

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel: 914-455-4373

E-Mail: cja@judgewatch.org

Website: www.judgewatch.org

March 26, 2013

TO: New York State Senate Secretary of the Senate
New York State Assembly Public Information Office

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

RE: The Public's Right to Know the "Process" Behind Adoption of Senate Resolution 818 and Assembly Resolution 812: The Scandal of Judiciary Appropriations Bill S.2601/A.3001, the Unidentified, Unitemized Judicial Salary Increases Therein, District Attorney Salary Reimbursement Based Thereon – & the Price Tag of Each

Enclosed is CJA's above-entitled March 22, 2013 letter to the General Budget Conference Committee and its Subcommittee on "Public Protection", Criminal Justice, and Judiciary – to which you are indicated recipients.

The records therein requested, for which your separate assistance is sought, are as follows:

Any records establishing that members of the Senate Finance Committee and Assembly Ways and Means Committee engaged in "extensive study and review" and "analysis and public review" of:

- the Judiciary budget; and
- the Division of Criminal Justice Services' budget pertaining to district attorney salary reimbursement tied to increases in judicial salaries. (at pp. 1-2).

Specifically, our March 22nd letter identifies records of:

1. meetings of the Senate Finance Committee and Assembly Ways and Means Committee at which their members reviewed, discussed, and/or voted on the Judiciary budget for fiscal year 2013-2014, particularly meetings following the February 6, 2013 hearing on "public protection". This would include videos, transcripts, agendas, attendance records, and votes thereon;

* **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.

2. meetings of the Senate Finance Committee and Assembly Ways and Means Committee at which their members reviewed, discussed, and/or voted on district attorney salary reimbursement tied to judicial salary increases for fiscal year 2013-2014, particularly meetings following the February 6, 2013 hearing on “public protection”. This would include videos, transcripts, agendas, attendance records, and votes thereon. (at p. 2, underlining in the original).

As stated by our March 22nd letter,

“This request is necessitated by the failure of the Senate and Assembly websites to reflect the existence of any such meetings^{fn2} – and the refusals of the Chairs, Ranking Members, and staff of the Senate Finance Committee and Assembly Ways and Means Committee to respond to our repeated inquiries on the subject.^{fn3}” (at pp. 2-3, underlining in original).

In connection with this request, you may exclude the live-streamed Sunday, March 24th meeting of the Senate Finance Committee, called from the Senate floor, whose video the Senate promptly posted – in palpable response to our March 22nd letter.

With respect to the February 6, 2013 joint budget hearing on “public protection”, our March 22nd letter specifically requests (at p. 3) any Senate Finance Committee or Assembly Ways and Means Committee reports analyzing or reviewing the testimony presented, or alerting committee members

^{fn2} See Senate Rules, Article VIII, §3 (‘Open Meetings of Standing Committees’), whose ¶4 states:

‘(4) All meetings of committees shall be recorded by video and to the extent practicable webcast live. Video of all committee meetings shall be made available on the Senate website and updated daily.’

Also, Senate Rules, Article XV ‘Freedom of Information’, ¶1(a):

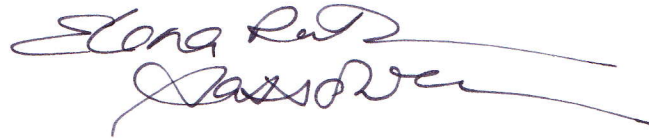
§1.a. ‘Publication of records relating to Senate legislative and administrative records. Recognizing that legislative records available by request under the ‘freedom of information law’ are of important public interest, the Senate shall make available through a searchable and sortable database on the Senate website: records of committees, agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including, active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.’”

^{fn3} These requests were made in innumerable phone calls to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee and to their separate staff, as well as to the Chairs and Ranking Members of the Senate and Assembly Judiciary Committees... CJA’s e-mails to them, sent February 27, 2013 through March 5, 2013, are posted on our webpage devoted to ‘Securing Legislative Oversight & Override’...”

and other legislators to testimony of a substantive nature, such as mine.

