

STATE OF NEW YORK

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PUBLIC HEARING

Commission on Legislative, Judicial and Executive  
Compensation

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December 14, 2015

New York City Bar Association  
42 West 44th Street  
New York, N.Y.

B E F O R E:

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HON. BARRY A. COZIER (RET.)  
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MITRA HORMOZI  
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HON. JAMES J. LACK (RET.)  
FRAN REITER

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Official Court Reporters

## Proceedings

1  
2 CHAIRWOMAN BIRNBAUM: This is the Commission  
3 on Salaries, looking at judicial salaries. We're going  
4 to start our deliberations. This is a continuation of  
5 deliberations that we had last week, and in the  
6 interim, the commissioners asked for some numbers to be  
7 run on the cost of several scenarios and that was  
8 distributed to the commissioners.

9 So at this point, I open it up to any of the  
10 commissioners to make any statement that they may want  
11 to make before or we can jump right into deliberations.

12 There are still, I think, three issues up for  
13 discussion. One is, should there be a parity with the  
14 Federal District Court judges for the judges -- Supreme  
15 Court judges -- and some others? There was more than  
16 one thought on that as of our last meeting. Whatever  
17 the increase will be, when should it go into effect?  
18 And there are lots of possibilities there. And then  
19 the third issue was: Should there be "between" changes  
20 in parity within the system for various judges?

21 So I think those are still the three issues  
22 we have on the table.

23 Jim?

24 JUDGE LACK: Yeah.

25 As to the first question, I've got to tell  
26 you, since our last meeting, I have spoken with a

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1  
2 number of judges. Perhaps I should rephrase that: A  
3 number of judges have spoken to me.

4 I don't think the question is -- that we're  
5 looking at is -- should there be parity, because the  
6 answer to that is, there has been parity, maybe  
7 theoretically, because there's no mechanism to increase  
8 state judicial salaries every year. But for the last  
9 16 years, since December 1998, there has been  
10 recognized parity between the federal district court  
11 judiciary and State Supreme Court justices.

12 This was done, as I mentioned before, by a  
13 Republican governor and the legislature in 1998,  
14 effective in 1999 and then, after the long dearth of  
15 nothing happening, by the commission that was  
16 established in 2011 by the legislature and a Democratic  
17 governor. Even though there was a four-to-three vote  
18 of the 2011 commission, the three dissenters  
19 were saying, not that there should not be parity. They  
20 dissented because of timing; not because of whether or  
21 not there should be parity with federal district court  
22 judges. So you have all seven appointed commissioners  
23 in 2011.

24 We have parity. The question here is, are we  
25 going to destroy parity?

26 And that's what judges have been speaking to

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1  
2 me about in the last week, and to say they're more than  
3 ticked off would be an understatement. At least, the  
4 ones I've spoken to want to know: What is it that the  
5 state judiciary has done or has not done that is going  
6 to -- is destroying the parity between the state  
7 judiciary and the federal judiciary? What is the  
8 number 95 percent supposed to represent? Is there some  
9 difference in performance by -- or professionalism --  
10 by the state judiciary versus the federal judiciary  
11 that has resulted in even having this discussion?

12 And, quite frankly, particularly since I sat  
13 as a judge for eight years, I know exactly what they're  
14 talking about; there really is no difference.

15 And perhaps, for a moment, I should go back  
16 into the history of the relationship between the  
17 judiciary and the other two branches of government, and  
18 what happened since 1977 in the establishment of OCA.

19 Particularly the last two Chief Judges of  
20 this state, Jon Lippman, whose term will be expiring in  
21 a couple of weeks, and Judith Kaye before him, have  
22 spent a long time trying to divorce as much as possible  
23 the judiciary from the legislature, and the last  
24 remaining stronghold between the two, which was pay  
25 raises. Not like the federal government; not equal pay  
26 raises, but the legislature -- and I know because I was

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1  
2 there -- for many years, refused to grant judicial  
3 salary increases unless there were legislative salary  
4 increases, the higher judicial number -- they don't  
5 meet the salary, of course -- the higher judicial  
6 number serving as a "cover" for legislative salaries to  
7 come at the same time.

8           Once, in the 1990s, there was a  
9 legislative -- a judicial -- increase without a  
10 legislative increase, the legislature thinking theirs  
11 would certainly follow shortly, when, in fact, it did  
12 not, until 1999. That made many members of the  
13 legislature disgruntled about further judicial salary  
14 raises and that's why it went to 2011.

15           Meanwhile, everything else versus the  
16 judiciary and the legislature changed, except for the  
17 time when a judge in this state, if he or she is  
18 elected, runs for election and immediately thereafter,  
19 there is no political involvement allowed anymore,  
20 whatsoever, by any member of the judiciary.

21           We stopped electing the chief -- the  
22 chief judicial tribunal, the Court of Appeals of this  
23 state, stopping multimillion-dollar campaign funds for  
24 such posts.

25           Part 100 of the Judicial Regulations was  
26 enacted; and so everybody can see it, I have brought

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1  
2 current copies of the revised -- as of November of this  
3 year, particularly for the nonattorneys around, maybe  
4 even for the attorneys who have never read it --

5 Sheila, if you wouldn't mind (handing).

6 -- which is the rules governing the Advisory  
7 Committee on Judicial Ethics and what has to be  
8 followed, and while I don't expect everybody to read it  
9 and suddenly become an expert, I should -- since I  
10 still serve on this committee, I should tell you that  
11 behavior by members of the judiciary is very carefully  
12 controlled, from the absurd and mundane to that which  
13 is very important. There is absolutely no political  
14 involvement allowed; there is absolutely nothing  
15 allowed that would demean judicial office.

16 Just to give you one funny example that I  
17 know has come in, I can remember, particularly from my  
18 legislative days, when certain eleemosynary  
19 organizations raised money and would have celebrity  
20 dunkings; with a tennis ball and a pot of water, if you  
21 hit the tennis ball in the right place, you'd get  
22 dunked. They actually banned any member of the  
23 judiciary from doing that. The Senate had no such body  
24 to do that and I can tell you, it provided a very wet  
25 afternoon.

26 But, down to the serious, there were

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1  
2 organizations members of the judiciary could not join  
3 because they're not neutral in the outtake [sic] and  
4 the outlook that they have, etcetera, etcetera. It's a  
5 very controlled environment which you live under as a  
6 member of the judiciary. This is not only at the state  
7 level but, quite frankly, at the federal level as well.

8 And in 2011, for this first commission, at  
9 that time there was, winding its way through the  
10 federal judiciary, the Beer case, which has been  
11 mentioned, which was not a case to bring about raises  
12 to the federal judiciary but a case to finally divorce  
13 the federal judiciary from the Congress in terms of its  
14 own salary; and there, it was a dollar-for-dollar  
15 parity and equal match. Congress stopped giving  
16 raises. The federal judiciary finally had enough, and  
17 sued, saying it was a diminution in value, particularly  
18 for Article III judges, who are appointed for a  
19 lifetime. And indeed, the court system agreed.

20 The court that first heard the case was not  
21 an Article III court. It went on appeal, came back,  
22 and the salary raise, which was 174,000 to 197,000 and  
23 took place after 2011, was a COLA, and that's all it  
24 was, an accumulation of COLAs that the federal  
25 judiciary had not gotten.

26 And at the same time, the lawsuit also

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1  
2 invalidated the congressional passage of legislation  
3 which prohibited the federal judiciary from receiving  
4 federal COLAs along with all other federal employees,  
5 which is why, in January 2016, the federal judicial  
6 salary would be \$203,100.

7 So we virtually have now, at both the state  
8 and federal level, complete divorcement of the  
9 judiciary from the executive and from a political basis  
10 in the legislature; and, quite frankly, that's the  
11 way -- that's the way it should be.

12 So, yes, I'm speaking about that parity  
13 should continue. Obviously, it's a raise of 174,000 to  
14 \$203,100 in 2016; that's just an accumulation of COLAs  
15 that have gone on. To me, that's the discussion we  
16 should be having, about how to reach that figure; not  
17 whether or not there should be parity, and certainly  
18 not whether or not we should destroy the parity that,  
19 for 16 years, Republican and Democrat, virtually every  
20 political entity in this state, has recognized exists  
21 between New York State Supreme Court justices and  
22 federal district court judges.

23 To do otherwise, quite frankly, demeans our  
24 state judiciary and 1300-or-so very hard-working,  
25 full-time working members of the state judiciary who,  
26 in many respects, if we look through Part 100, really



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1  
2 don't have -- certainly don't have -- a political voice  
3 anymore to speak for themselves and depend upon this  
4 commission, for salary purposes, to do just that.

5 CHAIRWOMAN BIRNBAUM: Fran?

6 MS. REITER: I think that --

7 Well, there's a lot I have to respond to  
8 there.

9 I think you've made the point, several times,  
10 Jim, that both Democrats and Republicans got us to the  
11 point of parity and that that is somehow particularly  
12 meaningful. I don't think it is.

13 I think that the state's budget process, the  
14 state -- the way the state budgets the resources  
15 available to it, the other -- the other  
16 responsibilities it has, are unique to New York State.  
17 Each state is unique and all states differ from the  
18 federal budget process. And the constraints that are  
19 often found in the state budget processes can be great,  
20 and they were for a very long time, and that got us --  
21 and despite that, this state got into serious fiscal --  
22 into a serious fiscal situation, which we are only now,  
23 over the last couple of years, climbing out of.

