

JOINT BUDGET HEARING
OF THE
ASSEMBLY WAYS AND MEANS
COMMITTEE
AND THE
SENATE FINANCE COMMITTEE
ON THE
PUBLIC PROTECTION BUDGET
FOR FISCAL YEAR 2010-2011

Hearing Room B
Legislative Office Bldg.
Albany, New York

February 8, 2010
9:44 A.M.

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From the perspective of court operations, our request is, in effect, another zero-growth budget. Despite record level caseloads, there are no additional funds for enhanced support for the courts. Virtually the entire increase is for mandatory cost increases over which we have no control.

The single discretionary increase we seek for the courts is \$6 million to increase the judicial supplemental support fund to assist judges with professional expenses. This modest amount represents less than one-quarter of 1 percent of the Judiciary budget request. After more than 11 years without any adjustment in judicial compensation -- longer than any other state -- during which the Judiciary has been called on to do more and more, we believe this supplement is more than appropriate.

With respect to judicial compensation, our budget request again includes language that would raise judicial salaries as well as reappropriation of funds for that purpose.

Finally, we are requesting \$15 million for civil legal services. This amount, included at the request of the justice community, is intended to offset the precipitous decline in IOLA revenues. Nothing is more fundamental to the court system's mission than ensuring equal justice for all. This funding is particularly critical at this time when so many of our most vulnerable citizens are at risk because of the economic downturn.

We believe that the Judiciary's 2010-2011 budget request balances our obligation to join the other branches of

Chief
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government in addressing the serious fiscal challenges facing New York State with our obligation to secure the minimum resources necessary to carry out our constitutional mission. This budget is being submitted at an already difficult time for the Judiciary, with court dockets at record levels.

Even in the face of these challenges, New Yorkers can rely on our judges and court staff to continue to work hard and deliver justice fairly and efficiently, just as they have been doing year after year, meeting each and every challenge with great professionalism and dedication.

I thank you for the opportunity to share with you the concerns about our budget, and I will be pleased to answer any questions you may have. Thank you.

CHAIRMAN FARRELL: Thank you very much.

JUDGE PFAU: Thank you.

CHAIRMAN FARRELL: First to question, Assemblywoman Weinstein. But before that, Senator, you have --

CHAIRMAN KRUGER: Yes, we're joined by Senator Eric Schneiderman, as well as Ruth Hassell-Thompson.

CHAIRMAN FARRELL: And we've been joined by RoAnn Destito.

Helene?

ASSEMBLYWOMAN HELENE WEINSTEIN: Yes, thank you, Mr. Chairman.

Thank you, Judge, for being here today.

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JUDGE PFAU: I'd be delighted to.

SENATOR LEIBELL: Because obviously we want to preserve everyone's rights. But in a time of great austerity, if dollars can be saved here, it would be very helpful. So I'm going to ask you if you would respond to me on this issue.

JUDGE PFAU: I would be delighted to. Absolutely.

SENATOR LEIBELL: Thank you.

CHAIRMAN KRUGER: Thank you, Senator.

CHAIRMAN FARRELL: Thank you. Next,

Assemblyman Parment.

ASSEMBLYMAN WILLIAM PARMENT: Yes, good morning, Judge. Thank you for being with us. 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 last decade.

I've read this with interest, and I've also read the presentation made by the courts 10 years ago and five years ago, in trying to determine what in fact is taking place with the financial circumstances surrounding the courts.

That said, 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. I believe that's a condition that is somewhat prevalent throughout State government. I don't think any agencies present us with data that is particularly helpful in trying to understand their circumstance.

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But that said, I may ask questions or make statements that you might differ with because of my inability really to understand the presentations that have been made.

In your testimony you indicated that starting in I think the year 2000 to present, there's been an 8 percent increase in employees. Now, if you ratchet that back one year and you take the presentation that was given to us when 1999-2000 employee levels were stated as actual as 16,243, and then you fast forward to this year's presentation where the indication is that there are 18,811, that's an increase of 2,568 employees in a decade. And by my arithmetic, that's a 15.8 percent increase, nearly double what you've indicated over the 10 years that you referenced.

