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STATE OF NEW YORK

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PUBLIC HEARING

Commission on Legislative, Judicial and
Executive Compensation,

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NEW YORK STATE CAPITOL
State St. and Washington Ave.
Albany, NY 12224
March 23, 2016

B E F O R E:

- SHEILA BIRNBAUM, Chair
- HON. BARRY A. COZIER (RET.)
- ROMAN B. HEDGES
- MITRA HORMOZI (Present on Video)
- GARY JOHNSON
- HON. JAMES J. LACK (RET.)
- FRAN REITER

JC Conrow

New York State Senior Court Reporter

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MS. BIRNBAUM: Good morning.

My name is Sheila Birnbaum. I'm the chair of the Commission on Judicial, Executive and Legislative salaries.

We're very glad to be here in Albany for this hearing. As you all know we have come out with a report, on judicial salaries, and we are now going to be concentrating on executive and legislative salaries.

Just a couple of announcements that I'd like to make, one of our members, Mitra, could not make it, and is listening to this on our video feed. We also have posted a second location for this, besides being on our video feed, at 25 Beaver Street, room 946, so this is being heard on our website and in New York City, as well, for anyone that would like to attend there as per our meeting's law.

We are going to begin -- I'd like to introduce you to the members of the commission.

Why don't we start with you, Roman.

MR. HEDGES: Roman Hedges.

MR. JOHNSON: Gary Johnson.

HON. COZIER: Barry Cozier.

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HON. LACK: Jim Lack.

MS. BIRNBAUM: And Fran Reiter who is, supposedly, on her way and will join us as well.

We only have four people who have signed up to talk to us this morning. We have done away with any limitations on the amount of time so we can have a robust discussion with people who are here, and we would like to do that; so we will proceed.

And the first witness is Assemblyman Bill Nojay; thank you so much for coming.

MR. NOJAY: Thank you, Chair, and thank you for holding this hearing and agreeing to allow us to provide this testimony.

I come before you, as a sitting member of the State assembly, I am a relatively new member, having served only since 2013, but I have, previously, also worked on the executive side chairing two New York State Authority Boards and having worked in the State of Michigan, as a chief operating officer of the Detroit Public Transportation System. I have also been a practicing attorney, for over 30 years, so I am familiar with judicial issues and judicial

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2 staffing issues, and have been involved with
3 compensation issues, on the executive side, as
4 well as reviewing the ethics issues that we have
5 been deliberating over in the State legislature in
6 the three years that I have been a member here.

7 My comments to you, today, are
8 primarily to request, or to suggest, strongly,
9 that you consider the full range of issues that
10 should be considered with regard to legislation.
11 We are currently in the midst of deliberations for
12 ethics reforms in the State legislature.

13 It is well known, in the public
14 record, and there has been, certainly, a lot of
15 publicity over the 30 some members of the State
16 legislature who have been indicted, many of them
17 convicted of various ethics violations, over the
18 past few years, including, most recently, the
19 conviction of multiple felony offense of the
20 leaders of both the Senate and the Assembly.

21 This kind of disgraceful conduct not
22 only disgraces the individuals involved, but the
23 State legislature and, ultimately, all of New York
24 State government and has given rise to discussions
25 about various menu items that can be adopted,

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either by the legislature or by the judiciary, on how to better police ethics in the New York State Legislature.

I would like to suggest that one of the considerations, that you would take up, would be the issue of a full-time versus part-time legislature; that is directly relevant when considering compensation levels.

There are another set of issues which is the regulation of outside income, which is, as I understand it, you are not commissioned to regulate or make recommendations on. However, the salary levels are directly relevant because if somebody is receiving a six-figure-salary the presumption, I think of the public, is that they will treat it as a full-time job. Whereas, historically, in New York State, we have treated the legislature as a part-time commitment.

In fact, many members of the legislature currently have part-time jobs which gives them, in my opinion, valuable, arguably invaluable experience, when deliberating over legislative issues.

I have part-time employment, outside

1
2 of my legislative duties. A legislator
3 immediately adjacent to mine owns three dry
4 cleaning stores, another legislator, to the north
5 of me, is an insurance salesman, others are
6 practicing attorneys, no business before the State
7 of New York, but running their own private law
8 offices, employing individuals, and so on. We
9 have other legislators, that are involved in the
10 auction business, others who are farmers, so we
11 have a wide range of experience which, I believe,
12 brings value to your conduct and your evaluation
13 of legislative issues.

14 If, on the other hand, we go to a
15 salary level, which the citizenry regards as a
16 full-time, requiring a full-time commitment, you
17 will lose, arguably, the people that have these
18 part-time jobs in sectors other than being a
19 professional politician or professional full-time
20 government employee.

21 I would encourage you to look at data,
22 from other states, and the level of commitment
23 they require from their legislators and their
24 compensation levels, and the economic performance
25 of those states.

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2 In fact, if you look at information
3 from the National Conference of State Legislators
4 at the states that compensate their legislatures
5 the highest, states like California and Illinois,
6 New York, Michigan, these are the states which
7 have the highest outflow of citizens looking for
8 jobs in other states; these are states which have
9 the worst economic performance.

10 On the other hand, if you look at the
11 states with the lowest level, of legislature
12 compensation, these are the states that are doing
13 the best in the country in job creation and growth
14 of their economies.

15 So if we want to continue to do poorly
16 we should continue to do what I suspect many of my
17 colleagues would like, which is to increase their
18 salaries and continue to be included with
19 California, Illinois and Michigan amongst the
20 states that are the worst performers in their
21 economy.

22 On the other hand, if we cut
23 legislative pay, or certainly held it to where it
24 is currently, we might join states like Texas and
25 Colorado and Massachusetts that are actually doing

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very well in their economies.

The causal relationship, you can spend a lot of time talking about, which we don't have time to do today, but if it happens once you can say, "Well, that's interesting." If it happens twice you can say, "Well, that's curious." When it happens three, four, five and six times, you have to begin to say, "There is a causal relationship."

Legislators with a professional, political class, who have no experience in life, other than in government, have, across the United States, produced laws and economies that are not doing well, that are hemorrhaging both people and jobs. States that have part-time legislators, and experience outside of governments in not being members of the political class, who actually start businesses, who employ people in the private sector, who have to meet payrolls, who understand the consequences of current discussions about a \$15 minimum wage, or 12-weeks of paid family medical leave with no prevention of use or fraud. These are the people, that they have private sector experience, who might vote differently than

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2 if you have never started a business, if you have
3 never hired somebody, in the private sector, if
4 you have never had to meet a payroll.

5 For that reason, I would encourage you
6 not to do simple mathematical equations about
7 whether states, with large populations, what they
8 pay their legislators, that will lead you in a
9 direction that would be continued to be harmful to
10 New York State's economy at least if the causal
11 relationship is true.

12 I would certainly encourage you,
13 through staff, or your own efforts, to take a look
14 at the higher compensated legislators, the states
15 they are from, how their economies are performing
16 and also look at the states like Texas and
17 Colorado, with lower compensated legislators, and
18 how well their states are doing, and how many jobs
19 they are creating, and where the New Yorkers are
20 currently living, that used to be here, and left
21 New York because they could not find jobs.

22 In Upstate New York we have lost over
23 400,000 jobs, we have lost over a million
24 population, over the last 30-years, and that is
25 with a legislative, political class that, clearly,

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does not understand the consequences of many of their decisions.

Currently the leaders, of both sides of the New York State legislature, and the Governor, have never, in their lives, started a business, they have never hired employees for the private sector, they have never understood the consequences of political decisions upon the private business sector and that may be one of the chief reasons we are performing so poorly compared with other states.

So, if we want to reverse these trends, this might be the place to start. And I would, therefore, just encourage you to look more broadly than mathematical equations and look at the underlying policies behind a full-time legislative class versus a part-time legislature.

MS. BIRNBAUM: Thank you.

MR. NOJAY: Thank you, chairperson.

MS. BIRNBAUM: We are certainly looking at data and statistics from other states, and from other places, so we will look at the economic aspect of that as well.

MR. NOJAY: I would only close in

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2 saying that I have a bill, currently before the
3 Assembly, that would reduce legislative
4 compensation by 50 percent in exchange to going
5 back to the days of when the legislature would
6 finish its annual deliberation by March 31st,
7 which is the constitutionally required deadline
8 for the budget.

9 MS. BIRNBAUM: Good luck.

10 MR. NOJAY: Thank you.

11 MR. JOHNSON: Assemblyman, in your
12 view, to what extent should we take into account
13 the effects of inflation over the past 14-years,
14 or so, in that sense the depressive effect on
15 legislative salaries?

16 MR. NOJAY: I hear the arguments in
17 favor of inflationary index. The problem is that
18 the average tax payer does not get an inflationary
19 increments in their own paychecks.

20 And this goes to the question of, do
21 you treat people in the government class
22 differently than the way you treat private
23 citizens? If my constituents could similarly get
24 increases in their salaries, based upon an
25 inflation index, then I would be all for us doing

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it on the governmental side.

MR. JOHNSON: My question wasn't going to an index going forward. It was a question about taking inflation into account, in regards to the recent past, and the fact that the legislature has not had a raise for so long.

MR. NOJAY: A lot of my constituents have not had a raise in 14-years either.

Again, the answer to your question goes to if we can somehow index the private sector's compensation I would be all for it, but the fact is that it can't. And, in fact, a lot of my constituents are making less money today than they were making even though they have the same qualifications.

