

STATE OF NEW YORK

PUBLIC HEARING

Commission on Legislative, Judicial
and Executive Compensation

December 7, 2015

New York City Bar Association
42 West 44th Street
New York, New York

B E F O R E :

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Michelle Mahaffey, RPR, CSR
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Senior Court Reporters

Proceedings

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2 CHAIRWOMAN BIRNBAUM: We are ready to start. We
3 are going to begin the first deliberative meeting of the
4 commission on judicial salaries compensation. We are only
5 discussing compensation for the Judiciary at this meeting
6 and will be filing a report before December 31 of this
7 year. Next year we will be taking up judicial --
8 legislative and executive salaries. So the commissioners
9 are all here and we are ready to begin.

10 I'd like to first make some preliminary notes
11 about some of the things that I'd like to clarify that were
12 said at the hearings, and we appreciate everybody who came
13 to the hearings and presented their points of view. We
14 have everyone's papers and the commission has reviewed
15 those filings, but there was a statement made about that we
16 did not get notice of the hearings out to the public. I
17 just would like to tell you that there was an in-media
18 advisory that is on our website and that was sent out to
19 over 100 media outlets throughout the state and that was
20 also distributed to wire services who have nationwide
21 distribution. So we feel strongly that there was more than
22 sufficient publicity about the hearings. And the hearings
23 were very well attended, and as you know and can see on our
24 website that there were many presentations, both by
25 organizations interested in these issues, bar associations,
26 and I think we actually received a very good cross-section

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Proceedings

of both the public and individuals; so just to clarify that.

How we are going to proceed today, it seems to us that there are about four major issues that we are going to discuss today and if we can come to a determination, we will. Otherwise, we have another meeting planned to further discuss the issues and come to a decision so that we can get our report done by December 31. And the issues, as broadly as I see them, are (1), there are those who testified that there should be no pay increases for any judiciary members; (2), there are those that testified and gave us reports and papers on the fact there should be an increase and it should be to the federal district court increase. So the first issue we would discuss would be if there is going to be an increase, what should that increase be and when should it take place.

The next issue would be should there be cost of living increases over a four year period, and if there should be, what should those increases be; and the last issue was the issues of parity that were raised by a number of the people who testified, and there are many sub-issues to the parity issue. So we will be discussing all of those issues, and I now open it up to the commissioners who would like to start anywhere in discussing what their views are.

Do you want to start anywhere? Fran, do you want

Proceedings

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to?

CHAIRWOMAN REITER: Sure. Thank you, Madam Chairwoman. I think those are the issues and I think that all would say is that I think there is some context in which we need to keep aware of as we deliberate on those areas. We are the first commission to be charged with examining and making recommendations on salaries for all three areas of government: Exec and legislative and judicial. While we are here doing only judicial, I think it's important -- before the end of the year, I think it's important just to keep in our minds that what we do for judges, like it or not, will be viewed, at least by some out in the world, as setting some kind of benchmark, and I think that whether we think that is what we are doing or not, it will be perceived that way, and therefore, we have to keep that in mind.

I think there are budgetary issues that need to be kept in mind as we do this. Points were made about -- during the testimony about the cost of what was being proposed in terms of raising everybody quickly to the level of -- immediately to the level of federal district court judges, which is about 15, 16 percent increase to -- I think it was 203,000 or something approximating that. That is a large increase if done all of a sudden in one fell swoop as opposed to potentially taking the approach of

Proceedings

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2 phasing it in over, let's say, a four year period. So that
3 even if you agreed with that level of salary that had been
4 proposed, to not do it necessarily all at once; that
5 legislative and executive increases, while likely to be
6 smaller in total number, because the number of individuals
7 is smaller, will have a budgetary impact as well.

8 Lots of people testified that the state is in
9 great shape and that we have lots of money. I think that
10 those who oversee the state budget, both on the legislative
11 and the executive side, might take a somewhat different
12 view of that including, you know, the fiscal restraint that
13 state government has acted under for the last five or six
14 years.

15 I think the argument can be made that the state
16 is in great physical shape relative to where it had been
17 because of that fiscal restraint, and therefore, anything
18 we do in terms of salaries should be keeping that in mind
19 as well. The politics of other people's salaries and
20 raises, including union negotiations which certainly look
21 over on a multi-year basis at much smaller increases, I
22 think that is part of the context.

23 And finally, the other thing I would throw out
24 there is -- that we haven't discussed is an approach they
25 haven't given a lot of thought to, but where we could come
26 to an agreement on an increase, and then given the pressure

Proceedings

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2 that our judges in New York City and in a couple of the
3 very close counties where the cost of living is
4 substantially higher than in the rest of the state, that
5 one approach could be to come up with some salary increase
6 and then some kind of stipend, if you will, for people --
7 for judges who live in very high cost of living areas as a
8 way of dealing with that fairness issue, but without, you
9 know, quite as big a budget impact.

10 So those are just some thoughts that I had after
11 reading all of the material that we have been sent and
12 listening to the various people who testified at our public
13 hearing, just some things I think to keep in mind and some
14 ideas.

15 CHAIRWOMAN BIRNBAUM: Thank you so much, Fran.
16 Anyone else who would like to comment?

17 JUDGE LACK: Yes.

18 CHAIRWOMAN BIRNBAUM: Yes.

19 JUDGE LACK: After our hearing, I went and
20 compared the testimony at our hearing with the testimony of
21 the people who spoke at the first hearing in 2011, and it
22 was very interesting. It was by and large the same groups
23 and, in some cases, the same people taking, obviously, the
24 same positions.

25 Now, in 2011 all seven Commissioners were in
26 agreement that agreement that the Federal District Court

Proceedings

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2 salary level should be the salary level of state judges
3 with the midpoint, of course, State Supreme Court by
4 justices. The vote became 4-3 because of the staging or
5 tiering over the first three years of a first year
6 Commissioner -- first year Commission, and I think the
7 reason for that is that there was one significant
8 difference between the 2011 hearing and the 2015 hearing.

9 In 2011 the Governor's budget director testified
10 on behalf of the Executive and on behalf of the budget, and
11 spoke of the fiscal situation in the state at that time
12 after the 2007/2008 recession and that significant salary
13 raises, particularly in one stage, would not be good for
14 the state. And I think that turned -- as a matter of fact,
15 I spoke to one of the commissioners, 2011 commissioners
16 after our hearing last week and he said that yes, that is
17 exactly what we discussed, but in 2015 there has been
18 neither a personal appearance nor, upon information and
19 belief, a written submission from the Executive with
20 respect to any fiscal problems in the state. Having served
21 in the Legislature myself for 24 years and knowing
22 something about state budgets, I take that as a rather
23 significant situation.

24 So what we have right now, going back to 1999
25 when I chaired the Senate Judiciary Committee, was
26 intimately involved with what then became the last

Proceedings

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2 statutory raise for both legislators and the Judiciary,
3 there was great discussion at that time to adopt the
4 Federal District Court model as the state model. That was
5 under a Republican governor with and a bipartisan
6 Legislature, and indeed that was done. In 2011, under a
7 Democratic governor with the first of three Commissions,
8 the same standard was used.

9 So here we are in 2015 with 16 years of precedent
10 under governors of both major political parties and
11 bipartisan Legislatures adopting the same principle each
12 time; that is, the standard should be that of Federal
13 District Court salaries. Of course, the difference between
14 2011 and 2015 with respect to Federal District Court
15 salaries is the lawsuit brought by Judge Beer of Louisiana
16 and five of his colleagues, which destroyed the umbilical
17 cord, as it were, between Congress and the Federal
18 Judiciary and raised the Federal Judicial salaries from
19 then-174, which equal Congress, to 197,000 when the lawsuit
20 in the Court of Federal Claims was finally settled. And it
21 also made it to the Federal Judiciary subject to the same
22 type of wage increases that all other federal employees
23 get, which is within one percent a year since the last
24 three years or so, which has changed from then-197,000 to
25 what will be \$203,100 on January 1, 2016.

26 So in the next four years, there is not going to

Proceedings

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2 be any substantial increase in Federal District Court
3 salaries. They will get an increase the same as any
4 other -- probably cost of living increases -- that any
5 other Federal employee gets as well.

6 That being said, I think, since we have 16 years
7 of precedence, we can use the \$203,100 as a base. I would
8 not be in favor of tiering or staging it because, quite
9 frankly, we have for 16 years said New York State Supreme
10 Court justices should be receiving the same salary as
11 Federal District Court judges and they are not bound doing
12 that.

13 Plus, there is another point, and that is that
14 each year, approximately 70 New York State judges are
15 involuntarily forced to retire because of a 19th Century
16 constitutional provision which says you have to retire at
17 age 70 or 75, if you are a Supreme Court Justice, and have
18 been certificated. That means over the next four years,
19 approximately 280 judges in the state, over 20 percent of
20 our full-time judges are going to be forced off the bench
21 whether they want to be on the bench or not, whether they
22 are still capable of serving or not, solely because of
23 their age and a Centuries-old constitutional requirement
24 which says you are no longer fit to serve purely because of
25 age and no other criterion.

26 That having been said, I think it's incumbent

Proceedings

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2 upon us to set the \$203,100 benchmark now and provide that
3 in the succeeding careers of 2017, 2018 and 2019, that the
4 equatable Federal District Court salaries as of January 1
5 of each of those years be applied to our state Supreme
6 Court Justices and, as it were, among other judges of the
7 state. I think that's our responsibility and something we
8 should do.

9 I am not mindful -- unmindful of the Legislative
10 and Executive salary increases, particularly since I am the
11 Senate appointee to this commission, but since there are
12 only about 300 people who were affected, I -- the amount of
13 money that we are talking about in terms of the state
14 budget is literally deminimus.

15 CHAIRWOMAN BIRNBAUM: Thank you, Jim. Anybody
16 else? Barry?

17 JUDGE COZIER: Well, I am certainly in accord
18 with what Judge Lack has said, for the most part and, you
19 know, I would point out that the predicate for the 2011
20 Commission was the fact that between 1999 and 2012, of
21 course a period of 12 years, there had been no increase in
22 judicial salaries in the state of New York for any of the
23 judges, and that of course is one of the things that
24 precipitated the initial Commission in 2011. And I think
25 the principle here is that there has been no systemic means
26 of affording compensation to -- fair compensation to judges

Proceedings

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2 in New York State. It had been done on an ad hoc basis
3 prior to, of course, the first Commission. And there were
4 years of course prior to 1999, a number of years where the
5 New York State Judiciary and Supreme Court Judge salary
6 levels were in fact comparable to the Federal District
7 Court levels. There were just maybe a couple of junctures
8 they may be slightly ahead of the Federal District Court
9 levels.

