGINAL

1

1 BEFORE THE NEW YORK STATE SENATE FINANCE
2 AND ASSEMBLY WAYS AND MEANS COMMITTEES

INFO CENTER

3 JOINT LEGISLATIVE HEARING

APR 03 2013

4 In the Matter of the
5 2013-2014 EXECUTIVE BUDGET ON
6 PUBLIC PROTECTION

**ASSEMBLY
WAYS AND MEANS**

7 Hearing Room B
8 Legislative Office Building
9 Albany, New York

10 February 6, 2013
11 10:03 a.m.

12 PRESIDING:

13 Senator John A. DeFrancisco
14 Chair, Senate Finance Committee

15 Assemblyman Herman D. Farrell, Jr.
16 Chair, Assembly Ways & Means Committee

17 PRESENT:

18 Senator Malcolm Smith
19 Vice Chair, Senate Finance Committee

20 Senator Liz Krueger
21 Senate Finance Committee (RM)

22 Assemblyman Robert Oaks
23 Assembly Ways & Means Committee (RM)

24 Senator Patrick M. Gallivan
25 Chair, Senate Committee on Crime Victims,
26 Crime and Correction

27 Assemblyman Joseph R. Lentol
28 Chair, Assembly Codes Committee

29 Senator Michael F. Nozzolio
30 Chair, Senate Committee on Codes

Kirkland Reporting Service

Exhibit 1

1 2013-2014 Executive Budget
 Public Protection
 2 2-6-13

3 LIST OF SPEAKERS, Continued

4		<u>STATEMENT</u>	<u>QUESTIONS</u>
5	Anne Erickson President and CEO		
6	Empire Justice Center	338	
7	Tracie M. Gardner Director of NYS Policy		
8	Legal Action Center	343	347
9	Kate Martin Deputy Director		
10	CASA of New York City	349	355
11	Jaya Vasandani Associate Director,		
12	Women in Prison Project The Correctional Association		
13	of New York	359	
14	Karen L. Murtagh Executive Director		
15	John Dunne Member, Board of Directors		
16	Prisoners' Legal Services of New York	370	379
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18	Terry O'Neill Director The Constantine Institute	380	
19	Elena Sassower		
20	Director Center for Judicial Accountability	387	
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24			

1 quality of life in our communities.

2 So with that, you all have my written
3 testimony. You can see that over many years
4 I've explored many aspects of the criminal
5 justice system, and I commend these observations
6 to your attention.

7 Once again, I thank you very much for
8 your patience and your indulgence, and we'll see
9 you again next year.

10 CHAIRMAN DeFRANCISCO: Thank you very
11 much.

12 ✓ The next and final speaker is Elena
13 Sassower, director of the Center for Judicial
14 Accountability.

15 MS. SASSOWER: Give me just a moment to
16 set up, please.

17 CHAIRMAN DeFRANCISCO: Sure.

18 All set?

19 MS. SASSOWER: Thank you.

20 CHAIRMAN DeFRANCISCO: Okay, go ahead.

21 MS. SASSOWER: My name is Elena
22 Sassower. I'm director of the Center for
23 Judicial Accountability, a nonpartisan,
24 nonprofit citizens organization that documents

1 corruption in the judiciary involving judicial
2 selection, judicial discipline, the judicial
3 process itself.

4 I have good news. For the past seven
5 hours you've heard testimony about the dire
6 straits that so many agencies are confronting
7 because they have lost funding and they don't
8 have the resources for the essential services
9 they provide. I have good news. You have money
10 to provide to them, and that is the money that
11 is presently earmarked for the judicial pay
12 raises.

13 You have before you distributed the
14 executive summary to the opposition report of
15 our nonprofit, nonpartisan citizens organization
16 to the August 29th, 2011, "~~Final~~ Report of the
17 ~~Special~~ Commission on Judicial Compensation."