When the economy is doing poorly nobody gets an increase because of inflation. And I do not believe that that should be a factor in governmental employee's compensation either.

MS. BIRNBAUM: Thank you, so much.

MR. HEDGES: One of the observations, that was made by someone, we heard testimony from in our last hearing, was that the compensation ought to be such that someone could have a family

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2 and get along without outside employment. While
3 this person didn't make this argument, I'm going
4 to raise the question in this form, if you're a
5 worker in a bakery could you afford to go work in
6 the State Assembly or State Senate? I don't think
7 you could because I don't think your employer
8 would give you six-months off to do the work. I
9 don't think you could come back to your job
10 assured, so you would be making a choice about
11 your family and your career and your livelihood.

12 How do you factor that kind of thought
13 into things? A lawyer can do part-time, an
14 insurance salesman can work around the schedule of
15 the legislature, but the baker can't.

16 MR. NOJAY: It's a good question.
17 It's a valid question, thank you.

18 But my response would be that you
19 can't do it in all instances, but one of my
20 colleagues, who has three dry cleaning stores, can
21 be found --

22 MR. HEDGES: Owns the business?

23 MR. NOJAY: Yes.

24 MR. HEDGES: It's not the worker in
25 the dry cleaning store. I'm asking about the

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worker in the dry cleaning store.

MR. NOJAY: And if a worker, in a seasonal business, wanted to be a legislator, I cannot see a problem with that.

MR. HEDGES: Only --

MR. NOJAY: There are a lot of seasonal businesses that require people.

We are in business for 60-days a year in Albany.

MR. HEDGES: No. We are in business for six months of the year almost every year.

MR. NOJAY: We are in business for 60-days a year in Albany; that's the amount of time we spend here. If you look at the legislative calendar we are here for 60-days. We work for an average of two-hours a day when we are in session. This legislature --

MR. HEDGES: If you live where you live you can't get here for that two-hours without taking at least a week off.

MR. NOJAY: That's a very good point; because you know what? If they wanted to be efficient around here they wouldn't be meeting for two-hours a day. If they wanted to be efficient,

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and get their work done inside of two to three months a year, they could do that.

MR. HEDGES: You can't change how you do your business. We're talking about compensation and you raised the full-time, part-time and total compensation. The question that was raised, by this witness was, we think that full-time, part-time isn't the issue. Who it is that can serve, and can afford to serve, was the form of that observations and that's the form of my question not so much how should the legislature do its work.

MR. NOJAY: And I would respectfully disagree with the proposition that this legislature could not rearrange its schedule to accommodate any citizen that could work legislative duties into a normal work schedule.

The problem is the legislature has chosen not to do that, so they meet for two-hours a day, and then adjourn, they collect their \$174 *per diem*. When they could collapse an entire month of work into one or two days in that entire month.

If this legislature wanted to be

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2 efficient, about the way they conduct hearings,
3 and the way they conduct their business on the
4 floor, there is no reason why the legislative
5 schedule could not be completed by March 31st,
6 every year, or an even shorter period which it has
7 during the majority of New York State's history.

8 The gradual expansion of the
9 legislative calendar to be six-months a year, or
10 even a longer period of time, is not necessary by
11 any measurement of the actual hours being worked
12 on the floor and the committees of the
13 legislature.

14 We spend two-hours a day, during our
15 legislative days, for 60-days a year. Do the
16 math; 120-hours. That is three weeks of work in a
17 normal person's work schedule and, for that
18 reason -- and this is all driven by the
19 compensation arrangement.

20 MR. HEDGES: You certainly aren't
21 arguing that you spend three or four hours in the
22 year working on budget and do it thoughtfully.

23 It's a 154-billion-dollar proposition,
24 which you spend a lot of time, that's not on the
25 floor, thinking and working and consulting.

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MR. NOJAY: You can fill your schedule with as many hours, going to as many events as you would like to, and many of the legislators do turn this into a full-time job.

The question then -- now, you are raising the question of, "What is the job of a legislator? The average legislator has very little to do with creating the budget, as I'm sure you realize. The average legislator has almost no vote in deciding how much money is in this line item or another, and that's a separate discussion entirely in terms of legislative duties, but let's not give the public the impression that 150 members of the Assembly, and 63 senators, are spending this week and next week deliberating the budget; they are not. They are presented with a budget that has been worked out by three men in a room, and legislative staff, and then vote up or down according to party lines and other consideration, but they are not spending their time in budget committees deciding whether one line or another goes up or down.

MR. HEDGES: One of the other charges, from the commission, is to look at compensation

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for the Executive branch, particularly for the commissioner of the State agencies, and for the statewide elected officials. You have thoughts about how you should think about those issues?

MR. NOJAY: I'm sorry; the issues?

MR. HEDGES: Of the issues related to the compensation for commissioners and the statewide elected officials.

MR. NOJAY: Having been on the executive side, both in New York, and in another state, I believe that attracting quality talent is absolutely essential. And let's not be Pollyanish that people enter public service for noble reasons, on the other hand, they have families to feed and quality people have other options in terms of their employment.

So I have always supported, for full-time executive staff, a level compensation that, in your judgment, is necessary to attract that talent.

MR. HEDGES: How should we think about that? I understand the position you are taking, but we have to actually put a number on it.

So the Commissioner of Agriculture how

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do we go about deciding that?

MR. NOJAY: You know, in the private sector, there are lot of people that are in the business of advising board's of directors on appropriate compensation for their executives, and it might be whether your commission, or as retaining people that are in that kind of business to do a comparative cost study, or comparative compensation level study, for people that are executives.

The Commissioners of Agriculture are typically people out of the farming business or out of the agri-business, who understand the industry. And if you look at compensation of people at comparable executive levels and food companies or food processors or the farming industry, that would presumably be the way to do it.

I am not an expert on executive compensation because the public roles, that I have held, on the executive side, those salaries have been set and I have not yet had to get involved in that, but that would certainly be a worthwhile endeavor to talk to people that are in the

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executive compensation business.

MS. BIRNBAUM: Thank you, so much.

MR. NOJAY: Thank you, very much
chairwoman, thank you for your time.

MS. BIRNBAUM: Assemblyman Phil Steck,
thank you for coming.

MR. STECK: Thank you, very much, for
having me.

I was struck by my colleagues remarks.
I think that most economists, that I know of,
would probably disagree with his assessment of
cause and effect as to the reasons why certain
economies perform well and that it probably has
nothing to do with the way the legislature is
organized.

I was very struck, recently, in a
meeting that I attended, and I put the question to
one of my colleagues, as to whether that person
would agree with the Governor that the bureaucracy
of the State University of New York was too highly
paid and that the Chancellor was too highly paid?
And the response I got was, "We absolutely need to
pay the chancellor \$600,000 a year to get a
qualified person in that position." I'm not so

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sure that that's really true at that level.

What I would say, that I find rather ironic, is that there are many people who appear to feel, we do not need to pay a reasonable professional salary to attract people to run for institutions like the New York State Assembly. I think there is actually a very anti-democratic trend that runs through this thing. We need to remember that this government is starting from the lower house, for example, of the legislature. We started with the Continental Congress, which was a one house body, we did not start with a president, so the foundation of democracy is, in our State, the Assembly, but the Legislature as a whole.

And I think this is a question of what respect do we have for democracy? Are we going to pay a reasonable professional salary, like my constituents earn outside of their service in the legislature, for this position? I do not think we should have a legislature where the pay is so low that only people who are wealthy, or have successful spouses, can participate in the body.

I am an attorney in private practice. I practice in the area of which is not a

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2 particularly lucrative area of law, which is civil
3 rights and employment law, representing employees,
4 none of my work has much to do with what I do
5 here, except for the fact that it gives me a good
6 understanding of some of the problems faced by
7 employees in their everyday lives and what type of
8 laws we might have to protect people's civil
9 rights. But there is, you know, no conflicts
10 between my work in the Capitol and my outside
11 work.

12 The issue that has been so
13 troublesome, for all of us, is a concept called,
14 "leveraging." And leveraging means taking your
15 position, as a governmental official, and using it
16 to get income that you did not earn; that's what
17 has been on trial in the courts, the federal
18 courts.

19 And also, quite frankly, a really good
20 example is the governors book deal, which I'm
21 sorry to bring up, but it's a perfect example of
22 leveraging. The Governor can write a book, while
23 he's Governor, and get a very large advance for
24 it, but no one who is not in a position of
25 Governor, Speaker, or a resident of the Senate,

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2 could do such a thing and expect anybody to want
3 to read it. There is certainly no problem with
4 someone writing a book after they leave
5 governmental service, and getting whatever amount
6 of income they want, but, perhaps, at that point
7 and time, no one would be interested in reading
8 it.

9 So the point being is that I think the
10 problems that we run into have absolutely nothing
11 to do with the outside income; they have to do
12 with leveraging. And there is almost no one, in
13 either body, who is in a position to do that.

14 One of the things I think is very
15 relevant, in your discussions, and as part of your
16 task, you look, also, at salaries for judges.

17 Now, as a lawyer, I've seen that the
18 bar association comes in routinely and says, "The
19 salaries of judges are never high enough, et
20 cetera, et cetera."