24 I think, to divorce -- I have to disagree  
25 that the fact that the judiciary is largely untouched  
26 by the political process now -- and I would agree with

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1  
2 you; I don't disagree with anything you've said in  
3 terms of that but for one thing, which is: judges that  
4 are elected are elected once in a political process and  
5 are -- but for some malfeasance, but for some  
6 dereliction of duty, they are -- virtually assured  
7 re-election until the time of their retirement. So  
8 while they don't have to go back into the -- while they  
9 may stand for re-election every 14 years -- I think  
10 it's 14 years -- the chances of them not being  
11 reelected are slim.

12           But I don't think this really has to do with  
13 the political process or lack of political influence on  
14 the judiciary now, nor do I think it should be viewed  
15 as demeaning to the judiciary to view their salary  
16 issues in the larger context of other parts of state  
17 government and what the state is able to do to address  
18 salaries and salary disparities in other parts of state  
19 government.

20           I recognize -- although I don't completely  
21 agree with it, but I recognize -- that the judiciary  
22 views itself as somewhat separate from other public  
23 employees. As it pertains to the subject at hand here,  
24 I disagree with that. I think they are public  
25 servants, and I think that their compensation has to be  
26 viewed within the bigger -- the bigger picture of

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2 salaries, compensation, across the board. And this  
3 commission -- unlike the ones that preceded it -- this  
4 commission is charged with looking at not only judicial  
5 compensation, but that of the executive and of the  
6 legislature, which will take it up next year.

7 So the idea that there has been a precedent  
8 set by what was done before, once during a Republican  
9 administration and once during a Democratic  
10 administration, is a precedent that I have to view as  
11 being something that, in fact, can be -- can be  
12 changed, can be challenged, without demeaning the  
13 judiciary or suggesting, by the way, that they've  
14 somehow done something wrong to be treated so badly.

15 What you are suggesting is going to bring the  
16 judiciary, in four years, in the four years that we're  
17 dealing with, assuming the continued one percent  
18 cost-of-living increase that the federal judiciary is  
19 getting -- is going to bring them over \$209,000. I  
20 believe that that's excessive, in view of the other  
21 compensation to the other two branches of government  
22 and that the precedent that you believe was set is  
23 insufficient to support us continuing down that road.

24 Clearly, this is -- we are -- we clearly  
25 disagree, respectfully, but I'm not prepared to take  
26 judicial salaries to that level to support that kind of

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1  
2 proposal.

3 I think that there is a reasonable number  
4 that we can come up with that would bring them to a  
5 percentage, whatever that percentage is, of what the  
6 federal judiciary will be making four years from now,  
7 so that they don't fall behind.

8 What I mean by that is that we would not be  
9 playing catchup again -- right? -- where whatever we  
10 ended up with after four years would be that  
11 percentage. So that -- so that, in fact, over the next  
12 four years, they would be getting bigger increases to  
13 ensure -- not just one percent, but to ensure that  
14 whatever that number is, and there is a number in my  
15 head but we're not there yet to talk about that -- that  
16 when they get there, they would be at that percentage  
17 of the federal judiciary, assuming the cost-of-living  
18 increases remain what they are today.

19 I believe that that's fair, that it is a fair  
20 way of looking at this; that it takes into  
21 consideration the other issues that our elected  
22 representatives have to deal with, particularly the  
23 executive; that is, dealing with a public work force  
24 that is being held to fairly strict increases and have  
25 been promised that others would not exceed that, as  
26 part of the collective bargaining system.

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1  
2 I am concerned with how we are going to  
3 deal -- it's not just a question of how much it ends up  
4 costing but, proportionately, where we end up when we  
5 take on executive salaries, which are -- if you want to  
6 talk about something demeaning, I would suggest to you  
7 that a commissioner that is -- that is running an  
8 agency with thousands of people in it that are  
9 delivering services and making public policy that  
10 impacts every citizen of this state is deserving of a  
11 far greater salary than they are making right now, and  
12 yet I know that when we take that up, there are going  
13 to be limits there, too.

14 The judiciary has moved forward in ways that  
15 the other branches of government have not over the last  
16 several years, or for more than a decade, and I think  
17 that that alone is reason for us to stop, think about  
18 this, and think about it in the larger context than  
19 just judicial salaries. And I don't think anyone  
20 should find that insulting.

21 I find it to be -- I think it's a fact of  
22 life; it's a fact of the public fisc, not politics per  
23 se, but the appropriate way of apportioning taxpayers'  
24 dollars when it comes to public servants, and in that  
25 sense, the judiciary is no different than any other  
26 public servant; they are paid for with tax dollars.

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1  
2 I believe this commission has a  
3 responsibility to view that in a larger context than  
4 just the judiciary.

5 So I would suggest to you that I am not  
6 prepared to support your contention that we need to  
7 continue down the road that our predecessor commissions  
8 traveled.

9 CHAIRWOMAN BIRNBAUM: Thank you.

10 Is there any other commissioner that wants to  
11 talk to this issue?

12 Barry, you seem to...

13 (Continued on next page.)  
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## Proceedings

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2 JUDGE COZIER: I certainly support parity with the  
3 federal judges. I heard the argument that the judiciary  
4 should be, you know, should be the same as other public  
5 employees. But frankly I think the judiciary is distinct  
6 from other public employees. While they are public  
7 servants, members of the judiciary are all public officers.  
8 They are not employees per se. They are not represented by  
9 a collective bargaining unit. They do not negotiate any of  
10 the terms, such as compensation or terms of benefits. So in  
11 that respect they are very different.

12 But New York's judiciary is among the top two  
13 judiciaries in the country. It is the largest and most  
14 complex judiciary in the United States.

15 In terms of responsibility and case load, it  
16 handles multiples of the national federal case load,  
17 multiples of the national federal case load. And so there  
18 is a tremendous responsibility that is placed upon the New  
19 York State judiciary.

20 It also is relevant that New York is one of the  
21 world's top legal centers. And so there is an expectation  
22 with respect to the reputation of the New York State  
23 judiciary that it will be placed at a reasonably, in terms  
24 of compensation, comparable to other judiciaries.

25 Now, to be in the bottom half when we take into  
26 account cost of living, it's really -- it is somewhat

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1  
2 insulting. The fact of the matter is that the last  
3 Commission in taking a look at this in 2010, 2011 firmly  
4 made the recommendation that it should be parity with the  
5 federal judiciary. That does not make New York, even if  
6 parity is recommended, that does not necessarily imply that  
7 New York will be number one in judicial salaries.

8 Now, I am very mindful of the fact that this  
9 Commission has jurisdiction with respect to legislative,  
10 excuse me, and executive compensation recommendations. And  
11 I would also want to highlight that the purpose of the  
12 Commission is to make a recommendation. A recommendation  
13 to, of course, to the Governor and to the legislation with  
14 respect to increases in compensation. And the criteria that  
15 have been set further in the charge of the Commission  
16 include fairness, objectivity, regularity and institutional  
17 integrity. I think that parity with the federal judges is  
18 consistent with all of those objectives.

19 Now, it is true and clearly a consideration that we  
20 are dealing with the public fisc. But I don't think it's  
21 appropriate to really base a diminution from the recommended  
22 level on what I think is just speculation as to where we  
23 might be.

24 And I would also point out that with respect to  
25 this question of annual cost of living increases in  
26 accordance with the federal level, there really is no



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1  
2 guarantee because, again, it may very well be if there is a  
3 downturn that, of course, the federal government will be  
4 frozen based upon a cost of living increase. So, you know,  
5 we are trying to tie it to something that does guarantee a  
6 degree of regularity, a degree of regularity. We are not  
7 requesting that New York State be number one in judiciary  
8 salaries, because comparatively it still will not be in the  
9 top 10 percent of judicial salaries compared with other  
10 states.

11 You know, I think it is significant that, you know,  
12 New York's judiciary is a large judiciary, and again handles  
13 a larger case load than any judiciary in the country, and as  
14 I said many multiples of the federal judiciary.

15 Also, I think that the legislature, you cannot talk  
16 in terms of comparability between the judiciary and the  
17 legislature. Legislators are part-time public officers.  
18 They are allowed to have unlimited outside income and pursue  
19 otherwise their profession or career. The limitations of  
20 the place on the judiciary are unique to the judiciary under  
21 the code of judiciary conducts, under the ethics that apply  
22 to judges, they cannot have outside income. They are  
23 proscribed from outside activities, with the slight  
24 exception of being able to be a lecturer or adjunct  
25 professor in the legal area. But there are -- there are no  
26 other, no other means by which they can supplement the

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1  
2 judicial income.

3           So, you know, I just think that we have to keep in  
4 mind the judiciary is a separate branch of government. And  
5 by virtue of the fact that they are not public employees,  
6 they are not civil servants per se or public employees  
7 because, of course, New York also maintains the highest  
8 standards of any jurisdiction or credence into the  
9 judiciary, including higher on the federal judiciary. And  
10 that is because in New York State the minimal requirement is  
11 that an attorney be admitted to practice for 10 years in  
12 good standing before application could be made to become a  
13 judge in the court of record. No other state and judiciary  
14 which has no time period, so that we see federal judges,  
15 yes, being appointed in the their 30's with five years  
16 experience, something that cannot happen as far as the New  
17 York State judiciary is concerned.

18           So I think that there are a number of  
19 considerations here. And my view is that they all mitigate  
20 in favor of moving to parity at the federal level, including  
21 cost of living adjustments.

