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December 11, 2013

TO: Governor Andrew M. Cuomo
Temporary Senate President Dean G. Skelos
Temporary Senate President Jeffrey D. Klein
Assembly Speaker Sheldon Silver
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian M. Kolb
Senate Finance Committee Chair John A. DeFrancisco
Senate Finance Committee Ranking Member Liz Krueger
Assembly Ways & Means Committee Chair Herman D. Farrell, Jr.
Assembly Ways & Means Committee Ranking Member Robert C. Oaks
Senate Judiciary Committee Chair John J. Bonacic
Assembly Judiciary Committee Chair Helene E. Weinstein

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: SAFEGUARDING THE PUBLIC PURSE FROM JUDICIAL FRAUD & LARCENY: Your Constitutional & Statutory Duty to Reject the Entirety of the Judiciary's Proposed Budget for Fiscal Year 2014-2015, Over & Beyond its Concealed, Unitemized Third Phase of the Judicial Salary Increase that Will Otherwise Take Effect, Automatically, on April 1, 2014

Pursuant to Article VII, §1 of the New York State Constitution, "Itemized estimates of the financial needs...of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals" were required to be transmitted to the Governor by December 1st "for inclusion in the budget without revision but with such recommendations as the governor may deem proper", with copies "forthwith...transmitted to the appropriate committees of the legislature."

By a November 29, 2013 memorandum addressed to each of you, Chief Administrative Judge A Gail Prudenti purported to furnish "itemized estimates of the annual financial needs of the Judiciary for the Fiscal Year beginning April 1, 2014".

Be advised – and I have so-stated to members of your staff – that these "itemized estimates", constituting the Judiciary's proposed budget for fiscal year 2014-2015, are even more fraudulent and

* **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.

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flagrantly unconstitutional than the Judiciary's "itemized estimates" that constituted its proposed budget for fiscal year 2013-2014. Thus, whereas the Judiciary's proposed budget for this fiscal year was completely unitemized as to the dollar amount of the second phase of the judicial salary increase that was to take effect on April 1, 2013, pursuant to the August 29, 2011 Report of the Commission on Judicial Compensation, the Judiciary's latest proposed budget is not only unitemized as to the dollar amount of the third phase of the judicial salary increase, scheduled to take effect on April 1, 2014, pursuant to the August 29, 2011 Report of the Commission on Judicial Compensation, but entirely conceals the existence of this third phase.¹

To be sure, fraudulent concealment is the only word that can describe what the Judiciary has done – and comparison of its proposed budget for fiscal year 2014-2015 with its proposed budgets for fiscal years 2012-2013 and 2013-2014 makes this obvious. As illustrative:

For fiscal year 2012-2013: Year #1 of Judicial Salary Increase

- (1) the Chief Administrative Judge's transmitting memo identified: "...the first judicial salary increase";
- (2) the executive summary identified: "\$27.7 million for the first judicial pay increase" (at p. ii);
- (3) the proposed budget repeatedly identified "the statutorily mandated judicial salary increase effective April 1, 2012" (pp. 6, 19, 22, 26, 30, 34, 37, 46, 87, 91); and
- (4) the proposed budget bill identified (at bill copy 14):

"By chapter 51, section 2, of the laws of 2008, as reappropriated and amended by chapter 51, section 3 of the laws of 2009, and as reappropriated by chapter 51, section 3 of the laws of 2011: For expenses necessary to fund adjustments in the compensation of state-paid judges and justices of the unified court system and housing judges of the New York City civil court, and for such other services and expenses specified in section two of this act." –

Personal service - regular ... 51,006,759 (re. \$31,000,000)"

¹ The judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report (at pp. 8-10) were summed up as follows:

"The Commission has determined that all New York State judges shall receive phased-in salary increases over the next three fiscal years, starting on April 1, 2012, with no increase in fiscal year 2015-2016. State Supreme Court Justices will...be paid an annual salary of \$160,000 in fiscal year 2012-2013, \$167,000 in 2013-2014 and \$174,000 in 2014-2015. All other judges will receive proportional salary increases..."

For fiscal year 2013-2014: Year #2 of Judicial Salary Increase

- (1) the Chief Administrative Judge's transmitting memo identified: "the next phase of the judicial salary increase...";
- (2) the executive summary identified "the second phase of the judicial salary increase" (at p. i);
- (3) the proposed budget repeatedly identified "the statutorily mandated judicial salary increase effective April 1, 2013." (at pp. 6, 19, 22, 26, 30, 34, 37, 46, 89, 94).
- (4) the proposed budget bill: NO mention of the second phase of the judicial salary increase

For fiscal year 2014-2015: Year #3 of Judicial Salary Increase

- (1) the Chief Administrative Judge's transmitting memo: NO reference to the third phase of the judicial salary increase;
- (2) the executive summary: NO reference to the third phase of the judicial salary increase;
- (3) the proposed budget: NO reference to the third phase of the judicial salary increase;
- (4) the proposed budget bill: NO reference to the third phase of the judicial salary increase.

Indeed, the executive summary's concealment of the third phase of the judicial salary increase is all the more striking as it identifies (at pp. iii) "a \$17 million increase in funding for the final year of the phase-in of statutorily mandated indigent criminal defense standards, and \$17.5 million for mandated salary increments for represented non-judicial employees". Likewise, its footnote 2 (at p. iii), referencing "the first two years of the judicial salary increase", but not a third year – or that 2014 is that year.²

Can there be any doubt as to why the Judiciary has concealed the third phase of the judicial salary increase from its proposed budget? It is to obscure that such can be eliminated from the state budget, pursuant to Article VII, §4 of the New York State Constitution and Chapter 567 of the Law of 2010 (§2(h)) – the latter reading:

"The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations,

² Footnote 2 in the executive summary reads: "The appropriation request associated with the requested increase in cash is \$1.82 billion, which represents a \$63 million, or 3.6 percent, increase. The increase in the appropriation request is slightly higher than the increase in the cash request because of technical reasons that relate to the use of reappropriations to pay for the first two years of the judicial salary increase. The cash increase, rather than the appropriation request, is the true measure of the year-to-year increase sought by the Judiciary."

if any, not later than one hundred fifty days after its establishment. Each recommendation made to implement a determination pursuant to paragraph (ii) of subdivision (a) of this section shall have the force of law, and shall supersede inconsistent provisions of article 7-B of the judiciary law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies." (underlining added).