21 Well, what makes someone successful in
22 the private practice of law does not necessarily
23 correlate to whether that person would be a good
24 judge or not. In many countries of the world,
25 perhaps most countries of the world, judges start

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2 as a career, out of law school, as civil servants,
3 and are promoted up through the judicial system
4 based on their performance.

5 We have a different system, I'm not
6 saying one is better than the other, but the fact
7 is the lawyer who might be making \$400,000 a year,
8 because they are an outstanding personal injury
9 lawyer, doesn't necessarily mean that they have
10 the breadth of experience, or the temperament, or
11 the commitment to researching and following the
12 law that makes for a very good judge; that could
13 be found by someone who is not very successful in
14 private practice.

15 For example, Learned Hand, one of the
16 greatest judges in the history of the United
17 States, happens to have been born here in Albany,
18 I read a biography of him by a professor at
19 Stanford and Judge Hand was very unsuccessful in
20 private practice; it was his dedication, to the
21 law, that made him a great judge.

22 Now, how does this relate to the
23 salaries of legislators? I've been emphasizing
24 that this is a professional position and that the
25 people who make the laws, and while they may not

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2 have technical expertise in the drafting thereof,
3 it is their intellectual capacity for figuring out
4 what their constituents need that they are paid
5 here to come and do; that is not different than
6 those who interpret, or we would say, from the
7 legislative perspective, sometimes misinterpret
8 the law.

9 So the point being, in my view, a
10 reasonable professional salary, for a legislator,
11 is absolutely no different from what is paid to a
12 judge in this state. If you have a part-time
13 body, I think keying it to what judges make, makes
14 a heck of a lot of sense.

15 I just want to make a point, too, that
16 when you run for an office, like this, you come
17 with the expectation of what's going to be in the
18 position. We've had a system which requires, now,
19 a tremendous amount of disclosure, which I make
20 willingly, and happily concerning my law practice,
21 but we all have responsibilities, as ordinary
22 middle class people, one of the things in the
23 society that's a very big problem for middle class
24 people, is the high costs of college education.
25 I'll sit here and tell you, right now, I have

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\$100,000 in debt related to paying for my daughter's education.

So to say that, as the Governor has said, we should go to the congressional model, consisting of the current salary plus \$15,000 of outside income, is an absurdity, no one who came to society, with that type of middle class experience, as I have had, could possibly stay.

So when we talk about the congressional model, which is a rational, sensible model, we're talking about a salary that is much higher than the one now that allows some modicum of outside income. In the federal system, I believe, it's key to some high level federal executive employees, but here to key it to the judicial salary makes sense.

By the way, our judicial branch received a value so greatly that it is the least democratic of all our institutions. So, in keeping with my earlier theme, I think this is largely a question of how much do we really value our democracy and representative government in what we are going to pay our legislators?

So, the other point, finally along

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2 those lines is, if we had a full-time legislature,
3 and I don't understand that to be the mission of
4 this body, but I do want to make the point that
5 some of the proposals that are made would have the
6 legislators being paid less than unionized PEF
7 employees who are -- there are some PEF employees,
8 by the way, who are at a very high level, that in
9 their contracts it's an individually negotiated
10 contract, but proposals to pay the legislator less
11 than people who are in civil service levels, that
12 don't have individually negotiated contracts, I
13 think is rather absurd. I think that, from what
14 I've heard, trying to equate this salary, as it
15 exists now, with how society has moved forward,
16 economically, and wage levels, seems like a pretty
17 appropriate thing to do, but, again, to sum up, if
18 we're going to a congressional model, we would
19 want to key it to some high level position and
20 that it has to be a reasonable, professional
21 salary just like you would do in any other
22 occupations.

23 By the way, I do feel there is a lot
24 of value in not having a professional class of
25 legislators. We experience the same problems as

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middle class people that my constituents experience. I think that puts me in better touch with the people that I represent; I can hear it from both sides.

I would also say one of the difficulties, in the part-time body, is that the legislative staff is here all year round. They are working everyday and I think that what we need to do, and salary is an important thing, we need to empower our elected officials, not disempower them. And I think having the salary at a reasonable professional one would go a long way to do that.

I'm happy to take any questions.

MS. BIRNBAUM: Thank you, very much.

Any questions?

MR. HEDGES: The only thing I would say is that our mission is particularly difficult because we're being asked to recommend salaries for a job that exists within certain parameters, right now, but that may change, that may not change, and it is very difficult to think of this in terms of, "Well, I support X under the current system. I'd support Y if you get something else,

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2 and if they go full-time I do this. If they give
3 up outside income I do I that. If they will give
4 up only certain kinds of outside income then we
5 would be at a different place."

6 So it's as if the job that we're being
7 asked to recommend a salary for is a constantly
8 moving target or, potentially, a constantly moving
9 target, and, I think, that makes our work
10 particularly difficult.

11 MR. STECK: Well, I think in answer to
12 that question, in my remarks I did elude to some
13 various possibilities, but, I think, as I
14 understand the task of this body, is to assume
15 that the system is, as it exists, and it really is
16 up to the legislature to pass limits on outside
17 income; the Assembly has made some proposals in
18 that regard. I don't think that's the mission
19 here.

20 I think what I was advocating for is a
21 reasonable, professional salary that will attract
22 people to the body and that is tied to, in some
23 fashion, the judicial salaries. Obviously they
24 are full-time, and we are not, but I want to say I
25 think it's important to talk about the actual

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2 lives of people who do this job. So when I am
3 here, in the six-months that we were eluding to
4 earlier, I work as a full-time legislator and what
5 happens is -- how I actually keep up with my law
6 practice? Well, I'm in a small firm. We do have
7 associates and they do my work and I supervise it,
8 nights, weekends; so that's how I'm able to do it.

9 When the six months ends I go back to
10 my law practice, but that doesn't stop my
11 legislative work. We continue to go out and do
12 things in the community, we continue to discuss
13 legislation, but more on a part-time basis and
14 it's not as intense as when we are here.

15 So, I think, to describe the
16 legislature, as my colleague did, as a body that
17 meets for 60-days, and we're only in session I
18 think is quite unrealistic. On the other hand, it
19 is not a full-time position as it has been said
20 accurately. I think, however, though, there are
21 lots of people, in the United States of America,
22 my constituents included, who do work two jobs. I
23 mean the fact is, today, for a lot of middle class
24 people to stay in that position, particularly in
25 Upstate New York, which is where my district is,

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2 there are people who have a full-time job and a
3 part-time job, and that's what's necessary, but I
4 do think that you are looking at it, I think, from
5 the perspective of, you know, what has changed in
6 the last 15-years? I don't think you can rewrite
7 the Constitution of the State of New York.

8 MS. BIRNBAUM: Even we can't do that.

9 MR. STECK: Right, right.

10 In theory we could, but that's one
11 thing about American government; we are very
12 unique in the world that we have a division of
13 legislative authority three ways. And I think a
14 lot of folks don't understand that; that's why
15 it's difficult to get things done. And, frankly,
16 that's the way the framers designed it. They had
17 put in a lot of checks and balances, so getting
18 radical changes of the structure of the
19 legislature is going to be hard and I would agree
20 that is not what this panel is supposed to do.

21 MS. BIRNBAUM: Any questions?

22 MR. HEDGES: Yes.

23 The notion of professional -- you
24 elude to judicial -- boy, that's a whole different
25 world you are in right now as a member.

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2 Should we be thinking about this in
3 terms of the basis is this, inflation is that, and
4 therefore, or should we be recasting the question
5 as the attractive job that we're comparing it to
6 is, and you mentioned judges, and that should be
7 the point of comparison and inflation isn't really
8 the point. How do we think about that?

9 MR. STECK: I think you could do it
10 either way. I think that -- there are a lot of
11 ways to do this, but I think you could do it
12 either way just because I spoke about the
13 importance of making it appear as a professional
14 position, that is respected by the public, because
15 we value democracy, doesn't mean that I am, in any
16 way, opposed to Dr. Hedges, what you said.

17 And I thought your point, by the way,
18 and we're talking about democracy, about the
19 baker, and how difficult it would be for a working
20 class person, that has a real job, to leave that
21 job and come here and work as a part-time
22 legislator they don't realistically have the
23 opportunity for outside income. I thought it was
24 an excellent point and I think, again, it would
25 support a salary increase that was, again,

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2 recognizing that if you are elected to the New
3 York State Assembly that is a professional
4 position. We are making laws just like judges are
5 interpreting them and that is something that's
6 worthy of respect from this society.

7 MS. BIRNBAUM: Thank you, very much.

8 MR. STECK: Thank you.

9 MR. HEDGES: I would also like to ask
10 the question with respect to executive
11 compensation.

12 We have got a charge of dealing with
13 the commissioners, we have a charge of dealing
14 with the statewide electives. There is an
15 internal discussion about what do we mean by
16 statewide electives? Do we include the Governor
17 or not? Personally I think we do, but that's not
18 my question to you. How do I think about
19 commissioners? How do I think about the
20 Comptroller, the Attorney General, the Governor?

21 MR. STECK: Well, I think I think the
22 comparison to the private sector is actually not
23 very apt, in this instance, because when we talk
24 about the way corporations determine the
25 compensation of a chief executive there has been a

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2 wide variety of criticism. Among the comments,
3 the high pay of our executives, in the corporate
4 world in America, as opposed to in other
5 successful economies around the world.