22           MS. REITER: I would like to respond. I completely  
23 agree with you, Barry, that the legislative salary issue is  
24 considerably different, but I do not believe that the  
25 executive salary issues are very different, if at all. The  
26 legislature is in their own place, and we take up those

## Proceedings

1  
2 issues, including someone perhaps that you raise in terms of  
3 part-time legislators outside income and the rest, all of  
4 which I would imagine, particularly in recent events end up  
5 being criteria for what we will ultimately recommend some  
6 months from now.

7           But I do believe that, I have to say again, that I  
8 think there are new parallels with the executive which has  
9 fallen way behind, and I believe that their responsibilities  
10 are great. And that that needs to be -- that needs to be  
11 part of the equation. We can disagree on this issue, but I  
12 wanted to at least say that I do believe with at least one  
13 part.

14           CHAIRWOMAN BIRNBAUM: Thank you.

15           JUDGE LACK: If I can for a moment. Fran, I don't  
16 think anybody would disagree with your statement. But the  
17 legislature and the Governor in enacting this Commission I  
18 assume enable the legislation bifurcated the work for the  
19 Commission on purpose. And I mentioned that before. I  
20 would, quite frankly, been happy because I agree with you  
21 the most out of date people involved here are --

22           300?

23           MR. HEDGES: (Nodded.)

24           JUDGE LACK: -- there are 300 people in the  
25 executive branch who haven't gotten a raise since 1999. But  
26 we're a political Commission and the creation of our

## Proceedings

1  
2 creators, and they establish the Commission and bifurcated  
3 it and put the case in that the judiciary is to be done  
4 separately with a report date of December 31st of this year.  
5 And the executive and the legislature is thereafter to  
6 follow with a report date of November 15th the following  
7 year.

8 I know the latter the legislative elections and  
9 gubernatorial with the Attorney General, the Comptroller, et  
10 cetera, but the judiciary could have been thrown in with  
11 that as well, and we handle it all in one context. We are  
12 given a mandate not to.

13 And my assumption is that is a point, you remember  
14 legislature is that it was a recognition of a separate  
15 situation involving the judiciary versus the other two  
16 branches of government. That rise rampant through our  
17 constitution and every other document we have where the  
18 judiciary is treated separately. The judiciary submits its  
19 budget to the Governor who cannot change it, and has to  
20 submit it, has to submit it to the legislature. The  
21 legislature obviously has the power to do something about  
22 it, but that's in our constitution. That is the way the  
23 branches of government are set up. There is a separate  
24 vehicle for the judiciary, which has gotten even stronger  
25 over the years as an independent board, and in fact it  
26 should be.

## Proceedings

1  
2 I am quite happy in joining you in seeking the best  
3 efforts we can for the executive, which is surely out of  
4 date. Meanwhile, we have a mandated, bifurcated mandate to  
5 consider the judiciary in its own context.

6 CHAIRWOMAN BIRNBAUM: I think this debate and  
7 conversation is a high caliber ending all in good faith. I  
8 think there are different philosophies at work, and we need  
9 to improve the dialogue forward because I'd like to get the  
10 Commission to vote today. We still have to get a report  
11 done by December 31st. And I think what we are going to try  
12 to -- we may not have an agreeing viewpoint, I don't want to  
13 have any discussion whatsoever about this, what topic. I  
14 think what we are disposing now our high should be gold and  
15 whether it should be parity with the federal district court  
16 judges or should it be less than the parity.

17 I'd like to just put something, more things into  
18 the mix because I think to some extent for me it also  
19 depends on when and how quickly, and that could make a  
20 difference, and I'm not sure that everything is discrete. I  
21 mean, we can get to a number that has parity over four  
22 years, and with those to be concerned about getting to a  
23 higher number too quickly because it may have implications  
24 elsewhere. Perhaps we can do it in tranches that will get  
25 us there in parse, but still get us parity. I don't know if  
26 there's going to be enough votes.

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2 Let me just say from a voting point of view  
3 checking our mandate for our decision will be based on the  
4 majority vote or carry to vote. I had an opportunity to  
5 vote on the executive and legislature, and there are no  
6 other requirements just in trying to vote. I don't think we  
7 are ready for a vote yet.

8 But for those who think it should be less than  
9 parity, do you have a number?

10 And let me just spill my thoughts. Mulling this  
11 over the weekend and looking at numbers we were provided,  
12 I'd just like to put out a thought for consideration, and  
13 I'd like to get a look at that if we can. I think that  
14 would be a very good thing, but not everything is necessary.  
15 So putting the cost of living on the side for a moment. But  
16 if we are to get to a number, 203 number if we did it half  
17 this coming in, and half two years later, would that be a  
18 better situation of those people who are concerned about too  
19 high a raise in one, would that be something that sort of  
20 meets a -- more work, more people think that that would  
21 work, or are there other suggestions? Because I think  
22 perhaps concrete in what the suggestions are of where we  
23 should go and at some point throws us out discussed propose  
24 perhaps, or think downward or figure out how we might get to  
25 a vote. I just throw that out for the people's thoughts and  
26 considerations and conversation.

## Proceedings

1  
2 MS. REITER: One thing I would say is that how we  
3 get to whatever that final number is, does it have budget  
4 implications that legislate both with the executive and  
5 legislative?

6 The budget negotiated between the two branches of  
7 government over the last several years have held the budget  
8 in the overall state budget to two percent, and that -- that  
9 appears to be continuing. That is I should say agency  
10 budgets -- in order to fully fund major education issues and  
11 that go up somewhere between I'm going to guess five and  
12 seven percent a year. Every one else, every other part of  
13 the government has been held to a maximum two percent, in  
14 many cases zero, because in order to achieve those additions  
15 in the spending and in the education spending, say, most  
16 agencies have been flat for the last four years or so.

17 So what I'm saying is that we can sit here and we  
18 can debate the philosophy. I was very impressed on some of  
19 the things you said having to do with, you know, putting  
20 aside how the judges feel and the judiciary feel about  
21 doing, part of what I think you need to look at is whether  
22 or not we can ensure a quality judiciary, which we all want,  
23 right, at lower than federal parity, that I believe we can.  
24 I believe we are right now and we shall --

25 CHAIRWOMAN BIRNBAUM: You are asking all propose.

26 MS. REITER: Yes. I say no, absolutely. I --

## Proceedings

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2 CHAIRWOMAN BIRNBAUM: We have a couple of things on  
3 the table.

4 MS. REITER: Well, one of the things we probably  
5 throw out is that the degree is that there is a -- at the  
6 end of that four year period, we should be there, not have  
7 this lag that we have now. Right? Because for all the  
8 talks of parity we don't -- four years out our judges are  
9 getting \$174,000 approximately, and the federal judiciary is  
10 getting \$203,100, so you are not even close to parity in  
11 that sense. They are already talking about implementing a  
12 phony benchmark because they didn't come close.

13 Having said that, phasing's are a fact of life  
14 because of other budgetary considerations that have nothing  
15 to do with what we are talking about.

16 So what I would suggest, I am prepared, and I  
17 believe they should speak for themselves, but I believe I am  
18 speaking for the other government representatives, to look  
19 to come up with 90 percent of the federal judiciary, the  
20 district court judge salaries, and at the end of the four  
21 years we are actually at 90 percent. In other words, if we  
22 are going to have something replaced, but at the end of the  
23 four years after that point, assuming a continuation of a  
24 one percent whole, the federal judiciary would be \$209,254  
25 at that point.

26 At that point I'm suggesting that the supreme court



## Proceedings

1  
2 salary would be 90 percent of that, and a little bit of  
3 \$188,000. So that -- so that at least when we get there at  
4 the end of the work we will have accomplished what it is we  
5 set out to accomplish.

6 Now, that presumes a one percent increase. I think  
7 that there is some question mark around that, because of  
8 change based on economic factors that we can't anticipate  
9 right now. So I think, number one, that if in fact the end  
10 of the year federal increase should go beyond one percent.  
11 Rather than automatically impacting the judiciary salaries,  
12 that that be subject to budget approval or regular budget  
13 process.

## Proceedings

1  
2 MS. REITER: (Cont'd) And then I would also  
3 say that whatever that increase is each year that gets  
4 us in the fourth year to 90 percent, that that -- that  
5 that be subject to the budget process, as well,  
6 although in the first year, I would look to keep it a  
7 little bit below two percent, but -- and in the  
8 subsequent three years, it would be subject to -- it  
9 would be subject to approval by the Department of  
10 Budget; and, obviously, the executive and legislative  
11 process, as well, as part of that budget.

12 So that's what I'm prepared to propose today.

13 CHAIRWOMAN BIRNBAUM: Okay, and that's even  
14 less than Roman was talking about.

15 MS. REITER: Roman actually worked it out in  
16 a number of scenarios, and we were talking 95 percent  
17 the last time; at least, that's sort of where we had  
18 focused; and I'm proposing a 90 percent -- a 90 percent  
19 of the federal judiciary district court judge salary  
20 today.

21 MR. HEDGES: I want to go back to the  
22 conversation we had last time and, in part, to respond  
23 to some of the things that have been said this morning.

24 What I said last time was that I thought, in  
25 the end, in order to make good on the claim of "let's  
26 make sure we're recruiting the very best and retaining

## 1 Proceedings

2 the very best," that we needed to be in the 95 percent  
3 to a hundred percent range.

4 CHAIRWOMAN BIRNBAUM: Um-hmm.

5 MR. HEDGES: And the way I got there, really,  
6 was this couple of concepts mixed in together:

7 One is that, to a degree, the point of  
8 reference for all of this conversation, good, bad or  
9 otherwise, is what's going on in the private sector for  
10 lawyers, and in particular, the kind of thing that is  
11 the everyday conversation in the newspapers and in  
12 other sorts of public arenas, which is, the starting  
13 salary for the first-years is astronomical, from my  
14 point of view.