As for our letter's final request pertaining to amended budget bills (at p. 8), please identify where, on the Senate and Assembly websites we can find all versions of the amended bills, as only the latest amended versions appear to be accessible. In that connection, please confirm that all versions of the amended versions were printed for the review, deliberation, and vote of Senate and Assembly members.

Thank you.

A handwritten signature in dark ink, appearing to read "Flora R. D. Dawson". The signature is written in a cursive style with a long horizontal line extending to the right.

Enclosure

cc: Committee on Open Government

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org

Website: www.judgewatch.org

March 22, 2013

TO: General Budget Conference Committee
Subcommittee on “Public Protection”, Criminal Justice, & Judiciary

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

RE: The Public’s Right to Know the “Process” Behind Adoption of Senate Resolution 818 and Assembly Resolution 812:
The Scandal of Judiciary Appropriations Bill S.2601/A.3001, the Unidentified, Unitemized Judicial Salary Increases Therein, District Attorney Salary Reimbursement Based Thereon – & the Price Tag of Each

According to Senate Resolution 818, introduced by rotating Senate Presidents Dean Skelos and Jeffrey Klein:

“...The Senate Finance Committee has conducted an extensive study and review of the Governor's 2013-2014 Executive Budget submission...” (underlining added).

In a similar vein, Assembly Resolution 182, introduced by Assembly Speaker Sheldon Silver:

“the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget...” (underlining added).

These resolutions were adopted by the Senate and Assembly on March 11, 2013, explicitly to commence the conference negotiations process, with Senate Resolution 818 additionally declaring:

“it is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public.” (underlining added).

Consequently, the Center for Judicial Accountability, Inc. (CJA) – on behalf of the public whose “increased participation” the Legislature seeks to promote – calls upon you to identify the particulars of the “extensive study and review” and of the “analysis and public review” done by the Senate Finance Committee and the Assembly Ways and Means Committee of:

* **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.

- the Judiciary budget; and
- the Division of Criminal Justice Services’ budget pertaining to district attorney salary reimbursement tied to increases in judicial salaries.

Please exclude the “White”, “Blue”, “Yellow” and “Green” books, as these are the workproduct of staff of the Senate Finance Committee and Assembly Ways and Means Committee and counsel to the Senate and Assembly majority and minority – and their uselessness as aids to legislators’ understanding of the Judiciary budget and district attorney salary reimbursement has already been demonstrated by CJA’s March 13, 2013 analysis thereof.¹

Specifically, please identify and furnish proof of:

1. meetings of the Senate Finance Committee and Assembly Ways and Means Committee at which their members reviewed, discussed, and/or voted on the Judiciary budget for fiscal year 2013-2014, particularly meetings following the February 6, 2013 hearing on “public protection”. This would include videos, transcripts, agendas, attendance records, and votes thereon;
2. meetings of the Senate Finance Committee and Assembly Ways and Means Committee at which their members reviewed, discussed, and/or voted on district attorney salary reimbursement tied to judicial salary increases for fiscal year 2013-2014, particularly meetings following the February 6, 2013 hearing on “public protection”. This would include videos, transcripts, agendas, attendance records, and votes thereon.

This request is necessitated by the failure of the Senate and Assembly websites to reflect the existence of any such meetings² – and the refusals of the Chairs, Ranking Members, and staff of the Senate Finance Committee and Assembly Ways and Means Committee to respond to our repeated

¹ The analysis was expressly in support of CJA’s March 11, 2013 letter which summarized and elaborated upon my testimony at the February 6, 2013 budget hearing on “public protection”. The March 11, 2013 letter was furnished to each of you on March 13, 2013 by an e-mail entitled “The Legislature’s Duty to Reject Judiciary Appropriations Bill S2601-A3001 & its Unidentified Judicial Salary Increases that are Fraudulent, Statutorily-Violative & Unconstitutional”.