10 What we find ourselves, I think, with this
11 journey with the Commission is one of the issues which has
12 arisen of course is while there was unanimity with respect
13 to fashioning judicial compensation in accordance with the
14 compensation of Federal District Court judges, in that
15 commission in 2011/2012, the difficulty is this issue of
16 the phase-in and the fact that there was a phase-in over a
17 four year period. What that, of course, resulted in is the
18 moot disparity that we are now again addressing, the
19 disparity between \$174,000 currently paid to Supreme Court
20 Justices and approximately \$201,000 paid to Federal
21 District Court judges.

22 So I do think that it is very important that we
23 do not perpetuate the same situation so that four years
24 hence, the same issue with respect to parity is again
25 before the next Commission. So I think that that is a very
26 critical issue and I certainly am not in favor of a

Proceedings

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2 phase-in. I think that if we adopt the Federal standard,
3 then the Federal standard should apply commencing April 1,
4 2016, and of course the cost-of-living adjustments
5 comparable to those given to the Federal Judiciary should
6 be again, in succeeding years, commencing again April 1 I
7 imagine, 2017 be applied.

8 CHAIRWOMAN BIRNBAUM: Thank you. Anybody else?
9 Yes.

10 MR. HEDGES: When thinking about the charge to
11 this group, it's important, I think, to sort of step back
12 and say, "What's this compensation stuff all about." And I
13 think it's fair to say that the big picture always is, in
14 any system of compensation, that you think about how you
15 get good people and how you keep good people, and that's
16 got to be a big piece of the puzzle.

17 A second thing is that when thinking about how
18 you get good people and how you keep them, you've got to
19 think about what constitutes a kind of comparable person.
20 We are talking about judges. We know that the standard is
21 a lawyer with considerable experience. That's the minimum
22 to be one, and so that's the minimum for who it is that we
23 are looking at for comparability.

24 And when we say that, we get into some other
25 interesting wrinkles. Who is that senior lawyer that we
26 are talking about? Is it a Manhattan senior lawyer? Is it

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Proceedings

a Niagara Falls senior lawyer? Because we know that the compensation around the state is greatly different, depending on the location of where that lawyer does his work or her work, and so I think that's got to be something that we think about. I am not sure what my own answer to that is, but it's got to be part of our calculation.

Certainly, we have to think about one other kind of comparability and that's what do other judges make, because that's an obvious, simple, kind of well, geez, those are comparable skill stats and so are the states, the federal, those are relevant benchmarks. When we are thinking about getting good people and keeping good people, we are also thinking about how do we make those good people do good work; you know, what kind of reward system should there be.

Traditionally, in areas like Judiciary, we don't have the concepts that we have in the private sector of bonus payments or variable compensation or anything of that sort. We don't have profit sharing. We don't have stock options. Those kinds of tools are not part of the repertoire that we traditionally think about and I wouldn't advocate that we want to think about it that way. I think we want to think about equity across the class with these judges, because we don't want to get into different kinds of compensation for different judges depending on some

Proceedings

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2 bizarre negotiation of performance, because we don't know
3 what we're talking about when we talk about performance.

4 We've got to think about what would the public
5 think is reasonable. If we look at the income distribution
6 of the state of New York and say well, sort of, what do
7 taxpayers make, because they are the people footing the
8 bill here, you know salary of 200,000 statewide puts you in
9 the top five or six percent of all earners. So that's
10 pretty rarefied atmosphere. It is not the currently
11 popular one percent, but it is way up there, and so we've
12 got to be mindful of that as well.

13 We can't compete with the private sector in any
14 simple sense. This is public service. That's the phrase
15 we all use, and that "service" part is something that we
16 all have as code words for, "Well, we don't pay them quite
17 as much as they do in the private sector," and I think that
18 that should be part of our calculus as well.

19 So I don't think I want to talk about the
20 comparable guy is the best paid Manhattan lawyer, but I
21 don't want it to be what the average citizen makes, because
22 this is a skill set that the average citizen doesn't have.
23 Someplace in there is where we've got to be looking, the
24 notion that is the Federal benchmark, that's got a certain
25 amount of appeal right on its face. It says we are going
26 to be looking for the best and we are looking for people in

Proceedings

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this kind of an environment. Well, who are the best? I think we all would acknowledge that the Federal judges are the best, and so pay that kind of scale and you're going to be recruiting amongst those kinds of people and you are not going to be losing people to that kind of competition.

So that's got a certain appeal as well, but boy, top five percent? Ooh, that's hard pushback. So I am very sympathetic to the notion that the judges' salary should be tied to a benchmark like the Federal benchmark. I am also sympathetic to the notion that wow, that's a lot higher than they are currently getting paid and I am going to go back and talk to the public and find out, gee, 15 percent raise just like that? Ooh, no. Nobody's getting 15 percent raises out there. They're getting one, two, three percent if they're getting anything. And the current popular discussion is nobody has gotten anything for a long time now. The average people are falling behind what average people made five years ago and ten years ago.

So I don't want to do this, "boom," and just be done. I want to agonize over it at the very least. And so the notion of some sort of transition with, perhaps, the competition being the federal judge, that's got some appeal. We know that the Federal judges are now getting a cost of living adjustment. We don't know exactly what that will be, because we don't know exactly what that cost of

Proceedings

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2 living number is going to be, but one way to think about
3 getting to a target like the Federal judges might be, well,
4 where are they going to be in four years, or let's just peg
5 it to where they're going to be in four years and let's
6 phase from where they are now into where they are going to
7 be in four years, and we know what that calculation is. We
8 know it's a cost of living adjustment and we know how
9 that's determined even if we don't know what the number is.

10 So maybe if we do something like a quarter of the
11 difference, a quarter of that 15 percent plus the cost of
12 living number, something like that, so that in four years
13 they are caught up as opposed to caught up today? And I am
14 a little nervous about the Federal benchmark as the
15 standard. If I look at other states by way of comparison,
16 that's going to be way higher than anybody else. I know
17 that there is an argument and I know the judges in the form
18 of the chief administrative judge making the case the cost
19 of living is higher in New York. Well, that's true, but
20 the average person in New York isn't making that more than
21 the average person in the country, so we need a little
22 pushback there as well.

23 And I certainly know that a relatively obscure --
24 I know it's not completely obscure. I have enough of an
25 academic background to know that we have all sorts of
26 indices and we have all sorts of academics who talk about

Proceedings

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2 them. I know that the cost of living notion for New York
3 is that it's higher, but if I say 200,000 is a benchmark or
4 204,000 is a benchmark, that's way higher than any other
5 state judge in the country, plus cost of living over the
6 four years. That's even higher yet, so I am a little
7 reluctant. At the same time, I really do want the best
8 people. I don't want to lose anybody. I know that we are
9 going to lose a lot of people in the near term because of
10 forced retirement, so we are going to need to hire a lot of
11 people in the near term. And I know that the Manhattan
12 lawyers aren't going to be real attractive on salary to be
13 a state court judge, because they can make a lot more than
14 that, and I know that judges do look to that as part of the
15 benchmark. I know they look to their salaries in their
16 local community. And again, senior lawyers in the local
17 community, even though they make less than Manhattan, they
18 still make a lot more than the average person.

19 So I am tempted to say the Federal standard is
20 reasonable. I am a little reluctant to just jump right in,
21 and I know what it's all about is making sure I get good
22 people. So I don't want to just say no. I don't want to
23 say let's just hold back here. I know that I want to push
24 the state budget system a bit and say these are people that
25 we want to pay more than we pay most people and that these
26 are people that we want to compensate properly to attract

Proceedings

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good people.

And to Fran's point from earlier -- and I am going to make a similar kind of argument when it comes to the Legislature and the Executive, because I think the same problem exists there, maybe even more so.

CHAIRWOMAN REITER: Certainly.

MR. HEDGES: Because they have been even longer without any kind of increase. And I know that as I read the newspapers and talk about, for example, Commissioners, that one of the problems the Governor was having, although he didn't articulate it and voice it personally, it was very clear in the accounts of the process that he's had a real tough time getting Commissioners, people willing to accept what is really a very low salary for really senior people and -- oh. By the way, the same thing applies to governors.

I know that it's a real prestigious position and I know that technically we are not going to be in a position to make governor's recommendation, but boy, I'd sure like that thought to be carried along. Governors should be making a lot more than they are too. So I am conflicted about a whole bunch of these dimensions, but real sympathetic to the notion we've got to do quite a bit.

(Whereupon, Maria Rivera replaced Michelle Mahaffey as the official court reporter at this time.)

1 Proceedings

2 THE CHAIRPERSON: Thank you. There will be some
3 convincing going on, I'm sure.

4 Gary.

5 MR. JOHNSON: I'm thrilled that it was first Roman
6 because I could not have been as eloquent or as cogent, and
7 so I will keep my remarks short.

8 I think it's important that we are looking at these
9 questions in a concept. I think we'll have consensus
10 certainly in regard to one that is derived through fair
11 compensation for the following judiciary, but the context
12 has to weigh heavily in our deliberations. I think, as Fran
13 said, one of the important concepts is that there is -- we
14 are in a different circumstance than the prior commission in
15 regards to having to address ourselves as the three branches
16 of government. It is not taking place in a restricted arena
17 as far as the judiciary alone, and we have to be very aware
18 of the fact that what we do here will have ramifications in
19 the other -- as to the other branches.

20 And more particularly, while in regards to the
21 legislature and the executive we may be talking about
22 jurisdictions, specifically over 300 individuals. I cannot
23 lose my spot as a leopard in having previously had
24 responsibility for the agency that directed negotiations for
25 state employees. I know that the context is that what we do
26 here will have a direct impact on negotiations with the

Proceedings

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2 state employees, and so it has to be also very much in our
3 minds. It's unfortunate in that sense, but it can't be
4 helped. I mean, there had to be some order, and we're
5 required to deal with the judiciary first. But at the same
6 time I think we need to keep those other branches in mind.