And I just wanted to bring that to the attention of my colleagues, that the judicial system, based on your presentations of that date, have shown an increase in employees of 2,568 employees, on a base of 16,243.

Now, in your statement you indicate that most of these increased costs are mandatory: Salary, healthcare benefits and pension costs. Well, obviously if you hire 2,568 new people, you have to pay them, you have to pay their healthcare benefits, and you have to pay for their pension. So I think that the argument that your hands are tied because you suddenly have this mandated requirement is, to say the least, not too convincing to me.

Now, I did want to ask just a couple of questions, one on I think it's page 320 of your presentation. You indicate that the

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City of Niagara Falls converted from a contractual-provided security detail to a State employee detail. And the question I would have for you, is that cost-neutral?

JUDGE PFAU: I have to find out. The Budget Director's answer is that it is almost cost-neutral. There's a slight increase when we take over the personnel and bring them over to the court system.

ASSEMBLYMAN PARMENT: Only a slight increase?

JUDGE PFAU: That's what I'm advised.

JUDICIAL BUDGET DIRECTOR: A slight increase, yes.

ASSEMBLYMAN PARMENT: That type of detail would be useful to us in the presentation. Obviously, that's a concern of ours, is how much it costs to do these conversions. And it seems to be a program that the court has had for some time and wants to in fact continue.

JUDGE PFAU: We do not have plans to continue it at this point.

ASSEMBLYMAN PARMENT: Let me give you an example of some of the problems in trying to basically get into a metric to measure what's going on. I took a look at the public safety area of the Budget, which is two-thirds of the way through this presentation. And based on the population of the judicial districts and the public safety personnel noted in the presentation, I attempted to

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create a metric of how much public safety there is per hundred thousands of citizens.

I did it in two ways. I decided, well, if one security person is a guy at the courthouse, how many citizens in that jurisdiction does that person have to guard against?

Interestingly, to me, in Kings County -- Brooklyn -- the individual would have to guard against 8,000 citizens coming in and disrupting the circumstance. However, in Nassau County, the individual would only have to guard against 4400 individuals. Or in Suffolk County, only 4200 individuals.

Now, there are a lot of things you can draw from this. You can say, well, maybe it's twice as dangerous in Nassau County and Suffolk County as it is in Brooklyn, which I tend to dismiss. Or you might say that in Suffolk and Nassau County they've done a better job of padding the payroll, which I hope isn't the case. Or you might say that these numbers mean nothing.

But it points out that there's no way that we can, as legislators, develop a metric that tells us why in fact in Queens County the rate of security personnel is 11.21 per hundred thousand of population whereas in Suffolk County it's 23.81 security personnel per hundred thousand. Could you tell me why there's such a variance?

JUDGE PFAU: We generally start with security for the courtroom. And the number of court parts, the number of judges, often doesn't bear a direct relation to the population. For example, in Manhattan, in New York County, you probably have the least

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population within the major boroughs of New York City, but you certainly have many, many more cases per resident, let's say, than you might in other places.

So it's caseload-driven, and it's the number-of-judicial-personnel-driven, primarily. It can also be specifics with regard to the courthouse design, how modern the courthouse is, what some of the security issues are, the proximity of the courthouse to other areas that might have dangers associated with them.

So the metric that we use is not particularly related to the number of citizens as far as protecting against citizens. The job of security is to protect the court from other things that may happen, people that may come in, what other kind of weapons might be available. And it can depend on court type. I would say a Family Court is probably much more prone to violence and people acting out in a violent way than a Civil Supreme Court. So there are a lot of different variables with regard to security, not just the population.

ASSEMBLYMAN PARMENT: Okay. Let me turn to -- you mentioned the courthouse. I noticed in your presentation that you indicated that there's been \$4 billion committed to new courthouses and improvements to courthouses across the State. And I assume -- and I may be wrong -- that the vast majority of that cost falls on real property taxpayers in the form of debt service for paying the obligations necessary for this construction. Is that accurate?

JUDGE PFAU: They are locally funded courthouses,

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that's right.