All such correspondence – and materials relating thereto, including the video of the February 6, 2013 hearing – are posted on CJA’s website, www.judgewatch.org, on the webpage entitled “Securing Legislative Oversight & Override of the...judicial pay raises”, accessible *via* the top panel “Latest News”. Indeed, accessible from that webpage is a separate webpage posting Senate Resolution 818, Assembly Resolution 812, the videos of the March 11, 2013 Senate and Assembly floor proceedings thereon, and the videos of the subsequent meetings of the General Budget Conference Committee and Subcommittee on “Public Protection”, Criminal Justice, & Judiciary.

² See Senate Rules, Article VIII, §3 (“Open Meetings of Standing Committees”), whose ¶4 states:

inquiries on the subject.³ The reasonable inference is that there have been no such meetings and no votes by Committee members with respect thereto.

With respect to the February 6, 2013 budget hearing on “public protection”, please confirm that no report was ever rendered by the Senate Finance Committee or Assembly Ways and Means Committee, analyzing or even reviewing the testimony presented, let alone alerting committee members and other legislators to testimony of a substantive nature, such as mine.

In other words, please confirm that when Senators voted on Senate Resolution 818 and when Assembly members voted on Assembly Resolution 812, they had not been informed by any report from either the Senate Finance Committee or Assembly Ways and Means Committee of what I had stated and handed-up during my 10-minute extemporaneous testimony at the February 6th budget hearing.

Unquestionably, Senators neither examined nor understood what was being stated in the short text of Senate Resolution 818, which, without any committee action, was directly “introduced” by Senate Leaders Skelos and Klein on March 11, 2013 and, on the same day “adopted” by the Senate. As reflected by the Senate floor debate, the text of the resolution was neither read nor discussed. The entire focus of the Senators was, seemingly, on the provisions of the “Report on the Amended Executive Budget” that the resolution appended and incorporated. Indeed, as stated by Senate Judiciary Committee Ranking Member Liz Krueger at the outset of the debate:

“...we don’t have bills in front of us. We just have one resolution, which is an outline, so alot of the details are actually in the bills that we are not voting on and not discussing today.” (video, at 00:32:02)

“(4) All meetings of committees shall be recorded by video and to the extent practicable webcast live. Video of all committee meetings shall be made available on the Senate website and updated daily.”

Also, Senate Rules, Article XV “Freedom of Information”, ¶1(a):

§1.a. “Publication of records relating to Senate legislative and administrative records. Recognizing that legislative records available by request under the ‘freedom of information law’ are of important public interest, the Senate shall make available through a searchable and sortable database on the Senate website: records of committees, agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including, active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.”

³ These requests were made in innumerable phone calls to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee and to their separate staff, as well as to the Chairs and Ranking Members of the Senate and Assembly Judiciary Committees (*see* pp. 5-6, *infra*). CJA’s e-mails to them, sent February 27, 2013 through March 5, 2013, are posted on our webpage devoted to “Securing Legislative Oversight & Override” (*see* fn. 1).

With respect to the Judiciary, the “outline” in the resolution’s appended “Report on the Amended Executive Budget” was as follows:

“JUDICIARY

Legislative and Judiciary (S.2601-C)

* The Senate concurs with the Executive recommendation of \$1.75 billion, however redirects funding from Judiciary-wide maintenance undistributed as follows:

- \$1,500,000 to Courts of Original Jurisdiction to restore funding for Court Appointed Special Advocates; and
- \$150,000 to Courts of Original Jurisdiction to restore funding to Community Dispute Resolution Centers.” (underlining added).

Had Senators meaningfully examined and understood this section – and not a single comment was made by a single Senator about it – they would have seen that the number “S.2601-C”, indicating a third amendment to the appropriations bill, was incorrect. S.2601 had never been amended once, let alone three times. Indeed, reflecting that it had not been amended is that the resolution’s opening and closing paragraphs identified eight thrice-amended appropriations bills, none being “S.2601-C”:

“RESOLUTION adopting proposed amendments to the 2013-2014 Executive Budget submission (Legislative Bills S2600C, S2603C, S2604C, S2605C, S2606C, S2607C, S2608C and S2609C).”