7 So it's -- I think we have to move slowly. I think
8 questions of restraint are important. One of the areas in
9 which we need to be restrained also I think it's that, and I
10 think we need to bring our own individual expertise,
11 obviously, is that while the budget director has not given
12 us a submission, and while perhaps maybe four years ago we
13 were looking at a deficit situation, we are not looking at
14 deficit now. We all have enough experience to know that
15 things can go south fairly quickly, and that restraint in
16 terms of the budget is an advisable course of action.

17 So in regards to talking about possibly facing and
18 with regards to deciding whether the federal judiciary is
19 the standard, all of those are things that we have to be
20 very deliberate about and restrained about, and not move
21 with -- we don't have much time, but we have to be very,
22 very deliberate.

23 MS. REITER: Can I say one last thing.

24 THE CHAIRPERSON: Yes.

25 MS. REITER: I thought Roman pointed about wanting
26 to track or keep good people is important. In fact, very

Proceedings

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2 important at every level of government. I do think,
3 however, someone who has left the private sector twice now
4 where I was making considerably more money than I ever did
5 in government.

6 There are lots of reasons why people decide to work
7 in the public sector. There are lots of reasons why lawyers
8 decide they want to serve in the judiciary, and I don't
9 think any of them do it because of -- necessarily because of
10 money, which doesn't mean that, that it's not an issue, but
11 for somebody who's making a half a million dollars a year
12 plus, the decision to make here in Manhattan, a high priced
13 Manhattan lawyer isn't going to really be swayed from
14 wanting to be a judge because of the \$20,000 a year
15 disparity between what it is now or what is contemplated in
16 \$30,000 or \$40,000.

17 It's not why people go to public service. It's not
18 why judges I believe will leave their law practices to
19 become judges.

20 So while I think it's an issue, meaning that money
21 certainly can equate to attracting and keeping better
22 people. As someone who recently came out of the executive
23 branch where I lived every day with the problem of
24 commissioners who are making on average about \$130,000 a
25 year running huge agencies with enormous responsibility, and
26 having to deal with the management issue that their deputy

Proceedings

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2 commissioners are all making more than they are, which from
3 a management standpoint is absolutely nuts, at the -- and it
4 made it difficult to attract good people. That is the
5 extreme that judges have had raises in this interim period,
6 the executive branch leadership has not.

7 And so I have to say it weighs heavily with me as
8 well, Roman, and it's certainly going to inform sort of
9 where I come out on all of this.

10 THE CHAIRPERSON: Mitra, do you want to make some
11 opening comments?

12 MS. HORMOZI: I would just echo what Roman and Fran
13 have said. I think we all very much are concerned about the
14 judiciaries' salaries and certainly want to keep and attract
15 good people, but there are other considerations, and this
16 won't be such an easy process to just say, yes, let's get
17 them to the federal judiciary level and move on. I think it
18 will have a huge impact on all state employees' salaries
19 negotiation.

20 I think even though our budget process right now
21 may be fine, as one of my fellow commissioners said, I
22 forget which one, I apologize, that can change quickly. And
23 so we need to be thoughtful about how quickly should we
24 decide to provide an increase, how big an increase, and over
25 what period of time because we want to be thoughtful and not
26 just -- I understand we are just looking at the judiciary

1 Proceedings

2 right now, but I think it's impossible to look at that in a
3 vacuum without the greater context.

4 And also, I mean, Roman said it so well, it's the
5 citizens of the State of New York, you want to be sure that
6 they are not looking and saying this small club set got a
7 huge increase, while the average citizen, or not just the
8 average citizen, many others are struggling. So I think it
9 is a complicated and it needs to be a thoughtful situation.

10 THE CHAIRPERSON: All right. Everybody has at
11 least spoken once. And if I can just try to get us to the
12 next step, I think there's unanimity that there should be an
13 increase. But when you take the fact that there shouldn't
14 any increases off the table, if I'm wrong in that, please
15 let me know.

16 If that's the case, I think the issues as we are
17 hearing them expressed is the commissioners are in favor of
18 an increase to the judiciary. The question is how fast and
19 to what amount. And if I can understand what the people
20 have been saying to try to get us to sort of focus on the
21 hard issues, most of you seem to indicate, and again you
22 correct me if I'm wrong, that we should somehow use the
23 federal salary, the present federal salary as a benchmark,
24 but maybe that it should not be given to the judiciary all
25 at once but in some other combination. And maybe that's
26 what we should hone in on, because at least that's, from

1 Proceedings

2 hearing everyone, that's where I think there may be some
3 kind of economy in the news.

4 Does that make some sense that we have a further
5 discussion along those lines? Anybody disagree?

6 (No response.)

7 THE CHAIRPERSON: All right, so then let's proceed.
8 You know, the number that we have been discussing is an
9 increase to the federal level of district court judges which
10 at this point \$203,100. Correct? So the issue I'd like to
11 put out there for us to discuss is, I understand -- I take
12 it there's a difference in views at the moment as to whether
13 that should be done all at once, and then some sort of cost
14 of living or whether it should happen over a period of
15 years.

16 Does anybody want to discuss that any further?

17 MS. REITER: I only say that I'm not a hundred
18 percent sold that we should increase judges' salaries. I am
19 not a hundred percent there yet that I want to go to the
20 federal level, even over a period of years, I'm not there
21 yet.

22 I think Roman had an interesting notion which is
23 that were we to do that, and I want to look at the math on,
24 although it's pretty easy to do. If it's now \$203,000 and
25 assume a one percent increase, what would it be after four
26 years. And that if you start now from \$174,000, if you add

1 Proceedings

2 four years try to get to that number rather than to the
3 \$203,000, that is what you were suggesting?

4 MR. HEDGES: Yes.

5 THE CHAIRPERSON: I'm sorry. What number?

6 MS. REITER: Well, instead of, instead of -- if we
7 were to agree on a phase where we would go from \$174,000 to
8 the salary of a federal judge, the problems that we ran into
9 the last time is that by the time you got three to four
10 years, you no longer had parity. Right?

11 What Roman had suggested was that maybe you add on
12 a projected cost of living increase, which generally these
13 days has been one to one and a half percent. Let's call it
14 one percent, all right? And you can then assume what a
15 federal judge would be making four years from now. All
16 right? And it is that number that you phase into. I'll
17 make it up. Let's say it's \$208,000, all right? That if
18 you start at \$174,000 today and you phase it over four
19 years, you phase it in a way to get you to \$208,000 after
20 four years, instead of the \$203,000. So that at the end of
21 that period when this body meets again, right, you have
22 parity.

23 I mean, I think that if I buy into raising it that
24 high, which I'm not there yet, I think that is an
25 interesting approach to possibly doing it.

26 THE CHAIRPERSON: So I understand that you figure

Proceedings

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2 out what the number is, and you thought we should do it each
3 year one-quarter of that amount to get to the total amount
4 that a federal judge would be making in four years?

5 MS. REITER: Right. So you actually end up with a
6 parity as opposed to what we have now which is, we're at
7 \$174,000, which is what it was four years ago, they are now
8 at \$203,000. Right?

9 THE CHAIRPERSON: Any further discussion on that or
10 any other issue with regard to come to a number assuming
11 that that is right.

12 MS. HORMOZI: So again, I think I'm going to second
13 Fran to say, yes, I agree there should certainly be a raise.
14 I'm not quite a hundred percent there that it should be the
15 federal judiciary benchmark. And so I'm just working
16 through that.

17 And I very much found interesting Roman's point of
18 looking at other states. I don't have in front of me how
19 much Delaware judges make, but I don't know that there could
20 be other benchmarks other than the federal judiciary that
21 could make sense. So I'm still struggling with that.

22 THE CHAIRPERSON: Let me -- I understand that. And
23 the question is we have to find a benchmark to do that. And
24 Delaware is a very small state with a very different
25 structure both judicially and otherwise.

26 So the question is, does anybody want to look -- we

Proceedings

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2 have those numbers. We have those numbers in. But we can
3 look at that. It just seems to me based on what the prior
4 commission decided and what seems to be a better benchmark
5 to me, the federal benchmark makes a lot of sense, and has
6 certainly supported a lot of judges and some very good
7 judges in the federal judiciary. So if you want to have
8 further discussion on, is there another benchmark, that's
9 perfectly fine, we should look at those benchmarks and see
10 if we can convince each other of what the best benchmark
11 would be.

12 I for one think the federal benchmark makes the
13 most sense. It's the benchmark that was accepted before.
14 And our state is different than a lot of states in many ways
15 besides being one of the states with the highest standard of
16 living probably. But also our judges handle many, many of
17 the same types of cases as the federal judges handle, and we
18 want very good judges to be doing that. Thoughts?

19 MR. JOHNSON: I agree, Roman's idea is intriguing,
20 but again I have concerns about linkages and what's actually
21 happening on the ground. In other words, my understanding
22 is that the federal cost of living is actually through
23 debate on CPI. The federal cost of living increase
24 rationally debates on the actual CPI. But if we picked or
25 projected a higher number as a target and locked into that
26 for four years, then we may miss the opportunity to actually

Proceedings

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2 be more sensitive to what is actually going on in the
3 economy. The American economy at this point is extremely
4 fragile, so there is certainly no real reason necessarily to
5 think that it would go up in the next four years. It's just
6 kind of simmering along at this point. So that's another
7 circumstance which argues for restraint in my mind.

8 THE CHAIRPERSON: Anyone else?

9 MR. HEDGES: Listening to Fran as she was trying to
10 work through the concept that I put forward, it's as I put
11 forward more complicated than it should be. Here is a way
12 to simplify to get that same idea. If we say that there's a
13 gap between what the federal government is paying right now
14 and what we are paying right now, and it's whatever number
15 of dollars that is, that could be expressed as a percentage
16 of the federal.

17 We know that the federal is going to change we
18 think by smaller amounts because inflation right now is low
19 and is expected to stay relatively low. We could just do a
20 percentage of the fed that increases over time to 100
21 percent in four years. So if it's 75 percent now, 80
22 percent the next year, 85, 90 --

23 MS. REITER: Yep.

24 MR. HEDGES: -- you know, that kind of thing. And
25 we can do the arithmetic and get it right, as opposed to off
26 of the top of hour heads. And that in the light it

1 Proceedings

2 implement what I approvably express --

3 MS. REITER: Without even knowing what it is.

4 MR. HEDGES: -- without even knowing what it is,
5 and without prejudicing the other conversation, should that
6 be the target, that's a better way of saying what I
7 articulated as a proposal. It's the federal benchmark which
8 will change a percentage of where year four it's 100.