15 MS. REITER: Mine too.

16 MR. HEDGES: And we're saying, "But the  
17 minimum qualification here is ten years out," so that's  
18 a relatively senior lawyer.

19 Starting salary for first-year lawyers isn't  
20 really the point of reference.

21 There's a bit of confusion in our public  
22 discussion, in all of government in New York, because  
23 there's Manhattan, there's the rest of the city, and  
24 there's the rest of the world; and I'm enough of an  
25 upstate guy these days that I kind of throw in the  
26 suburbs as the New York City thing. And so, it's

## Proceedings

1  
2 really downstate, with Manhattan as the real outlier  
3 there, and then the rest of the state.

4           And I want to be competitive in some loose  
5 sense of that word, recognizing that we are talking  
6 about public service. So it's not not really being  
7 competitive; it's trying to not be offensive; it's  
8 trying to say, "We take you seriously; we respect you;  
9 we think of you seriously."

10           Footnote on that, to Fran's point: We've got  
11 to start saying that about our commissioners and we've  
12 got to start saying that about our legislature. The  
13 marketplace for them is a little less clear; they don't  
14 have to be lawyers, although some of them have to be  
15 doctors, not exactly unimportant.

16           But it's not going to be dollar for dollar;  
17 it's not going to be truly competitive, but it's got to  
18 be, at least symbolically, recognizing that the world  
19 is out there and that we want to appeal to people in  
20 that world and ask them to come and at least spend a  
21 while working for state government, to contribute.

22           So it's got to be pretty far out there. I  
23 said, the 200,000 was a kind of rarefied atmosphere. I  
24 think I am talking about a rarefied atmosphere. I shy  
25 away from that at some level. I am an upstate guy but  
26 I live in New York, and that's part of New York, and

## Proceedings

1  
2 that rarefied world is part of New York, too.

3 So I've got to be prepared to get into that  
4 world, perhaps more than my own personal instincts  
5 would say I should, because I want to be competitive  
6 here and I want to get the best, so that's where I got  
7 the 95 to a hundred; and whether I'm talking Year 1 or  
8 talking Year --

9 CHAIRWOMAN BIRNBAUM: 4.

10 MR. HEDGES: -- 4, I'm still in that arena, I  
11 think.

12 Phasing in, to me, helps; it helps a great  
13 deal, but I've got to start someplace in that 95 if I'm  
14 going to be true to what I just said.

15 And so, in my mind, you know, start at 95,  
16 not at -- not end at 90, and think about getting to a  
17 hundred, and maybe not in Year 1 but maybe in Year 3.  
18 You know, then I've got something like this: A six- or  
19 seven-percent raise in Year 1. If inflation is one  
20 percent, maybe a one-percent in Year 2, and maybe it's  
21 more than six or seven, it's more like ten; and then,  
22 in Year 3, it's six or seven; and then back to one  
23 again, assuming inflation is what it is.

24 So I think that concept of --

25 I want it to be a percentage of the federal  
26 because the federal's a moving target; that's why I

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1  
2 don't put a dollar on it. So Year 1, we know what that  
3 number is. If we were 95 percent of that, well, that  
4 would be a pretty hefty raise; that would be pretty  
5 substantial; that would, kind of, deal with, we're  
6 trying to be attractive. It wouldn't bust the budget  
7 because it's not the whole of the judiciary.

8           It is also the case that I want to be able to  
9 say something similar about the chief executives. I  
10 would make a distinction as -- I guess, I'm too much a  
11 state government guy. They're all public officers.  
12 That's technically what they are, so I don't want to  
13 make that kind of -- that judges are a different kind  
14 of thing. They're not civil servants with negotiating  
15 rights. None of these people are. All of them are  
16 without a union; all of them are without collective  
17 bargaining. That's the whole point. That's why we  
18 exist, because there isn't that for them.

19           And I also take pretty seriously what Senator  
20 Lack said. You know, the judges were separated out and  
21 given to us as the first job precisely to keep some  
22 separation. I'm not sure my background, career-wise,  
23 says that that's exactly the right thought but that is  
24 the charge, whether I wanted it or not.

25           So the judges come first in this process; I  
26 don't want to lose track of the rest of them. I want

## Proceedings

1  
2 to bring the same argument to bear later on. I want to  
3 have a better ability to recruit the best for  
4 commissioners. I want to have a better ability to make  
5 sure that legislators are the best in their role, as  
6 well. I want to pay them well enough that I'm  
7 comfortable that public service is not a career goal  
8 for money reasons but it isn't offensive; it's not  
9 turning people off; it's attracting people; it's  
10 recruiting people; it's retaining them.

11 So I want to come back on all that.

12 I want to do judges now, and if 95 percent  
13 and then a hundred later on kind of got everybody  
14 there, boy, that would make me pretty happy. If we  
15 ended up at some other framework but we had those  
16 thoughts in mind, I'd be okay with that, too --

17 That's what I tried to say last time and  
18 that's what I'm trying to say this time, but it all  
19 puts me in an arena where, boy, this is a heavy lift.  
20 If I'm an upstate blue-collar worker, "This is pretty  
21 outrageous"; if I'm a Manhattan lawyer, "What peanuts  
22 are these guys talking about?"

23 -- and, hopefully, attractive enough to that  
24 Manhattan lawyer that they'll think about it for a  
25 while; hopefully, attractive enough to that upstate  
26 lawyer that they'll think about it for a while; that

## Proceedings

1  
2 we'll get good people from around the state doing this  
3 job we want to see done by really good people and who  
4 we want to feel good about the fact that they are in  
5 public service, and stay in there for a while.

6 CHAIRWOMAN BIRNBAUM: Can I just say one  
7 thing that comes to mind from what you just said and  
8 Fran said:

9 Commissioners are in there for four years or  
10 eight years, for pleasure [sic], and then they're going  
11 back to private industry and they go back to private  
12 practices. Judges, they don't go back, most of the  
13 time. They get on the bench and they stay for their  
14 12-year term or longer, and they get certified and  
15 Supreme Court judges can stay until they're 76. This  
16 is their -- because they don't have an opportunity to  
17 go back to the private sector again.

18 JUDGE LACK: Or they're just retired, thank  
19 you very much.

20 CHAIRWOMAN BIRNBAUM: Or they're just  
21 retired.

22 I just want to keep that in mind; that we're  
23 talking about different animals. That doesn't mean  
24 that I think that they don't deserve significant  
25 raises, when we get to it. I don't know. I don't know  
26 why -- I think we have to look at judiciary as a



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1  
2 separate body, and we will have a lot of discussion on  
3 commissioners and the executives later on.

4 Let me just --

5 MS. REITER: But as an expert on  
6 commissioners, that's not necessarily true. A lot of  
7 them are lifetime public servants. A lot of them come  
8 out of the not-for-profit sector. They may come in for  
9 four years; they may very well go back to the  
10 not-for-profit sector. I know very few -- very few  
11 wealthy commissioners who had had major salaries  
12 outside.

13 And I think it's fair to say, as well, that  
14 our judges come from a lot of different --

15 CHAIRWOMAN BIRNBAUM: That's true.

16 MS. REITER: -- parts of the legal world.

17 For every partner in a major law firm that's  
18 making a huge amount of money, there are, you know,  
19 ten-year associates; there are people who never make  
20 partner. They are, very possibly, great lawyers and  
21 potentially great jurists; they may be lousy  
22 rainmakers, which is generally what gets you to be a  
23 partner.

24 Right?

25 CHAIRWOMAN BIRNBAUM: Well, not necessarily.

26 MS. REITER: Well, it's certainly --

## Proceedings

1  
2 CHAIRWOMAN BIRNBAUM: It's a factor.

3 MS. REITER: It's a factor.

4 I know a lot of brilliant lawyers who are  
5 academics, who are practicing attorneys, and they're  
6 not making -- they're not making those huge salaries  
7 because they may not be partner material; but I'll tell  
8 you, I would think that a lot of them would be great  
9 justices and great public servants.

10 So I think that it's easy for us to, sort of,  
11 talk about all of this in stereotypes, almost; right?  
12 It's not that simple. Nothing --

13 CHAIRWOMAN BIRNBAUM: That's why we're having  
14 the discussion.

15 MS. REITER: But we've had an underpaid  
16 judiciary -- by -- by your reasons, we've had an  
17 underpaid judiciary for a very long time relative to  
18 the private sector, and yet we have a fine judiciary.

19 So I think that that's an issue, as well;  
20 it's one of the things that Roman raised last time and  
21 again this time: that if our concern is that we're New  
22 York, that we have huge case loads, that this is almost  
23 -- the most important place; you know, this is the  
24 "crossroads of the world," to quote a former boss of  
25 mine, that we must have a fine judiciary, the  
26 question -- and we do, and the question is whether or

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1  
2 not what we do here today, what prior commissions have  
3 done, has really had that large an impact on our  
4 ability to build and sustain a first-class judiciary.

5 And I would suggest that while everybody  
6 wants to make more money, that that's not necessarily  
7 the most critical factor in retaining and attracting a  
8 fine judiciary.

9 CHAIRWOMAN BIRNBAUM: Let me just call --  
10 Gary, do you want to say anything, or not --  
11 and Mitra -- because you haven't spoken?

