

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

3 -----
4 JOINT LEGISLATIVE HEARING
5 In the Matter of the
6 2017-2018 EXECUTIVE BUDGET
7 ON LOCAL GOVERNMENT OFFICIALS/
8 GENERAL GOVERNMENT
9 -----

10
11 Hearing Room B
12 Legislative Office Building
13 Albany, New York

14
15 January 30, 2017
16 10:09 a.m.

17
18
19
20 PRESIDING:

21 Senator Catharine M. Young
22 Chair, Senate Finance Committee

23 Assemblyman Herman D. Farrell, Jr.
24 Chair, Assembly Ways & Means Committee

PRESENT:

Senator Liz Krueger
Senate Finance Committee (RM)

Assemblyman Robert Oaks
Assembly Ways & Means Committee (RM)

Senator Diane J. Savino
Vice Chair, Senate Finance Committee

Assemblyman Michael Benedetto
Chair, Assembly Cities Committee

Senator Simcha Felder
Chair, Senate Committee on Cities

Senator Kathleen A. Marchione
Chair, Senate Committee on Local Government

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1 comment too that Senator Marchione represents
2 me also.

3 CHAIRMAN FARRELL: Anyone else?

4 SENATOR KRUEGER: Always appreciate
5 your work, Barbara. Thank you.

6 MS. BARTOLETTI: Thank you so much.

7 CHAIRWOMAN YOUNG: Thank you, Barbara,
8 for coming in.

9 CHAIRMAN FARRELL: I liked that last
10 answer. Somebody finally understood. Term
11 limits are called the poll. Every two years
12 you get a limit.

13 MS. BARTOLETTI: Yes. You're
14 absolutely correct.

15 Thank you again.

16 CHAIRMAN FARRELL: Thank you.

17 To close, Elena Sassower, director,
18 Center for Judicial Accountability.

19 MS. SASSOWER: Thank you. Thank you.
20 Just a moment to set up, please.

21 My name is Elena Sassower. I'm
22 director and cofounder of the Center for
23 Judicial Accountability, which is a
24 nonpartisan, nonprofit citizens organization

1 that documents corruption in the judiciary --
2 and in particular, because we are based in
3 New York, corruption in the New York State
4 judiciary.

5 The situation is as bad as it is, and
6 it is because there has been no oversight by
7 the committees of the Legislature that are
8 charged with oversight responsibilities.
9 We're speaking now of the Assembly Judiciary
10 Committee and the Senate Judiciary Committee.
11 Obviously the primary policing mechanism in
12 this state is the Commission on Judicial
13 Conduct. The Assembly Judiciary Committee
14 has not held an oversight hearing of the
15 operations of the Commission on Judicial
16 Conduct since, I believe, 1987. The Senate
17 Judiciary Committee has not held an oversight
18 hearing of the Commission on Judicial Conduct
19 since 2009.

20 That was when Senator John Sampson
21 showed leadership that had been lacking from
22 all his predecessors and began what he
23 announced was going to be a series of
24 hearings on the Commission on Judicial

1 Conduct and the attorney discipline
2 disciplinary system. He held two, scheduled
3 the third, and then aborted the third and
4 continued no further. There were no -- there
5 was no investigation of the testimony that he
6 was presented with, the evidence supporting
7 it. There were no findings of fact. There
8 were no conclusions of law. The hearings
9 were aborted because the testimony and the
10 evidence supporting it was devastating of the
11 corruption of the state commission.

12 Now, likewise, there has been no
13 oversight by any committees of the
14 Legislature of judicial compensation, which
15 this Legislature vested in two commissions, a
16 commission on judicial compensation in 2011,
17 and thereafter in 2015, in a commission on
18 legislative, judicial and executive
19 compensation.

20 I'll go one step further. This
21 Legislature refused to oversee what was going
22 on and to examine the evidence presented to
23 it that these commissions had rendered
24 reports that were statutorily violative,

1 fraudulent, unconstitutional.

2 As a result, salary increases took
3 effect automatically by force of law. And
4 with it, district attorney salary increases,
5 because approximately 45 years ago, this
6 Legislature took from the counties their
7 authority to set the salaries of their
8 district attorneys, who are county officers
9 elected by the people of the counties. It
10 was vested in the state, the state took over
11 the setting of salaries, and the pretext
12 was -- or one of the justifications was that
13 enforcement of the Penal Law is a state
14 interest and therefore the state was going to
15 fix the salaries, going to correlate them
16 with judicial salaries so that they would be
17 high, they would attract the best and the
18 brightest.