9 MS. REITER: Got it.

10 MR. HEDGES: And the other conversation needs to
11 happen in order to decide whether that's the right detail,
12 that's a way of framing what that concept will be. And I
13 think to me that would be a reasonable way to do it to get
14 it to the federal benchmark. And then we should argue about
15 the federal benchmark.

16 MS. REITER: Right.

17 THE CHAIRPERSON: Does anyone want to comment?

18 MS. REITER: You know, I guess we never really as a
19 state cared much for --

20 MR. HEDGES: Other states are better?

21 MS. REITER: You know, we always think we are New
22 York and we are special. We get to serve in New York. With
23 respect to tourism, we never spent a lot of money on getting
24 tourists here. And the basic attitude was, we're New York,
25 you want to come, come; if you don't want to come, it's your
26 loss. That was the New York attitude about tourists back

Proceedings

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2 then. Didn't work, by the way, so we had to change course,
3 but that was the attitude. But I mean I think to a certain
4 extent it is hard to compare ourselves to other states. I
5 also think the fact that there is such a gap between what
6 the cost of living is Upstate versus what it is Downstate,
7 then what state are we in fact going to compare ourselves
8 to? Are we comparing ourselves to a state that resembles
9 our Upstate economy? And what that means with the cost of
10 living associated with that? Or are we going to compare
11 ourselves to, you know, a state that has a very, very large
12 urban area, like we do, and look at a lawyer in California?
13 So I think it's very, very hard for us to find that
14 equation.

15 I'm more concerned with some of the stuff that Gary
16 has brought up that I raised and Roman raised. And that is,
17 well what is, what sort of makes sense to a certain extent?
18 It is a political piece of all of this, which is when we
19 look at what judges right now are making, that federal
20 benchmark, that old federal benchmark of \$174,000 is
21 virtually what the governor makes. The governor is making
22 \$179,000, I think. Certainly more than I made when I went
23 back into government, and I took a huge cut to go into
24 government, and took way more than the commissioner is
25 making. So I'm not sure the federal benchmark is the one we
26 should be looking at, because I think that, that we have to

Proceedings

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2 deal with these issues from the perspective of this state,
3 this electorate, and to a certain extent historical
4 attitudes about the public sector. It doesn't mean I want
5 to sway so far that we do nothing.

6 On the other hand, in my view wanting to go so far
7 as to put the judiciary out of sync with other public
8 servants, who in my view are equal in their importance, I
9 have no doubt that there are some that believe that the
10 judiciary is more important than the executive or the
11 legislative. But I think there are people including me who
12 would argue that that's not necessarily the case, that the
13 people who run our executive branches as an example are
14 extraordinarily important, grossly underpaid, and frankly
15 under appreciated. And we are going to deal with that at
16 some point. But you set the bar that high this time and
17 it's going to make our work, our subsequent work I think
18 that much more difficult. So I'm just concerned.

19 Again, I have no -- I haven't made up my mind, you
20 know, I do appreciate the public servants, I've been one on
21 two occasions. And for my part we can raise everybody's
22 salaries to the roof, and we will still be probably
23 underpaying them. But that's just not realistic.

24 JUDGE LACK: If you look at the way the commission,
25 this commission was legally structured to bring in the
26 executive and the legislature, in addition to the judiciary,

1 Proceedings

2 having served in the legislature so long, there's a
3 difference in the commission.

4 First of all, one, Madam Chair, and you don't get
5 to vote on the legislative and executive salary increase.
6 Plus, the date differential where we have to report to the
7 judiciary by the end of this year, but on the legislature
8 and the executive it's November 15th of 2016. Obviously,
9 that was done because of the 2016 election, and because you
10 can't raise legislative salaries during the term of the
11 legislature.

12 But the commission could have been formed that all
13 three report on November 15, 2016, and therefore link them
14 all together. By not doing that and separating it, then the
15 legislature and the governor who signed the enactment in
16 effect was separating the affect of the judiciary and the
17 affect of the legislative and the executive.

18 And, Fran, I think the reason for that is one the
19 judiciary did get a raise four years ago. But the governors
20 and commissioners, the governor, the lieutenant governor and
21 the attorney general, the comptroller and the legislature
22 have not had a raise since 1999, and will not be getting a
23 raise until 2017, being the period of 18 -- period of 18
24 years.

25 The judiciary is to be handled separately. And we
26 in effect have to do that as it's structured separately, and

Proceedings

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2 quite frankly great impact on the fact that there hasn't
3 been a statement by the budget director and the executive
4 with respect to this commission versus the earlier
5 commission. And obviously as both a retired judge and a
6 retired legislator, I put great impact on the fact that the
7 last time the legislature and the executive and the
8 commission created by the legislature and signed into law by
9 the executive in 2011 spoke, it was a unanimous agreement
10 that the benchmark being federal district court salaries,
11 regardless of political party involved, and regardless of
12 whether it was done by statutory enactment or by reclamation
13 of a commission. To me particularly as a judge following
14 the president, that is as important. And the state is in
15 far better fiscal health, that health has been in the
16 system, let me give you two examples.

17 I noted from the current state budget, Roman, I
18 think one involves you as State and Municipal Facilities
19 Program, which is I think is a wonderful authority, is in
20 charge of is now at \$1.1 billion at yearly incremental
21 addition to \$385 million. When I was a legislator that was
22 called member-item funding. I haven't been a legislator for
23 a long time, and I realize even in a public meeting
24 mentioning those words probably can get me throttled
25 someplace as soon as I walk out of here.

26 But quite frankly, the State and Municipal

Proceedings

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2 Facilities Program is just as, shall we call it a 2015
3 version of what had been a member-item funding, although
4 somewhat more narrow in focus than in the past. And he
5 speaks of this state in better fiscal health. I'm not at
6 all against it. As a matter of fact, I was aware of the
7 spectrum involved. I voted for it, as I did for related
8 items in the past. There is also a \$900 million park
9 improvement program. As a retired person living within
10 three miles of a state park, I used that state park almost
11 every week, and I'm all in favor of that. I just point out
12 that the legislature and the governor, and my compliments to
13 the governor for doing so, have set up this \$900 million
14 park improvement program to go through 2020 be speaking of a
15 better fiscal health of the state. I think those are all
16 very good things, and says that we are enacted by the
17 legislature and the governor in a sound fiscal posture.

18 MS. REITER: It's all capital money. It's all
19 capital money which has an impact on the operating budget as
20 you know but -- but much less so than salary issues which
21 are purely outweighed.

22 JUDGE LACK: Yeah, and this is \$75 million in a
23 budget of billions and billions. My only point --

24 MS. REITER: A budget being held at 2 percent.

25 JUDGE LACK: Fran, you know as well as I do, or
26 maybe not as well as I do, that there is no way that either

Proceedings

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2 of these two projects in times of fiscal constraint capital,
3 notwithstanding, would have never made it through a budget
4 enactment. And the fact that they have, and that they are
5 here and they are projected into years and into the future
6 says something, or at least what the legislature and
7 executive considers to be the fiscal health of the state.
8 The impact of a -- for judiciary purposes of this enactment,
9 I forget what one of the commissioners in 2011 who voted
10 against the statement, I would say the minimal, but he had a
11 much better phrase for it, and I'm sorry I don't remember.
12 In terms of its affect on the budget, it would be virtually
13 zero.

14 And, Fran, while I certainly appreciate and attempt
15 to differentiate salaries based on where you live in New
16 York State, if you ever want to set New York State elective
17 bargaining negotiations into a fizzy, just try to bring that
18 one forward.

19 MS. REITER: I don't want to.

20 JUDGE LACK: No, no, I understand.

21 MS. REITER: That's why I'm saying -- that's why
22 I'm saying comparing those two things, what state are you
23 going to -- you know, what are we going to compare ourselves
24 with?

25 JUDGE LACK: Well, I mean that has been raised in
26 every collective bargaining situation I have ever seen or

1 Proceedings

2 heard of in this state, and the reason it gets nowhere, it's
3 just what you said, it's impossible to try to differentiate
4 what salary should we pay people from Long Island versus
5 what salary should we pay people from Erie County. Talk to
6 the state.

7 I always felt sorry for a few state troopers.
8 There are state parks in New York City. And there's a state
9 police and state parks police presence in New York City. I
10 always felt sorry for the state troopers who have to be in
11 New York City versus state troopers elsewhere in the state
12 in terms of the money they're paid. No one gets into that
13 or can't for both political reasons and for collective
14 bargaining reasons throughout the state.

15 And believe me, we're actually into that judiciary,
16 that's the thing we're not discussing right now, a parity
17 because that exists because almost 40 years ago when the
18 state took over the pay of the judiciary on the statewide
19 basis, there were salaries that reflected whatever the
20 economic consequences were in various parts of the state.
21 And the state took it over as it was, and almost four years
22 later it still is as it was.

23 And there are differentials of which, of course,
24 you heard in our hearing, there are many judges in the state
25 who are what they consider the wrong side of that paid
26 parity because their salaries have never been equalized with

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Proceedings

their colleagues throughout the state. So the practical matter I don't think we certainly get into regional differentiations among salaries.

And again I repeat, I think the fiscal health of the state is such that I would like to see these salaries go up immediately to the federal level. And once again mentioning the 70 judges who are forced to retire who will for the rest of their lives have pension consequences, every 70 judges every year who are forced to retire because of the constitutional enactment. And we don't have an equatable standard that they should have by the time they retired because of a tiered state that somehow failed to adjust their salaries, so they are spending the rest of their lives with a reduced pension. I just don't think that's going to be a threat.

1 Proceedings

2 THE CHAIRPERSON: Let me just put some numbers on
3 the table that you can at least listen to. Illinois, this
4 was adjusted for -- to reflect local cost of living, but
5 the current salary in Illinois is \$190,758. That's now.
6 They are way ahead of us. California is 189,041. Delaware
7 is 180,733. Pennsylvania is 176,572, and New York would be
8 174,000. So those are the states that are large states
9 that might be somewhat -- except for Delaware, of course --
10 that might be somewhat equivalent.