12 You can comment now, or not.

13 MR. JOHNSON: Very briefly, I can say that  
14 during the course of our deliberations, I've become  
15 less and less -- "convinced" is not even the right  
16 word -- that a hundred percent of federal parity is  
17 where we should be going.

18 I know that our predecessors on the last  
19 commission, at the time when they made their  
20 recommendation, qualified it by saying "at this time,"  
21 and so I think we have to, in that sense, make this  
22 determination in this time, in this time.

23 One of the reasons I have concerns about it  
24 is because, very often, in discussing proposals about  
25 reaching a hundred percent of federal -- a hundred  
26 percent parity with the federal judicial salary, in our

## Proceedings

1  
2 proposals that would tend to not maintain control over  
3 the process, we would be on, kind of, automatic pilot,  
4 and I don't think that that's a fiscally responsible  
5 route for us to take.

6 So I --

7 And I also think, ultimately, one way of  
8 thinking about this is, when you say, "a hundred  
9 percent parity with the federal judiciary," it's  
10 philosophically, for me, a question of: Is our  
11 judiciary more a federal judiciary or are they  
12 creatures of state government? And I think they are  
13 creatures of state government; that their salary  
14 determination has to take place in that context, as  
15 being part of state government, as those others that  
16 we'll consider next year; as, also, the state employees  
17 and the impact that I spoke about the last time on the  
18 state employee negotiations.

19 And, you know, on that note, even if we were  
20 talking about the 95 percent of federal parity and  
21 depending upon what year we were talking about and how  
22 do we phase it in, I mean, you're talking about  
23 something like a ten- or eleven-percent increase; and  
24 that's, to me, the kind of number that I think about  
25 that I might be not so comfortable with and want to be  
26 very, very careful about how we approach something like

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1  
2 that.

3 CHAIRWOMAN BIRNBAUM: Okay.

4 Mitra? You don't have to.

5 MS. HORMOZI: Yeah.

6 I mean, I would say, I'm not convinced yet  
7 that parity with the federal government is the correct  
8 way to go. I am trying to figure out, listening to  
9 Fran and Roman, about the 95 percent -- 90, 95 percent,  
10 but I think there is a number below that hundred  
11 percent that would be a sufficient increase.

12 Certainly, everyone has the utmost respect  
13 for the judiciary, and this has nothing to do with  
14 one's view of the New York State judiciary; it's just  
15 trying to figure out -- it's a fiscal process, right?  
16 It doesn't occur -- if we had all the money in the  
17 world, it would be very easy. But you have to be aware  
18 of New York State at large, and should we hit another  
19 recession, we were -- this economy is still fragile, so  
20 I want to be fiscally responsible as well as  
21 acknowledging that the judiciary deserves a raise.

22 So I'm struggling with what the right answer  
23 is, but I don't think it's a hundred-percent parity  
24 with the federal government.

25 CHAIRWOMAN BIRNBAUM: Okay.

26 The question is, where do we go from here? I

## 1 Proceedings

2 mean, we have several thoughts on the table. One is to  
3 get to a hundred percent parity; one is to get to,  
4 maybe, 95 percent parity, although, Roman, you keep  
5 saying 95 and a hundred.

6 MS. REITER: I'm suggesting 90, by the way,  
7 so I don't want that to get lost.

8 Roman and I agree on a lot of stuff but I'm  
9 not in the same place number-wise.

10 CHAIRWOMAN BIRNBAUM: No, I'm getting to  
11 that.

12 MR. HEDGES: The notion that you advanced and  
13 that's consistent with what I've said heretofore is,  
14 start at some number; have another number in mind. So  
15 in my mind, if I started at 95 and said, that's Year 1,  
16 inflation on Year 2, and then a hundred in Year 3, that  
17 would work for me.

18 CHAIRWOMAN BIRNBAUM: So I was --

19 So I understand what you're saying, it would  
20 be -- it would get them up to 95 percent. I just want  
21 to make sure that we all understand. It would be a  
22 six- or seven-percent increase --

23 MR. HEDGES: I think it would be more like  
24 ten.

25 JUDGE LACK: I think he said 95 percent.

26 MR. HEDGES: Ninety-five percent of the

## Proceedings

1  
2 federal number in Year 1, which I think is  
3 10-point-something.

4 CHAIRWOMAN BIRNBAUM: Okay. And then Year 2  
5 would be cost of living?

6 MR. HEDGES: Cost of living, which I would  
7 translate to be 95 percent of the new federal number,  
8 which I expect to be a one-percent increase.

9 CHAIRWOMAN BIRNBAUM: Right.

10 JUDGE LACK: Well, I think it would be --  
11 The district court salary is set on January  
12 1st, 2017.

13 MR. HEDGES: We would be at 95 percent of  
14 that, still.

15 JUDGE LACK: On April 1st, because the  
16 judicial salaries take effect on April 1st. So the  
17 federal, you know what the number is after January 1st.

18 So you're suggesting 95 percent of the salary  
19 on January 1st, 2016, and we know that; that's 203,100.

20 The second year, it would still be 95 percent  
21 of whatever the federal salary is on January 1st of  
22 2017 --

23 MR. HEDGES: Exactly.

24 JUDGE LACK: -- on April 1st.

25 On April 1, 2018, it would be 95 percent of  
26 whatever that number was on January 1st, 2018; and then

## Proceedings

1  
2 2019, on April 1st, it would be 100 percent of whatever  
3 the federal district court salary is on January 1st,  
4 2019.

5 MR. HEDGES: Right.

6 That would translate to -- I started at 95, I  
7 got to a hundred; I did it over a couple of years. In  
8 Year 1, it's going to be a double-digit percentage  
9 increase; in Year 2, in all likelihood, it's going to  
10 be a de minimis increase.

11 JUDGE LACK: Or none.

12 MR. HEDGES: Or none.

13 In Year 3, it's going to be a sixish  
14 percentage increase, again assuming low inflation. If  
15 it's no inflation, it's five percent; you know, it's  
16 going to be a little less.

17 CHAIRWOMAN BIRNBAUM: Whatever the number is.

18 MR. HEDGES: Whatever the federal number is.

19 That's the logic that I --

20 That's very different than what Fran  
21 proposed.

22 MS. REITER: Very.

23 And I have to say that it is hard for  
24 me because what we recommend becomes -- is -- a done  
25 deal unless the legislature and the governor decide  
26 they want to protest it, and they can.



## Proceedings

1  
2 JUDGE LACK: Yes, they can.

3 MS. REITER: Right?

4 And I guarantee you that that's what's going  
5 to happen if you're talking about that kind of  
6 increase. Putting all other issues aside, that's a  
7 huge increase in the first year.

8 JUDGE LACK: You know, Fran --

9 CHAIRWOMAN BIRNBAUM: They have a right to do  
10 that.

11 JUDGE LACK: -- they have a right to do that.

12 And interestingly enough, this commission  
13 continues, so if they come back in January and indeed  
14 they do that, they can just tell the commission to go  
15 do the judiciary again, because we're still around,  
16 starting to work on the executive and the legislative,  
17 as opposed to prior commissions that go out of  
18 business. So...

19 MS. REITER: I can only reiterate --

20 JUDGE LACK: Other than more volunteer  
21 readings by all of us --

22 MS. REITER: That's fine. That's fine. You  
23 know, enough said.

24 I can only restate that given -- given the  
25 fiscal situation of the state, I think that that is  
26 excessive, and I can't --

## Proceedings

1  
2 AUDIENCE MEMBER: I applaud that.

3 Oh, sorry.

4 CHAIRWOMAN BIRNBAUM: Anyone have any other  
5 comments?

6 JUDGE LACK: Have you got a motion? Are we  
7 taking a vote?

8 CHAIRWOMAN BIRNBAUM: We haven't gotten there  
9 yet. We can take a vote -- we can take a vote on  
10 Roman's, we can take a vote on what I suggested, or we  
11 can take a vote on what Fran suggested. We can put all  
12 three up and see how it comes out and see if that makes  
13 sense.

14 Or do you want to, maybe, take a five- or  
15 ten-minute break? Maybe we can get some numbers --

16 JUDGE LACK: All my legislative experience  
17 tells me, when you got numbers on the table, you put it  
18 out there; then you take your break.

19 CHAIRWOMAN BIRNBAUM: Oh, all right. Fine  
20 with me.

21 MS. HORMOZI: One question:

22 So, Roman, are you wedded to getting to a  
23 hundred percent in the four years, as opposed to  
24 keeping it at the 95 percent?

25 MR. HEDGES: I would like to do that.

26 I'm still open to people suggesting

## Proceedings

1  
2 alternatives. I think that the number is the tough  
3 one, whatever number we make. I think that the level  
4 is such that I think that it's a big number, and I  
5 think, even in New York State it's a big number.

6 I'm attracted to it in large part on the  
7 argument that says, "We want to make sure we're  
8 attracting and retaining the best people." I think  
9 this helps do that. I think it helps make the  
10 statement that we are very, very persuaded by the  
11 argument that we want the very best and that this would  
12 be the very best.

13 It would be the highest salary in the country  
14 for judges other than federal judges. It would get you  
15 to a number like what the federal judges are making.  
16 It would be back to a world that Jim said, the last  
17 couple of iterations -- actually, I think it goes back  
18 further than that, and the target of trying to get to  
19 the federal judge level, at the very least, was  
20 articulated in the '80s, as a matter of state policy;  
21 and at one point along the way, by virtue of detail,  
22 they were technically higher.

23 And we've been talking about this idea for a  
24 long, long time, and I think Jim's right in saying, to  
25 do other than that is to say something's changed about  
26 what we're trying to do, and I don't want to do that.