That each of you are duty-bound to take steps to void this third phase of judicial salary increases is clear from CJA's October 27, 2011 Opposition Report and the verified complaint in our People's lawsuit based thereon, *Center for Judicial Accountability, Inc. v. Cuomo, et al.*,³ establishing that the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report flagrantly violates Chapter 567 of the Laws of 2010, in addition to being fraudulent and unconstitutional. Yet your duty does not end there. It extends to rejecting the Judiciary's "itemized estimates" in their entirety for lack of sufficient and meaningful itemization. Certainly, that the Judiciary's supposed "itemized estimates" enable it to surreptitiously secure monies for the third phase of the judicial salary increase evidences how meaningless its itemizations actually are – and that its proposed budget is, in fact, a slush fund for it to do whatever it wants without notice and accountability to this state's taxpayers.

Nor is there any question that the Judiciary included the third phase of the judicial salary increase in its proposed budget. Thus, the New York Law Journal December 2, 2013 article "*Judiciary Seeks 'Road to Recovery' Budget*" identifies its dollar cost, \$8.4 million, representing a 4.2% increase, albeit not revealing that this information is nowhere found in the Judiciary's budget documents. John Caher, the article's author, refused to disclose the source of his reporting about the third phase of the judicial salary increase, stating he was "not going to engage in this". Nor would he engage in a discussion of such other pertinent portions of his article as the following:

"The \$1.8 billion budget figure highlighted by OCA represents what is known as the 'cash funding' number, or the amount of money the courts propose to spend for the fiscal year.

It differs from the so-called 'appropriation request,' which is the upper limit on available funds and not necessarily representative of what the Judiciary plans to use. The 'appropriation' budget totals \$1.82 billion, representing a \$63 million, or 3.6 percent, increase.

[OCA Executive Director Ronald] Youkins attributed the discrepancy between the cash and appropriation budget to a technical accounting measure resulting from the Judiciary's use of reappropriated funds to pay the first two years of the judicial salary increase."

³ Innumerable "hard" copies of our October 27, 2011 Opposition Report and verified complaint in *CJA v. Cuomo, et al.* are in your possession and/or available to you. As for the copy that I handed up at the February 6, 2013 joint legislative budget hearing on "public protection", I have been informed by Jessica Cherry, counsel to Senator Bonacic, that it was forwarded by the Senate Finance Committee to the Senate Judiciary Committee and is in its files.

All CJA's strenuous objections to the Judiciary's proposed budget for the current fiscal year, to which I testified on February 6, 2013 at the Legislature's joint budget hearing on "public protection" and then followed up with a mountain of further particularizing correspondence, apply with even greater force to the Judiciary's proposed budget for the coming fiscal year.

The video of my February 6, 2013 testimony at the Legislature's joint budget hearing on "public protection" and CJA's relevant correspondence to you from January 30, 2013, culminating in our March 29, 2013 letter to the Governor, is readily accessible. It is posted on our website, www.judgewatch.org, on the webpage created even before I testified, entitled "SECURING LEGISLATIVE OVERSIGHT & OVERRIDE of the 2nd & 3rd phases of the judicial pay raises scheduled to take effect APRIL 1, 2013 & APRIL 1, 2014". Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/legislative-oversight-judicial-raises.htm>.

Suffice to enclose and incorporate by reference CJA's March 11, 2013 letter to the then Senate Budget Subcommittee on "Public Protection", chaired by Senator Michael Nozzolio – thereafter sent to all of you. This March 11, 2013 letter furnishes facts and law sufficient for mandating your rejection of the unitemized and concealed third phase of the judicial salary increase and the entirety of Judiciary's proposed budget. This is the constitutionally-compelled relief we herein seek.

To enable you to discharge your constitutionally-compelled checks and balances function with respect to the Judiciary's "itemized estimates" and proposed budget bill for the upcoming fiscal year – and to prevent a replay of what occurred with respect to the current fiscal year budget – we request:

- that the Governor, now in receipt of the Judiciary's "itemized estimates", direct his Division of the Budget, by its director, Robert Megna, to undertake appropriate review so that the Governor will be able to make "such recommendations as [he] may deem proper", when he includes them, "without revision" in the state budget, pursuant to Article VII, §1;
- that when the Governor presents the Legislature with the Judiciary's proposed budget bill for the Judiciary, pursuant to Article VII, §3, he not join it in the same bill with the Legislature's proposed budget bill for the Legislature;
- that the Senate and Assembly Judiciary Committees, jointly or individually, hold public oversight hearings of the Judiciary's "itemized estimates", taking testimony from the Judiciary, from constitutional scholars, and from the public and, following a vote of their members, that the Senate and Assembly Judiciary Committees present the Senate Finance Committee and Assembly Ways and Means Committee with their reports containing findings of fact and conclusions of law as to: (1) whether the Judiciary's "itemized estimates" are intelligible, lend themselves to meaningful review, and are consistent with Article VII, §7 that new, continuing, and revived appropriations "shall distinctly specify the sum appropriated, the object or purpose to

which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum”; and (2) whether the third phase of the judicial salary increase must, *as a matter of law*, be voided, based on CJA’s October 27, 2011 Opposition Report;

- that the Senate Finance Committee and Assembly Ways and Means Committee, by public meetings of their members, each discuss and vote on the Senate and Assembly Judiciary Committee reports – and, that any member voting to accept the Judiciary’s “itemized estimates”, including monies for the concealed and unitemized third phase of the judicial salary increase, be required to explain his vote with specifics as to how the Judiciary’s budget meets standards of intelligibility and consistency with Article VII, §7 and conforms to the facts and law presented by CJA’s October 27, 2011 Opposition Report;
- that no hearing be held by the Senate Finance Committee and Assembly Ways and Means Committee on the Judiciary’s “itemized estimates”, if, based on the Senate and Assembly Judiciary Committee reports, a majority of each committee has voted to reject the Judiciary’s “itemized estimates”, in which case the Senate and Assembly majority and minority leaders shall notify the Chief Administrative Judge and Chief Judge to resubmit “itemized estimates” to the Legislature and, if deemed appropriate, to the Governor for such recommendations as he “may deem proper”;
- that, upon such resubmitted “itemized estimates”, the process repeat, with the Senate and Assembly Judiciary Committees, jointly or individually, holding public oversight hearings of the Judiciary’s resubmitted “itemized estimates”, again taking testimony and, following discussion and vote of their members, presenting reports to the Senate Finance Committee and Assembly Ways and Means Committee, to be discussed and voted on by their members at open meetings, with the basis of any dissent from an approving vote memorialized by a written committee report.
- that any joint legislative budget hearings on the Judiciary’s “itemized estimates” under the auspices of the Senate Finance Committee and Assembly Ways and Means Committee be held separate from hearings on Executive branch agencies, so as not to obscure the constitutionally-differentiated nature of the budgeting for this separate branch – and that the committees’ deliberations and votes thereon be at open meetings and embodied in written committee reports.