6 One of the things that's very
7 interesting is that when Franklin Roosevelt was
8 president there was proposed legislation, that
9 they didn't end up going in this direction, that
10 would keep the top executives compensation to a
11 certain multiple of the lowest earners salaries,
12 so, in public service, that might be something,
13 because we are not market contributing, you have
14 to take into account, you want to attract people,
15 you want to do, I think, a few things, you want to
16 attract people who are qualified, you want to have
17 esteem for the position, you want to show that you
18 value the position, and the salary that you are
19 making, just like any other position, but, also,
20 it is public service, and to say that the Governor
21 should be paid the same as the CEO of Citibank is
22 a little bit absurd, obviously. So, I think,
23 those are the three things that you have and it's
24 the same legislatures. It is public service, and
25 the salary has to reflect that, but it also has to

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2 show that these are positions that we hold in
3 esteem and I think that's true of the Governor, I
4 think that's true of the Commissioners, but,
5 obviously, these are folks who come here and are
6 not expected to make what they would make in the
7 private sector in today's world.

8 MS. BIRNBAUM: Thank you.

9 MR. HEDGES: The specific example that
10 I use, with your colleague, was the Commissioner
11 of Agriculture. It is amongst our commissioners
12 relatively, modestly paid and all of them are too
13 low, from my point of view, but a good example.
14 He cited possible points of comparison of somebody
15 in the business of farming, somebody in the
16 business related to farming, agribusiness more
17 broadly. I might want to throw in full professor
18 at Cornell.

19 MR. STECK: I like your latter example
20 better because, again, you are not going to be --

21 MR. HEDGES: But 90,000 isn't what a
22 full professor, at Cornell, is getting paid these
23 days. And that's more than the Commissioner of
24 Agriculture.

25 MR. STECK: Well, that's clearly

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incorrect and I --

MR. HEDGES: How should we figure it out?

MR. STECK: Well, again, the point that I make is given the way that compensation of executives, in corporate America, has absolutely exploded, and many economists might say, "inappropriately," I think that certainly for a position of -- I don't think you can compare that position to the chief executive officer of some large agribusiness.

I do think, however, when we talk about respect, which I think is what we're trying to show to our people in public service, that in comparison to a professor, an esteemed professor at Cornell, in the agriculture school, is a very excellent comparison.

HON. LACK: Since the Governor's salary is set by joint legislative resolution, presumably, that will probably happen before the end of the year. What do you think the Governor should be making since you will probably be voting on it before January 1st?

MR. STECK: I have to be very frank

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with you; I have not paid a lot of attention to what the Governor is paid. What is the Governor paid?

HON. LACK: He makes 179,000 and that, again, has not gone up, again, since 2000 --

MR. STECK: And, certainly, I would say that the Governor, of the State of New York, should not be paid less than the United States Congressmen or United States Senator; certainly not less.

HON. LACK: WELL, he's not, but that's only by a few thousand.

But, as you pointed out, there are certainly people at SUNY, forget Cornell, that earn way more than the Governor by multiples.

MR. STECK: I would support a salary increase for the Governor.

HON. LACK: Well, you are going to support a salary increase for the Governor. I was just sort of asking since you have an idea --

MR. STECK: I haven't given a thought as to what it should be, but what I would say is that, again, it's the combination of factors. Obviously, you're not going pay the Governor what

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you would pay the president of a major corporation. Is the Governor's responsibility equivalent to that? In many respects he has a greater responsibility.

One of the interesting things, about New York State, is this is a State that is as big as many foreign countries, and it would not be inappropriate to look at what chief executives of similar foreign countries were paid, in evaluating the Governor's salary and, yet, obviously, he can't be paid as much as the President of the United States, so somewhere in between probably.

HON. LACK: How about the mayor of the City of New York?

MR. STECK: Similar.

HON. LACK: Okay.

MS. BIRNBAUM: Thank you, very much.

MR. STECK: Thank you.

MS. BIRNBAUM: Mr. Fritz Schwarz.

Thank you for coming up from the city today.

MR. SCHWARZ: It was a nice trip.

MS. BIRNBAUM: For all of those in the audience Mr. Schwarz chaired the commission that

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looked into salaries in New York City, so I think he has a lot to offer.

MR. SCHWARZ: I'm really happy to be here and I love the way you question people, and please interrupt me, don't wait until I'm finished, that makes for the best kind of dialogue.

So, in addition, I've done a lot of things in government and in the private practice, and I don't need to go into them here, but my most relevant --

MS. BIRNBAUM: Your experience and prestige comes before you.

MR. SCHWARZ: So my most relevant reason for being here is chairing our recent commission, so I'd like to raise a couple of points that we looked at, and you are also looking at, and offer our perspective for whatever it's worth.

And, again, I say, I really want you to come after me, interrupt me, ask me hard questions.

So we started off, in our approach to pay, first by saying you have to value good

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2 government. Second by saying there is some
3 implicit ceiling on how much government officials
4 can be paid. The job of government officials is
5 at least as hard as chief executives of private
6 companies, but nobody thinks government officials
7 should be paid at that level.

8 Indeed we did some research that way
9 back in 1789 Benjamin Franklin said, "Government
10 officials should be paid zero," and he had pretty
11 cogent reasons, which lost in the convention, and
12 nobody else supported his point.

13 So with those sort of broad
14 philosophical groundworks, to our work, we focused
15 on a number of factors in setting pay. Our job
16 was to set pay for every elected official, no
17 administrative people, but we took account of what
18 commissioners were paid when we thought about what
19 government officials ought to be paid.

20 But the first thing we looked at was
21 how much time has passed since the last raise and
22 what has happened in the economy? And the first
23 measure which, traditionally, was the only
24 measure, basically, in New York City, was to look
25 at the consumer price index and changes and,

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2 essentially, the commissions, prior to ours, just
3 took that percentage change and applied it to the
4 prior salaries.

5 We rejected that approach for a couple
6 of reasons. First, the CPI is a better gauge for
7 low paid people than for, sort of, middle paid
8 people.

9 And, secondly, we thought the CPI
10 pushed salaries up too much. If the public has
11 not been doing well, and that there is part of the
12 equation that we looked at, and you might well
13 want to look at, which is how are the people, in
14 our case New York City, or, in your case, New York
15 State, doing economically? And we felt that that
16 should be a restraining factor. So we abandoned
17 the CPI, as sort of a threshold piece of analysis,
18 and, instead, looked at changes in median
19 household income, which have tended to be a little
20 lower, and we thought, frankly, were more relevant
21 to the job of an elected official than changes in
22 the CPI because they can do zero and State
23 officials can essentially do zero about how the
24 CPI changes, but they can make changes in
25 legislation or administrative action that affect

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median household income in the long term, like what they do for education, and, in the short term, things like minimum wage changes do affect that.

So we took, as sort of the threshold number, what had been the change in median household income. I offer, in our case, it was over nine-years that Mayor Bloomberg failed to appoint a commission, when he was required to, under law, so instead of being four-years it was nine-years, but then having seen what median household, how it had changed, median household income, we also said, "Well, what's been going on with ordinary citizens?" And in New York City and, certainly in New York State, during the great recession, there was, and still is, the residue of substantial suffering among the citizenry and we thought that that was relevant as a restraining factor.

By the way, I do agree, and we can come back to the pay for government officials is important, and it's important they not be too far behind just as they shouldn't get too far ahead of the citizenry. So we came up with a what I

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called, "a base number" for the presumptive change in pay for the various elected officials, that we looked at, and that was 12-percent over the nine-year period.

Then we said, well, you really should do a second piece of analysis which is, has the job changed? Have the responsibilities, in any way, been increased since the last pay increase? And looking at that we found that for three offices, the mayor, where the, you know, Commissioner Reiter you know about charter changes.

MS. REITER: I do.

MR. SCHWARZ: And you know the 1989 charter greatly enhanced the responsibilities of both the Mayor and the City Council.

MS. REITER: Yes.

MR. SCHWARZ: But no pay commission had ever taken that into account, for the mayor, although they had taken it into account for the City Council.

So, anyway, looking at the mayor and the City Council, we said, they each should get a bump of three percent beyond the threshold

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12-percent.

In the case of the City Council, where the prior pay commission had taken into account their greater responsibilities, under the '89 charter, why they didn't do it for the mayor, at the same time, I don't know, but in the case of the City Council it was since 2006 when the last pay commission occurred, their responsibilities, and their activity, and productivity had continued to increase and the first witness from the State Legislature said the people here work, apparently, according to the witnesses, 60-days and two-hours a day. It's very clear --

HON. LACK: I think he meant that's where he works. There are 212 other members of the legislature who might have a disagreement.

MR. SCHWARZ: Because in the City Council, it is very clear, it is a full-time job, and they work all of the time.

I'm going to come back to the State Legislature and some things that I know that might help you in thinking about whether their responsibilities have changed or remain what they were years ago.

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2 Another thing we looked at, just as a
3 double check on our recommendations, was to make
4 an income and equality test and look at for -- we
5 took an entering policeman, an entering
6 firefighter, an entering member of the Corporation
7 Council's office and the lowest paid union
8 official in the city, who actually turned out to
9 be someone who checked for bad insects in city
10 owned buildings.

