

Submitted Testimony

Written Testimony of
Michael P. Friedman
to the Senate Finance and
Assembly Ways and Means
Public Hearing on the
Judiciary Budget for
2016-2017

“There can be no doubt as to the Judiciary’s commitment to fiscal prudence... But the fact is that the austere budgets of the past years imposed a price.” Unified Court System 2016-2017 Budget Request.

“There is a point beyond which the Judiciary cannot be pushed if it is still to play its role in our constitutional system. We have reached that point.” Jonathan Lippman 2014-2015

“This budget request is austere.” Executive Summary, Judicial Budget, 2013-2014

“The proposed budget is austere.” Executive Summary, Judicial Budget, 2012-2013

“The judiciary submits this austere budget request.” Executive Summary, Judicial Budget request, 2009-2010

The Judiciary Budget for the State of New York is the most expensive per capita judicial budget in the United States of America. For the most part, there is virtually no voice against its unnecessary spending. More and more dollars are spent every year that have nothing to do with the purpose of the Judiciary, i.e. the allocation of the cost of operating and maintaining the court of appeals, the appellate division of the supreme court in each judicial department, the supreme court, the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York.ⁱ The theme of “we’re poor, we’re frugal, we need more money” has always worked and the testimony you receive invariably calls for the urgent need for more and more money from the usual players: the New York State Bar Association, the Legal Aid Society, The New York County Bar Association, the Office of Court Administration, among others. I suspect mine will be the lone voice to the contrary.

The court system now wants \$2.13 billion to hold body and soul together, an increase of \$48.6 million. However, unless the Legislature disapproves of the projected salary increases for our judges, the increase will be \$75.1 million. More about that later. In 1997 just after Jonathan Lippman became the Chief Administrative Judge the judicial budget was \$952 million. So, let’s put this in perspective. The state of Florida now has more people than New York, but just barely.ⁱⁱ Their Judiciary Budget for 2016 is a tad under \$517 million. Texas has 7 million more people than

New York and its Judiciary Budget for 2016 is \$753 million. So, why is our austere court system so expensive, especially since it handles a lot fewer cases every year for the past five years? Is it more than the chauffeurs and cars for its highest paid judges? It is certainly more than the myriad useless programs that have nothing to do with the operation of the courts. It finances such efforts as a Collaborative Family Law Center, a Parent Education and Awareness Program, Judiciary coloring books, the Gender Fairness Committees, the Judicial Committee on Women in the Courts, the myriad Advisory Committees, the ten “problem solving courts” (Veterans Courts?), Lay Guardian Training and the various task forces. It funds a Judicial Institute at Pace University to provide a forum “for identification of new and emerging legal, technological, social, criminal, and administrative trends affecting the courts.” Why?

Know what you can get for \$2.13 billion? Liberia is a country on the west coast of Africa with over 4.5 million people. It’s yearly gross domestic production is less than our Judiciary budget. The Princess Tower in Dubai is the largest residential building in the world (101 stories) and cost about the same as this budget proposal without the new judicial salaries. The most expensive cruise ship in the world, the MS Allure of the Seas, has a 1300 seat theater, a skating rink, sixteen decks and can hold over 6,000 people. It cost half a billion dollars less than the OCA budget.

Calling itself a “faithful steward of public’s funds” the budget request did make one startling admission: “The objectives of the Judiciary are to: (1) provide a forum for the peaceful, fair and prompt resolution of civil and family disputes, criminal charges, disputes between citizens and the state, and challenges to government action; (2) supervise the administration of decedents’ estates; (3) preside over adoptions and proceedings to protect children and the mentally-ill; and (4) regulate the admission of lawyers to the Bar and their conduct and discipline.” Really? And just what do chauffeurs, coloring books, parent education and all the other nonsense have to do with any of that? Nothing. Here is where the court system has failed miserably. In losing sight of its prime directive, it has successfully blossomed into an enormous bureaucracy that is now the most expensive judicial system per capita ever. The entire federal judicial budget services every citizen in the United States and costs only \$7 billion.