This suggested course is consistent with Article VII, which three times mentions the Governor’s “recommendations” (§§1, 2, 3) and underscores the role of legislative committees by directing that the Judiciary’s budget be transmitted “to the appropriate committees of the legislature”. These “appropriate committees” are – as reflected by the Judiciary’s own November 29, 2013 transmitting memorandum – the Senate and Assembly Judiciary Committees, the Senate Finance Committee, and

the Assembly Ways and Means Committee.

Certainly, too, the suggested procedures implement key concepts of both the majority and minority reports of the 2009 Temporary Senate Committee on Rules and Administration Reform, three of whose nine members are now Temporary Senate President Klein, now Senate Minority Leader Stewart-Cousins, and now Senate Judiciary Committee Chairman Bonacic.

The Governor also should be greatly supportive of these suggested procedures. After all, his “Special Counsel for Public Integrity and Ethics Reform” is Jeremy Creelan, principal author of the Brennan Center’s 2004 report “*The New York State Legislative Process: An Evaluation and Blueprint for Reform*”, which, with its two updates, gave rise to the Temporary Senate Committee on Rules and Administration Reform⁴. Indeed, Mr. Creelan testified before it at its February 26, 2009 public hearing, as well as answered questions, including about budget reform.⁵

Likewise, great support should be expected from now Senate Finance Committee Ranking Member Krueger, who participated with the Temporary Senate Committee on Rules and Administration Reform, from the dais, at its February 26, 2009 hearing. Senator Krueger is known for her strong advocacy of legislative rules and budget reform, at least rhetorically. Surely she – and Senators Klein, Stewart-Cousins, and Bonacic – will be the first to recognize that the procedures here proposed for the Legislature’s constitutionally-mandated oversight of the Judiciary’s budget could and should be reasonably adapted for its review of the huge Executive budget, accomplished by activating the 70-plus Senate and Assembly Committees to each engage in numbers-crunching,

⁴ The titles of these two Brennan Center updates, “*Unfinished Business: New York State Legislative Reform*” (2006) and “*Still Broken: New York State Legislative Reform*” (2008), reflect how little had changed after the 2004 report.

⁵ The question about budget reform, by the Temporary Senate Committee’s majority co-chair, Senator David Valesky, began with his observation:

“...if we step back for a moment and look at the work that the legislature does. The 11 budget bills, I guess, four appropriations, four language bills, the debt service, the Legislative, Judiciary, and revenue bill. From the perspective of what we do that affects people’s daily lives the most, I think we can all agree, by far, it’s the budget: \$124 billion taxpayer-supported budget...

...So maybe you could advise us at some point in the future as the committee continues to do its work as to ways we might continue to, in the spirit of reform of the legislative process, actually, additionally, reform the budget process. (emphasis added, video at 1:30:48 mins.)

Mr. Creelan’s response opened as follows:

“I’d just like, one comment on that. When we issued the report originally, one of the criticisms of the report was that it didn’t focus enough on the budget process and it was one of the few criticisms that I actually thought was quite fair. Um, not to say that the rest of the report, I thought, it didn’t render it, you know, unhelpful. But, it was an important aspect of it in focusing just on that we didn’t, you know, we didn’t. We included it in the analysis but we didn’t break it out separately and really discuss the unique dynamics of it...”

budget oversight hearings of the agencies and government services within their jurisdiction.

Based on the transcript excerpts quoted by our March 11, 2013 letter, there can be no doubt that decisive action by the Governor and Legislature with respect to the Judiciary budget is long overdue. The Judiciary has contemptuously persisted in submitting opaque, indecipherable budgets, despite year, after year, after year of criticism by legislators on the subject and promises of transparency and accountability by its Chief Administrative Judges. That such budget has evaded the Legislature's comprehension – despite the huge financial and personnel resources of its Senate Finance Committee and Assembly Ways and Means Committee – is highlighted by our March 11, 2013 letter and reinforced by its referred-to subsequent analysis of the Legislature's "White", "Blue", "Yellow", and "Green" Books (at p. 12).

Should you disagree that each of you is duty-bound to take steps to reject the Judiciary budget because it lacks sufficient and intelligible itemization and violates Article VII, §7 – creating a slush fund for the Judiciary to steal monies from the public purse for the third phase of the judicial salary increase which, like the first two phases, are fraudulent, statutorily-violative, and unconstitutional, as demonstrated, resoundingly, by CJA's October 27, 2011 Opposition Report – please furnish the facts and law constituting the basis for your disagreement.

So that the foregoing may be discussed directly, I respectfully request that you schedule a meeting with me, as soon as possible. Meantime, I will be contacting scholars of New York's Constitution and budget, bar associations with committees pertaining to these issues, and so-called "good-government groups" to request that they offer expert opinion. I will also be scheduling meetings with rank-and-file Senators and Assembly members, beginning with CJA's own, Senator George Latimer and Assemblyman David Buchwald – and the chairs and ranking members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Oversight, Analysis and Investigation – so as to be able to report to you as to whether they are able to meaningfully comprehend and scrutinize the Judiciary's purported "itemized estimates", budget bill, and the concealed, but included, third phase of the judicial salary increase.

As the Commission to Investigate Public Corruption has pledged to "follow the money" and has announced as recently as in its December 2, 2013 interim report that:

"Government watchdogs, the media, and, most of all, members of the public have a right to understand how their tax dollars are spent and by whom, as well as the process used to appropriate state funds" (at p. 25),

this letter is being simultaneously furnished to the Commission with a request that it investigate and render a report to you of the evidence here presented of the Judiciary's latest fraud and attempted grand larceny of taxpayer dollars by its materially unitemized, slush-fund budget and the concealed third phase of the judicial salary increase. So that Chief Administrative Judge Prudenti and Chief Judge Lippman may prepare for the Commission's interrogation – and yours – this letter is also being simultaneously sent to them.