19 And needless to say, there has not
20 been any oversight in all these years. Not
21 by the Judiciary Committees, not by the Codes
22 Committees, not by the Committees on Local
23 Governance of the Senate and Assembly, as to
24 how, if, the district attorneys are

1 discharging their function of enforcing the
2 Penal Law.

3 And there has been no examination of
4 the provision in the County Law that was
5 enacted to provide the counties with
6 reimbursements. Since the state was taking
7 over the setting of salaries, the counties
8 wanted some reimbursement. And so you have
9 County Law 700.8, 700.10, 700.11, as to which
10 there has been no oversight.

11 Now, this mess, this mess created by
12 the failure of the Legislature, with all
13 respect, to discharge its duties, is
14 presented in a lawsuit, a citizen taxpayer
15 action which I authored and of which I am the
16 individual plaintiff. It sets forth 10
17 causes of action. And the thread throughout
18 is the inaction, the dereliction, the
19 malfeasance of the committees of the
20 Legislature.

21 Why? Well, in part it's because the
22 committees have no budget. And that's
23 concealed by the Legislature's budget, which
24 only identifies funding for the Ways and

1 Means Committee and in past years, and
2 inferentially today, for the Senate Finance
3 Committee. But the reality is that there is
4 no funding for the committees. They have no
5 resources, just like the member offices.
6 When I call -- and I have called I think all
7 of your offices, and I've had conversations,
8 and I know that your staff doesn't have staff
9 to really do the heavy lifting, the
10 substantive work that needs to be done to
11 serve constituents.

12 Okay. There is a citizen taxpayer
13 action, 10 causes of action. It is addressed
14 to the unconstitutionality of the Legislative
15 Budget, Judiciary Budget, Executive Budget,
16 and a raft of statutory violations,
17 legislative rule violations that go into the
18 mess that becomes the budget.

19 The budget is off the constitutional
20 rails. And I have called your offices, and
21 I -- three weeks ago, I implored leadership
22 and the committee heads to meet with me,
23 because I saw what was happening in this
24 fiscal year. That all the violations, the

1 constitutional, the statutory, the rule
2 violations were repeating themselves in a
3 Groundhog Day fashion.

4 Why should that be? It's all laid out
5 in the lawsuit. There are lawyers galore in
6 the Senate and Assembly, including on the
7 committees. They know how to read a
8 pleading, the verified complaint, and to
9 examine the record. And the record
10 establishes an entitlement to summary
11 judgment to the plaintiffs. Again, the
12 budget is off the constitutional rails.

13 Now, what brings me here today to
14 testify at this hearing -- and I thank you.
15 And it's very late, and I recognize that you
16 want to get on with it. But this is a lot of
17 money. This is our government. The reason
18 why Albany is dysfunctional, the Legislature
19 is dysfunctional, has nothing to do with
20 whether there are full-time legislators or
21 part-time legislators, whether you earn
22 outside income or not, whether we have public
23 campaign financing or not. That is bogus.
24 Because there is no difference,

1 empirically -- I've interacted with members
2 of the Legislature for 25 years, and I can
3 tell you there's no difference between a
4 legislator who purports to be full-time or
5 one who has outside work. There's no
6 difference. The problem is that you don't
7 have the resources and you are emasculated by
8 rules.

9 And Senator Krueger, who was one of
10 the champions of rule reform going way back,
11 essentially abandoned that issue. Of course
12 she waves the flag now and then. But she
13 knows how to be forceful and to show
14 leadership. It's the rules, it's the budget.

15 Okay, I want to conclude. And I am
16 available always to meet with you, to examine
17 how we move forward.

18 The tenth cause of action -- because
19 you have a problem now. You have a very
20 significant problem. The district attorneys
21 now, by reason of the statutory link, are by
22 \$50,000, \$60,000, \$70,000, \$80,000 -- maybe
23 even more -- the highest paid officers in the
24 counties, electeds in the counties. Other

1 than the judges, of course. In some counties
2 the package, with the pensions and health
3 insurance and all the rest of it, is about
4 \$220,000 a year. This is upstate, Western
5 New York, where the median household income
6 is \$40,000, \$50,000, \$60,000?