18 That was the commission that recommended
19 judicial pay raises of 37 percent over three
20 years.

(EES mistake → should have
seen 27%)

21 The first phase of those pay raises
22 became effective April 1st, 2012. The second
23 phase is now scheduled to take effect April 1st,
24 2013. Those pay raises must be voided,

1 overridden by you, because they are
2 unconstitutional, statutorily violative, and
3 fraudulent.

4 The demonstration of that was contained
5 in our opposition report, and I'd like to hand
6 it up, please.

7 CHAIRMAN DeFRANCISCO: We have got an
8 executive summary of your opposition report.
9 You want us to have the whole report?

10 MS. SASSOWER: Yes. *In fact, I have -*

11 CHAIRMAN DeFRANCISCO: Okay. Well,
12 Dottie, would you hand it up to us? And we'll
13 make it part of the record. Okay.

14 MS. SASSOWER: Now, this opposition
15 report was delivered on October 27th, 2011, to our
16 highest constitutional officers in our three
17 government branches -- to the Governor, to the
18 Chief Judge, to the Assembly Speaker and
19 Temporary Senate President -- specifically and
20 explicitly so that they could take steps to
21 protect the public. The first of those steps
22 being to override the judicial pay raises
23 recommended by the Commission on Judicial
24 Compensation, based on our showing.

*Handing
up
October 27, 2011
Opposition
Report **

1 There has been no production by these
2 public officers of their findings of fact and
3 conclusions of law with respect to our
4 opposition report. I have had correspondence
5 with you asking for you to secure from them
6 their findings of fact and conclusions of law.
7 Likewise, to secure from the Attorney General
8 his findings of fact and conclusions of law.

9 I have received no response from you.
10 No one has denied or disputed the accuracy of
11 the presentation here. And it is your
12 obligation to make such findings of fact and
13 conclusions of law based upon this
14 presentation.

15 Now, in advance of today's testimony I
16 examined the Judiciary Budget and I was unable
17 to find the amount, the dollar amount of the
18 judicial pay raises scheduled to take effect
19 automatically this April 1st, 2013, unless
20 overridden by the Legislature.

21 May I ask you, what is that dollar
22 amount?

23 CHAIRMAN DeFRANCISCO: This hearing is
24 for people to make comments to the Legislature.

1 It's not a question-and-answer period.

2 MS. SASSOWER: Well, I was unable to
3 identify anywhere in the budget the dollar
4 figure of those judicial pay raises.

5 Now, last year that dollar figure was
6 identified in the executive summary of the
7 Judiciary's budget as \$27.7 million. This year
8 there was no identification of the figure in the
9 executive summary or elsewhere in the budget.

10 Likewise, I was unable to find any
11 dollar figure of the compensation and
12 nonsalaried^y~~ed~~ benefits, excluding salary, paid to
13 judges and justices of the unified court
14 system. Demand was made in correspondence, in a
15 letter from me to the Judiciary for that
16 information. I said, "I do not see it
17 anywhere. Where is it?" They refused to
18 provide that information.

19 The public is entitled to know how much
20 this second phase of judicial pay raises is
21 costing.

22 Now, the Finance Committees have in
23 prior years objected to the lack of itemization
24 in the Judiciary's budget. This year, in this

1 hearing, there was no -- there was no comment
2 about the insufficiency of the budget, the lack
3 of itemization. The fact that they have not
4 identified the cost of the judicial pay raises,
5 they haven't identified the cost of compensation
6 and nonsalaried^y benefits, excluding salary, is
7 reflective of the larger problem of the lack of
8 specificity rendering their budget
9 unconstitutional.

10 And I would like to read from a decision
11 in one of the judges' judicial compensation
12 lawsuits, one that is still live that is pending
13 in the Appellate Division Second Department,
14 *Pines against New York State*. And this is what
15 it says: "The degree of itemization necessary
16 in a particular budget is whatever degree of
17 itemization is necessary for the Legislature to
18 effective^y review that budget. Should the
19 Legislature determine that a particular budget
20 is so lacking in specificity as to preclude
21 meaningful review, then it will be the duty of
22 that Legislature to refuse to approve such a
23 budget."