For the convenience of all and to facilitate CJA's upcoming advocacy pertaining to the budget for fiscal year 2014-2015, this letter and all referred-to substantiating evidence, will be posted on a webpage entitled "CJA Leads the Way to NYS Budget Reform, Starting with the Judiciary Budget" and accessible *via* our top panel "Latest News".

Thank you.



Enclosure: CJA's March 11, 2013 letter (14 pages)

cc: Mylan Denerstein, Counsel to the Governor
Jeremy Creelan, Special Counsel for Public Integrity and Ethics Reform
Robert Megna, Director, Division of the Budget
Senate Judiciary Committee Ranking Member Ruth Hassell-Thompson
Assembly Judiciary Committee Ranking Member Tony Jordan
Senator George Latimer (37th Senate District)
Assemblyman David Buchwald (93rd Assembly District)
Senate Committee on Investigations and Government Operations Chair & Ranking Member:
 Senator Carl Marcellino & Senator Brad Hoylman
Assembly Committee on Oversight, Analysis and Investigation Chair & Ranking Member:
 Assemblyman Andrew Hevesi & Assemblyman Michael Montesano
Commission to Investigate Public Corruption
Chief Administrative Judge A. Gail Prudenti
Chief Judge Jonathan Lippman
The Public & The Press

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Elena Ruth Sassower, Director & Founder
Doris L. Sassower, President & Founder

March 11, 2013

TO: Senate Budget Subcommittee for “Public Protection”¹
Senator Michael F. Nozzolio, Chair
Senator Greg Ball
Senator Patrick M. Gallivan
Senator Martin J. Golden

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Rectifying your Absence at the February 6, 2013 Budget Hearing on “Public Protection” by Verifying the Dispositive Nature of the Opposition Testimony to the Judiciary Budget & its Judicial Salary Increase Request

This follows my notification to your offices on Tuesday, March 5, 2013, expressing concern that you, as Chair and Members of the Senate Budget Subcommittee for “Public Protection”, were not present for my testimony on February 6, 2013 at the Senate and Assembly joint budget hearing on “public protection”.

Indeed, it would appear that the reason I was assigned to be the last speaker at the February 6, 2013 “public protection” hearing was to ensure that as few Senators and Assembly Members as possible would be present when I testified, more than seven hours after the hearing began.

Tellingly, the Senate Finance Committee has not posted the video of the February 6, 2013 “public protection” hearing on its website, but only the list of scheduled speakers and their written “testimony”. However, my testimony was not written, unlike that of Chief Administrative Judge Prudenti, the first scheduled speaker. Rather, I spoke extemporaneously in opposition to the Judiciary’s proposed budget and its request for funding for the second phase of the judicial salary

¹ It is unclear what Committee this is a “Subcommittee” of.

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increase, citing to, and handing up, substantiating proof.²

Fortunately, the search feature on the Senate’s website produces the video of the February 6, 2013 “public protection” hearing – posted on Senator Nozzolio’s website³. As it is none too accessible in this fashion, our own website, www.judgewatch.org, has rescued the video from oblivion by featuring it on our webpage entitled “Securing Legislative Oversight & Override of the 2nd & 3rd phases of the judicial pay raises...”, conveniently accessible *via* our website’s top panel “Latest News”. This “Legislative Oversight & Override” webpage additionally posts all the evidentiary proof and legal authority on which my February 6, 2013 testimony was based, including the dispositive documents I handed up when I testified and immediately thereafter, *to wit*:

- (1) CJA’s October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Report, whose recommendations are the sole basis for the second phase of the judicial pay raises for which the Judiciary’s budget is seeking funding;
- (2) the March 30, 2012 verified complaint in CJA’s People’s lawsuit against New York’s highest constitutional officers and three government branches for collusion against the People in connection with the judicial pay raises – whose most important exhibit is CJA’s October 27, 2011 Opposition Report;
- (3) CJA’s correspondence with our highest constitutional officers in our three government branches in the week and a half preceding the February 6, 2013 budget hearing on “public protection”, largely based on the dispositive significance of the October 27, 2011 Opposition Report and verified complaint based thereon⁴;

² What is posted, beside my name, on the Senate Finance Committee’s website, <http://www.nysenate.gov/testimony-february-6-2013-budget-hearing-public-protection>, is the Executive Summary to CJA’s October 27, 2011 Opposition Report, copies of which I supplied to legislative staff before the February 6, 2013 hearing began – and which it distributed to the few Senators and Assembly Members who remained, more than seven hours later, as I began to testify, extemporaneously.

³ <http://www.nysenate.gov/event/2013/feb/06/joint-legislative-public-hearing-2013-2014-executive-budget-proposal-topic-public->. My testimony is at 7:21:50.

⁴ This correspondence, four copies of which I handed up, consisted of the following:
To the Legislative branch: (1) CJA’s January 30, 2013 letter to Temporary Senate President Skelos and Assembly Speaker Silver; (2) CJA’s January 30, 2013 letter to the Chairs & Ranking Members of the Senate Finance Committee, Senate Judiciary Committee, Assembly Ways & Means Committee, and Assembly Judiciary Committee;

To the Judicial branch: (1) CJA’s January 29, 2013 letter to Chief Administrative Judge Prudenti, with a copy to Chief Judge Lippman; (2) CJA’s February 2, 2013 e-mail to the Office of Court Administration; (3) CJA’s February 4, 2013 e-mail to the Office of Court Administration;

To the Executive branch: (1) CJA’s February 1, 2013 letter to Governor Cuomo; (2) CJA’s February 1, 2013 letter to Attorney General Schneiderman & Comptroller DiNapoli; (3) CJA’s February 5, 2012 e-mail

- (4) pages 103-107 of the transcript of the January 31, 2012 Senate and Assembly joint budget hearing on “public protection”, containing colloquy between then-Senator Stephen Saland and Acting Commissioner of the Division of Criminal Justice Services Sean Byrne as to the cost to the state of the increases in district attorney salaries resulting from the judicial salary increases, to which they are statutorily tied.

These documents must be personally reviewed by you, so that you can verify, for yourselves, that CJA’s October 27, 2011 Opposition Report irrefutably establishes that the judicial salary increases recommended by the Commission on Judicial Compensation are statutorily-violative, fraudulent, and unconstitutional – and that it is the Legislature’s absolute duty, based thereon, to override those increases, along with the statutorily-linked increases for such other public officers as district attorneys,⁵ contained in the Executive budget. As your review will further make obvious, Senate and Assembly Members, now knowledgeable of CJA’s October 27, 2011 Opposition Report, cannot approve the Judiciary’s request for funding of the second phase of judicial salary increases without being chargeable with official misconduct that is both criminal and impeachable. Indeed, at issue, is nothing short of grand larceny of the public fisc, involving tens of millions of dollars this year alone.