11 MS. REITER: That's a busy guy.

12 MR. SCHWARZ: And that person was paid
13 18,000 and it was the lowest paid and the entering
14 cop and firefighter and corporation council lawyer
15 were paid higher numbers. And we did ratios
16 between the pay of those people and we looked at
17 it for the mayor, but he could have done the same
18 thing for the Council, and found the ratios were
19 not out of line in an income in equality point of
20 view, you know, for corporations it once was
21 something like eight to one or 20 to one and now
22 it's, like, 400 to one, those numbers are not
23 precise, but that's the order of magnitude, but
24 that in the case of the city's elected officials
25 the higher paid people, the mayor, council,

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2 controller, were not out of line in a multiple, so
3 that was a check we had that didn't end up
4 changing our results. We also gave the controller
5 a one percent bump, based on stuff that had not
6 been taken into account previously.

7 Now, we looked at the -- let me go off
8 on Albany for a minute. And I showed the
9 Chairman, when we were coming in the nice bus from
10 the train station, a report my office, that I now
11 work at, the Brennan Center For Justice, where I'm
12 the chief counsel, written in 2004, entitled, New
13 York State Legislative Process and Evaluation and
14 Blueprint for Reform. And I'm going to give
15 copies to your counsel, and she will get them to
16 all of you, but they present -- and frankly I knew
17 the report, when I was there, so I vouched for the
18 validity of the report, this presents a picture of
19 a dysfunctional legislature with three men in the
20 room dominating the process with, next on the
21 budget, no real hearings. In fact, as the witness
22 said, it's just sort of given to the people at the
23 end with far to few committee hearings, with proxy
24 voting, and other things, and now I cannot answer
25 the question whether the problems with the State

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2 Legislature, that are presented here, are still
3 problems, and I think that is something you would
4 want to look at, if they are, it means that the
5 legislature is not an effective body doing what
6 the citizens deserve to have done by the
7 legislature.

8 We looked at lulus and the question of
9 full-time slash outside income and, first, an
10 historical point, outside income was, of course,
11 the practice, almost, in every particular
12 legislature, but even George Washington's first
13 Attorney General also practiced law on the side.
14 You can't imagine that happening today, but with
15 respect to legislatures it was common that they
16 met only for a couple of months, usually in
17 October or November or December, for about 60-days
18 every two years. And so when you had that kind of
19 a legislature, and, to some extent that kind of an
20 Executive branch, it was not uncommon to have
21 people -- in fact, it was obviously necessary to
22 have people have other jobs, otherwise they would
23 have nothing to do, and the same with lulus they
24 got their start in New York City, and we have
25 history of that on pages 21 to 25 of our report,

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which you guys may have or if you don't --

MS. BIRNBAUM: We do have it. We will circulate it again.

MR. SCHWARZ: Great.

On pages 21 to 25 we talk about the history of both lulus and full-time.

And lulus also made sense in the context of a really part-time legislature because if it was a part-time legislature then maybe it made sense to pay extra to people who worked more than part-time, and the history supports that's what, in the case of the city, the lulus were. At the beginning only two committee chairs got lulus and only two other people, in the New York City council, got lulus, and they were people who really -- it almost was a full-time job, but then it evolved in the city, that more and more and more people were getting lulus and finally it was something like 45 out of 51 that got a lulu, so then it becomes simply a disguised pay increase, disguised also in a way that is misleading to the public, because a legislature can say, I'm only paid, and name whatever the "salary" is, and ignore the extra money that comes from the lulus.

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2 And, finally, I think, lulus are just
3 a very bad idea because they enable the speaker,
4 and, in your case, the majority leader, to use
5 money to coerce people to do what they hope should
6 be done as a matter of policy, or politics, and
7 that's not a proper use of money.

8 So we got rid of lulus for everybody,
9 for the Speaker we said, that office, like the
10 majority leader in the US Senate, and like the
11 Speaker in the House, should be given a statutory
12 salary, so it's not at the discretion of anybody,
13 it's in the statute and, in our case, we didn't go
14 beyond the Speaker because New York City is still,
15 essentially, a one party place and the
16 republicans, even though when I changed the
17 charter, when we changed the charter, to have 51
18 members, we wanted, principally, to do that to
19 increase the ethnic diversity of the council, in
20 which it did, but we also hoped that a few more
21 republicans would be elected because, in 1989, the
22 majority leader of the council led only herself,
23 who was one person, but the republicans still in
24 the City Council are very few, there are only
25 three or four. They do not have a separate

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2 office, so we only had the Speaker getting a
3 stipend, but it became statutory in case of
4 Albany, if you went down that route, you would,
5 presumably, have more officials, but if you go
6 down that route don't let it become a slippery
7 slope so they can have leadership positions that
8 are used in the same way as lulus were to coerce
9 people to do what the leaders want.

10 On full-time it was an easier question
11 for us. In the first place full-time does not
12 mean no outside income, those are two different
13 things. Outside income, for example, that is
14 passive income, someone who rents out buildings,
15 or someone who runs a pharmacy, and is getting,
16 because they own the pharmacy, are getting passive
17 income or Mayor Bloomberg who got piles of passive
18 income, but that was not banned by the full-time
19 requirement in New York City, but, by our work,
20 this year, last year, really, there were nine
21 people on the 51-person City Council with any
22 outside income and five of those were getting
23 outside income for things that -- the city law
24 requires everybody, except the City Council, to be
25 full-time, and now after our changes the City

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2 Council is also required to be full-time, but some
3 things are sort of seen as sufficiently small an
4 amount, and not raising any possible conflict kind
5 of issue, that under opinions, by the City
6 Corporation Council, over the last many years, and
7 under what the City Council adopted as a new law,
8 governing them, things like writing an article, or
9 teaching as an adjunct, once a week, or once a
10 month in some university, are not regarded as
11 inconsistent with full-time.

12 We got some stories, these were not
13 from testimony, because we only had one elected
14 official who testified, and that was too bad, she
15 said, well, I know she said, exactly these words,
16 "Mr. Chairman, speaking to me, I can tell you why
17 they are not here. They are afraid to testify,
18 and they are afraid not of you, or us, who are
19 only three people, but they are afraid that the
20 newspapers will vilify them for looking like they
21 are greedy."

22 And I don't think that -- I know our
23 questioning would have helped by talking to
24 people, and we didn't want to overpay either, and
25 so we could have talked with them about how do you

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structure pay increases without overpaying?

But it was a pretty easy question for us, with only four people remaining who are with outside income as lawyers, or other things that would be barred, and now is barred, you don't lose the skills you have acquired, in prior work, by becoming an elected official.

And I used, in our report, we used in our report some examples of that; Abraham Lincoln was a lawyer, he didn't lose that ability, George Washington and Dwight Eisenhower were generals, they didn't lose that understanding, Mike Bloomberg was a businessman, he didn't lose that understanding when he became elected, Barack Obama was a community organizer and a constitutional law professor, he didn't lose that when he became an elected official.

So the idea that bans on outside income, or limits on outside income, are inconsistent with citizen legislature is just wrong.

Also, part of the job of being an elected official is to spend a lot of time with your constituents, and that is part of the job,

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and doing that keeps you informed about what's going on, what are people worried about? How are people suffering? When are they doing well, and so forth.

So, in our case, I thought it was an easy question to go to a prohibition on outside income with those exceptions, that I mentioned, and a label as full-time. You have a harder problem because you have a legislature that is, you know, very much like the legislatures of 100-years ago, and so it's a difficult, a more difficult problem for you.

We did get some understanding from people who come from the State Legislature to be a City Councilmen, who said, "This is much harder work." Now, it ought to be harder work for the people in the State Legislature, but it isn't because -- at least it wasn't, I hope you do, you know, analyze whether that has changed, it isn't as hard as it should be because of the bad way the legislature is run. I mean how do you do oversight? That's an important legislative job. How do you do oversight with having regular committee hearings not committee hearings once a

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year; which are truncated.

So, I guess, I'm commiserating with you, I think you have a much harder job, not in wrestling with lulus but, I think, in wrestling with the question of full-time and part-time.

And I just want to finish with one thing, I think, maybe, it was you, that asked the question about indexing future pay. And we thought about that and concluded it was a bad idea for two quite separate reasons, one is, I think the witness may have said this in response to your question, but one is that ordinary people don't get guaranteed raises down the line. And the second reason is more of sort of a fundamental democracy constitutional question.

I think government officials, those that pass and sign laws, that is the legislature and the Governor, ought to always face a moment of democratic accountability when their pay is raised.

Now, under your system, the raises you propose go into effect unless they are rejected, but that moment where they have to decide whether or not to reject what you propose is a moment of

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2 democratic accountability and I don't think you
3 want a system where the people responsible for
4 legislation and pay changes are essentially
5 legislation, that is the legislature and the
6 Governor are exempted from democratic
7 accountability because of some guaranteed pay
8 increase. So that's --

9 MS. BIRNBAUM: Thank you, so much, for
10 sharing those experiences with us.

11 Are there any questions?

12 MR. JOHNSON: Yes.

13 Mr. Schwarz, in your remarks I believe
14 you observed that our legislature is not an
15 effective body. It was not clear to me how you
16 thought that might affect our deliberations. In
17 other words, if we came with our own base numbers
18 do we come off of that number for that reason?

19 MR. SCHWARZ: First, you have to
20 decide whether this report, of 2004, is still
21 valid. My impression is it is, but you need to
22 independently decide that. Assuming it is, you
23 know, it would be good if you sent a message, to
24 the legislature, that if you were a fully
25 functioning legislature you would have gotten a

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2 better pay raise. How you send that message I
3 haven't really thought through, but I think if you
4 did send that message it might develop some
5 incentives; which would be a healthy thing.