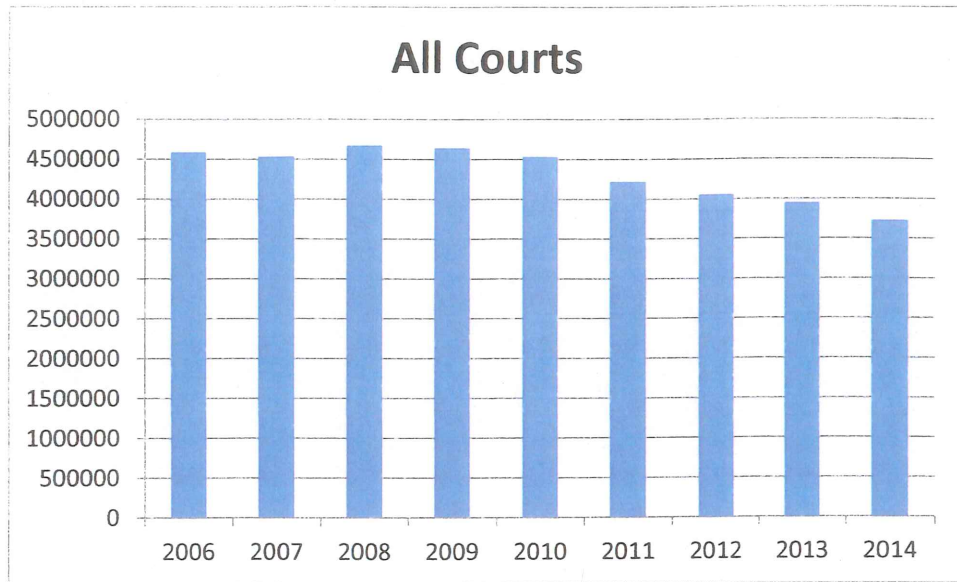
\$15 million of the increase is for more funding of charities and not for profit organizations that provide civil legal services to the poor. Of course, that has nothing to do with the objectives of the judiciary, but who cares!

Under Chief Judge Lippman the funding has grown from \$0 to \$100 million per year. The purpose might be admirable, but it is not the function of the Judiciary. If New York State wants to provide such services, it is up to the Legislature and not the Judiciary. Here is where it gets a little dicey. Judge Judy Harris Kluger was one of four judicial executive officers of the court system until she left 2013 to become the executive director of Sanctuary for Families. That year, thanks to the Chief Administrative Judge A. Gail Prudenti, Sanctuary for Families received \$308,637 from the court system. The award this year was \$839,897. Now, Judge Prudenti has left the court system to head Hofstra University's Center for Children, Families and the Law. Just before she left, she saw that Hofstra University would receive \$133,561 in 2015 from taxpayer funds courtesy of the court system. It was a one third increase from 2014. Much of the decision to award these finds comes from the Chief Administrative Judge who has made this Judicial Budget request.

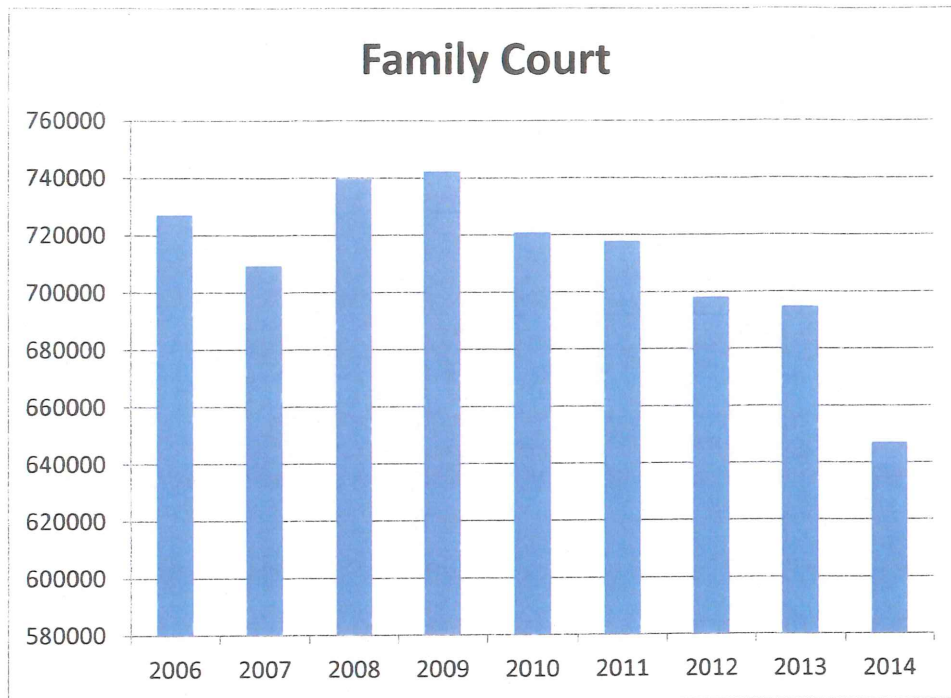
Just to give you some sense of the scale of this civil legal services project, the Legal Aid Society of Northeastern New York will receive over \$4 million from the Office of Court Administration this year. Many of these organizations like Sanctuary for Families, My Sister's Place (\$263,251), the Capital District Women's Bar Association (\$564,679), MFY Legal Services (\$3,485,108) and the Legal Aid Society (\$9,512,606) actively advocate to the legislature for their causes. This year the Legal Aid Society joined OCA in support of judicial pay raises, and why wouldn't they for \$9.5 million?