## Proceedings

1  
2 But that having been said, I think the other  
3 arguments that are being made, about what other  
4 precedents are we setting, what does it look like to  
5 the rest of the state, including the state workers, all  
6 those things are relevant and they give me: "Ooh,  
7 let's not jump in and just be done. This is rarefied  
8 atmosphere I think, you know, you're pushing."

9 MS. REITER: Things have changed, though.

10 This is a state that spent way more than it  
11 had for a very, very long time. This is a state that  
12 had, I think, if memory serves me correctly, a \$10  
13 billion deficit six years ago; it now doesn't because  
14 of fiscal responsibility and by -- and by making hard  
15 choices.

16 And I guess my point in separate -- in  
17 addressing judicial salaries is not that I don't hold  
18 them in high esteem, and maybe even higher esteem than  
19 any other part of government; I can certainly tell you,  
20 I hold them in higher esteem than at least one  
21 section -- part -- of the government, but that those  
22 fiscal re -- but they are not exempt from those fiscal  
23 realities, as well.

24 That's what I'm saying: That they're not  
25 special, in my view, in terms of the way the State of  
26 New York deals with the public's money; and it dealt

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1  
2 irresponsibly with it for a very, very, very long  
3 time and it is now dealing responsibly with it, which  
4 is why we are unable to, in fact, spend more in areas  
5 that we really feel are critical in delivering to our  
6 citizens and making investment in upstate New York,  
7 which we didn't do for decades.

8           So what I'm saying is, to take judicial  
9 salaries and suggest that they are really special in  
10 that context, I think, is just wrong. That's all.

11           MR. HEDGES: And, Fran, I agree with your  
12 concern, and here's the couple of other things that I  
13 have in the mix as I have been trying to come to my own  
14 conclusion:

15           That one of the things that has happened over  
16 the period of time that we're talking about and doing  
17 historical references on, from sometime in the '80s to  
18 present day, is, most of the state work force, along  
19 the way, has, with notable exceptions and with a great  
20 deal of -- I don't know what the right, exact word is,  
21 but it verges on resentment at times. We've typically  
22 done cost of living; we've typically kept up; we've  
23 typically -- over the long haul. There may be an  
24 exception; in a particular year we've fallen short,  
25 another year we've done better, but across the board,  
26 pretty much, we've kept up. We haven't done that for

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1  
2 the three classes that are in our charge: the  
3 judiciary, the executive's senior executives, and the  
4 legislature.

5           And particularly with respect to the  
6 executive senior folks, we have a painful regular  
7 reminder every time we look at the state agencies: most  
8 of the senior people below the top guy are making more  
9 than the commissioners. That's, like, really bad  
10 personnel policy, and I don't want to see that  
11 continue.

12           I heard a little bit of reference to that  
13 from some of the judges that happened to talk to us in  
14 our hearing, but I didn't try to go back and track that  
15 down. In the case of the state agencies, I know it for  
16 a fact so I don't have to track it down, but I don't  
17 doubt for a moment that that scenario exists.

18           And so, I want to make sure that what we're  
19 really doing is keeping up with the cost of living.

20           So parity for me, on the federal judges'  
21 side, isn't simply, "Oh, there's the target; that's the  
22 end of the story." It really reflects the proper  
23 calculation of what the cost of living has been.

24           And I'm not very persuaded -- although I've  
25 heard it both from people here and I heard it in the  
26 hearing, I'm not really persuaded that the

## Proceedings

1  
2 cost-of-living calculation should dominate our thinking  
3 but that -- but the COLA concept, in the abstract,  
4 really does weigh pretty heavily.

5           And so, that number for federal judges  
6 represents, essentially, a benchmark on what COLA  
7 should have been had we been paying attention to it.  
8 But we know that they didn't quite get it, either, and  
9 that from their point of view, all that foregone  
10 opportunity is a little bit of resentment on their  
11 part. You know, the hundred thousand or two hundred or  
12 three hundred thousand that over their lifetime, when  
13 they didn't get the COLAs, they didn't ever catch up,  
14 well, that's true for Albany, too, and that's the way  
15 it goes, and that's what we say.

16           And I'm mindful of the concern, "But isn't  
17 this going to set a precedent for the rest of the state  
18 work force and, in fact, return us to the days that  
19 you're talking about?" I would like to think, you  
20 know, this is the exception and that we're mindful of  
21 that, and the exception is because they didn't get  
22 COLAs when everyone else did.

23           (Continued on next page.)  
24  
25  
26

## Proceedings

1  
2 MR. HEDGES: That's how I got in my thinking. But  
3 I still think that's arguments -- and I don't -- I think we  
4 shouldn't limit it.

5 CHAIRWOMAN BIRNBAUM: Let me just --

6 MR. JOHNSON: Just on Roman's last point. We have  
7 the state employee especially most that matter.

8 MR. HEDGES: Most.

9 CHAIRWOMAN BIRNBAUM: I would add, Fran, the  
10 judiciary is, I think it is special. I think in all walks  
11 of civilization, there are millions of people in this state  
12 that are going into courts every day, every day, but over  
13 the year. And in the meanwhile, I want the judges to feel  
14 that they are respected, and that they are there with ears  
15 of quality which is the federal judiciary. So I do think  
16 there is a distinction certainly between the legislature and  
17 certainly between the Commissioners. I'm really anxious  
18 when we get the discussion of Commissioners to have this  
19 discussion of how we can do better.

20 MS. REITER: We are but, you know what, I guarantee  
21 you we are not going to get -- I think that I'll, Sheila,  
22 take a look at what they are making right now and tell me  
23 that they are not being treated as a special group. Right  
24 now without parity they are making more money than anyone.  
25 I think the Governor makes \$179,000.

26 CHAIRWOMAN BIRNBAUM: Probably.



## Proceedings

1  
2 MS. REITER: But you see that's my point. My point  
3 is --

4 CHAIRWOMAN BIRNBAUM: That's my personal.

5 MS. REITER: You can't -- you cannot. The  
6 judiciary area is already doing far better than any other  
7 category of public servant.

8 JUDGE LACK: The Governor's salary has been out of  
9 whack.

10 MS. REITER: I understand that. It's all out of  
11 whack. But I know that when we get to the point where we  
12 start talking about the executive, right, their salaries are  
13 not going to be anywhere near what the judiciary salaries  
14 are even after we make our recommendations, because that's  
15 just a fact that --

16 JUDGE LACK: We haven't gotten there yet.

17 MS. REITER: Right now I can say, you know what,  
18 state commissioners have, should have parity with New York  
19 City in excess of \$200,000 a year. The average state  
20 commissioner makes \$130,000.

21 JUDGE LACK: I think the Governor should make more  
22 than the Mayor, and I'll say that right now.

23 MS. REITER: That's my point, that we are never  
24 going to reach. While I agree with you, I think the  
25 Governor should get more, the judges should get more,  
26 everybody should get more. I agree within the grounds of

## Proceedings

1  
2 the fact that we are talking about the judges' salaries, and  
3 it's never going to be that of private sector salaries, but  
4 even with that, I think people should get paid more, the  
5 same workforce at every level is, I would say not every  
6 level, but certainly in each area that we are going to be  
7 examining are underpaid. Right? The question is not that,  
8 but that is, that is the reality of how much money we have  
9 to spend in that adventure and prioritizing how we spend it.

10 So do we spend it on judges -- to pay judges'  
11 salaries more and pay less into other areas of the  
12 government?

13 We elect people to make those decisions. Frankly,  
14 I'm not even comfortable making that decision. But I'm not  
15 an elected official. I don't speak to --

16 CHAIRWOMAN BIRNBAUM: Fran --

17 MS. REITER: No, but that's for them.

18 CHAIRWOMAN BIRNBAUM: All we can do is do with what  
19 we have.

20 JUDGE LACK: Argue.

21 MS. REITER: Okay. So we have a couple of  
22 responsibilities.

23 MR. JOHNSON: In one point of your remarks, your  
24 remarks on your peers' quality you immediately went to the  
25 federal judiciary, when state judges also have them. And in  
26 terms of 90 percent that Fran is talking about, that would

## Proceedings

1  
2 put our judges --

3 CHAIRWOMAN BIRNBAUM: The next.

4 MR. JOHNSON: Not absolute value in putting them in  
5 what the other state judges. The question is where is the  
6 most appropriate place.

7 MS. REITER: By the way, cost of living is never  
8 going to be fully addressed, Sheila, you know as well as I  
9 do. On the other hand, judges get to live in other cities,  
10 and the most expensive and the greatest city, which is why  
11 people move here. And, you know, and at the earliest age  
12 and put four people in an apartment because they cannot  
13 afford an apartment.

14 JUDGE LACK: About I don't know.

15 MS. REITER: But my point is that there are reasons  
16 to live in New York and make less than to live in Iowa and  
17 make more.

18 CHAIRWOMAN BIRNBAUM: I don't disagree.

19 MS. REITER: Okay.

20 CHAIRWOMAN BIRNBAUM: I could never live anywhere  
21 else. But maybe we should take a vote.

22 JUDGE LACK: I vote on Roman's suggestion.

23 CHAIRWOMAN BIRNBAUM: Why don't we do that. If  
24 that's okay with everyone, we will take a vote on Roman's  
25 suggestion. Do you want me to state it or do you want vote?

26 JUDGE LACK: Yes.

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1 CHAIRWOMAN BIRNBAUM: All those in favor?

2 (Hands raised.)