“RESOLVED, That, the above referenced legislative bills (S2600C,S2603C, S2604C, S2605C, S2606C, S2607C, S2608C and S2609C)be and are incorporated as part of this resolution and are hereby adopted as the New York State Legislature's proposed amendments to the 2013-2014 Executive Budget Submission.”

Likewise, any Senator knowledgeably reviewing this section would have realized that its assertion: “The Senate concurs with the Executive recommendation of \$1.75 billion” made absolutely no sense, as the Executive recommendation, reflected by the Governor’s “Commentary” to the Judiciary budget, is “\$2.6 billion”!

The shorter, less-complicated, text of Assembly Resolution 812 was also not read with any care by Assembly members voting for it. Nor, it would seem, by the Assembly Ways and Means Committee, to which it had been “referred” on March 8th, or by the Assembly Rules Committee, to which it had been “referred” on March 11th, after being “reported” by the Ways and Means Committee. The proof? The eight amended bill numbers identified by its introductory first paragraph:

“ASSEMBLY RESOLUTION in response to the 2013-2014 Executive Budget submission (Bill Nos. A. 3000-B, A.3001, A.3002, A.3003-B, A.3004-B, A.3005-B, A. 3006-B, A. 3007-B, A.3008-B and A.3009-B) to be adopted as legislation expressing the position of the New York State Assembly relating to the 2013-2014 New York State Budget” (capitalization in the original, underlining added)

are different from those in its final paragraph:

“RESOLVED, That, this resolution, together with the New York State Assembly proposals for Executive budget resubmission contained in Assembly Bill Nos. A.3000-C, A.3001, A.3002, A.3003-C, A.3004-C, A.3005-C, A.3006-C, A.3007-C, A.3008-C and A.3009-C which are incorporated as if fully set forth in this resolution, herein constitute the legislation which expresses the budget proposals of the Assembly for the 2013-2014 New York State Budget.” (capitalization in the original, underlining added).

As for the unamended A.3001 – the same as unamended S.2601 – Assembly Resolution 812 gives no figure as to the total dollar appropriations for the Judiciary, unlike Senate Resolution 818, whose representation, in its “Report”, is a gross misrepresentation. However, any Assembly member adding the untallied Judiciary appropriations in A.3001 would have gotten a total closer to \$2.7 billion than the “\$2.6 billion” of the Governor’s “Commentary”.

Suffice to say, at the March 11th floor debates of these two resolutions, not a single Senator or Assembly member mentioned the Judiciary budget, judicial salary increases, district attorney salary reimbursement⁴ – or any other cost increases resulting from the unmentioned judicial salary hike⁵. This includes:

Senate Finance Committee Chairman John DeFrancisco, who presided at the February 6th “public protection” hearing, including when I testified. I thereafter repeatedly contacted his office about my testimony, requesting a meeting to further elaborate upon it. Senator DeFrancisco is a member of the General Budget Conference Committee;

Assembly Ways and Means Committee Chairman Herman Farrell, Jr., who was absent for my February 6th testimony. I had repeatedly called his office, alerting him to its serious and substantial nature, verifiable from the video, and requesting to meet with him about it. Assemblyman Farrell is a member of the General Budget Conference Committee;

⁴ It would appear that district attorney salary reimbursement, tied to judicial salary increases, is contained in the appropriations bill for aid to localities, as part of the Division of Criminal Justice Services budget. The bills number is S.2603-C /A.3003-C – and the line item, appearing on page 50 thereof, is for \$3,862,000.

⁵ As, for instance, county clerk salaries or increases in “fringe benefit” costs resulting from the hike in judicial salaries, i.e. pensions.