7 And this year, concealed in the
8 Judiciary Budget, although recognized by the
9 majority Yellow Book of the Assembly and
10 White Book of the Senate, there's going to be
11 an increase in judicial salaries. That's
12 going to go into increases this year for DAs'
13 salaries.

14 Your appropriation this year that
15 grants for district attorney salaries is
16 identical to the appropriation last year and
17 the year before. It's \$4,212,000. You know
18 what happened last year. The counties were
19 clamoring for you to pass separate
20 legislation. You shouldn't be passing
21 separate legislation to funnel additional
22 salary reimbursement to the counties. You
23 should be severing the link. You should be
24 revisiting Judiciary Law 183-A to sever the

1 link.

2 And you should examine what is going
3 on with the appropriation item. Because you
4 have a law that defines the giving of
5 reimbursement. That's 700.10, 700.11. If it
6 needs to be amended, then you should be
7 amending it. Instead, in the appropriation
8 item, it identifies, notwithstanding, and
9 proceeds to violate. Not only does it
10 violate the provision giving reimbursement to
11 the counties, but it adds counties which
12 under Judiciary Law 183-A are not entitled to
13 compensation. And those are the counties
14 with under 40,000 people, excepting Essex
15 County, which is for some reason -- obviously
16 connections -- excluded in the statute.

17 The bottom line is that this is not a
18 judiciary or legislative appropriation. And
19 your duty under the Constitution -- and I
20 read from Article VII, Section 4: "The
21 Legislature may not alter an appropriation
22 bill submitted by the Governor except to
23 strike out or reduce items therein."

24 So you can't add -- if you want to add

1 on the increases this year as a result of the
2 judicial increases that are going to effect,
3 you can't add it here. You can only strike
4 or reduce.

5 Now, you already are on notice of the
6 tenth cause of action laying out the multiple
7 grounds on which the appropriation item last
8 year -- that is replicated identically
9 here -- suffers from all the same
10 constitutional, legal infirmities. What I
11 respectfully suggest -- because the only way
12 you can -- you can't add to it, you can't --
13 because of the court case, and I'm sure
14 you're familiar with the court case, a
15 consolidation of two cases, Silver against
16 Pataki and Pataki against Assembly and
17 Senate, you are constrained. You cannot
18 remove the language and keep the monetary
19 appropriation.

20 So the only thing that you can do is
21 strike that entire -- because what happens
22 under the Constitution, you know, is that
23 such an appropriation bill shall, when passed
24 by both houses, be a law immediately without

1 further action by the Governor.

2 Your duty with respect to the Aid to
3 Localities bill is to reduce appropriations,
4 strike appropriations, and then between the
5 Senate and Assembly, reconcile your bill and
6 it never goes back to the Governor.

7 There is no -- you have no business
8 with your one-house budget resolutions.
9 They're completely off the constitutional
10 rails. The Governor is out of it.

11 What you can do, I respectfully
12 submit -- I have a solution for you on this
13 issue. Under the Constitution, Article VII,
14 Section 3, you can have the Governor -- you
15 can request the Governor or heads of the
16 departments to appear before you, and you
17 can -- and the Governor additionally has
18 30 days within which to amend his bills. You
19 can give him notice that you want his 30-day
20 amendments to include a revision of this DA
21 salary reimbursement provision. He has
22 30 days he can do it as of right. After
23 that, he needs your leave.

24 And once he delivers something

1 acceptable to you, that is compliant with the
2 law -- because what you have here is not
3 compliant -- then you can include it in
4 whatever appropriation bill you're going to
5 enact. And as I said, under the
6 Constitution, it takes effect immediately.
7 It never goes back to the Governor. He's out
8 of the picture. All your to-do about we've
9 got to get an on-time budget -- it never goes
10 back to the Governor. The timeliness is in
11 your hands.

12 Thank you very much. I am of course
13 available to answer any questions.

14 There is one additional matter that I
15 feel constrained to bring up, and that is the
16 three FOIL requests that were part of the
17 tenth cause of action. If you notice, the
18 Aid to Localities budget bill begins with --
19 of course it announces at the top that the
20 bill is submitted by the Governor pursuant to
21 Article VII of the Constitution. Okay?