3 CHAIRWOMAN BIRNBAUM: Two, three, four.

4 All opposed?

5 (Hands raised.)

6 CHAIRWOMAN BIRNBAUM: Three.

7 We have a majority. We have -- do we want to vote  
8 on the other issue of parity, or is there anything more to  
9 discuss with regard to the issue of the amount and when  
10 the --

11 JUDGE LACK: I think we have decided that.

12 CHAIRWOMAN BIRNBAUM: We are going to take a  
13 10-minute break. Is that okay with everybody?

14 MS. REITER: Yes.

15 (Brief recess held.)

16 CHAIRWOMAN BIRNBAUM: Okay, we are ready to start  
17 again.

18 The next issue that we have to discuss is parity  
19 between intramural court system, so someone can correct me  
20 depending upon the issues -- I don't have in front of me --  
21 other judges will get 95 percent. Supreme court judges 93  
22 or 90 percent. And question is, is there anyone who wants  
23 to talk about a different combination of that or should we  
24 just decide? Do we want to talk further about the parity  
25 among judges in the state, or are we prepared to go as  
26

## Proceedings

1  
2 recommended, hear testimony? Are we prepared to vote 95, or  
3 93 or 90 percent based upon what position the judges are  
4 entitled to? Is there anyone who wants to discuss that any  
5 further? If not, I'm going to put a motion on the table.

6 MS. REITER: Those are the current percentages,  
7 correct?

8 CHAIRWOMAN BIRNBAUM: Yes, that's my understanding.

9 MS. HORMOZI: Keeping it as percentage.

10 JUDGE LACK: I'm sorry? I didn't hear you.

11 MS. HORMOZI: Percentages we have.

12 MR. HEDGES: As opposed to what Judge Marks  
13 recommended.

14 CHAIRWOMAN BIRNBAUM: Yes, I think the office of  
15 the court judiciary.

16 MS. REITER: Two separate issues, maybe let me make  
17 sure I understand. I thought there were two separate  
18 issues. One is that right now there are -- I didn't hear  
19 anybody say that we should change the percentage, that it's  
20 supreme court judges are the benchmark, right, whatever that  
21 is? The other judges above and below, right, currently  
22 there are percentages what those salaries would be?

23 CHAIRWOMAN BIRNBAUM: Correct.

24 MS. REITER: I don't remember hearing about that.  
25 I remember parity was in within judges -- categories of  
26 judges outside of the city, I guess Long Island where there

## Proceedings

1  
2 are disparities between judges of equal level, right?  
3 That's a different issue, correct?

4 JUDGE LACK: Well, let -- I think we are going to  
5 keep the same distinction between the supreme court, state  
6 supreme court 100 percent, and there are judges above and  
7 below that and keep the same above and below, Fran, you are  
8 right.

9 MS. REITER: Right.

10 JUDGE LACK: No one has any disagreement with that.

11 MR. JOHNSON: I'll just go through the language of  
12 the chief justice's conclusions and recommendation:

13 "The salaries of the judges in the appellate courts  
14 be adjusted to reflect their present proportion to the  
15 salary of a Supreme Court Justice."

16 And 2. "The salaries of Judges of the Court of  
17 Claims be maintained in parity with those of Supreme Court  
18 Justices."

19 JUDGE LACK: And the salaries of all other judges  
20 be maintained at the percentage that they are. Then there's  
21 the second discussion nobody ever disputes.

22 MS. REITER: No.

23 CHAIRWOMAN BIRNBAUM: Take a note on that.

24 MR. HEDGES: Before you get because --

25 MS. REITER: It could change the percentage.

26 MR. HEDGES: Right.

## Proceedings

1  
2 MS. REITER: Those judges that were disparities  
3 within the category.

4 JUDGE LACK: We can take that up separately.  
5 That's the next --

6 MS. REITER: Don't you have to do that first  
7 because until you reach that, what we were talking about,  
8 right, because of the floor versus the ceiling. If you've  
9 got a judge one is making \$132,000 one is making \$158,000.  
10 Right?

11 JUDGE LACK: It's like taking an egg. It really  
12 doesn't matter. We can adopt the standard, then talk about  
13 modifying the standard that that's keeping it the way it is.  
14 Then, Fran, we get to the next step or we could do --

15 MS. REITER: All right.

16 JUDGE LACK: -- doesn't matter.

17 CHAIRWOMAN BIRNBAUM: We have a motion on the table  
18 to keep it the way it is presently. All those in favor?

19 (Hands raised.)

20 CHAIRWOMAN BIRNBAUM: Unanimous.

21 Now the second issue on that issue.

22 JUDGE LACK: We want to modify the standard.

23 CHAIRWOMAN BIRNBAUM: Instead of --

24 MS. REITER: That's right. What we talked about, I  
25 think OCA had talked about was changing the floor, not the  
26 ceiling.

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JUDGE LACK: Correct.

MS. REITER: Right.

JUDGE LACK: Yes, floor, not the ceiling, yes.

MS. REITER: So how do we do that?

JUDGE LACK: We do it now.

MR. HEDGES: I would recommend that we adopt Judge Marks' proposal level up.

MS. HORMOZI: I'm sorry?

MR. HEDGES: Level up.

MS. REITER: Level up.

MR. HEDGES: His language --

CHAIRWOMAN BIRNBAUM: Is that there within recent --

MR. HEDGES: It's kind of long. It's on page 26.

CHAIRWOMAN BIRNBAUM: Recommendation.

MR. HEDGES: "County, Family and Surrogate's Court Judges: no such judicial position shall be paid less than 95% of Supreme Court Justice's salary. Any such judiciary position shall be paid less than of a Supreme Court Justice's salary that is greater than 95% thereof shall continue to be paid that same percentage."

With respect to civil, New York City Civil Court, Criminal Court Judges, and District Court Judges, that judges -- excuse me -- that should be 93%.

With respect to full-time City Court Judges and New



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York City Housing Court Judges that should be 90%.

Those are the three levels that he recommended we have the effect of leveling up to those that aren't and lessor -- and I would move that.

## Proceedings

1  
2 JUDGE COZIER: I think that is consistent  
3 with what we voted on. It does not address  
4 equalization within the court groups.

5 MS. REITER: Right, right.

6 JUDGE COZIER: It doesn't address that  
7 question and, you know, I just don't know if we're  
8 prepared to address that issue, the main discrepancies  
9 of the County, the Surrogate and the Family Court,  
10 because statewide there's a discrepancy that ranges  
11 from 150 -- \$152,500 to current Supreme Court salary,  
12 174; and then, within the City Courts outside of the  
13 City of New York and Long Island, there's a range of  
14 one-thirty-eight-five to one-fifty-two-two. You know,  
15 so that's -- I'm not sure that we are really in a  
16 position to tackle it.

17 JUDGE LACK: It's greater than that, Barry,  
18 because the District Court -- the two counties that  
19 have adopted District Court, Nassau and Suffolk -- have  
20 the exact same judicial functions as the New York City  
21 Civil and the New York City Criminal Court and  
22 different salaries.

23 Of course, all the upstate cities whose  
24 salaries are lower, their City Court judges also have  
25 the identical judicial functions as New York City's  
26 Civil and Criminal and Long Island District, and

## Proceedings

1 they're paid various amounts of money.

2 And all of this, of course, goes back to  
3 pre-1977.

4 So you almost have to get into it city by  
5 city.

6 MS. REITER: And we don't have a clue what  
7 the fiscal impact ultimately would be.

8 CHAIRWOMAN BIRNBAUM: That's right.

9 JUDGE LACK: We don't have a clue as to the  
10 fiscal impact. And I can tell you that for many years,  
11 this came up and never got passed in the legislature,  
12 even with the time to handle it.

13 In some ways, the court system tries to  
14 handle it itself because, in terms of basing need, they  
15 can make Acting Supreme Court Justices --

16 MS. REITER: Right.

17 JUDGE LACK: -- out of these lower court  
18 judges, who would then get paid Supreme Court salary --

19 MS. REITER: Yes.

20 JUDGE LACK: -- and do that level of work.

21 MS. REITER: Forget I asked.

22 JUDGE LACK: Sorry. Yes, ma'am.

23 CHAIRWOMAN BIRNBAUM: Am I getting the sort  
24 of vibes that we would not make any other changes and  
25 just leave things the way they are?  
26

## Proceedings

1  
2 Anybody who thinks otherwise?

3 MR. HEDGES: Do I not understand those words?  
4 Because I think the effect of adopting what Justice --  
5 Judge -- that doesn't raise up the lower?

6 MS. REITER: Only proportionally.

7 JUDGE LACK: Only proportionally.

8 MS. REITER: If you get a 90 percent of  
9 Supreme Court, right? Yes, if you make 132 now --  
10 They're not now, but what this is saying  
11 is -- well, yeah, they --

12 MR. HEDGES: They are not now, so if they  
13 only go up proportionately, this proposal gets ignored.

14 MR. JOHNSON: Well, didn't we just vote  
15 affirmatively on 95, 93, 90?

16 CHAIRWOMAN BIRNBAUM: Yes.

17 MR. JOHNSON: Which understanding is, that  
18 creates a floor that does not now exist.

19 CHAIRWOMAN BIRNBAUM: Right.

20 MR. HEDGES: If that's what we think we did,  
21 then I'm fine, but I didn't think --

22 I think we were talking about proportional  
23 increases moving forward. So if you're in a class  
24 where some get, currently, 90 percent, they stay at 90;  
25 if they're currently at 85, they stay at 85. And I  
26 wouldn't like that.