11 It seems to me there is no way you can pick
12 between states and say, this is better or this is worse or
13 this is what we should follow or not, and we don't know
14 what's going on in those states as to increases this year,
15 next year or the year after. So it seems to me that the
16 benchmark that wasn't selected the last time makes the most
17 sense as the bench mark. How you do it after that I think
18 is really a discussion we have to have, but I would hope
19 that we can at least focus in on that as a benchmark so we
20 don't -- because if you could tell me how you can
21 distinguish any of these states or that one state is better
22 than the other and whether they have upstate-downstate
23 problems or east-west problems or different categories, I
24 just can't -- there is nothing to compare it to that to me
25 makes any sense except at least going down the Federal
26 route, so...

1 Proceedings

2 MR. HEDGES: One way of thinking about the parity
3 question would be to say 100 percent is complete and any
4 number less than that is still a number that's considerably
5 higher than where we are now. And if I were to do the
6 rough arithmetic based on the chart that was provided by
7 the court system where they gave -- they reported here is
8 the actual salary, the nominal salary in each of the
9 various states, the highest is Hawaii and mutual
10 explanation for Hawaii is cost of living, but let's use
11 that as a starting point. Hawaii is 95 percent of what the
12 Fed will be.

13 So we don't have to say we are going to 100. We
14 are going to 95. And built into that is the cost of living
15 increase that the Feds are going to do, which is CPI. So
16 it's a target that changes with cost of living. It's the
17 most widely used cost of living measure. There are others
18 in the cost of living adjustment that the court system
19 recommended for comparability purposes is yet another. The
20 number of those options is considerable. Cost of living as
21 CPI is one that almost everyone accepts. That's what we
22 use for Social Security. That's what we use for the
23 federal judges. That's what we use for a lot of things.

24 So if I were to take the concept that I
25 articulated a little while ago and said, well, 100 percent
26 is the target, 95 would put us at high or as high as anyone

Proceedings

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2 else. And someplace in there, in my mind, is the range of
3 things that we should be talking about. We want the really
4 best of people. And we know that New York has got all
5 sorts of odd things going on between upstate and down and
6 between particular portions of upstate versus, others and
7 between Long Island versus the City and all other regional
8 variations that we can talk about, but someplace between 95
9 and 100 is a lot higher than we are now and is a big move
10 in the direction.

11 One of the things I didn't say when talking about
12 why do you increase someone's pay, you want to make them
13 feel good so they will do a better job. That's part of
14 what's at issue here as well. The judges have articulated
15 in the form of the recommendation that we are getting from
16 the chief administrative judge, you know, you are not --
17 keep treating us with proper respect. I think we need to
18 address that proper respect argument however we choose to
19 address it. We don't have to say yes and here's the
20 answer, but yes, we acknowledge that it's an argument and
21 we do want to treat you with proper respect. I do want to
22 do that. That's me and my personal recommendation.

23 And so, you know, 95, 100; I am less stuck on a
24 number than I am on a concept that says let's make sure we
25 are keeping up with inflation. Let's not repeat this
26 situation of "We hit the target and the target's been

1 Proceedings

2 moved," and the day after everyone dissed about not having
3 been respected; so some sort of cost of living and some
4 sort of substantial increase. And again, I am going to
5 want to apply that concept when I get to Executive salaries
6 and Legislative salaries.

7 THE CHAIRPERSON: Mitra?

8 MS. HORMOZI: Just to clarify, so picking
9 Delaware wasn't so much the size and cost of living in
10 Delaware, but rather the complexity of legal work that
11 occurs. Most major companies and most complex commercial,
12 although not criminal litigation, occurs in Delaware, and
13 so I think many companies are always trying to choose
14 between Delaware and New York, for the most part, for their
15 choice of law provision. So that was a point of comparison
16 as it relates to seeking out and obtaining the best judges,
17 but I understand it is a rather arbitrary choice, picking
18 one state over the other. And given that we do have
19 precedent in prior Commissions in picking the Federal
20 benchmark, that might be the simplest way to go in figuring
21 out how, when and what percentage would be far simpler and
22 more efficient.

23 MS. REITER: Meanwhile, for all of our disparity
24 in looking at the numbers of the top four states in terms
25 of salary right now, not one of them is at the Federal
26 level. So why we chose to use the Federal level as the

Proceedings

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2 benchmark -- I wasn't here in 2011 or the prior Commission,
3 but it seems to me to be a -- not a false benchmark, but
4 not a necessary benchmark to accomplish what it is we are
5 trying to accomplish, which is fairness and doing the right
6 thing, but doing the right thing within the context of the
7 state, of the state budget, of what the other work that we
8 have to do, all the things that we have talked about here
9 today. So I think it's easy to fall back on a precedent
10 that exists of marrying what we do to the Federal
11 Judiciary, but it seems to me it's not a very strong
12 precedent. It is not one that just sort of yells at you,
13 yells out at you to say you have to do it this way.

14 THE CHAIRPERSON: Well, what would you suggest
15 otherwise? I mean, I think we have to get beyond -- you've
16 got to start getting into the nitty gritty of the
17 discussion, and we don't even know what the benchmark is.
18 It is hard to figure out where we go from here.

19 MS. REITER: Well, it could be a benchmark, but a
20 percentage of that benchmark.

21 THE CHAIRPERSON: I am not even suggesting that.
22 I am trying to get us to see if we can agree that that
23 should be the benchmark. Whether you agree that it's 100
24 percent or 90 percent or 95 percent, I think that would be
25 another discussion and people may have very different views
26 on that, but can we agree that we should be looking at the

Proceedings

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2 Federal benchmark? And how much of it may be another
3 thing, but we are not going to look at other states. That
4 should be, at least, what we are thinking as the goal that
5 it's that as a benchmark. How we would like to implement
6 it may be quite different, but at this point we are not
7 looking at Delaware. We are not looking at California. We
8 are not looking at Illinois as a benchmark, just a way of
9 getting the discussion moving down the way.

10 MS. REITER: I am okay with it as a benchmark
11 just so long as it is not the mark.

12 THE CHAIRPERSON: That we will have to decide on.
13 I think that it is the best mark we can look at and get the
14 best people available. So is there anybody that would
15 disagree that we should at least look at that as the
16 benchmark; that how much, maybe it's 100 or less, that we
17 can discuss next or it should be implemented and that we
18 have been discussing as a whole?

19 So I think clearly one of the Commissioners or
20 two have stated that that benchmark should be 100 percent
21 and should be upfront and I think some have said that it
22 should not be 100 percent, at least initially, but there
23 should be some timing of it to get at the end of four years
24 to where that benchmark might be, plus linked with the
25 various cost of living increases that is would come in. I
26 think we heard various ways of doing that. I don't know if

1 Proceedings

2 any people have other thoughts that they wanted to discuss.
3 Yes.

4 MR. HEDGES: One thing we haven't talked about
5 that is part of the charge but I would like to make clear
6 from my point of view that I don't want to address except
7 to say we are doing the right thing already, is other
8 benefits. Pension benefits, health care benefits and the
9 like are very costly things and in many compensation
10 systems they are traded off one against the other.

11 I think that the state system of benefits is a
12 pretty good one. I haven't heard anyone, whether a state
13 employee, legislative employee, executive commissioners or
14 judges say we should have something different from that,
15 and I guess I'd like to put that in the context of could we
16 all agree on at least that and have that be part of the
17 package, but done already.

18 THE CHAIRPERSON: I understand what you're saying
19 is that there -- I didn't think there was going to be any
20 discussion, but then whatever the benefits are, they are.

21 MR. HEDGES: But the statutory charge is that we
22 actually consider it.

23 THE CHAIRPERSON: Changing the benefits in some
24 way?

25 MR. HEDGES: It didn't say "change." It said
26 consider compensation including, you know, benefits, and to

1 Proceedings

2 my way of thinking in the normal compensation system, they
3 are all in the mix and the employer says this cost me "X"
4 and the union, as it were, says No. Well, we've got to
5 make sure -- and that becomes part of the discussion -- an
6 explicit tradeoff. I don't want to have that part of the
7 discussion. I want to assume it.

8 THE CHAIRPERSON: Is there any disagreement with
9 Roman --

10 MR. HEDGES: I don't think there is a.

11 THE CHAIRPERSON: -- that this is not part of our
12 discussion, that we are really only focusing on salaries?
13 The rest of the system is as to benefits, we are not
14 discussing that and that will remain whatever they are. I
15 they we have agreement here.

16 MR. COZIER: I think that's appropriate and I
17 think you have to keep in mind that judges are not involved
18 in collective bargaining.

19 MR. HEDGES: Neither are a lot of other
20 employees.

21 MR. COZIER: Yes, but in the court system, which
22 has some 14,000 employees, 90 percent -- at least
23 90 percent are represented by bargaining unions and so
24 there are many --

25 MR. LACK: Twelve of them.

26 MR. COZIER: Twelve different bargaining units

Proceedings

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2 and that's part of the context that we sometimes forget,
3 which is that nonjudicial employees have gotten raises
4 variances in their benefits over that 12 year period when
5 of course the judiciary did not receive raises to the
6 extent that there were nonjudicial employees who were
7 earning as much or more than some of the judges. And I
8 think that's an appropriate context, because the system is
9 so much larger than if we are talking about legislators or
10 the Executive.

11 I think nationally I think we have to put it in
12 context that New York happens to be the largest legal
13 system, the most complex legal system and it is considered
14 the legal center, certainly, of the U.S. but probably
15 certainly among the 12 top legal centers in the world and,
16 I mean, something goes along with that.

17 The other thing I just wanted to clarify is of
18 course this regional disparity issue is an issue I don't
19 think that we can actually address, because part of that is
20 really an anachronism from when the system was based upon
21 counties essentially compensating judges, but I think
22 what's important in that discussion in terms of the
23 regional aspect is that whether we look at the Federal
24 system or we look at the system in the other 49 states,
25 there is a uniformity with respect to judicial
26 compensation, and that is it is never regionally based,

1 Proceedings

2 because the idea is that judges in particular categories,
3 whatever the category may be, are elected or appointed to
4 perform the same duties and responsibilities and should be
5 compensated in the same manner.