6 MS. REITER: We've actually have had
7 that discussion, an informal discussion, at the
8 end of the first public hearing, some of us, we
9 just gathered, in talking about that, and it is
10 sort of a carrot stick approach because we are so
11 limited in what we can do, and, clearly, there is
12 lots of evidence of that disfunction, including
13 the report that you referred to, but also an
14 unwillingness to address disfunction by the body
15 itself and at what point do you reward that kind
16 of behavior as opposed to trying to incentivize
17 better behavior and real change? The only thing
18 we have is to send that message that, you know
19 what, guys? If you actually get your act together
20 become what you should be, right? Change the
21 internal governance of your body, be more
22 responsive, be more transparent, all of the things
23 that have been raised, over several years now, as
24 being the issues of our State Legislature then
25 guess what? We treat you as professionals we want

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you to be, right? And it is just -- it's an ongoing -- it's going to be an ongoing dilemma for us.

MR. SCHWARZ: Yes.

MS. REITER: I completely agree with your assessment of the City Council and the changes. They are, as the most local of our elected officials, they are very engaged in constituent services. I would say more engaged in constituent services than they are in their legislative duties.

There were certain areas, as you rightfully pointed out, they gained more power in 1989, mostly around the budget process, and land use in New York City is, as the former Deputy Mayor for Planning, is almost everything and that was a substantial change, but in terms of what they spent a great deal of time on, because it's not as complex a legislative body because what they do is, from a legislative standpoint, is very different from what State Legislature does.

It is in their areas of constituent services where the council member is out in the community, every night, and going to meetings, and

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understanding what their appointees to the community boards are doing, and getting involved in things that are very important to their constituents in a very real, palpable way.

The higher up you go the further away you get from that and yet I know many State Legislators, and I came in late and I apologize; I couldn't find a parking place in a city where I used to have a parking space, so I never realized how hard it is to get a parking space in Albany when the legislature is in session.

But I came in in the tail end, of the first person who testified, and it would appear that he does no constituent service whatsoever. And, in my own, just personal relationships with elected officials, I know very few members of the State Legislature who do not do constituent service and are there, and hold office hours, and respond to their constituents opinions, and needs, and desires, and it is part of the job.

So, at any rate, that's just some observations and I thank you for yours.

I think that the process that you used can at least, to some degree, inform what we do

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here, as you rightly pointed out, we have our own very unique issues to deal with.

MR. SCHWARZ: You do.

MS. BIRNBAUM: Any other questions?

MR. HEDGES: Yes.

One is an observation and the other is a question.

The report that you referred to, I had a very lengthy, and, from my point of view, very difficult conversation with its author, at the time the first addition of that report came out, and, subsequently, several other conversations with him as well.

What I indicated to him was I thought it was the greatest piece of rhetoric over the last 15-years, but I also thought it was a piece of garbage in terms of research and I told him if he had been a graduate student of mine he would have failed.

I don't want to use that as a source of anything. And I think your report, on compensation, was, by comparison, an absolutely great piece of thinking and wonderful way of framing issues and was not simply a piece of

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rhetoric.

On that point, one of the things that you did, one the distinctions that you made, was getting at a really hard question, but you still did it with the same perspective that I want to ask you to think out loud with us about. When people talk in terms of, here is the base and here is an increment to the base, use CPI, use growth and real wages, whatever change measure you used, it still presumes the base. You tried to get at that a bit by saying, "Maybe there was a change in the scope," but I think it's even harder than that; maybe the base was wrong. Maybe the point of reference that we're all using was wrong because it didn't properly capture the real purpose of compensation. You talk about it at great length and I think you did a thoughtful job in the report and you certainly did here as well.

How do we think about what that right number should be? Without respect to the base, per-se, how do I get really good people to be in the legislature? How do I get really good people to be commissioners? How do I get really good people to run for office in the statewide

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positions? To me part of that is compensation, so how do I think about compensation?

MR. SCHWARZ: I think you are absolutely correct that part of -- before you get to the kind of baseline and bumps, that I talked about, you have to say, "Well, are we attracting good people?" And we didn't write about that in the sense of the baseline, but I think we at least thought about it in the sense of our analysis of the elected officials in the city and we thought they were very good, nothing is perfect, but really very good.

I didn't know, until sitting next to your wonderful council, and hearing some of the questioning that you have power to, and a responsibility, to set salary for administrative officials as well as elected officials.

MR. HEDGES: Right.

MR. SCHWARZ: There is an interesting question there on the subject of -- we use the shorthand, the city statutes uses the shorthand of, compression, which is a shorthand for, is there something pushing those administrative officials, the top level ones higher than the

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2 elected officials? And every New York City
3 office, and I suspect it's true here to, the first
4 deputy mayor in New York is paid more than the
5 mayor. There are two people in the Controllers
6 office one of whom who deals with hundreds of
7 billions of dollars in investments, who are paid
8 more than the controller. The leading officials
9 in the City Council staff are paid more than
10 anybody on the City Council, and so we did think
11 about that, a little bit, and said, well, you
12 know, one of the reasons that happens is if there
13 is a long delay, like in our case, nine years,
14 and, I think in your case, it's, like, 17-years.

15 HON. LACK: 18-years before it goes
16 into effect.

17 MR. SCHWARZ: If you have a long delay
18 that's going to cause more compression, but then
19 we also said, well, you know, it's not necessarily
20 an awful thing and think about universities where
21 the leading surgeon is going to be paid more than
22 the Dean of the medical school and the football
23 coach.

24 HON. LACK: He gets paid more than
25 anyone.

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MR. SCHWARZ: He's going to get paid more than the president of the university, but you certainly do need to address the question of, "Are we attracting good people? And if we're not is the pay determining that?"

Certainly leave out the legislature; people who run for Governor are going to run for Governor if the pay is 175 or 275.

MS. BIRNBAUM: That's not a motivational factor.

MR. SCHWARZ: There is lots of psychic income in being a public official.

In the case of legislators your pay is your pay. The pay in the State is a good deal lower than the pay in the city, but I don't know what the evidence would show. My instincts would be there still are competent people running for the legislature and then getting to a job that, at least traditionally, has been dysfunctional, but you are absolutely right, the baseline issue has to be thought about and why do we want public officials to be paid reasonably? I don't know if that's helpful; it was an awfully long answer to your direct and simple question.

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MR. HEDGES: Let me pursue the
compression question.

In the case of our State agencies, our
commissioners, their salaries are set in statute.
The people who work for them are not set in
statute. They are set pursuant to contract
negotiations and, in many instances, the senior
people in the agency, coming up through the ranks,
are, in fact, paid more than the commissioners.
And, certainly, if you look at what we technically
call, "the minor commissions commissioners," and I
used earlier the example of the agriculture
commissioner, they are paid far less than a middle
level bureaucrat.

Now, in the State of New York, the
Commissioner of Agriculture does not supervise a
huge agency, but it's not a small entity. It's a
lot of people and many of the people who work
there, in theory, are civil servants who could be
paid a lot more than the commissioners, that
creates a recruitment problem, at one level, but
it creates another kind of problem as well in the
normal course of events, when the boss is paid
less than you are, there is a certain attitude

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2 problem that can crop up that might have to get
3 addressed, but, more to the point, it makes it
4 really hard to recruit those people. It makes it
5 harder to get the tax commissioner. It makes it
6 hard to get a good transportation commissioner.
7 It makes it hard to get a good agriculture
8 commissioner.

9 I used, earlier in the day, the
10 thought, getting a professor from Cornell, a state
11 run portion of Cornell, the agriculture school is
12 an obvious place to look for a Commissioner of
13 Agriculture. The commissioner is supposed to help
14 us figure out how to do the best farming
15 practices.

16 Well, that's what the School of
17 Agriculture at Cornell does for a living; what all
18 of them do for a living. And yet there will be a
19 real problem in trying to so say to someone, "Hey,
20 why don't you come and be commissioner for awhile,
21 take a pay cut, you know, move, no, there is no
22 housing allowance, come and live in Albany."
23 There is a problem doing that. How do we address
24 those kinds of issues and compression is part of
25 it, but, absolutely, dollar value is another part.

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MR. SCHWARZ: Yes.

Well, I guess, you should address them, and I haven't, so I don't know that I give much of a value to you.

It's definitely a mistake to keep administrative officials pay lower than what it takes to get people to want to take the job.

Now, take my going from paid, stupendously overpaid private lawyer, disgracefully overpaid lawyer. I would say that only in certain -- to being New York City corporation counsel, you know, I didn't give it a thought because it was such a great opportunity, so if it's true that they are not -- the State is not able to get a first rate commissioner, in certain fields, that's a problem, so I think you would have to, you know, ask questions, hold a hearing on that subject, which probably is not what most people think you are doing. I know that the US officials have a statutory limit on what they can be paid, so they never can be paid more than -- I think it's tied to what a Senator is paid or something like that. I know when I saw it I thought it was sort of funny, but, on the other

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hand, I don't think presidents have a hard time getting cabinet people to join.

MR. HEDGES: To use that particular example all of our commissioners are paid more than any of our legislature.

HON. LACK: Any of our what; I'm sorry?

MR. HEDGES: Any members of the legislature.

HON. LACK: Yes.