It does beg the question, does the legislature care? If past is prologue, not really. There is virtually no criticism to these massive spending increases. None of this is popular with our judges who live with bureaucratic hypocrisy every day, trying to move people through the system fairly while dealing with a growing administration that burdens their lives for no reason. Some day, someone should ask the judicial system why it costs so much to handle fewer cases every year.

It is being less than truthful about those figures. In the opening lines of his 2015 State of the Judiciary address on February 15, 2015, Chief Judge Jonathan Lippman said, "Access to justice is the defining principle of our court system. It manifests itself in so many diverse ways in over four million civil, criminal, and family proceedings in court houses across New York State." Not exactly. Here are the annual filings according to the Office of Court Administration:



See that 4 million line up there? We haven't seen that since 2012. By 2007, Judge Lippman was the longest serving Chief Administrative Judge in state history. In 2009, he became the Chief Judge of the Court of Appeals. For the 2015-2016 fiscal year, he requested and the Judiciary received an additional \$51 million from the prior year. That kept New York State as the most expensive judiciary per capita. Congratulations. As for that \$25 million you approved annually in 2015 for 25 new family court judges, statewide there were 95,000 fewer filings in Family Court in 2014 than when Judge Lippman became Chief Judge. Here's what those statistics look like:



It doesn't end there. On January 26, 2016 the Unified Court System forwarded a press release to every member of the judiciary reprinting a letter to the Albany Times Union from Judge Richard B. Meyer of Saranac Lake. In it he erroneously stated, "According to a 2008 report by the Special Commission on the Future of the New York State Courts, the court system cost New Yorkers over half a billion dollars per year – equal to almost 25 percent of the judicial branch's budget....She (Judge Judith Kaye) watched Albany lawmakers heap ever more responsibilities upon the courts while limiting the judicial branch budget, which comprises less than 2 percent of the entire state budget and has increased a mere 3.5 percent the past six years." I hardly think that going from \$.5 billion dollars to \$2.1 billion is a little more than 3.5 percent in the past six years.

In a footnote to the 2016-2017 Budget Request of the Judiciary, Chief Administrative Judge Lawrence K. Marks wrote: "There is also the currently unknown cost of a salary adjustment for judges that will be recommended by the Commission on Legislative, Judicial and Executive Compensation, to take effect on April 1, 2016. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015, and therefore the cost of the recommended adjustment is not now known and is not included in this request. If necessary, the Judiciary will

submit a supplemental budget request to cover the cost of the April 2016 salary adjustment.” Apparently he does not think it is necessary.

Under the current law, whatever the Commission says about pay raises takes effect automatically on April Fools’ Day, 2016 unless you say otherwise. The Commission estimated the increase to be \$26.5 million in the first year. Judge Marks wrote in his undated submission to the Commission, “A judicial pay adjustment of 16.7%, as urged herein to establish parity with the federal judiciary, would cost the State approximately \$35.56 million annually. Adoption of the Judiciary’s proposal to reform certain pay disparities (see section V) would add approximately \$3 million annually.” Putting aside that there will be another 45% increase (\$38.56 million versus \$26.5 million) in 2018, that would make our 2016 judicial budget about \$2.156 Billion and would make the judicial budget increase over 2015 \$74.1 million. This increase is more than 50% higher than Judge Marks told the legislature in the “proposed” 2016 budget. And just what does one get for \$2.156 Billion? Among other things, the yearly exports of Aruba or how much Magic Johnson and some investors paid for the Los Angeles Dodgers.