As for that portion of my February 6, 2013 testimony addressed to the Legislature’s power and duty to disapprove the Judiciary’s requested budget for fiscal year 2013-2014, in its entirety, because its insufficient itemization frustrates meaningful review and renders it unconstitutional, I cited and quoted the Supreme Court decision in *Pines v. New York State* (Nassau Co. #10-13518), one of the judges’ judicial compensation cases which is still live, pending appeal before the Appellate Division, Second Department (#2011-02821). That decision, finding the state liable for over \$51 million in judicial pay raises based on the appropriations bill the Legislature passed for the Judiciary in 2009, is a “must read”. It, too, is posted on our website⁶, as are the Court of Appeals decisions it

to the Governor’s Division of the Budget.

⁵ The salaries of county clerks are also statutorily-linked to judicial salaries. *See, inter alia*, N.Y. Cnt. Law §908.

⁶ Also posted are the transcripts of the Senate and Assembly floor debates on the 2009 appropriations bill for the Judiciary. This, because the *Pines* decision brazenly falsifies their content so as to purport that the Legislature, in passing what became Chapter 51 of the Laws of 2009, intended to raise judicial salaries. Thus, the decision states:

“Defendant [NYS] suggests that the legislative intent is demonstrated by the debate on the chamber floor. The Court finds unavailing defendant’s submission of Assembly and Senate floor debate transcripts for the very reason that those transcripts represent just that, which is debate about the issue. While illustrative of the animus and disdain of less than a handful of legislators for the judiciary, a co-equal branch of government, the colloquy is unpersuasive...” (underlining added).

In fact, as the April 3, 2009 Senate transcript shows, the unidentified “legislators” were Senator DeFrancisco, then Ranking Member of the Senate Finance Committee, and Senator Sampson, then Chairman of the Senate

identifies for the proposition that the budget must be itemized and that the Legislature must reject a budget it cannot meaningfully review. These also are “required reading” – and not only *Saxton v. Carey*, 44 NY2d 545 (1978), quoted by *Pines*. Read also *Hidley v. Rockefeller*, 28 N.Y.2d 439

Judiciary Committee, and the unidentified “unavailing”, “unpersuasive” “colloquy” between them was solely as to whether, in passing the appropriations bill for the Judiciary, the Legislature would be raising judicial salaries. The following is illustrative:

Senator DeFrancisco: “In order for the judiciary to receive a salary increase, is it correct that there would have to be a separate bill authorizing such an increase separate and apart from this budget?”

Senator Sampson: “...That’s correct, Senator....”

Senator DeFrancisco: “Stated another way, the only mechanism for a judicial salary increase would be through a separate piece of legislation...”

Senator Sampson: “...you are correct, Senator DeFrancisco.”

Thereupon, and without disputing comment from a single Senator, the Senate voted to pass the appropriations bill.

Similarly, the March 31, 2009 Assembly transcript shows that the unidentified “legislators” were, in the first instance, Assembly Ways and Means Committee Chairman Farrell, who did not engage in any colloquy, but, rather, made the following emphatic statement:

“As required by New York State’s Constitution, judicial salaries are and have always been set by law, Article VII(B) of the Judiciary Law. A reappropriation of potentially available monies cannot and does not change that law and what it certainly does not authorize is any salary increases. The notion that the Office of Court Administration has been somehow authorized or empowered to ignore both the New York State Constitution and Article VII(B) of the Judiciary Law by some words stricken from an appropriation is 100 percent incorrect. Simply stated, some redundant words were removed, but these words could be replaced if that was deemed necessary to eliminate any contrived confusion in a chapter amendment. No New York State court in any case, and there have been several, has ever determined that judicial salaries could be adjusted without amendment to Article VII(B) of the Judiciary Law.”

This was not contested by a single Assembly member. The only other Assembly member who thereafter spoke about the Judiciary budget, without any colloquy – following which the Assembly vote was directly taken – was former Assemblyman William Parment, who, citing figures showing that the Judiciary’s budget had increased 121% in 10 years, from 1999-2009, stated:

“Now I believe that this Legislature should take a responsibility to more closely examine what the Judiciary is doing with all the money we’ve been spending on the Judiciary...And so, I would recommend all of you to vote against this budget and we come back and work on it again at a later date.” (underlining added).

(1971), where the important dissent is not that of Judge Breitel, but of then Chief Judge Fuld, who would have held unconstitutional the Executive budget therein challenged. Additionally read *People v. Tremaine*, 281 NY. 1 (1939), whose passing references to the Judiciary budget make apparent that the Judiciary budget, at that time, like other budgets, contained itemization altogether lacking in the Judiciary’s budget request for fiscal year 2013-2014, *to wit*, “every place and position are stated with the salary connected therewith.” (at p. 9), albeit recognizing that “it is not necessary to state the salaries of all clerks or of all stenographers, but it may be appropriate to state the number that is required to do such class of work and the lump sum that is to be appropriated for the purpose.” (at p. 10).

Examination of the Judiciary’s budget request for fiscal year 2013-2014 reveals precisely what I stated at the February 6, 2013 hearing: it does not identify the dollar amount of the judicial salary increases and does not identify the dollar amount of “judicial compensation and non-salary benefits”, excluding salary. Indeed, the budget also does not identify the dollar amount for judicial salaries. Instead, it lumps salaries of judges, whose numbers are not given, with salaries of employees on the Judiciary payroll, whose numbers are also not given – listing the combined salaries as “Personal Service” – and also lumps together “fringe benefits” of judges and employees on the Judiciary payroll. Similarly, the Governor’s appropriations bill for the Judiciary (S2601; A3001), essentially replicating the Judiciary’s proposed appropriations bill, does not identify the cost of the judicial salary increase – or even that there is one – and lumps together salaries of judges and judicial employees, as likewise “fringe benefits” of judges and judicial employees.⁷

That this is improper may be seen by comparison with the Legislature’s requested budget for fiscal year 2013-2014, which separately itemizes the salaries of legislators and legislative employees⁸.