Senate Finance Committee Ranking Member Liz Krueger, who was present for my February 6th testimony. Senator Krueger had received from me, *in hand*, a copy of CJA’s October 27, 2011 Opposition Report at the conclusion of the February 6th hearing, as she was leaving the hearing room. Thereafter, I had contacted her office, requesting to meet with her about my testimony. This culminated in a February 27, 2013 e-mail, entitled “Securing Appropriate Oversight & Action”, to which I received no response⁶;

Assembly Ways and Means Committee Ranking Member Robert Oaks, who was present for my February 6th testimony;

Senate Judiciary Committee Chairman John Bonacic, who was absent for my February 6th testimony. I had spoken with Senator Bonacic, *in person*, about the judicial salary increases encompassed by the Judiciary budget minutes before the start of the February 6th hearing, giving him, *in hand*, CJA’s October 27, 2011 Opposition Report. Thereafter, I had alerted him to my testimony’s serious and substantial nature, verifiable from the video, and repeatedly called his office to request a meeting with him about it;

Senate Judiciary Committee Ranking Member John Sampson, who was not present at the February 6th hearing. Senator Sampson had received from me, *in hand*, CJA’s Opposition Report, with its two volumes of exhibits, more than a year before the February 6th hearing. Following the hearing, upon learning that he was the Senate Judiciary Committee’s Ranking Member⁷, I had alerted him to my testimony’s serious and substantial nature, verifiable from the video, speaking at length to his counsel. Senator Sampson is an alternate on the Subcommittee on “Public Protection”, Criminal Justice, and Judiciary;

Assembly Judiciary Committee Chairwoman Helene Weinstein, who was present for my February 6th testimony. Following my testimony, I had repeatedly called her office, requesting to discuss it with her Judiciary Committee staff and counsel, and requesting to meet with her. Assemblywoman Weinstein is a member of the Subcommittee on “Public Protection”, Criminal Justice, and Judiciary;

Assembly Judiciary Committee Ranking Member Tom McKeivitt, who was not present for my February 6th testimony, possibly not even present at the hearing. Following the hearing, I had alerted him to its serious and substantial nature, verifiable from the video and, in phone calls to his office, had requested to meet with him.

⁶ This not-to-be-believed, unless seen, February 27, 2013 e-mail is herewith annexed.

⁷ I had originally been informed that Senator Ruth Hassell-Thompson was the Senate Judiciary Committee’s Ranking Member.

The sole legislator identifying S.2601/A.3001 during the March 11th floor debates was Assemblyman Steve Katz. Addressing only the portion of the bill pertaining to the Legislature, not the portion pertaining to the Judiciary, Assemblyman Katz questioned Assembly Ways and Means Committee Chairman Farrell as to “Assembly miscellaneous contractual services” at “page 4 [3], line 41”, stating it was “\$12,111,000, down from last year, at \$17 million” and “just down as a line item”. Responding to their initial exchange, Assemblyman Katz stated:

“On the bill, please. Well, you just heard it, everybody, ‘miscellaneous contractual services’... I want to know how many other, other issues like this are in the bill, are in this budget, that we do not know about...”

My question at this point is, are there other line items in this budget that we do not know about.... What I want to know is, how much, what else is in this budget, or is this it? ...we can’t hear about the truth. I want the truth ...

...I want to know how much more of this is in there. And that is the reason that there are people who, around this state, who are asking for forensic accounting pract., you know, accountings, of this budget for exactly this. Are there others?... Is it the same thing in the Senate? I think there are people who want to know these things...”

Upon Chariman Farrell’s “clarify[ing]” what he had said, Assemblyman Katz continued:

“...We are responsible for having a budget that is open, transparent, that we all can understand and is factually correct. I don’t see that right now, at least in this one instance. So what my fear is, how much more of this is in the budget that we do not know about. This is very disturbing to me...” (video, at 1:45:35 - 1:52:50, underlining added).

Obviously, had the Senate Finance Committee and Assembly Ways and Means Committee rendered any report pertaining to my testimony at the February 6th hearing, identifying what I had said as to the lack of itemization in the Judiciary’s budget, precluding intelligent review and rendering it unconstitutional, Assemblyman Katz would have known, when he took to the Assembly floor on March 11th, that there were powerful other “instance[s]” in A.3001 on which to champion an “open, transparent” budget “that we all can understand and [that] is factually correct”.