22 So -- but if you look at D, it says
23 "No monies appropriated by this chapter shall
24 be available for payment until a certificate

1 of approval has been issued by the Director
2 of the Budget, who shall file such
3 certificate with the Department of Audit and
4 Control, the chairperson of the Senate
5 Finance Committee, and the chairperson of the
6 Assembly Ways and Means Committee."

7 On September 1st, I filed a FOIL
8 request for such certificate by the director
9 of the Division of the Budget, filed with
10 you. The response came back from the Senate
11 and Assembly that you have no certificate of
12 authorization, of approval. And my FOIL
13 request to the Division of Budget and to the
14 Comptroller, well, they haven't produced
15 anything yet.

16 Now, as to the other two FOIL
17 requests, if you look at County Law 700.11,
18 it vests in the Comptroller the
19 responsibility to determine the
20 appropriations for each county by way of the
21 reimbursement.

22 Guess what? When I asked for the
23 Comptroller's determinations as to the
24 appropriations to be made to each county,

1 over the past -- I think I asked for the past
2 seven, eight, 10 years, the response came
3 back that the Comptroller -- the Comptroller,
4 whose responsibility it is to fix these sums,
5 he has no records.

6 The last FOIL request was for the plan
7 for counties that do not otherwise qualify
8 for reimbursement pursuant to Judicial Law
9 183-A, the plan that is supposed to be done
10 by the Criminal Justice Services and approved
11 by the budget director.

12 They delayed, they delayed, they
13 delayed. This is from July. I just got the
14 responses on Friday, and the responses show
15 that all they have done was to give to the
16 counties under 40,000 -- that do not qualify
17 for salary reimbursement, that are free to
18 set their DAs' salaries however way they
19 choose -- if they want to have a full-time
20 DA, they can have a full-time DA, and they
21 can fix the salary according to the local
22 conditions. There is no reimbursement to
23 which they are entitled.

24 Nonetheless, they have been given a

1 free ride. You're talking about five
2 counties that have, it would seem now for the
3 past 10 years or so, been -- okay, last
4 thing. I know. Last thing. Okay?

5 CHAIRMAN FARRELL: Thank you very
6 much.

7 MS. SASSOWER: One last thing. NYSAC
8 testified, and they passed a resolution. And
9 their resolution contains two
10 misrepresentations of a material nature. One
11 is "Whereas, for over 50 years, the state has
12 funded all salary increases that they imposed
13 on the counties." No. They have -- the
14 state has not paid -- if you look at the most
15 recent emendation of County Law 700.11, and
16 it's recited in the tenth cause of action, it
17 reimbursed the counties not fully, not a
18 hundred percent -- which is what they want,
19 and what has been snuck into the budget --
20 but the reimbursement statutorily was fixed
21 at between 36 and 42 percent.

22 The second misrepresentation. That is
23 material, because it affects how you view
24 this situation and your obligations. They

1 say, "Whereas, DAs are entitled to the
2 compensation they are owed pursuant to state
3 law for fulfilling the state constitutional
4 and statutory duties related to the
5 enforcement of the State Penal Law."

6 What committee of the Legislature has
7 ever held a hearing as to whether in fact the
8 DAs are discharging their duty? They are
9 not. And they are not discharging it
10 specifically with respect to the information
11 that was presented to them, each of them,
12 that the commission reports raising judicial
13 compensation, salaries, on which their DA
14 salary raises rest, are false instruments,
15 false filings, violative of a succession of
16 Penal Law provisions. They were all
17 presented with the information, with the
18 evidence, with the documentation, and --

19 CHAIRMAN FARRELL: Good night.

20 MS. SASSOWER: -- they've been sitting
21 on them.

22 CHAIRMAN FARRELL: Excuse me.

23 MS. SASSOWER: Thank you. Thank you.

24 CHAIRMAN FARRELL: Excuse me. You are

1 done.

2 MS. SASSOWER: Thank you, Chairman
3 Farrell.

4 CHAIRMAN FARRELL: Thank you very
5 much.

6 MS. SASSOWER: Thank you. Thank you.
7 I look forward to being of service to this
8 committee.

9 SENATOR KRUEGER: Thank you.

10 (Whereupon, the budget hearing
11 concluded at 7:22 p.m.)

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