6 THE CHAIRPERSON: I am trying to take this
7 discussion to the next step. It seems to me what I've
8 heard -- and then I think we should just consider this and
9 any other ideas that people have -- one suggestion that
10 I've heard is that there should be 100 percent of the
11 Federal salary now at in the next increase level. And if I
12 understood, Roman, what you were saying as another
13 alternative, was that it be 95 percent? I don't want to
14 put words in your mouth. Maybe you want to express it so
15 we can sort of put it down and then see if there are other
16 suggestions as well. So let me go back to you, okay? If
17 you can sort of spell out what your thought is at the
18 moment of what we should be doing.

19 MR. HEDGES: In my mind the question what
20 percentage of the total it should be is in fact an open
21 question. From way of illustration, 100 percent is sort of
22 one end of it; 95 percent would give us a salary in New
23 York that is, roughly speaking, the highest in the country
24 among states, and in my mind that's a nice way of
25 ratcheting what should be our choice.

26 My thought is that I conclude it but I put a

1 Proceedings

2 lower round on a number less than 100 percent; 95 percent;
3 way up there.

4 THE CHAIRPERSON: Can I understand --

5 MR. HEDGES: Way up there.

6 THE CHAIRPERSON: Can I understand?

7 MR. HEDGES: Yeah.

8 THE CHAIRPERSON: Because I don't understand
9 maybe. It would be 95 percent of the \$203,100, that would
10 be an increase at the next -- all of that would be an
11 increase in 2016. I just want to make sure of --

12 MR. HEDGES: No. In my mind, I would like to
13 phase in whatever we decide.

14 THE CHAIRPERSON: Okay.

15 MR. HEDGES: But --

16 THE CHAIRPERSON: Okay. That's it. That's what
17 I wanted to understand.

18 MR. HEDGES: -- but I would like to limit our
19 discussion -- this is my recommendation -- to someplace
20 between 95 percent of the Federal number and 100 percent of
21 the Federal number. And for purposes of argument, because
22 I want to phase it in, I would say in year four.

23 THE CHAIRPERSON: I'm sorry?

24 MR. HEDGES: By the way, if we were to say in
25 year one, 95 percent, what would that look like compared to
26 other states? It would look like the highest nominal

1 Proceedings

2 salary of any judge in the other states, according to the
3 chart that the court system gives.

4 THE CHAIRPERSON: Again, that --

5 MR. HEDGES: Which is 193,000.

6 THE CHAIRPERSON: We don't know if there are
7 any -- we haven't looked at the other compensation in those
8 states. We are just looking at salaries.

9 MR. HEDGES: Just looking at salary. And as a
10 "by the way" in my world, I would like the current other
11 than salary considerations to be what they currently are,
12 which is the state pension system, the state health system,
13 and the like.

14 MS. REITER: I'd be surprised if any state were
15 more generous than we are in those areas --

16 MR. HEDGES: Me too.

17 MS. REITER: -- number one, we could certainly
18 find out, I guess, and that they probably exist somewhere,
19 but generally speaking, our benefit packages in this state
20 have been pretty rich and the fact is I think one of the
21 reasons quality people go into the Judiciary even though
22 the salary isn't as high as we might think it ought to be.
23 So, I'd be surprised if we were lagging behind any other
24 state in that regard.

25 THE CHAIRPERSON: Roman, can you just clarify for
26 me, that would be at the end of four years, what you are

1 Proceedings

2 proposing we would be at -- judges would be at 95 percent
3 of whatever the Federal number was in four years, is what
4 you have in mind?

5 MR. HEDGES: In my mind that would be the range
6 of discussion that I would like us to be focused on,
7 someplace between 95 and 100.

8 THE CHAIRPERSON: Okay. Anybody else have any
9 other thoughts on this particular issue?

10 MR. JOHNSON: Just asking Roman for
11 clarification; what we are talking about, then, is waiting
12 to see in four years what the Federal number is. We would
13 state for our target the Federal number in four years and
14 then what you're talking about is the lower -- possibility
15 of a lower boundary of 95 percent.

16 MR. HEDGES: Of that. As the target number for
17 our final number, and the higher range of that would be
18 parity full 100 percent.

19 MS. REITER: Just so I understand, if you did the
20 calculation of the Fed numbers over a four year period,
21 whatever that -- to phase in, let's say, 25 percent a year,
22 right, over four years to get to 95 percent of that number
23 knowledge.

24 MR. HEDGES: Exactly.

25 MR. LACK: But that number would be a number that
26 we project.

1 Proceedings

2 MR. HEDGES: Right. I would be happy to actually
3 do it as a percentage up and let life happen and let the
4 chips fall where they may. If the CPI goes up 10 percent
5 and the Fed is just 10 percent, then we get a bigger
6 number than we are expecting. If it stays zero, as my
7 Social Security number stays this year, then that would be
8 what happened.

9 THE CHAIRPERSON: But so --

10 MS. HORMOZI: Sorry for my math. Why not agree
11 to a cost of living increase for four years and then do
12 95 percent of what the Federal salary is now so we know the
13 number and the cost of living increase?

14 MR. HEDGES: Because I am not happy to get to
15 95 percent in day one. I'd like to get --

16 MS. HORMOZI: So I agree, but in four years you
17 phase in to 203 but allow everyone to get their cost of
18 living increase every year, whatever that is.

19 MR. HEDGES: Since the Fed does cost of living, I
20 don't even have to know what that number is. It just takes
21 care of itself. I am just doing the arithmetic, that's
22 all. The concept is the same in my mind.

23 MS. HORMOZI: Right. There is just one we would
24 know and one we wouldn't; right?

25 MR. HEDGES: I don't think it comes out any
26 different, but it allows us not to do that complicated

Proceedings

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arithmetic.

MS. REITER: So in year one, in year one it's 95 percent of whatever the Fed actually is, what that cost of living. In year two it's 95 percent.

MR. HEDGES: Correct.

MS. REITER: Of --

MR. HEDGES: Correct. If we weren't doing any phase-in at all, that's exactly --

MS. REITER: Right. If we do the phase-in it's 95 percent of year one of.

MS. HORMOZI: 25 percent.

THE CHAIRPERSON: I don't understand why are we picking 95 percent.

MS. REITER: Whatever it is.

MR. HEDGES: I'll tell you how I got to the 95. The 95 is rough justice -- someone can do the precise arithmetic, a number that that will get us to be the highest state in the country.

THE CHAIRPERSON: Yeah, but we don't know what the states are going to do.

MR. HEDGES: Well, no, no. That's my point.

MS. REITER: California is bankrupt and Pennsylvania can't get a budget to save their lives so I am not worried to us losing ground to them.

MR. HEDGES: But it was a way of saying --

1 Proceedings

2 MR. LACK: You just said that we shouldn't be
3 compared to other states.

4 MR. HEDGES: It was a way of saying a number less
5 than 100 percent, but my recommendation would be but still
6 quite generous. And how generous, if I did the arithmetic
7 correctly with rounding and so forth, 95 percent would put
8 us higher than what Hawaii and if I got the arithmetic
9 wrong, maybe it can be 96 percent.

10 THE CHAIRPERSON: So maybe somebody out here can
11 do the arithmetic while we're talking.

12 MR. LACK: Well, I've got to say all of a sudden
13 we are comparing with other states when we've had a
14 precedent for years now -- again, and I keep mentioning
15 it -- by governors in both parties and the State
16 Legislature equating our salaries to that of the Federal
17 District Court, and what we were in fact having this
18 discussion about is that the Federal District Court as a
19 result of a lawsuit that had increased, a lawsuit that was
20 evaluated through the federal judicial system as to what
21 judges should earn at any given time in the Federal system.

22 I again stress that in the Federal system, there
23 is no comparison between Mississippi and New York or New
24 York and California. It's across the board, across the
25 country, and the evaluation was that judicial salaries
26 should be increased to a standard that was debated hotly

Proceedings

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2 within the Court of Federal Claims and went up on appeal,
3 came back and was structured, and that's why the 174 was
4 raised to where it was and where it is now. And if that's
5 a standard that we accepted now for the last few years, I
6 think this is a standard we should still be using and not
7 switching to a standard where we are suddenly going to come
8 off of that, "use it as a benchmark" but only take a
9 percentage of it, because we want to compare ourselves to
10 other states, which we haven't been doing at all and as
11 Fran, you pointed out New York doesn't compare itself to
12 other states. New York is New York.

13 MS. REITER: Whether you use it as a comparison
14 to other states which we discussed here or not, I am having
15 problems with an increase the size that we are talking
16 about to get to -- to keep within that Federal benchmark in
17 view of everything else that's going on in the state. And
18 while what we recommend will happen unless the legislature
19 and the governor say no, I think we put ourselves in the
20 position of them doing just that, that I would love to come
21 up with something that is both fair, that says to the
22 Judiciary that we value you, and that you deserve more, but
23 at the same time it is in a stick in the eye to every other
24 person in this state who has similar issues, some of which
25 we will be dealing with, not to mention the public at large
26 which is going to look at this and say, right -- and you

1 Proceedings

2 have been in politics a long time and I have been in
3 politics longer than I ever wanted to be when it comes to
4 issues like this.

5 MR. LACK: That's why I have been out of it for
6 years. Thank you very much.

7 MS. REITER: Well, me too, but I haven't
8 forgotten, that that \$35 million -- that we casually look
9 at as being chump change, right now someone is going to
10 turn around and say, "That will buy us the services in
11 supportive housing for New York City's homeless population
12 in X number of units, and it's going to be a lot of units
13 or it's going to be this number of day care slots; or it's
14 going to be any number of things that it's going to get
15 compared to. So while the context of the overall state
16 budget \$35 million may sound like a spit in the ocean, as
17 they say, it is not going to be viewed that way by the
18 other people whose salaries we are going to be considering
19 next year; by -- your point, Gary -- by all of the civil
20 servants that are going to be sitting there and saying
21 whoa, we got one and a half percent if we were lucky next
22 year and look at what they just gave the judge. And they
23 are not going to be interested -- and you know just as well
24 as I do -- they are not going to be interested in whether
25 or not judges are worth more than a civil servant sitting
26 in an agency -- that's -- we can debate until the cows come

1 Proceedings

2 home -- you can tell I moved to Columbia county -- you can
3 debate forever whether that's viable, realistic fair
4 comparison. Who cares? In this world it doesn't matter
5 whether it's viable or realistic or fair.

6 It is what it is. We want to do the right thing,
7 and I'd really like to come up with something that the
8 Legislature and the governor are going to embrace, and I
9 think that we are not quite there yet. We have agreed that
10 we want to give the Judiciary a raise. I think raising
11 them to the Federal level will -- not comparing us to any
12 one state, but will so make us the number one state in
13 terms of judicial salary.