Senate Finance Committee Ranking Member Krueger, who began her Senate floor remarks by expressing concern about “the dollars and cents and how it adds up or doesn’t add up” (video, at 00:17:8), thereafter stating “when I do the math, it really doesn’t add up” (video, at 0.29.00), could have – but did not – identify that the numbers don’t add up with respect to the Judiciary budget, the judicial salary increases, and the district attorney salary reimbursement resulting therefrom. Fortunately, she made other important remarks as to the lack of process leading up to the resolutions – albeit only in passing and not as a call to action to the legislators. In addition to:

“I’m shocked at how little time there is to discuss this today. And, of course, we don’t have bills in front of us. We just have one resolution, which is an outline, so

alot of the details are actually in the bills that we are not voting on and not discussing today.” (video, at 00:32:02);

She stated:

“It’s not a bill. It doesn’t have any standing in law. It’s a resolution...” (video, at 1:47:00);

“There’s some strange Article VII language and I confess we didn’t have that many hours to look at all this and actually a couple of the bills we only saw about two hours before we came to the floor today.” (1:53:50);

“We also have a responsibility to not do resolutions in dark of night and no time for the public or half the colleagues on this floor to really delve into it and I suspect a bunch of my colleagues on the other side of the aisle didn’t look through all that Article VII language all that carefully either.” (video, at 1:57:00).

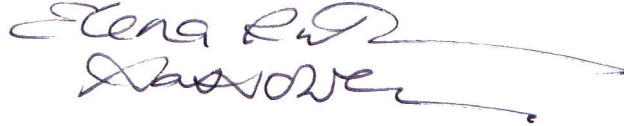
Other legislators alluded to their dismay at being required to vote on appropriations bills, not separately, but joined together in the resolutions. Indeed, there would appear to be significant violations of Senate and Assembly rules with respect to the adoption of the resolutions and the amended and unamended appropriations bills they embody – or, not embody, as is the case with Senate Resolution 818 and unamended S.2601.

In that context, please confirm:

- that the amended bills, identified by Senate Resolution 818 and Assembly Resolution 812, are the handiwork of “central staff”, not any Senator or Assembly member;
- that members of the Senate Finance Committee and Assembly Ways and Means Committee never deliberated or voted upon either the amended bills or the unamended bills; and
- that the result of the resolutions, bundling together, in the case of Assembly Resolution 812, ten separate appropriations bills, and in the case of the Senate Resolution, 8 separate appropriations bills, was to prevent Senate and Assembly members from deliberating and voting upon each bill individually.

So as to more reliably ensure a response, this letter is also being furnished to the Secretary of the Senate, pursuant to Senate Rule XV “Freedom of Information”, and to the Assembly’s Public Information Office, pursuant to Assembly Rule VIII “Public Access to Records”.

Thank you.

A handwritten signature in black ink, appearing to read "Steven R. Krueger". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Enclosure: CJA's February 27, 2013 e-mail to Senate Finance Committee Ranking Member Krueger

cc: Assembly Member Steve Katz
All Members of the Senate & Assembly
Secretary of the Senate & Assembly Public Information Office
The Public & The Press

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, February 27, 2013 11:26 AM
To: 'lkrueger@senate.state.ny.us'
Cc: usher@nysenate.gov
Subject: Securing Appropriate Oversight & Action
Attachments: 2-27-13-ltr-to-usher.pdf

Attached is my already-faxed letter to Chief of Staff Brad Usher, to which Senator Krueger is an indicated recipient. Please be sure that it is furnished to the Senator so that she can take such appropriate action as befits a public officer of her rank and position. The letter is already posted on CJA's website, www.judgewatch.org, accessible *via* the top panel "Latest News" on the webpage devoted to "Securing Legislative Oversight & Override of the 2nd and 3rd Phases of the Judicial Pay Raises..." – which is where this fax will also be posted. Here's the direct link:
<http://www.judgewatch.org/web-pages/judicial-compensation/legislative-oversight-judicial-raises.htm>