⁷ That the Judiciary budget combines judges with employees mirrors what the Judiciary did in campaigning for judicial salary increases. As the Judiciary well knows, including from CJA’s October 27, 2011 Opposition Report (at p. 14), judges are NOT employees. Rather, they are “constitutional officers” of the Judicial branch – co-equal with the “constitutional officers” of the Executive branch: the Governor, Lieutenant Governor, Attorney General, and Comptroller, and the “constitutional officers” of the Legislative branch: the Senators and Assembly Members, none of whom have had salary increases since 1999 – in contrast to this state’s 195,000 employees to whom the judges always compared themselves in whining for pay raises and claiming they were being “subjugated” by the Legislative and Executive branches.

⁸ As illustrative, for the Senate:

“For payment of salaries to members, 63, pursuant to section five of the legislative law.....\$5,008,500”

“For payment of allowances to members designated by the temporary president, pursuant to the schedule of such allowances set forth in section 5-a of the legislative law....\$1,289,500”

“For personal service of employees and for temporary and expert services of members’ offices and of standing committees: Personal Service Regular.....\$32,404,725”

The same is true of the Governor's appropriations bill for the Legislature based thereon – which is the same appropriations bill as for the Judiciary (S2601; A3001).

In testifying on February 6, 2013, I stated:

"The finance committees have in prior years objected to the lack of itemization in the Judiciary's budget. This year, in this hearing, there was no, there was no comment about the insufficiency of the budget, the lack of itemization."

In support, I brought with me the pertinent pages of the transcripts of the Legislature's joint budget hearings on "public protection" from 2010, 2011, and 2012. In each of these years – the only years of transcripts I could find on the internet⁹ – the objections of Senators and Assembly Members were without apparent recognition of the Legislature's power and duty to reject a budget it could not meaningfully review for lack of appropriate itemization. At the February 9, 2011 "public protection" hearing, three separate Senators objected: Senator Nozzolio being one, in addition to Senate Judiciary Committee Chairman Bonacic and Senate Finance Committee Chairman DeFrancisco. Their comments followed upon the testimony of Chief Administrative Judge Pfau, who had stated:

"I want to also discuss what the budget looks like this year, which is different from last year. What we have presented this year, for purposes of clarity and to conform

"For personal service of employees and for temporary and expert services for senate operations: Personal Service Regular.....\$27,984,758"
(appropriations bill, underlining added).

Similarly, for the Assembly:

"Members, 150, payment of salaries pursuant to section five of the legislative law.....\$11,925,000"

"For payment of allowances to members designated by the speaker pursuant to the provisions of section 5-a of the legislative law\$1,592,500"

"For personal service of employees and for temporary and expert services of members' offices and of standing committees and subcommittees:
Personal Service Regular.....\$23,112,207
Temporary Service.....\$2,261,960"

"For personal service of employees and for temporary and expert services for administrative and program support operations:
Personal Service regular.....\$38,770,768
Temporary Service.....\$460,907"
(Appropriations bill, underlining added)

⁹ These transcripts are posted on our website, as likewise the corresponding videos for the 2011 and 2012 "public protection" hearings.

our format to that used by the other branches, are two separate documents. One contains the operating budget, which are really the operating needs for the courts for the coming fiscal year. And the second contains the general state charges; that is the pension and health-related costs – costs that certainly are outside of our control – again for the judiciary for the coming fiscal year.

This is the first step in what we hope to continue working with you to continue to make sure that our budget is as transparent, as simple, and as straightforward as possible so everybody understands very clearly how the taxpayers’, hardworking taxpayers’ dollars are being put to use in the New York State judiciary.” (at pp. 9-10, underlining added).

Senator Bonacic’s questioning was as follows:

“...you know, with the legislative budget we itemize in very specific detail every aspect of every elected official’s office. And we’re wondering if – we would like to see the Judiciary do that with respect to every judge and office with personnel and expenditures, to the same standard with respect to the legislative budget. Because we need transparency and accountability.

Is that something that you would be willing to undertake and do, to the same degree of itemization as our legislative budget?” (at pp. 23-24).

The response from Chief Administrative Judge Pfau was this:

“...I couldn’t agree with you more that our budget, like your budget, like every budget, has to be transparent, has to be readable. Any citizen should be able to pick it up and understand where their taxpayer dollars have gone. So we would absolutely be willing to work with you, to work with the Division of the Budget towards a budget that works and is as transparent and as itemized as possible...” (at p. 24, underlining added).

Senator Nozzolio thereafter stated:

“I’d like to follow up on Senator Bonacic’s question regarding an open judicial budget. And I believe your answer missed the point. The point that Senator Bonacic was asking you about were not the budgeting process, not the allocation of those resources during a budgetary review, but rather the itemization of the specific expenditures made by each individual judge and each individual court across this state.

Each individual legislator sitting at this dais, as well as all the other legislators, as well as the Executive, have the requirement of itemizing their expenditures. Why don’t judges do the same?” (at p. 32).

...

...let’s start with the judges’ cost of operating their offices, including their staff. And then the next step would logically be the list, the roster of those researchers and other court personnel connected with the administration of the court.

Now, that’s what we’re asking for. We believe the Judiciary should follow the example of itemizing their expenditures. Whether they be assigned to an individual judge or an individual court is not determinative factor. What is the determinative factor is that each expenditure be open and itemized for public review.

And we hope that in order to restore confidence in the Judiciary, as well as we’re trying to restore confidence in all areas of government, that the Judiciary does not drag its feet, does not try to hide behind a cloak of secrecy, and itemizes those expenses appropriately.” (at pp. 34-35, underlining added).

Again Chief Administrative Judge Pfau pledged improvement:

“...is this the budget that tells the story the way it should be told? Probably not. Do we have to do better? Of course. And what exactly the right answer is for us to make sure our budget is one that everyone has confidence in and understands what their dollars are for, I think that’s a process that we absolutely will work with you, with the Division of the Budget. It has to be something that everybody can use and understand. But we will do that, absolutely.” (at p. 35, underlining added).

Senator DeFrancisco then followed with questioning about the Judicial Institute at Pace Law School:

Chairman DeFrancisco: “It’s very – it’s impossible, under this budget, to figure out exactly what the cost of Pace is, because all the personnel are lumped together.

And so when you talk about itemized budgets, it’s not only itemized budgets of a court, a judge and who participates in that courtroom, but it’s also the Pace – can you, the financial person or somebody tell me what the total cost of the Judicial Institute is in this budget?”