How did we get here? The Commission on Legislative, Judicial and Executive Compensation has submitted its final report and an “Appendix” from Judge Marks that has all kinds of backup data. The Appendix does not describe the final increase, but it certainly gives lots of statistics in its 258 pages of gobbledygook. For example, did you know that in 2011, New York State’s trial judges ranked 11th highest out of 50 states in salary? By 2015 according to the National Center for State Courts, we were 8th on the hit parade. So, how do you justify a stupefying \$38+ million per annum pay increase? You “adjust for cost of living” whatever that means. It brings our judges down to 47th place, although doesn’t cost of living include the taxes New York imposes in part based on the Judicial budget? To justify the increase, Judge Marks in his Appendix compares our judges to, among others, top partner salaries in New York City (minimum \$455 per hour, thank you very much), the head of the Boy Scouts of America (\$442,900), the Attorney General of Guam (\$105,286) and Sheldon Silver (\$121,000 plus mesothelioma fees). Presto chango, our judges deserve the money.

By 2018, absent a cost of living increase or an increase in federal judicial salaries, a New York State Supreme Judge will be paid \$203,100 per year plus health insurance and retirement. According to the Bureau of Labor Statistics, the mean annual salary of a lawyer in the Albany-

Schenectady-Troy area is \$113,070. Glens Falls? \$75,200. Wonder what it would be if “adjusted for cost of living”? In 2011, a Supreme Court or a Court of Claims Judge in New York was paid \$136,700 plus benefits. In seven years they will receive a minimum increase of over 48%, not adjusted for inflation, of course.

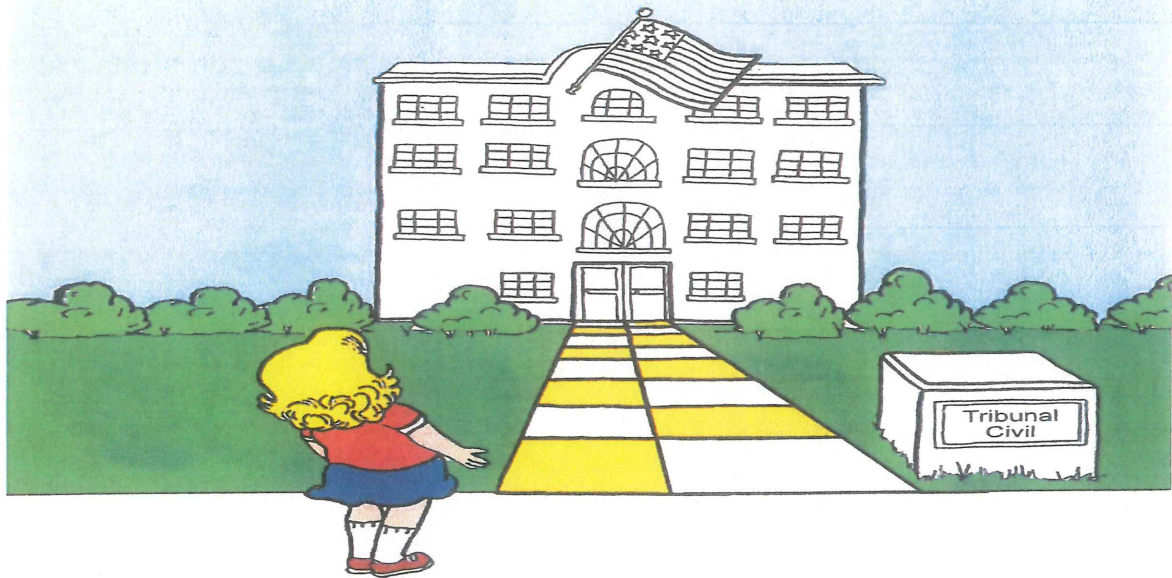
The Commission’s report is addressed to Governor Cuomo, the Speaker of the Assembly, the Senate Majority leader and Judge Lippman, none of whom need do anything and the recommendation goes into effect. Having devised the system of never voting on this recommendation and putting in place its inclusion in our budget like it or not, your silence will confirm the increase. All you have to do is ignore the report and its skewed information and the taxpayers pay the price.

For these reasons, I urge you to deny the Unified Court System its requested budget increase. Please stop the enormous, unnecessary increase in judicial salaries.

Thank you for the opportunity to allow me to submit this testimony.

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Une Visite au Tribunal Civil



Un livre d'activités et de coloriage, du tribunal de la ville de New York

Fern A. Fisher

Doyen adjoint et juge administratif des tribunaux de New York.

Directeur du programme d'accès à la justice dans les tribunaux de l'État de New York.



ⁱ Article VI, Section 29a of the New York State Constitution

ⁱⁱ The Office of Court Administration still insists that New York State is the third largest state in population in spite of the 2010 census.

http://www.nycourts.gov/COURTS/problem_solving/index.shtml