MR. HEDGES: Now, when you factor in the stipend for the speaker, or the majority leader, that stipend makes it so that not all of the commissioners are paid less, but most of them still are and, certainly, the base pay for a member is below the lowest commissioner by quite a bit.

HON. LACK: The other problem --

MR. HEDGES: In both instances it has not been raised in two decades.

MS. REITER: The other problem, Roman, is that not only is it true, and I can attest to the fact that it makes it very difficult to attract really good people to head state

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government departments; the pay is a huge factor.

MR. SCHWARZ: Yes.

MS. REITER: But the other piece of that is, you are a dedicated public servant, you have been in government, for all of your life, you become a subject matter expert in transportation, and you have worked your way up, and you are the Executive Deputy Commissioner of an agency, and the pinnacle of your career should be to become the commissioner and guess what?

MR. HEDGES: They won't do it.

MS. REITER: They won't do it because they are going to take a huge pay cut, so if the Executive Deputy Commissioner is making 150 or 160,000 a year, and the commissioner is making \$120,000 a year; who wants that job?

MR. SCHWARZ: Interesting.

MS. REITER: And yet, and yet, it would send the absolute best message to people, who are in public service, who want to come into public service, who believe in it, to be able to say to them, if you come in, and you do a good job, do your job well, you work your way up through the system, that you can become, it's not

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2 just all outside appointees, that you can grow in
3 that agency and become the head of that agency and
4 if you take a look around state government you
5 will see, in a number of cases, we have agencies
6 that are being led by someone who is called,
7 "Acting Commissioner" rather than, "Commissioner"
8 because they are the Executive Deputy
9 Commissioner, who is acting in the commissioners
10 position, but with the title, "Acting," they have
11 not been sent to the Senate to be approved, and
12 because they are, frankly, the best person for
13 that job, but we can't get them to take it and off
14 the top of my head I can name two major agencies,
15 important agencies, where that's the case right
16 now.

17 HON. LACK: And there are reasons for
18 that, and most of the reasons deal with not only
19 the amount of money they are paid, but the pension
20 system and how their pensions would figure out
21 when, and if, they left. And the difference
22 between the State government and becoming a
23 cabinet official and the national government is
24 the prestige of the office. There are certain
25 state agencies, involving finance and insurance,

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2 where to become the head of the agency there is a
3 future, once you leave, in both the insurance
4 industry and, certainly, on, "Wall Street,"
5 however you want to define that.

6 When you get into agencies like
7 agriculture, for example, there is not very much
8 prestige compared to a national title of that and
9 there are certainly no transference once you leave
10 the commissioners, whatever, and getting some kind
11 of position someplace. It just doesn't work out,
12 which is why when Fran is talking about the
13 actings; the actings have to run something. We're
14 not going to be able to take the pension systems,
15 or how that works, and all of these top salaries
16 are in statute and subject to change by us. They
17 are going to stay in statute and that has been the
18 long range part of their problem. They are not
19 worked out based on need, or what people should be
20 earning, or what deputies earn, or anything else.

21 They get changed, usually, when the
22 Governor, Lieutenant Governor, Controller and
23 Attorney General's salaries change and when the
24 legislature changed. And, for many years, that
25 included the judiciary as well until, finally,

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that was broken off and we're, in effect, we are at the rear end of that having happened through the judiciary thanks to then Chief Judge Lippman.

MR. SCHWARZ: Hearing all those comments I come up with a process suggestion for you, so here I am, I'm a pretty knowledgeable citizen about government, but I didn't know any of these facts about State Commissioners, so if I don't know it that means it's really not known.

HON. LACK: Witness all of the people coming here to testify.

MR. SCHWARZ: Yeah.

And you really want to build a record. You might want to, in addition to having people come in to testify, on these subjects, you might want to write, in effect, like, interrogatories to the budget office, or the personnel office, and ask them questions that would draw out statistics, because I think what all of you have been giving is sort of personal knowledge and if you build more of a record it might be helpful because definitely, just listening to you, this is a problem for the State.

MS. BIRNBAUM: Thank you.

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We have one more person.

MR. SCHWARZ: Thanks a lot; I enjoyed this.

HON. LACK: Thank you.

MS. BIRNBAUM: We appreciate the dialog; we will try to continue it.

Thank you so much.

Mr. Blair Horner.

Thank you for coming.

MR. HORNER: Thank you for hanging in there.

My name is Blair Horner, I'm the executive director of NYPIRG; New York Public Interest Research Group. We work on a wide range of issues, consumer protection issues, environmental preservation, healthcare, higher education, and governmental reform. We appreciate the opportunity to testify today.

As a multi-issue organization we are well aware of the relationship of a functioning State government to attract and retaining high caliber individuals. We know that providing reasonable compensation for public service is an important factor in making government work. We're

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2 also deeply sympathetic to anyone that has not had
3 a raise in over a decade, and we have been proud
4 of the work that we have done with both statewide
5 elected officials and legislators who advance
6 legislation that's important to the public
7 interest.

8 However, as an organization that
9 includes governmental reforms, as one of its
10 priorities we're deeply concerned by the public's
11 growing cynicism over its own democracy. A
12 cynicism that is the direct result of some in
13 government gaming the system for their personal
14 enrichment.

15 That cynicism is reflected in voter
16 apathy and to an overall view that those in
17 government are only in it for themselves. Sadly,
18 in recent years, that view has too often turned
19 out to be accurate.

20 So in this increasingly toxic
21 political environment that you must consider the
22 issue of setting reasonable compensation levels
23 for members of the executive and legislative
24 branches. Combatting that public cynicism and
25 growing voter anger is as important a goal as

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2 identifying appropriate, defensible compensation
3 levels. So our testimony is organized around how
4 we believe best for you to proceed under these
5 daunting circumstances.

6 The first is, we urge you to do
7 everything humanly possible to make the public
8 believe you are acting independently. Given the
9 stunning series of seemingly unending scandals
10 that have rocked the Capitol, the public must
11 believe that the commission is doing all it can to
12 operate outside of the influence of the State's
13 political establishment.

14 The legislative authority for the
15 Commission itself feeds the public concern. The
16 majority of the Commissioners are picked by the
17 Governor and the legislative leaders whose people
18 whose pay raise will be impacted. New Yorkers
19 have seen far too many commissions that serve at
20 the beck and call of the political establishment.

21 We urge that you resist any pressure,
22 and make public any inquiries received from the
23 executive or legislative branches, or their
24 surrogates. In addition, all discussion and
25 analysis must be made available to the public only

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through complete openness can you have any hope of earning public confidence in your work.

MS. BIRNBAUM: Can I just stop you there?

MR. HORNER: Sure.

MS. BIRNBAUM: Just so it's clear, that we operate under the open, and all our decision making will be in open meetings so, at least that part of it, you can rest assured, will create a transparency that, I think, you are looking for.

MR. HORNER: I certainly would love to discuss that more; if you like.

The second issue is the appropriate compensation levels.

Currently New York pays the State elected officials comparatively well. The Governor gets the third highest salary in the nation, behind Tennessee and Pennsylvania, and the legislature gets the third highest paid salary.

In addition, law makers are allowed to receive stipends on top of their base pay. A recent analysis found that all State senators and at least 100 of the 150 State Assembly members

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2 received additional pay ranging from 9,000 to
3 \$41,500.

4 Moreover, New York has one of the
5 most, if not the most, generous *per diem* rates in
6 the nation. And while it's outside of the scope
7 of the Commission work, the reality is that it has
8 been well documented that campaign funds were
9 often used by some lawmakers, in questionable
10 ways, ways that subsidize their lifestyles and
11 have less than a tenuous connection to running for
12 office.

13 Thus, the salary of most lawmakers is
14 considerably higher than the base salary of
15 seventy-nine-five. Most, but not all, a
16 substantial number of lawmakers, mostly Assembly
17 Democrats, received only the base salary plus *per*
18 *diems*.

19 So I'm not going to testify -- we are
20 not here pretending to know what the appropriate
21 compensation levels should be. A simple CTI
22 adjustment would raise legislative salaries to
23 over \$113,000, but, as you heard, through
24 testimony and comment on the New York City process
25 you heard from Mr. Schwarz. They did a good job,

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2 we thought, of reviewing, comprehensively, the
3 adequate way of adjusting for income over time.
4 And they, specifically, looked at things like
5 median household income, which, we think, is more
6 appropriate than CPI for some reasons Mr. Schwarz
7 referred to. So we brought the cities Quadrennial
8 Commission to try to take a comprehensive look at
9 compensation levels and we think they are a good
10 model to look at.

11 Lastly, in Albany, elected law makers
12 are allowed -- elect officials are allowed to
13 accept outside income. Most recent legislative
14 scandals highlighted the problems with allowing
15 lawmakers to serve two masters. But the ability
16 to raise outside income is not only limited to the
17 legislative branch, Governor Cuomo has received
18 hundreds of thousands of dollars in book royalties
19 and advance fees.

20 So, in that context, those are our
21 comments on the compensation issues. The ethical
22 failures are fueling public unhappiness with
23 Albany. And, as you heard before, over the last
24 15-years at least 30 New York State elected
25 officials have been sanctioned for some

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2 misconduct, most of them lawmakers, but the
3 unethical behaviors have caught up to members of
4 the Executive branch as well. As a result of this
5 staggering number of ethical controversies, and
6 scandals, the public wants change. A recent Siena
7 Research Institute poll found that nearly 90
8 percent of New Yorkers believe that Albany has a
9 significant ethics problem.