Chief Admin. Judge Pfau: “I can tell you the operating cost, just operating the building costs, the MPS cost is about \$300,000 a year.”

Chairman DeFrancisco: “To operate the building.”

Chief Admin. Judge Pfau: “To operate the building. But you’re asking about the people.”

Chairman DeFrancisco: “Well, personnel is the real cost to running an institute, I would think. And my question is, how many – is there lawyers, judges, teachers?”

Chief Admin. Judge Pfau: “I’m being told it’s about \$3 million a year.”
(at pp. 46-47, underlining added)

Today – two budget requests later – it is still “impossible” to figure out the actual cost of the Judicial Institute at Pace Law School – or to intelligently assess the costs of salary and “fringe benefits” of judges and varying classes of employees and the operations of any number of offices, programs, and commissions within the Judiciary. Indeed, the Judiciary budgets for fiscal years 2012-2013 and 2013-2014 are LESS ITEMIZED and MORE INDECIPHERABLE than the Judiciary budget for fiscal year 2011-2012,¹⁰ about which Senators Nozzolio, Bonacic, and DeFrancisco complained at the 2011 “public protection” hearing – failing even to identify the number of judges and non-judges on the Judiciary’s payroll, information contained in those previous budgets.¹¹

The inability of Senators and Assembly members to comprehend the Judiciary budget in any meaningful way was evidenced at the February 6, 2013 hearing. Indeed, when I stated, following my reading aloud from *Pines v New York State*:

“I respectfully submit that the reason why there was so little number-crunching at this committee hearing is because the members of this committee really don’t understand the budget. It escapes them. And I think it’s time to ‘fess up’ to that reality”,

Senate Finance Committee Ranking Member Liz Krueger broke into a smile, in recognition of its truth.

Needless to say, the Judiciary is not “an agency” – but a separate branch of government whose requested budget should have been the subject of its own hearing, rather than lumped in with agencies under the rubric of “public protection”, with my opposition testimony shoved to the end.

¹⁰ The Judiciary’s budgets for fiscal years 2012-2013 and 2013-2014 are approximately 200 pages each – including the separately presented “General State Charges” of “fringe benefits. By contrast, the Judiciary’s budgets for fiscal years 2009-2010, 2010-2011, and 2011-2012 were more than 2-1/2 times the size: approximately 550 pages each.

¹¹ Omission of this previously included information in the Judiciary’s budgets for fiscal years 2012-2013 and 2013-2014 is all the more significant in view of former Assemblyman Parment’s questioning of Chief Administrative Judge Pfau at the February 8, 2010 “public protection” hearing, challenging her as to the number of employees indicated in the Judiciary’s budgets for fiscal year 2010-2011 and fiscal year 1999-2000, which he had prefaced, as follows:

“...I have several questions about the Budget, and my comments and questions are based on the presentations that the Unified Court System has presented to the Legislature over the past decade.

...I will tell you that the presentations do not submit an easy understanding, and it’s very difficult to develop metrics based on the data presented...” (at p. 37, underlining added).

Examination of the Judiciary’s requested budget for 2013-2014 discloses a succession of material deceits by the Judiciary, as to which there needed to be appropriate questioning of Chief Administrative Judge Prudenti at the February 6, 2013 hearing, of which there was none.

Notably, in testifying on February 6, 2013, the Chief Administrative Judge did not state the dollar amount of the Judiciary’s request. Instead, and notwithstanding the Judiciary’s “General State Charges” portion of its budget identifies growth of \$93 million, which it calculated as a 16.4% increase from the previous year, she stated that the Judiciary budget, “in terms of [its] General Fund operating budget, is flat, seeking no increase over the current year” (at p. 1), and was a “zero-growth budget” (pp. 2, 9).

This concealment by the Chief Administrative Judge of the dollar cost of the Judiciary budget is no accident. It mirrors a similar concealment in the Judiciary budget which nowhere identifies an “All Funds” total for its two component parts: the “Operating” budget, which the Judiciary tallies as \$1,973,235,869, and its “General State Charges” budget, which it tallies as \$660,660,607. The simple addition of these two is \$2,633,896,476.

Nevertheless, this is not the figure that either the Senate Majority Coalition or the Senate Democratic Minority identify as the “All Funds” total. Thus, according to the Senate’s “White Book” of its Finance Committee’s Majority Coalition (at p. 75), the total “All Funds” figure is \$2,662,000,000. According to the Senate’s “Blue Book” of its Finance Committee’s Democratic Minority (at p. 232), it is \$2,660,128,900. In other words, the Senate cannot agree as to the dollar amount of the Judiciary’s “All Funds” budget – diverging, in their respective totals by \$1,871,000 and each, respectively, \$28,103,254 and \$26,232,154 more than what a straight add of the “Operating” budget and “General State Charges” should produce.

The Judiciary’s “single budget bill” also provides no cumulative tally of the appropriations it contains. Is the \$50,095,000 of “Reappropriations” a sum on top of the “All Funds”, and “General State Charges” – in which case isn’t the total monies being appropriated \$2,683,991,476? Or does the bill contain more appropriations, as, for instance, \$15,000,000 for “New Appropriations (Supplemental)” and \$51,000,000 for “Capital Projects-Reappropriations”, both tucked in the back.

As for the Governor’s “Commentary” to the Judiciary’s budget, accompanying his transmittal to the Legislature of the Judiciary’s budget and his appropriations bill based on the Judiciary’s bill¹², it is of no help. It identifies the Judiciary’s requested budget as “\$2.6 billion” – a rounded figure able to conceal many tens of millions of dollars: a veritable slush fund – made all the worse by “transfer provisions” that Chief Judge Fuld’s dissent in *Hidley v. Rockefeller*, 28 N.Y.2d 448 (1971) would have declared unconstitutional, *on their face*, because:

¹² These are not completely consistent – especially as to the \$50,095,000 “Reappropriations”. Thus the Judiciary’s budget bill gives figures of \$14,000,000; \$16,095,000; \$20,000,000 as the breakdown of “Reappropriations” from “General Fund-State and Local”; “Special Revenue Funds – Federal”; and “Special Revenue Funds-Other”. In the Governor’s bill they are \$14,000,000; \$14,375,000; and \$21,720,000.

“To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of article VII of the Constitution”.