ASSEMBLYMAN PARMENT: And that was induced in most cases by the Office of Court Administration?

JUDGE PFAU: Under the statute, every locality comes up with a plan that is approved by the Court Facilities Board that includes members of the Legislature. They approve the plan and then the locality, with our assistance, develops the plan and either builds or refurbishes the courthouse.

ASSEMBLYMAN PARMENT: My observation on this would be if we were to place on the ballot a \$4 billion initiative for borrowing for courthouses, it would be soundly defeated by the public of the State. But it wasn't on the ballot, and so they didn't have anything to say on it.

Let me just turn to the overall size of the Budget. Again, relying on the documents that you've presented, in the year 2000-2001 the court requested of the Legislature a \$1.14 billion total All Funds request. This year the request is \$2.7 billion, a growth of \$1.56 billion or 137 percent. That basically, by my arithmetic, comes to nearly 14 percent a year.

The State Budget overall, according to the Governor's presentation, grew at 7.5 percent a year during that time, and inflation was less than 3 percent. How is it that the court budget is growing at twice the rate of the State Budget and nearly, what, five times the rate of inflation?

JUDGE PFAU: The budgets are not in a straight line.

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There are years when there is additional funding. And certainly after September 11th there was an infusion of funding for security into the courts. Last year we put in literally a zero-growth budget where we absorbed all of the collective bargaining costs within our existing budget.

So I think it is variable depending on the circumstances. There have been years that the drug court program and the problem-solving courts have been something that was particularly compelling, and funding had been put in for that.

So I think it depends on the year, it depends on the programs, again, that the Legislature thought were worth funding, security needs, other things that we see on a year-to-year basis. And certainly the costs of collective bargaining, pension costs. And the pension cost again is in our budget and the Executive Branch agencies do not have that in their budget. And that's something that's reflected in a year-to-year basis as well.

ASSEMBLYMAN PARMENT: In your memory or in your experience, has the Legislature ever reduced the Court Administration's request for a budget?

JUDGE PFAU: Yes.

ASSEMBLYMAN PARMENT: What year was that?

JUDGE PFAU: I can't remember the year because I'm getting very old.

But certainly there were years where the budget was reduced.

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ASSEMBLYMAN PARMENT: Well, let me just say that during the last budget crisis, which we're still in, my understanding was there was a zero-based budget last year adopted by the Legislature for the courts -- therefore, no reduction -- where other agencies and programs across the spectrum were in fact reduced by 10, 15, 20 percent.

Again, the deficit reduction package that the Legislature dealt with in December of last year had reductions, in total, of over \$600 million, but the court system was not involved in that deficit reduction package. Now, I'm correct in that, aren't I?

JUDGE PFAU: We were involved, but in the direct way you're speaking about. We had met with the Budget Director and during the course of the year had achieved significant savings, up to the tens of millions of dollars, that was already reflected in the lower budget that we put in last year, the flat budget.

ASSEMBLYMAN PARMENT: Let me just get back to the personnel, because there is a thing that's bothering me. In your introduction you indicate that there's been a reduction of 200 positions through attrition, and yet on page 6 of your presentation it indicates that the recommendation for UCS is 18,820 employees, an increase of nine employees.

Which one of those statements should I put my reliance upon?

JUDGE PFAU: And I would be delighted to follow up with you, I just don't have at my fingertips the number you're

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talking about. I can ask the Budget Director.

Oh, this is what they're telling me, that the larger number you're referring to is the schedule of authorized positions as opposed to the actual filled positions. Many of those positions are vacant because they're not funded.

And the 8 percent increase that we speak about from 2001 to 2009 is the increase in the number of filled positions, not necessarily the authorized positions. And so the decrease you have that I spoke about in my testimony is the decrease in filled positions, positions we're leaving vacant but they are still authorized positions.

ASSEMBLYMAN PARMENT: Let me suggest to you that in future presentations, that type of detail would be very helpful to the Legislature in understanding what the court is about and whether or not they've in fact increased by 2,568 employees or haven't. It's very difficult, just reading the documents, to be clairvoyant and say, well, okay, they've got the positions but they probably didn't fill them. My suspicion is you probably did fill them.