10 The public will be angry if it feels
11 that members of Albany's exclusive club, of
12 elected officials, are unfairly enriching
13 themselves even while State government is
14 embroiled in, seemingly, nonstop scandals.

15 So what's the argument for pay
16 increases? The argument stems from the fact that
17 State elected officials haven't had a pay increase
18 since 1999; which is a long time. When that
19 decision was made then Governor Pataki linked his
20 approval of pay raises to non-related policy
21 changes that is horse-trading in exchange for
22 legislative pay. This time around the governor
23 and the legislature agreed to create a commission
24 to review compensation levels. They have given
25 you the power to set the appropriate compensation

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2 rates without additional legislative approval.
3 Unless, of course, the governor and the
4 legislature reject it. We support that idea. We
5 think the commissioner idea makes sense, lawmakers
6 shouldn't have to face linkages between
7 appropriate pay and policies advanced by the
8 Governor, or vice-versa, but given Albany's
9 seemingly unending series of political scandals
10 how will a pay raise sit with the public who has
11 to pay for it? How will the public feel about a
12 pay raise for Albany when the Governor and the
13 legislature are not tackling the biggest scandals
14 in New York's political history? Our guess is
15 that New Yorkers will not be happy about it.

16 Of course, that doesn't argue that
17 public officials don't deserve a pay raise, that's
18 up to the Commission to independently and publicly
19 discuss.

20 However, if the Governor and the
21 legislature can't agree on cleaning out Albany's
22 political stables then the public has every right
23 to be angry.

24 We are well aware that the
25 Compensation Commission does not have the

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2 authority to make changes on key ethics reforms,
3 like limiting outside employment income of elected
4 officials, but it can create some pressure to keep
5 the Governor and the legislature focused on doing
6 their jobs and fixing Albany.

7 The Commissioners can openly promise
8 to release recommendations after the legislative
9 session ends in June, but well in advance of the
10 elections. As you know, the New York City
11 Quadrennial Commission will wrap up their work in
12 a few months; in the fall of 2015.

13 So we urge you to publicly announce
14 that the commission expects to issue its report on
15 the legislative and executive compensation after
16 the legislature has ended, when we will all be
17 aware of what it is that Albany has done to fix
18 itself, but before the election season.

19 Given New Yorkers' unhappiness with
20 Albany it is fair to let them judge if enough has
21 been done to respond to New York's, "Watergate"
22 moment; it is their money. Let the public vote
23 too.

24 Thank you for the opportunity to
25 testify.

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MS. BIRNBAUM: Thank you, so much.

MS. REITER: You know I just -- one of the great frustrations, of this, and similar endeavors, I agree with you that the public is angry. The public is angry about public education, but there is this really interesting thing that happens with people, which is the person who may yell loudest about the quality of public education will tell you that the school their child goes to is great and the person who will yell the loudest, perhaps, about the disfunction and corruption in our State Legislature will vote, yet again, for the person that's their now because that's their legislature.

MR. HORNER: I have lots of ideas on that.

HON. LACK: Pardon?

MR. HORNER: I have lots of ideas on that.

MS. REITER: You may, but it is sort of a fact of life that people never want to admit that their person is the problem, so for all of the anger, and the anger is there, I don't disagree with that, but for all of the anger that

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exists among the public about what's going on in this city, for the last several years, and, in particular, the last couple of years, they continue to get reelected in huge, huge numbers.

MR. HORNER: In the sense when I was grappling with the testimony, because, again, I don't want to pretend to come in with some analysis as to what the appropriate level of pay is because, to some extent, it's objective and to some extent it's going to be subjective. You are going to have to base pay, to some extent, on what goes on in the rest of the country, and the issues of administrative, executive staff and pay raises. You probably have to survey and see what other agencies do, not-for-profits do. There is a lot of things you are going to, sort of, factor in, but, as I read the statute, your recommendations are due, I believe, by the middle of November. I don't believe that is an accident.

The governor and the legislature are, at the moment, appear to be no where in terms of reacting to Albany's Watergate moment. It's just sort of astonishing; if you think about it. It's almost as if when Watergate happened the Congress

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and the President couldn't come together as to what should be done, people would be with pitchforks and torches.

So I think, in your case, I think the public should get a chance to say what they think and if you recommend pay increases, compensation levels, and the legislature and the Governor have not done anything to respond to the well documented problems, to what's happening in Albany, then the voters will have the opportunity to ask their candidates what will they do about your recommendations?

And, again, we're not in the business of getting people elected or not elected if the public want people to get elected, great, that's not my job, but, in this case, My job is to make what I think are reasonable recommendations to the Commission not to say what the salary level will be, because you have to do that work. I can recommend a process by which you go through and I think you have to go far beyond the freedom of information meeting's laws because, I mean, there has been a very notable commission, that was created recently, to look at ethics in New York,

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2 and it was widely reported that members, high
3 ranking members of political establishment were
4 deeply involved in directing where that went, and,
5 so, if you are going to recommend -- let's say,
6 hypothetically, you recommend a pay increase the
7 public has to feel comfortable that that was not
8 because somebody told them to; not that I'm saying
9 you would do that.

10 MS. REITER: Its been suggested,
11 interestingly enough, you want us to make our
12 decision before election day.

13 MR. HORNER: That's right.

14 MS. REITER: And I understand that.

15 It's actually been suggested, though,
16 that we make our decision before the end of the
17 legislative session to say, look, this is what
18 we're prepared to do, whatever that number is, but
19 by the way, between now and when the legislative
20 session is over you should just know that if you
21 do X, Y, and Z we would recommend something else.

22 MR. HORNER: I mean the policymakers,
23 they should be making policy, and it may impact on
24 what you, ultimately, decide. Let's say they did
25 agree to a limit on outside income. It may impact

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on what you decide in terms of what's a reasonable compensation level.

So I wouldn't agree with that recommendation. I'm not here to extort anybody I don't think that's the right thing to do. I think, in this case, the public pays the bill. The public is unhappy, clearly unhappy, and they have every right to be. And, so, if they know that their candidates for office have an opportunity to roll back pay increase, and they are that unhappy that they demand this, maybe that's what will happen.

HON. LACK: You mentioned *per-diems* and the rate of *per-diems*; *per-diems* are not income and the rate of *per-diems* is set by the federal government not by the state government. The Albany *per diem* rate fluctuates whatever the federal government sets for reimbursement, in Albany, as it does anyplace else in the United States, so the fact that there is a *per diem* it's a *per diem*, but the rate has nothing to do with anybody in Albany.

MR. HORNER: I was just pointing out there are other sources of income. The National

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2 Conference of State Legislatures that has the list
3 of all of the *per diems*; New York is the highest
4 in the country.

5 HON. LACK: Because of the cost of
6 living in New York and the NCSL, as you know
7 Blair, I was the president of, sets it based on
8 whatever the federal government sets anywhere in
9 the United States.

10 And, the second thing, you are the
11 second person, I find myself in a strange
12 position, because I'm no great fan of the
13 governor, however everybody keeps mentioning the
14 governor's fees that are received for a book, so
15 be it, but I can't think of any compensation
16 system, that I know of, of public employees in the
17 United States, which would not result in the same
18 compensation, for the same book, if it was written
19 and I think Mr. Schwarz, and others, have tried to
20 get to it on defining what earned income is, not
21 necessarily by the amount of money, but by
22 function. And writing a book, by an elected
23 official, regardless of party, and regardless of
24 position, would never come under earned income by
25 function that an elected official cannot do.

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2 So the fact that he got hundreds of
3 thousands of dollars, or whatever it is, so be it.
4 I happen to know legislators, both State and
5 Federal, who have written books who have made
6 \$10,000, no one ever wrote a news article about it
7 because the book didn't do that well and, I guess,
8 on the amazon, or whatever, it was
9 one-million-seven-hundred and whatever, so be it
10 because, as I said, I'm no great fan of the
11 governor, but I would never criticize him because
12 he made a good book deal, congratulations to him
13 and I guess he negotiated. How well the book did,
14 again, has nothing to do with it. But, again,
15 that will always be outside of the scope of what
16 income we, or anyone else, would ever consider for
17 an elected official.

18 MR. HORNER: Well, the advanced
19 royalties might be covered. In Congress they are;
20 in terms of book deals.

21 My point wasn't to criticize the
22 Governor; he can do whatever he wants. He got the
23 appropriate ethics authority. I was just pointing
24 out the ability to make outside income is not
25 limited to the legislative branch and so that was

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really it.

HON. LACK: Again, my point was that's never been, "earned income" by any definition.

MR. HORNER: The Congress, again, it depends how the deal is structured. Advance royalties are prohibited in Congress and that has been the subject of discussion here in Albany. The Governor has a proposal in his budget to sort of address some of the issues around book royalties from the legislative branch; it does not apply to the Executive branch.

MS. REITER: Which has gone where?

MR. HORNER: Passed the Assembly. I'm not sure if that passed the Assembly. The governor proposed it and it's to be expanded to the Executive branch as well.

MS. BIRNBAUM: Thank you so much; you have been very helpful.

MR. HORNER: I brought copies of my testimony.

MS. BIRNBAUM: We will take that and distribute them.

Thank you so much.

We stand adjourned and we thank all of

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the presenters for this interesting dialog that we
have had today.

Thank you, all.

(Whereupon the proceedings were
completed.)