24 And it goes on: "If the Legislature

1 determines that a budget is not sufficiently
2 itemized, then it should decline to adopt it.
3 However, once adopted, the logical inference can
4 be drawn, that the Legislature found the budget
5 to be sufficiently itemized and capable of
6 implementation."

7 I respectfully submit that the reason
8 why there was so little number-crunching at this
9 committee hearing is because the members of this
10 committee really don't understand the budget.
11 It escapes them. And I think it's time to 'fess
12 up to that reality.

13 I will additionally point out that there
14 is another issue that needed to be brought to
15 your attention. Last year, in questioning by
16 Senator Saland of the acting director of the
17 Criminal Justice Services, it was identified
18 that because of the judicial pay raises,
19 salaries of the district attorneys were
20 necessarily increased. And there was colloquy
21 as to the cost to the state.

22 If you look this year, if you look this
23 year in your -- well, let me just show you. I'm
24 reading now from the Yellow Book of the Assembly

1 Majority. "District attorney salary
2 reimbursement. The Executive proposes a total
3 of \$3.9 million, an increase of \$1.05 million
4 from state fiscal year 2012-2013 levels, to
5 support the full cost of local district attorney
6 salary increases that are tied to the scheduled
7 increases in judicial compensation."

8 In our opposition report, we pointed out
9 that one of the deficiencies of the report of
10 the Commission on Judicial Compensation is that
11 it did not identify that there was a statutory
12 link between judicial compensation and DA
13 compensation and what that was going to cost to
14 the state. That is now coming back to haunt
15 you. And I would respectfully draw to your
16 attention ~~to~~ the colloquy last year between Sean
17 Byrne, the then-acting director of the Criminal
18 Justice Services, and then-Senator Saland as to
19 who was going to be footing the bill. And
20 apparently the full bill is coming due to the
21 state, not the counties. And this is on top of
22 the salary increases, last year \$27.7 million,
23 this year --

24 CHAIRMAN DeFRANCISCO: Excuse me,

1 Ms. Sassower. Excuse me, Ms. Sassower. We've
 2 given everybody the same allotted time, and your
 3 time is up. So please wrap up.

4 MS. SASSOWER: Thank you. Thank you
 5 very much. I would like to hand up, in addition
 6 to the opposition report, the lawsuit against
 7 the three government branches for collusion
 8 against the people on the judicial compensation
 9 issue. Those judicial pay raises are
 10 fraudulent, statutorily violative,
 11 unconstitutional. And they are the subject of a
 12 serious and substantial legal challenge.

13 I provide you the -- the most important
 14 exhibit, needless to say, to the lawsuit brought
 15 in the public interest on behalf of the people
 16 of the State of New York is the October 27,
 17 2011, opposition report to the ~~Committee~~^{SSIA} on
 18 Judicial Compensation's report. That's the most
 19 important exhibit to the verified complaint,
 20 whose balance I have now handed up.

21 I would additionally provide you hard
 22 copies because --

23 CHAIRMAN DeFRANCISCO: Okay, time out.

24 MS. SASSOWER: This is a lot of money of

*
 handing up
 March 30, 2012
 verified
 in complaint
 GIB v
 Cuomo I

*
 handing up
 correspondence
 (4 sets)

the taxpayers, \$27.7 million last year --

CHAIRMAN DeFRANCISCO: I understand.

Okay, if you want to hand anything else up, just bring it me or give it to Dottie. We do have to conclude the hearing. We have to treat everybody the same time frame.

So thank you very much for testifying, and we'll take that.

The meeting is now closed, the hearing is now closed. We'll start up again on Monday. Thank you.

(Whereupon, at 5:37 p.m., the Senate adjourned.)

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* handing up,
in addition
to correspondence,
transcript pages
from 2012 hearing

Sossower:
Thank you, sir
Thank you.
Thank you