14 And the cost of living arguments, while it is
15 meaningful to me, I don't think it's meaningful out there
16 in the public, at least not nearly as much, but I just want
17 to come up with something. I think Roman has some up with
18 one potential way of looking at it. If you don't like
19 comparing us to the other state, that's okay, but it would
20 certainly be a substantial raise. It would keep them below
21 \$200,000, which I think is going to just make people
22 absolutely crazy to go that far. And I want to come up
23 with something that's workable, that's fair and that is
24 going to be embraced as a positive step for the state.

25 (Whereupon, Maria Rivera replaced Michelle
26 Mahaffey as the official court reporter at this time.)

1 Proceedings

2 THE CHAIRPERSON: Is there anybody going to comment
3 on what Fran said, or is there anything more on this topic?
4 Barry?

5 MS. REITER: I think I would share to an extent we
6 put a lot of things on the table, and we didn't think we
7 were going to get into a vote today. I think we each have a
8 lot to think about, and there are options that we could put
9 on the table.

10 THE CHAIRPERSON: I think maybe if we can talk
11 about some more options perhaps might be helpful. I agree
12 with you. I don't think those are the only options. For
13 example, if we were to agree at a hundred percent and maybe
14 without cost of living for the first two years, and the
15 first two years gets us to the federal benchmark now, and
16 then add the cost of living, I think there are, it seems to
17 me, various ways to do this for people who feel that there's
18 some -- that the number over 200 is too high for them to go
19 for optique reasons or otherwise with the public. There are
20 ways of doing it that are different than, you know, talking
21 about 95 percent. I just want to put that out there. And
22 not that I'm agreeable with any position right now. I think
23 here everybody was sort -- not everybody, but a lot of
24 people are unsure of how to do this besides wanting to do
25 it.

26 JUDGE LACK: I don't think there is anything

Proceedings

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2 imaginable about the 200. The number of \$203,100 is not a
3 new number. Not only did we have a hearing on it last week,
4 we referred to the area of judicial association, the issues
5 why we're here, and of course, had that number, and it's
6 been out there, out there for months.

7 And again I repeat, neither the executive nor the
8 budget director showed up and poured cold water on it. Nor
9 have I read in the press or noticed or -- I don't think we
10 received any statement from anybody in the legislature
11 saying how could you tentatively have any number like that
12 at all. And there is absolutely no doubt that after 18
13 years the salary of the governor of this state, which is not
14 our charge only because the constitution is going to be way,
15 way above \$200,000 by the act of the legislature which is
16 the only way that can happen, the governor and the
17 lieutenant governor, and that we have considered and have to
18 consider again after 18 years substantial increases in the
19 department heads for all the reasons that Fran mentioned
20 with the commissioner is making way more than what
21 commissioners make.

22 And as Barry pointed out, fiduciary finding about
23 the rate, there were many law clerks who were earning much
24 more than the judges for whom they worked. I mean, and
25 that's all a reality that we have to limit. But I don't
26 think there is any prohibited number such as \$200,000 that

1 Proceedings

2 becomes meaningful. And I'll tell you right now, when we
3 get to it, I don't want to hear anything about we have to
4 hold the governor relative to the attorney general and the
5 comptroller to a salary that's not going to go over
6 \$200,000, it's ridiculous to have this commission here with
7 people who haven't gotten salaries in 18 years at the level
8 it is now.

9 So that being said, I think we should proceed on
10 whatever it is that doesn't have a magical cap attached to
11 it.

12 THE CHAIRPERSON: Just a -- maybe this would be a
13 good time to take like a five-minute break or 10-minute
14 break and continue.

15 You're suggesting, Fran, that I think we are not
16 going to vote. I think people want an opportunity --

17 MS. REITER: Right.

18 THE CHAIRPERSON: -- to first to consider their
19 position and look at the materials again. I just would like
20 to see if we can narrow whatever we can narrow today,
21 because my only concern is I think our next meeting
22 scheduled is December 16th.

23 MR. JOHNSON: Correct.

24 THE CHAIRPERSON: Without any -- without walking
25 away with some -- a better understanding of where we want to
26 go that may be too far down to get in the time frame to get

1 Proceedings
2 a report done after that. So I just would like to maybe
3 raise two issues. One is can we move that meeting up? We
4 can do this, you know, afterwards try to find the time to
5 meet before that to sort of try to take a vote to see where
6 we stand, so that the report can be written maybe by the
7 16th or some other time after that we can sign off on the
8 report. So I'm concerned about the time. And maybe we can
9 get another meeting in before the 16th to try to -- might be
10 more of a decision making.

11 JUDGE LACK: Friday.

12 THE CHAIRPERSON: This Friday, oh, by that time we
13 would have the record, let's try to do it, you know, either
14 during the break or at the end. But if we can do that, I
15 think that would be really helpful. So we will take -- we
16 will start again in 10 minutes.

17 MS. REITER: That sounds good.

18 THE CHAIRPERSON: Ten to one.

19 MS. REITER: Sure.

20 THE CHAIRPERSON: And in between see if we can try
21 to come up with a plan. Okay? Thank you.

22 We are going to take a 10-minute recess.

23 (Brief recess held.)

24 THE CHAIRPERSON: Okay. We are back from our
25 recess. During the recess one of the things we talked about
26 was trying to get some numbers. And our staff is going to

Proceedings

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2 put together some numbers on phases of different scenarios
3 that people can see what impact certain of the things we
4 have been talking about having real dollars, so that will be
5 sent out to all the commissioners as soon as this gets done
6 hopefully in the next day or two. But it's going to be hard
7 to do all those things, and therefore we can see how the
8 scenarios will be.

9 Let me just ask, is there any more discussion that
10 anybody would like to have based on cost of living or what
11 the amount should be? If not, I would suggest we just move
12 into the question of parity, which I think it's another
13 question that we really should discuss.

14 So with everybody's permission, parity was raised
15 by many of the speakers that testified. There were
16 different levels of parity that were discussed. And so if
17 anyone wants to say anything about parity, should we be
18 considering parity at this point, and if so, what issues in
19 parity recommendations should we be looking at?

20 Does anybody want to begin their discussion?

21 MS. REITER: I have a question, because where we
22 talked briefly about this casually, I don't really
23 understand what impediments make this to addressing this.
24 If someone is a judge at a certain level, whether it's a
25 city judge, county, town, whatever.

26 JUDGE LACK: Not town.

1 Proceedings

2 MS. REITER: My town judge is my electrician.

3 JUDGE LACK: Deciding who is the best mechanic.

4 MS. REITER: Went to law school, decided he could
5 make more money Upstate being an electrician.

6 JUDGE LACK: Probably from being a lawyer, right?

7 MS. REITER: Somebody charge fees.

8 JUDGE LACK: I know the plumber -- I know the
9 plumber is going to back things up.

10 MS. REITER: Right.

11 Put that aside. Whatever categories there are,
12 meaning whatever the issue, as we heard people testifying
13 that resinated the most with me whose judges who were doing,
14 if we think of supreme court judges as being a category, and
15 we think of a civil court judge being a category, a family
16 court judge. Putting aside that a lower judge serves in a
17 higher court, because they're assigned like a civil court
18 judge going and sitting in supreme court making the supreme
19 court salary while they are sitting there, right?

20 THE CHAIRPERSON: That is correct.

21 JUDGE LACK: Correct.

22 MS. REITER: But if what the issue is that in these
23 various other courts people who are apparently at the same
24 level are making different salaries, is there an impediment
25 to addressing the parity issue? Is there a legal
26 impediment, is there any impediment?

1 Proceedings

2 THE CHAIRPERSON: That's a very good question.
3 Does anybody have an answer?

4 MR. JOHNSON: Is part of the issue directly
5 definable, meaning is there are a number of parity issues,
6 and so there may be different answers to each of those
7 parities, I don't know. Fran said a judge was sitting up at
8 a higher level. But then there is parity within -- parity
9 disparities within counties within people performing the
10 same function. But I don't suspect that there is any legal
11 impediment to addressing any of those.

12 JUDGE LACK: Certainly I don't think there is a
13 legal impediment. I mentioned during hearings addressing
14 the family court judge who spoke, this is a historical
15 situation that was inherited when the uniform budget act
16 took place at the end of 1976, in fact in 1977 the court
17 assumed -- sorry -- the state assumed responsibilities for
18 payment in the judicial system. As such it took in place
19 all the judges from whence they came at district salary
20 levels all those judges earned, with the exception of
21 supreme court justices who were paid on uniform basis
22 throughout the state, state court of claims judges were paid
23 on uniform basis throughout the state. Everybody else, the
24 salary it was a county base system as you mentioned, and
25 salaries having been established by the county, county
26 legislature and county board of supervisors, whatever it

1 Proceedings

2 might be --

3 MS. REITER: Got it.

4 JUDGE LACK: -- and the various counties, and it
5 changes place. The immediate result was a series of
6 lawsuits on behalf of the judges. And I mentioned that an
7 attorney named Fred Block was most successful, and he as a
8 result in affect meant that all senior judges, that's family
9 court and above from Putnam County to Suffolk County, which
10 is the majority of senior judges in the state, were all paid
11 at the level of supreme court justices. Everybody else, it
12 could not happen. There were some lawsuits where the court
13 held, no, they are not going to equate to salary. And
14 decisions which a lot of people didn't agree on, but there
15 were decisions between Albany and the other counties, to
16 which the court said no.

17 MS. REITER: So a municipal court judge in Yonkers
18 could be making more than a municipal court judge in
19 Rochester, same level?

20 JUDGE LACK: Yes. Now, at the lower court level
21 that's certainly true, and that still happens. Civil court
22 is paid one salary, district court judges, the two Long
23 Island counties that have them, they have the exact same
24 jurisdiction, is paid a different salary. Certainly the
25 city court judges, Ron, you know the number, how many
26 different salary levels there are amongst that all through

Proceedings

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the state, they all have the same jurisdiction.

Legislative attempts to rectify that in the almost 40 years it's been going on have never proven successful. They're asking, why. Well, a vast majority of the judges who are already equated at the scene file along so therefore there was no political will to end the differentiations. Some people came out and said the argument you have asked before, well, standard of living is less where they're coming from, therefore by the way is ridiculous in my opinion. But --

MS. REITER: I'm not endorsing it.