## Proceedings

1  
2 CHAIRWOMAN BIRNBAUM: Well, I don't think  
3 there would be anyone at 85 at this point. It would be  
4 90, 93 and 95.

5 MS. REITER: No, I understand what Roman's  
6 saying.

7 Let me just make sure we all know what we  
8 voted on. Roman's saying that if, currently, a class  
9 of judges is supposed to be making 90 percent -- all  
10 right? -- of the Supreme Court salary -- okay? So  
11 let's say the Supreme Court salary was a hundred  
12 thousand dollars -- and this other class, the judges  
13 should be making \$90,000, if there's someone in that  
14 class who's currently making \$80,000, not \$90,000, are  
15 we raising them to \$90,000? You're not raising the  
16 other guy because he's already making 90 percent.

17 MR. JOHNSON: Again, I think the problem is  
18 captured by the Chief Judge Marks' recommendation and  
19 that what he suggested we do was that the salary of the  
20 judges in the trial courts with limited jurisdiction  
21 and all administrative judges be adjusted to reflect a  
22 present proportion to that of a Supreme Court justice.  
23 And then except that -- and then it goes into the 95,  
24 93, 90.

25 So you make a proportional change, except for  
26 the fact that we're creating a floor, is what --

## Proceedings

1  
2 CHAIRWOMAN BIRNBAUM: The floor is 90  
3 percent.

4 MR. HEDGES: If that's what we did, then I'm  
5 fine.

6 MS. REITER: So we are raising up those who  
7 are under that 90 percent.

8 JUDGE LACK: We don't have a number but --

9 CHAIRWOMAN BIRNBAUM: It shouldn't be a hard  
10 number.

11 JUDGE LACK: It's not a hard number.

12 CHAIRWOMAN BIRNBAUM: Does everybody  
13 understand?

14 All in favor?

15 JUDGE LACK: Aye.

16 CHAIRWOMAN BIRNBAUM: I think everyone's  
17 unanimous.

18 All right, is there any other business we  
19 have to talk about, or can we talk about the future and  
20 next steps?

21 The next step will be to draft a report. If  
22 those who are in the minority would like to draft, of  
23 course, a minority report or a dissenting report, they  
24 should definitely let us know and, you know, start that  
25 process.

26 We have a meeting scheduled for --

## 1 Proceedings

2 Do we have a date?

3 AUDIENCE MEMBER: The 16th.

4 JUDGE COZIER: The 16th.

5 CHAIRWOMAN BIRNBAUM: The 16th.

6 MS. REITER: Well, are we keeping that  
7 meeting?8 JUDGE LACK: I don't think we need that  
9 meeting.10 CHAIRWOMAN BIRNBAUM: I think the other date  
11 was the twenty --

12 JUDGE LACK: -first.

13 CHAIRWOMAN BIRNBAUM: The 21st, correct.

14 MS. REITER: Of December?

15 CHAIRWOMAN BIRNBAUM: Of December.

16 MS. REITER: Wasn't that if we needed it?

17 CHAIRWOMAN BIRNBAUM: If we needed it.

18 JUDGE LACK: I know you're away.

19 MS. REITER: I won't be here, so --

20 CHAIRWOMAN BIRNBAUM: Well, I think, maybe we  
21 can change that.22 What I'd like to do is get a draft,  
23 hopefully, around for everyone by the end of this week  
24 or earlier, if possible, and get your comments back.  
25 And then the question is -- if everybody is in  
26 agreement, we will have no need for another meeting and

## Proceedings

1  
2 we can just issue the report.

3           So I am hopeful we will, you know, not have  
4 to have another meeting, but if you could just keep the  
5 date open, at least until we see what comments everyone  
6 has to the report? And I don't expect that the report  
7 is going to be very long, so it shouldn't be too  
8 difficult for everyone to get comments to me; and we  
9 can get everyone to sign off, if we can do that, before  
10 the 21st, and then we will not have a need for a  
11 meeting.

12           JUDGE LACK: Can you be available by e-mail?

13           MS. REITER: Yes.

14           CHAIRWOMAN BIRNBAUM: Anything else? Any  
15 other business?

16           MS. REITER: I'll get that to you, Sheila.  
17 Let us talk amongst ourselves (indicating) about  
18 getting a minority report.

19           CHAIRWOMAN BIRNBAUM: Okay, that's great.

20           And I just want to thank all the  
21 commissioners and the staff, who was very helpful in  
22 getting us so much information that I think helped us  
23 get to this decision.

24           We are going to adjourn, and we will let  
25 everyone know if the 21st is on or off on our website.

26           MS. REITER: I think this was fairly quick.



## Proceedings

1  
2 CHAIRWOMAN BIRNBAUM: I think it was a quick  
3 process, but it was a thorough, full process, with most  
4 everyone having an opportunity to consider a large  
5 amount of information we got in testimony.

6 Roman?

7 MR. HEDGES: I would only urge that we start  
8 putting together some sort of calendar and circulating  
9 it well in advance of what our next get-together is,  
10 and that we think about what that agenda should be,  
11 because I think that the likelihood of us needing more  
12 than one public hearing --

13 CHAIRWOMAN BIRNBAUM: Oh, yes, I think --

14 JUDGE LACK: Oh, absolutely.

15 MR. HEDGES: -- is really high.

16 JUDGE LACK: And outside the City of New  
17 York.

18 MR. HEDGES: So I think we need lots of lead  
19 time so that we can schedule a couple of events and at  
20 that first meeting -- there should be a meeting to do  
21 that.

22 CHAIRWOMAN BIRNBAUM: Do you think we should  
23 have three public; one in Albany, one in Buffalo, and  
24 one in New York?

25 MR. HEDGES: Buffalo or Rochester.

26 And I also think, and I don't mind mentioning

## Proceedings

1  
2 it, certainly, in public, that next year -- this is a  
3 political commission appointed by dint of passage of  
4 law. Next year is an election year, and I think our  
5 hearing process should be outside the political  
6 election season. We have to report by November 15th,  
7 and then, holding public hearings on legislative salary  
8 increases in the middle of a political campaign is not  
9 exactly the most sanguine time to be holding such.

10 So then we should give consideration to that,  
11 as well.

12 CHAIRWOMAN BIRNBAUM: Well, what we'll try to  
13 do is work backwards and create a calendar and send you  
14 a draft of it, and you can let us know if you're going  
15 to be away on vacation. I mean it's wide open.

16 MS. REITER: I would suggest that to the  
17 extent that we know, now, the times when we're going to  
18 be away, that we should just state that.

19 CHAIRWOMAN BIRNBAUM: And if you have any  
20 thoughts of what the agenda should be for our first  
21 meeting or other information that you think we're going  
22 to need, just let us know and we'll start getting it  
23 together.

24 JUDGE LACK: Since Fran brings up that  
25 there's a lot of work to do on the executive, do you  
26 want to handle it both together?

## Proceedings

1  
2 MS. REITER: I don't know yet. I've got to  
3 think about it.

4 JUDGE LACK: The executive first?

5 Obviously, the executive -- I'm not going to  
6 use the word "easier" -- the executive can be denoted  
7 that it's, perhaps, easier than the legislative. I  
8 mean, if we're holding hearings, it's pretty hard, when  
9 we have to do public hearings, not to do them together,  
10 when we have to double the hearings.

11 In other words --

12 MS. REITER: Right.

13 JUDGE LACK: -- I think we should hold  
14 separate hearings for the legislature and the  
15 executive, obviously. We can do deliberations  
16 separately, choosing one or the other.

17 MS. REITER: I don't know. I'd like to think  
18 about that a little bit. We may, for convenience sake,  
19 want to hold separate hearings on the same day or over  
20 a two-day period.

21 I suspect that the tenor of the legislative  
22 hearings --

23 CHAIRWOMAN BIRNBAUM: Will be different.

24 MS. REITER: -- are going to be -- is going  
25 to be very different than the ones for the executive,  
26 so I'm not sure that -- the people who will be

## 1 Proceedings

2 testifying and making presentations to us are going to  
3 be very different, so I'm not sure that you can combine  
4 the hearings, but for the sake of convenience and  
5 travel, to try to have them, you know, maybe one in the  
6 morning and one in the afternoon; whatever.

7 JUDGE LACK: And there are constitutional  
8 considerations with respect to legislative increases  
9 that don't exist for executive increases, which we can  
10 take up and work around, but they certainly are there.

11 CHAIRWOMAN BIRNBAUM: And I think what we can  
12 do, at least in the meantime, in early January is start  
13 putting together some materials, as we had done for the  
14 judiciary, on salaries across the country; you know,  
15 various legislative and executive salaries, so we can  
16 have some comparative information.

17 JUDGE LACK: That's easy to get. I can speak  
18 to the National Conference of State Legislators; I used  
19 to be president of it, and they have all that charted  
20 out.

21 CHAIRWOMAN BIRNBAUM: A long time ago.

22 JUDGE LACK: Twenty years ago.

23 CHAIRWOMAN BIRNBAUM: I'd like to thank the  
24 commissioners. It's been my pleasure to get through  
25 this first piece, and we stand adjourned.

26 MS. REITER: We've been so collegial, we've

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only had lunch once.

CHAIRWOMAN BIRNBAUM: Right.

MS. REITER: I feel like I'm getting gypped here.

CHAIRWOMAN BIRNBAUM: You are. We'll take you out to lunch.

Thank you very much.

We stand adjourned.

MS. REITER: Happy holidays, everyone.

JUDGE LACK: Happy holidays.