But that said, the Governor this year submitted to this Budget, your budget, a commentary which I thought was most unusual. And I just wanted to read from it. It says that "The Judiciary budget appears to lack initiatives to restrain spending or consolidate operations." Further, the Governor says: "I send the submission along with a strong charge to the Legislature to evaluate the request carefully. I also call upon the Chief Judge to revisit this request and offer suggestions for how it may be reduced."

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Now, I take that charge seriously, and I hope that the court does as well.

JUDGE PFAU: Well, we're a little confused by it, quite frankly, because when they talk about consolidating operations in the court system, we don't know quite what he means. If they're saying to combine Family Court and Criminal Court to one court, that's not something we can do. We can't combine functions. We can't send people away to say you can't come into our courthouse today, we don't have any money to support your case. I'm not quite sure what he means.

We are always looking at ways to save money. I think we have done a very good job of doing that over the last year, and we will continue to do that and continue to work with the Budget Office and with the Legislature to save money. But we do have a constitutional obligation to submit a budget that allows us to perform our function for the people of the State of New York.

ASSEMBLYMAN PARMENT: I appreciate that, Judge.

I would just say, based on the history of last couple of years, at least, with no cut to this agency last year and a general adoption of the Budget and no cut to this agency during the deficit reduction package, and the fact that this agency's budget has grown at twice the rate of the growth of the State Budget, I would strongly recommend to the chairs of this committee that this agency have a reduction of at least 10 percent from the request that's been submitted

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to us.

Thank you.

JUDGE PFAU: Thank you. If I could just respond that we are a branch of government, we're not an Executive agency. We did put in a budget that we think is very responsible. We do understand the fiscal crisis facing the State, but we do have our own constitutional obligation that we have no choice but to uphold. Thank you.

ASSEMBLYMAN PARMENT: Well, Judge, I have a Constitutional obligation as well to present to the people of this State a balanced Budget, which I'll have to say we've failed to do for many, many years in this State, but not for lack of trying on my part.

And I would like to see us at least be able to present a balanced Budget this year, and part of that balance could come from a reduction in the Unified Court System of 10 percent of their request.

JUDGE PFAU: Thank you.

CHAIRMAN FARRELL: Thank you.

Senator.

CHAIRMAN KRUGER: Thank you. Senator

DeFrancisco.

SENATOR DEFRANCISCO: Judge, in your remarks on page 10 you indicate "The single discretionary increase we seek is \$6 million to increase the Judicial Supplemental Support Fund to assist judges with professional expenses." When was that fund first implemented?

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JUDGE PFAU: Two years ago.

SENATOR DEFRANCISCO: And is it fair to say that it was first implemented two years ago in response to the Legislature's continuing failure to provide increases in salaries to judges?

JUDGE PFAU: Yes, it was done at a time when there had been obviously many years gone by without salary increases, and judges were facing more and more pressure to fulfill their professional obligations as far as --

SENATOR DEFRANCISCO: In other words, it was a way to get more money in the judges' pockets.

JUDGE PFAU: It was a way to help them support their professional expenses.

SENATOR DEFRANCISCO: And in response to a direct determination by the Legislature, right or wrong -- I happened to sponsor and support a judicial increase. But that was clearly what it was for; correct?

JUDGE PFAU: Yes, it is to --

SENATOR DEFRANCISCO: Now, how much -- you're looking for a discretionary increase of \$6 million to increase the Judicial Supplementary Support Fund. What is the cost presently without an increase?

JUDGE PFAU: Six million dollars. It is currently a \$5,000 fund that costs about \$6 million.

SENATOR DEFRANCISCO: And so you absorbed

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it in the past; now you're asking for it to be actually a line item in the budget?

JUDGE PFAU: We're asking for the increase. We are seeking to -- we are increasing it from \$5,000 to \$10,000. So it's the extra \$6 million we're seeking.