JUDGE LACK: I understand that completely, but that's the reason it has lasted to this day. And so particularly at the lower court level there are all these, all these different salaries. And if we want to look into it, what we would have to do is pick a figure. Whose figure do you want to use to equate who with what. And there will be instances where some judges someplace particularly surrogates are earning more than whatever figure you set and --

THE CHAIRPERSON: Prevent --

JUDGE LACK: -- you are not going to lower the salary of a current surrogate, so that surrogate or surrogates hanging out there will still be receiving whatever the surrogates might be receiving more than the

1 Proceedings

2 standardized -- all the other surrogates. I mean that's
3 part of the complexity, that's one reason legislatively
4 never been able to pass, and that's the parity issue that's
5 presented to us and came up with testimony last week.

6 MS. REITER: Well, I can't imagine that we could
7 ever address that in the time that we have here. I mean --

8 THE CHAIRPERSON: I think it's a very complicated
9 issue, and there's partly a way we can understand what we
10 have been provided with as to when, what, and whom and how
11 it would all interact. So it seemed to me in thinking about
12 this that, that it was so difficult legislatively even on
13 the materials that we received that I just couldn't figure
14 out where we would start and where would we end. I don't
15 know if anyone has any other view.

16 MS. REITER: It seems to me that is something that
17 should be taken up by a separate judicial panel that's
18 charged specifically with doing this within some reasonable
19 period of time, because it's certainly never going to get
20 done by us. It was allotted to us.

21 JUDGE LACK: Well, again, the one way to handle
22 this is constitutionally through court merger. One reason
23 we have all these problems is because of nine trial courts
24 in this state. And you know, and the reason we have all
25 that is our forefathers thought the best way to protect the
26 judiciary is to put anything pertaining to the judiciary in

1 Proceedings

2 the constitution, so someone writing bogus legislature
3 couldn't come along present it like a court decision and
4 destroy the judiciary.

5 So everything, major retirement, in all, who knows,
6 et cetera, all these nine courts, four appellate divisions
7 that haven't been reorganized since Brooklyn was a city, but
8 that's what we have.

9 When I was in the legislature, I attempted along
10 with Judge Kaye, and Chief Administrative Judge Lippman and,
11 Barry, remember would propose resolutions that would, with
12 the constitution merge us into a two tiered court system of
13 a superior court and a lower court would, of course, also
14 standardize the salary. It was a minor discussion point at
15 the time. It has never happened.

16 By the way, in 2017, everybody at the table and in
17 the room gets a chance to vote on whether or not to have
18 another constitutional convention, which has not been a
19 popular subject. Yes or no. I'm just saying when they did
20 this into the constitution in the 19th Century, it was a
21 routine to have constitutional conventions and you could
22 then handle it. We obviously haven't had one, a successful
23 one, I think since 1938. Somebody correct me if I'm wrong.
24 The last one was voted down because you have to go yay or
25 nay, I mean it's like a constitution, and good luck to that
26 in this age of social media. So that's where we are, and

1 Proceedings

2 that's what we are stuck with.

3 THE CHAIRPERSON: Let me just -- let me just see
4 how the commissioners feel. Is there any commissioner who
5 thinks we should be taking up a parity issue in any
6 conservative way of moving forward? Anyone who thinks
7 otherwise?

8 JUDGE COZIER: Well, there are really two different
9 issues here. One is the intra-court parity. For example,
10 city court judges who are the so called municipal judges
11 every year outside of the City of New York and Long Island
12 make between \$138,500 and \$152,200. So there's a wide band
13 there in terms of city court judges. What they make is also
14 different from what district court judges, who are the
15 comparable judges in Nassau and Suffolk make, which is
16 \$156,600. So you have that.

17 But the issue that we do have to address is what,
18 how will we pay the increases for each of those courts?
19 Because our charge is to consider judicial compensation as a
20 whole, not just for the supreme court justices and court of
21 claims judges.

22 THE CHAIRPERSON: And right now there are --
23 various of these judges receive various percentages based on
24 what, on historically --

25 JUDGE LACK: On the salary of a supreme court
26 justice.

1 Proceedings

2 THE CHAIRPERSON: Is the highest form and
3 everything works so --

4 JUDGE LACK: Everything works up or down. The
5 Appellate division and court of appeal judges and the chief
6 judge of the court of appeals are all paid a plus percentage
7 above the supreme court justice, and the rest of the
8 justices and judges who are not supreme court justices, they
9 are not covered by Putnam to Suffolk County are paid a lower
10 percentage. And that's how they handled the 2011, it was
11 assigned percentages to it, and they all got increases of
12 the same percent, but their total salary even though it has
13 the same function, stayed behind where many were lost.

14 JUDGE COZIER: Yes. The recommendation of course
15 made by the Office of Court Administration was that county
16 family and surrogate court judges receive not less than 95
17 percent of the supreme court salary. And that the New York
18 City civil court, criminal court and the district court
19 judges in Long Island receive, firstly civil or criminal
20 receive 93 percent of supreme court salary, and 90 percent
21 for district court judges. So there were some
22 recommendations there. And city court also and New York
23 City housing court not less than 90 percent.

24 THE CHAIRPERSON: And is that percentages they are
25 getting now or each percent is different? I don't recall.

26 JUDGE COZIER: Well, not all of them because again

1 Proceedings

2 there are variances in court.

3 THE CHAIRPERSON: That was the problem.

4 MS. REITER: But if you're making \$138,500 now,
5 right, that represents some percentage of a -- of the
6 supreme court salary that was set, right, and it still
7 would. So if you went to the \$203,100, or whatever number
8 we come up with, we could assign that same percentage to
9 that judge. So instead of it being \$138,500 to \$152,200, it
10 will be the same kind of range but at that higher number.
11 Right?

12 JUDGE LACK: Yes.

13 JUDGE COZIER: Well, I think the reason why that's
14 not the recommendation is because again this would
15 perpetuate parity, and it doesn't help reaching the gap
16 between the judges.

17 MS. REITER: But if you --

18 THE CHAIRPERSON: Go ahead. I'm sorry.

19 MS. REITER: Well, if you follow that, if you
20 wanted to create parity in these places outside of what was
21 it New York City and Long Island -- right?

22 JUDGE LACK: Further north.

23 MS. REITER: I'm sorry. And Putnam.

24 JUDGE LACK: Go ahead.

25 MS. REITER: Whatever area we are talking about,
26 right, if you took the high end of that, which is \$152,200,

1 Proceedings

2 are you suggesting that to achieve parity of the kind we are
3 talking about right now, you would raise everybody, you
4 would make that \$152,200 everyone's new benchmark in that
5 group and whatever increase there was you would end up with
6 everybody in that group making the same salary.

7 JUDGE COZIER: Well, that would of course achieve
8 parity if --

9 MS. REITER: Without pissing off the person who is
10 make the \$152,200.

11 JUDGE COZIER: That's not of course the
12 recommendation.

13 MS. REITER: Understood. Well, what is the
14 recommendation that you are suggesting.

15 JUDGE COZIER: Well, the recommendation that the
16 report suggested, that the Office of Court Administration
17 suggests is that they're paid to either 95, 93 or 90 percent
18 of supreme court, not less than that amount for each. Now,
19 there will be some in those categories who are already
20 making --

21 MS. REITER: That amount.

22 JUDGE COZIER: -- that amount.

23 MS. REITER: Right.

24 JUDGE COZIER: Some make supreme court salary.

25 MS. REITER: Got it.

26 JUDGE LACK: So some make more. You want to

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Proceedings

2 receive parity, just raise some people's salary.

3 MS. REITER: Got it.

4 JUDGE LACK: They still have --

5 MS. REITER: Disparity.

6 JUDGE LACK: Disparity.

7 THE CHAIRPERSON: Thank you for making that
8 distinction because I think that's really important. And
9 it's something we have to decide whether that recommendation
10 is something we want to follow or not. And what we will do
11 when we send around the numbers, I think we should also
12 include in that what now, what these people would be making
13 now and what they would be making under the recommendation.

14 JUDGE COZIER: Under the recommendation you are
15 changing the floor, but not the ceiling essentially.

16 THE CHAIRPERSON: I'm sorry. You have a quick --

17 MR. HEDGES: I guess I'll go back with Fran's
18 question. Let's assume for the sake of discussion that we
19 accept the recommendation of the administrative judge, and
20 we leave aside what our target number is because it's done
21 in percentages. This recommendation would have the effect
22 of raising the floor, reducing the disparity, but would not
23 have been made.

24 THE CHAIRPERSON: That's right.

25 MR. HEDGES: What's the problem with doing that?

26 MS. REITER: I'm not sure there is a problem.

1 Proceedings

2 MR. HEDGES: With that clarification I'm asking
3 your question. What's the problem with doing that?

4 MS. REITER: I don't think there is necessarily a
5 problem doing it. I mean, it is what I will call a budget
6 ramification, but I can't imagine it's going to be huge.

7 THE CHAIRPERSON: Small amount.

8 MS. REITER: And it seems to me gets you a step
9 closer to fairness, not all the way there but certainly
10 closer to it without taking on the bigger issue of
11 remaking --

12 MR. HEDGES: Right.

13 MS. REITER: I don't have an issue.

14 THE CHAIRPERSON: Does anybody have a problem with
15 that? We will look at that when we get the sample, the
16 examples then that would be included in that, so we will be
17 able to see at least the ramifications within are about.

18 Any other discussion on parity?

19 (No response.)

20 THE CHAIRPERSON: Okay. Are there any, any other
21 open issues that anybody wants to discuss or any issue that
22 one wants to go back to that we have already discussed? I
23 think this has been a very worthwhile thorough discussion.

24 Any of the commissioners?

25 (No response.)

26 THE CHAIRPERSON: Then I think what we will do is

Proceedings

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adjourn. We will possibly change our September 16th date to September 14th if that's -- December -- we are not going back -- December 16th to December 14th. We will put it on the website. It's good that everyone check their calendars and make some changes. And we will continue our conversation and dialogue, and hopefully we can position to vote at our next meeting.

Is that okay with everybody.

MS. REITER: I think so.

MS. HORMOZI: Yes.

THE CHAIRPERSON: Well, thank you very much. That will be the adjournment of this session to December 14th or 16th. Thank you.