Certainly, too, it appears from the Judiciary’s budget bill – and the Governor’s appropriations bill based thereon (S2601; A3001) – that the repetitive references to prior budget appropriations for unidentified “services and expenses including travel outside the state and the payment of liabilities incurred...” flagrantly violate Article VII, §7 of the New York State Constitution:

“No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law...and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.” (underlining added).

None of this, however, was inquired about at the February 6, 2013 “public protection” hearing. Nor, for that matter, was there any questioning of Chief Administrative Judge Prudenti about the “second phase of the judicial salary increase” to which the Judiciary’s budget prominently and repeatedly refers, but without any dollar amount or percentage figure – and as to which the Chief Administrative Judge stated in both her oral and written testimony:

“We face significant cost increases in the coming year, including the cost of the judicial salary adjustments recommended by the Judicial Salary Commission” (at p. 2, underlining added).

There is no “Judicial Salary Commission”. As Chief Administrative Judge Prudenti well knows, the name of the Commission is the Commission on Judicial Compensation, so-named by the statute that created it – Chapter 567 of the Laws of 2010 – because the statute required the Commission to “examine, evaluate and make recommendations with respect to...compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system” as a predicate to any determination it might make for salary adjustment. This, the Commission did not do, examining only – and in the most superficial way – judicial salary, as is highlighted by CJA’s Opposition Report (at pp. 18-21, 25-31, 33) and the verified complaint in the lawsuit based thereon (¶¶ 110, 118, 169(ii), “WHEREFORE”, ¶4). Thus, unexamined by the Commission were “non-salary benefits” – these being what the Judiciary’s budget refers to as “fringe benefits” and defines as including “pension contributions, Social Security and Medicare, health, dental, vision and life insurance”, whose ballooning cost, from \$567,639,322 last year to \$660,660,607 this year, it attempts to distance itself from by calling them “General State Charges”.

Notwithstanding the Governor’s constitutional obligation to make “such recommendations as he may deem proper” with respect to the Judiciary budget (Article VII, §1, 2), his Director of the Division of the Budget, Robert Megna, with full knowledge of CJA’s Opposition Report, including as to the Commission’s violation of the statutory requirement that it examine “judicial compensation and non-salary benefits”, failed to ensure that the Division of the Budget would appropriately examine the Judiciary budget so that the Governor might make proper recommendations to the Legislature with respect thereto.

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. As for the Senate and Assembly Judiciary Committees, there is no evidence of their members having reviewed the Judiciary budget for fiscal year 2013-2014 – nor of their ever having reviewed the August 29, 2011 Report of the Commission on Judicial Compensation, whose violation of the statutory requirement that the Commission “examine, evaluate and make recommendations with respect to...compensation and non-salary benefits for judges and justices of the state-paid courts” does not require CJA’s October 27, 2011 Opposition Report to discern, as it is evident from the face of the Report, as are other of the Commission’s flagrant statutory violations. Indeed, the evidence is ALL to the contrary.

Suffice to say that in the weeks following the February 6, 2013 “public protection” hearing, I have repeatedly called the offices of the Chairs and Ranking Members of these four committees directly responsible for overseeing the Judiciary’s budget – the Senate Finance Committee, the Senate Judiciary Committee, the Assembly Ways and Means Committee, and the Assembly Judiciary Committee – in an effort to schedule a meeting with them to discuss my testimony, to provide additional information, and to answer their questions. I received no response from them to my meeting requests, virtually no call-backs from their committee staff to discuss such further information as I might provide, and little response as to:

- (1) who was reviewing the documents I handed up and to which I referred at the February 6, 2013 budget hearing on “public protection” in support of my testimony in opposition to the Judiciary’s budget and judicial salary increases;
- (2) the date their findings of fact and conclusions of law would be made public with respect to their review of my document-supported testimony;
- (3) The date(s), following the February 6, 2013 hearing, that the members of these four committees would be meeting to discuss and vote on the Judiciary’s budget;

- (4) The date(s), prior to the February 6, 2013 hearing, that the members of these four committees had met to review and discuss the Judiciary's budget, received by their Chairs on or about November 30, 2012.



I, therefore, request that, in discharge of your duties as the Chair and Members of the Senate Budget Subcommittee on "Public Protection", that you ascertain the answers to these questions from Senator DeFrancisco and Senator Krueger, the Chair and Ranking Member, respectively, of the Senate Finance Committee, and from Senator Bonacic and Senator Sampson, the Chair and Ranking Member, respectively, of the Senate Judiciary Committee – as well as their answers to the following:

- (1) the basis for the "All Funds" tallies for the Judiciary budget that appear in the Senate's "White Book" and in its "Blue Book", *to wit*, \$2,662,000,000 and \$2,660,128,900, respectively;
- (2) the cumulative dollar amount of the appropriations bill for the Judiciary (S2601; A3001) – and where such figure appears on the appropriations bill;
- (3) the dollar amount of the second phase of the judicial salary increase – and where such figure appears in the appropriations bill;
- (4) the dollar amount for judicial salaries – and where such figure appears in the appropriations bill; and
- (5) the dollar amount for "compensation and non-salary benefit" of judges, exclusive of salary – and where that figure appears in the appropriations bill.

In that connection, I request you aid your fellow Senators by providing them with your own answers to these two sets of questions – and that you make their answers and yours public – consistent with Senator Nozzolio's declaration in the January 31, 2013 announcement of his appointment as chair of the Senate Joint Budget Conference Committee for "Public Protection" that he "will fight to make sure State government, including the judiciary, remains accountable to the taxpayers of New York State".

As time is of the essence – and to ensure that every Senator and Assembly member is personally knowledgeable of my testimony so that, like yourselves, they might be held accountable for their votes – copies of this letter will be furnished to them.

Thank you.

cc: All Senators & Assembly Members – beginning with
Senate Majority Coalition Leaders Dean Skelos & Jeff Klein/Malcolm Smith
Senate Minority Conference Leader Andrea Stewart-Cousins
Assembly Speaker Sheldon Silver
Assembly Minority Leader Brian Kolb
Senate Finance Committee
Senator John A. DeFrancisco, Chair
Senator Liz Krueger, Ranking Member
Senate Judiciary Committee
Senator John J. Bonacic, Chair
Senator John L. Sampson, Ranking Member
Assembly Ways & Means Committee
Assemblyman Herman D. Farrell, Jr., Chair
Assemblyman Robert Oaks, Ranking Member
Assembly Judiciary Committee
Assemblywoman Helene E. Weinstein, Chair
Assemblyman Tom McKeivitt, Ranking Member
The Public & Press