SENATOR DEFRANCISCO: So you absorbed \$6 million, and you want \$6 million for an additional increase to increase it to \$10,000. Is that true for every judge, that they'll get \$10,000 if this is passed, every judge in the system?

JUDGE PFAU: Every State-paid judge, yes.

SENATOR DEFRANCISCO: Now, there's a case pending before the Court of Appeals for a judicial pay raise, whether or not somehow the Legislature violated the -- I don't know all the issues, but violated the separate branch of government and that the judicial is a separate branch of government.

Let's suppose the courts determine that there was a violation of the Constitution by the State Legislature by not providing the increase. Does this discretionary fund, does that Judicial Supplementary Support Fund, does that go away? Is that no longer necessary?

JUDGE PFAU: We would certainly look at it and take that into consideration. The idea was to provide judges extra support during the absence of a summary increase.

SENATOR DEFRANCISCO: And let me just ask you a theoretical question. Assemblyman Parment asked several

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questions about the issue concerning the growth of the budget of the Judiciary, and your response was that you're a separate branch of government and you have a responsibility to perform your functions, which I happen to agree with.

Along the same theory that this judicial pay increase is being determined by the Court of Appeals, does that same theory apply if the Legislature decides not to provide the funding that you believe you're entitled to under the Budget? Does that lead to the possibility of another lawsuit to be determined by the Judiciary that there was a violation of some constitutional provision that we can't adjust or in any way determine the amount of dollars that the Judiciary should be receiving?

JUDGE PFAU: That's never been our position. And certainly, you know, in response, I do remember years past in which our budget was modified by the Legislature.

SENATOR DEFRANCISCO: Yes, but back then there wasn't lawsuits going to the Court of Appeals about judicial pay increases. And it seems to me the logic behind that argument would equally apply to a separate branch of government for the Budget. But right now you have no plans of doing that?

JUDGE PFAU: No.

SENATOR DEFRANCISCO: The other issue -- there's a couple of other issues.

I don't know whether this number is correct, but I'm looking at just this year's Budget. And you're talking about the

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increases this year pertain only to things like pension funds and increases that are required. Am I correct that the increase that the Judiciary is looking for is 7.4 percent?

JUDGE PFAU: That's correct.

SENATOR DEFRANCISCO: Now, how -- school districts -- and I'm a lawyer, and I appreciate the problems in the Judiciary. How could a legislator ever justify providing that kind of increase when school districts and local governments have the same pension problems and they're getting cut, and just about every part of government who's been cut in the past year or so has had those same automatic increases?

How do we, as legislators, justify that the Judiciary should be placed in a different category and receive the full funding they need to take care of these increases that everybody else has to take care of?

JUDGE PFAU: The Judiciary alone, there is no place else that people can go to get justice. It's not like a program where you can, say, go a private provider who will give you the same service. If you're a citizen and you need an order of protection at 4 in the morning, there's only one place to go, and that's the court system. And --

SENATOR DEFRANCISCO: There's only one place to go to get an education.

JUDGE PFAU: Well, certainly there are at least alternatives of going to a private school. There are alternatives to that.

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But there isn't a private justice system.

Again, it is to me a unique Constitutional obligation that we have that we take every single case that comes to us. We have no choice. And it's justice that we have to provide to our citizens.

SENATOR DEFRANCISCO: And I'm not so sure everybody in the State of New York has a choice of going to a private school --

JUDGE PFAU: But there are alternatives.

SENATOR DEFRANCISCO: If you are incapable of paying for that alternative, how do you gain access to that alternative?

JUDGE PFAU: But there's not even any alternative to the justice system.

SENATOR DEFRANCISCO: All right, now you indicate in your presentation also that the increase in judges -- your caseload went up 20 percent, and there was an increase of I think it was 8 percent --

JUDGE PFAU: That's right.

SENATOR DEFRANCISCO: -- in the staff through nonjudicial as well as judicial-type positions.

As far as the increase in caseload, that is based upon the number of filings; correct?

JUDGE PFAU: That's right.

SENATOR DEFRANCISCO: Now, we talked about this before this meeting, and it seems to me that if the number of trials are going down -- which really take most time of anything in the