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-455-4373

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

February 27, 2013

TO: Brad Usher, Chief of Staff to Senator Liz Krueger

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

RE: Memorializing What You Told Me

This is to memorialize what you told me yesterday when I called to again request to meet with Senator Krueger – who, in addition to being a member of the Senate Judiciary Committee, is Ranking Member of the Senate Finance Committee – before whom I had testified on February 6, 2013 at the joint legislative hearing on “Public Protection” in opposition to the Judiciary’s requested budget for fiscal year 2013-2014 and the unspecified millions of dollars in judicial salary increases it seeks – and to whom, as she left the hearing room, I had given, *in hand*, a bound copy of CJA’s October 27, 2011 Opposition Report.

You stated to me that Senator Krueger could not meet with me, giving as an excuse that she is “busy with the budget”. When I reiterated that it was about the budget that I wished to meet with Senator Krueger, you told me there are “a lot of budget issues”, but that “[my] budget issue” is “not a priority” for the Senator. When I responded that “[my] budget issue” is the budget of the third branch of our state government – a \$2.6 billion dollar expense – you replied that the Senator, having “listened to [my] testimony”, does not “accept [my] argument”. When I protested that my supposed “argument” concerned the dispositive nature of the October 27, 2011 Opposition Report in establishing that the judicial salary increases recommended by the Commission on Judicial Compensation’s August 29, 2011 “Final” Report are fraudulent, statutorily-violative, and unconstitutional and, additionally, the insufficient itemization in the Judiciary budget, precluding meaningful review and rendering it unconstitutional, for which I had furnished the February 9, 2011 Supreme Court decision in *Pines v. State of New York* (Nassau Co. #13518/10) – both requiring findings of fact and conclusions of law – you resisted that such was necessary, stating that Senator Krueger does not have the time or resources, thereafter asking me what findings of fact and conclusions of law are.

When I stated that the Senate Finance Committee is the most resourced committee of the Senate, with a budget presumably matching, if not exceeding, the \$5.8 million budget of the Assembly Ways and Means Committee, and asked you what that budget is because, unlike the Assembly Ways and Means Committee budget, it is not specified in the Legislature’s requested budget for fiscal year 2013-2014 – you told me I would have to get that information from Senator DeFrancisco, its Chairman. You further told me that notwithstanding Senator Krueger is the Finance Committee’s Ranking Member, she has no power because she is in the minority, rejecting my assertions that she is

nonetheless in a position to secure the necessary findings of fact and conclusions of law and take other steps to protect the public purse.

According to you, Senator Krueger believes that the judicial salary raises are “justified” – and any contrary showing, such as by our October 27, 2011 Opposition Report, will have to be determined in a court of law. You adhered to this even as I pointed out the Commission on Judicial Compensation’s most flagrant statutory violation, evident from the face of its August 29, 2011 Report and so-highlighted by our Opposition Report (at pp. 18-21; 25-26; 31-33). That facially-evident violation is the Commission’s deliberate disregard of the requirement that it “examine, evaluate and make recommendations with respect to adequate levels of judicial compensation and non-salary benefits”, as the statute expressly mandates for any salary recommendation (Chapter 567 of the Laws of 2010, §1(a)) – thereby concealing a package of “fringe benefits” whose cost to taxpayers has been estimated at approximately \$40,000 a year for each judge.¹ Tellingly, the Judiciary conceals the annual dollar amount of “fringe benefits” for all judges, as opposed to everyone on the Judiciary’s payroll, in its budget request for \$660.7 million in “General State Charges”, whose increase for fiscal year 2013-2014 is a whopping \$93-plus million over the current fiscal year.

You additionally told me – by way of further excusing Senator Krueger’s complicity in grand larceny from the public purse – that the budget is decided by “three men in a room” – these being Governor Cuomo, Temporary Senate President Skelos, and Assembly Speaker Silver. Suffice to say, these “three men in the room” are the original recipients of our October 27, 2011 Opposition Report – and any findings of fact and conclusions of law to be made as to the October 27, 2011 Opposition Report would expose their official misconduct and fraud upon New York taxpayers, warranting their being criminally prosecuted and removed from office for corruption. This you well know from our several prior phone conversations, beginning on December 7, 2012 – and my extensive correspondence spanning from that date to January 9, 2013 – to which Senator Krueger was more than an indicated recipient.²

As you further know, no great time and resources are needed for Senator Krueger to verify the fraud, statutory violations, and unconstitutionality of the judicial salary increases demonstrated by our October 27, 2011 Opposition Report. All that is necessary is securing such findings of fact and conclusions of law as were made by the “three men in a room” – and by Chief Judge Lippman, the

¹ It was to conceal this very statutory infirmity that Chief Administrative Judge Prudenti, in testifying before Senator Krueger on February 6, 2013, referred to the Commission on Judicial Compensation as the “Judicial Salary Commission”, stating, in both her oral and written presentation, “We face significant cost increases in the coming year, including the judicial salary adjustments recommended by the Judicial Salary Commission...” (at 1:11:48; p. 2).

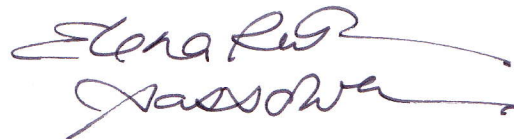
² This correspondence is posted on our website, www.judgewatch.org, accessible *via* the top panel “Latest News”, on the webpage entitled “CJA’s championing of appropriate rules and leadership for the New York State Legislature”.

fourth original recipient of the October 27, 2011 Opposition Report – as well as by our state’s highest law enforcement officer, Attorney General Schneiderman, to whom our Opposition Report was provided on November 29, 2011. This was highlighted by the correspondence to which I referred in my testimony, sent to you and Senator Krueger in the week and a half preceding the February 6, 2013 budget hearing – four copies of which I handed up at the hearing.³

What is Senator Krueger’s justification for refusing to demand that our highest constitutional officers produce their findings of fact and conclusions of law with respect to our October 27, 2011 Opposition Report, in discharge of her constitutional, statutory, and Senate-rule duties to protect the public fisc? This she could readily do, as a minority member of the Senate, with or without the support of a single other Senator or Assembly member. All that is necessary is that she write them a letter demanding production of their findings of fact and conclusions of law, to reiterate that demand at Senate Finance and Judiciary Committee meetings and on the floor of the Senate, and, of course, at press conferences in Albany and Manhattan, which she could easily call and which, given its subject, would be widely reported by the media, whose coverage would leave no choice to the “three men in the room”, to the Attorney General, and to the Chief Judge, but to disgorge the incriminating evidence. Or did Senator Krueger not even read our October 27, 2011 Opposition Report, from which her duty to her constituents and to the People of this State would be evident. As for you, you stated you had “looked through it”.

Should you deny or dispute the accuracy of the foregoing in any respect – or deny what is obvious from the most cursory examination of the October 27, 2011 Opposition Report, *to wit*, that findings of fact and conclusions of law with respect thereto will make it impossible for any member of the Senate Finance Committee or Assembly Ways and Means Committee to approve the judicial salary increases for all the reasons set forth therein and summarized by the “Executive Summary” which was distributed to Senator Krueger when I testified – please furnish specifics, without delay. In any event, please identify the salary you receive as Senator Krueger’s Chief of Staff – a salary paid by this state’s taxpayers.

Thank you.



cc: Senator Liz Krueger
NYS Legislators, etc. & The Public

³ These four copies were being publicly presented by me when Chairman DeFrancisco cut me off – and can be seen in the video of the February 6, 2013 hearing (at 7:34:48), which is posted on our website, together with that correspondence, accessible *via* the top panel “Latest News”, on the webpage entitled “Securing Legislative Oversight & Override of the 2nd & 3rd Phases of the Judicial Pay Raises...”.