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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 City Bar Association
42 West 44th Street
New York, New York
March 10, 2016

B E F O R E:

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

VANESSA MILLER

DIANE KAVANAGH

Senior Court Reporters

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2 THE CHAIRPERSON: Good morning.

3 We are about to begin the first of several
4 hearings for The Commission On Legislative, Judicial And
5 Executive Compensation. We thank you all who have come.
6 We do not have a large number of presenters today. Our
7 next hearing will be in Albany and, hopefully, we will
8 have many more presenters. I want to encourage people,
9 however, who cannot appear in person, to send us comments
10 so that we can get your views on these issues. As you
11 know, we have already reported on judicial compensation
12 and we are now looking at the issues of legislative and
13 executive compensation.

14 So I'd like all of the commissioners who are all
15 here to introduce themselves and then we'll begin the
16 hearing.

17 MS. HORMOZI: Good morning.

18 Mitra Hormozi.

19 MS. REITER: I'm Fran Reiter.

20 JUDGE LACK: I'm Jim Lack.

21 JUDGE COZIER: Barry Cozier.

22 MR. JOHNSON: Gary Johnson.

23 MR. HEDGES: Roman Hedges.

24 THE CHAIRPERSON: Thank you all.

25 Our first presenter is going to be Susan Lerner
26 from Common Cause. There is no time limit today since we

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do not have as many people as we would've liked.

So, Susan, the floor is yours. And we're here to hear whatever you can add to these issues for us. Thank you so much for coming.

MS. LERNER: Well, thank you so much. And thank you to all the commissioners for your service. I know that this is a lengthy process that takes up a lot of time and we and the public and The Good Government community are very grateful to you for being willing to serve and to tackle what is, unfortunately and we think unnecessarily, a thorny issue. I'm particularly happy to appear before Chairman Birnbaum who is my tort teacher more decades ago than she and I will admit back at NYU Law School.

I did prepare written testimony, which I was going to submit, and then I found out that I cleverly printed out 12 copies of an earlier version. So we will submit my written remarks through your website, and I compliment you on having set up a website, I think that's a very helpful tool, by the end of the day today, so that the written testimony actually tracks what I'm going to say.

THE CHAIRPERSON: Thank you very much. And we'll read it with great gusto.

MS. LERNER: So first and foremost, I would

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like to say that Common Cause has been and remains on record as a strong supporter of a legislative pay raise. We think that the extraordinary length of time that has elapsed since the last pay raise is a problem. We think that such lengthy time should not at all have taken place. And we're great fans of the system here in New York City where our charter at the city level provides for a Quadrennial Commission every four years to take a look at compensation. And we really think that this is a logical, good system, which we would hope ultimately the state will adopt in some way. So we're very pleased to see this Commission appointed because we think that it really helps address a political hurdle which the legislature has been intimidated by for way too long.

So we believe that an objective look at comparative salaries helps to inform your decisions and also helps to educate the public. We believe that having reasonable and regular raises for elected officials doesn't help them stay competitive with private industry, because we're not expecting that public service will be compensated at the same level as private industry, but allows public service and its compensation to at least be sufficiently attractive that it will attract and retain talented, committed people. And any job that doesn't show a pay increase for 17 years is one that is difficult

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to recruit for.

So as I said, we are very strong supporters of the idea of a pay raise. And what we've looked at in terms of comparative salaries, we haven't looked at other legislatures, but what we have done is we have taken a look at the salaries for starting lawyers here in New York City. We've also taken a look at the salaries and the median salaries for middle managers, because we think that that's an appropriate comparison. So we looked at general and operations managers salaries as reported throughout the United States. And it basically had job categories categorized by the description of planning, directing or coordinating the operations of public or private sector organizations, which we think is a pretty good analog for what we expect our legislators and certainly other elected officials to do.

And we thought it was pretty interesting that looking at that pay category across the United States, the top of the pay scale is an average yearly wage of \$117,200 and a median 50th percentile of a yearly wage across the country of almost \$98,000. But what's also very interesting is that out of the top five states with the highest employment of general and operations managers, New York State tops out at the highest average yearly wage at \$141,500. When you contrast that to the

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79,500, which the legislature is currently getting, there's really quite a stark difference.

We think it's also appropriate to take a look at the cost of living. If the legislative salary had simply kept pace with the changes in the cost of living over the last 17 years, we calculate there would be a 42 percent increase and that would bring the salary up to a base of \$113,000. We think that that is an important starting place for your examination. But we think that there are other factors at play. And our recent experience at the New York City level with the recommendations of the Quadrennial Commission, which completed its work at the end of calendar 2015 and whose recommendations were, in major part, followed by the City Council and signed into law by Mayor DeBlasio within the last month, I think provides an excellent example for a thoughtful way to approach this. And a tremendous amount of research which was accomplished that I think could be very beneficial and very usable in your examination so that you do not have to reinvent the wheel and can take advantage of the substantial research that they did into City Council compensation in other cities and other salaries to look at so that that can be a jumping-off place for you.

But one of the reasons why I'm emphasizing the idea of \$113,000 base is that as it has developed, over

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2 the intervening years, the legislature has found ways in
3 which to increase legislative compensation without
4 actually giving itself a raise. From a good government
5 point of view, this is problematic. As a Good Government
6 Group, we have, in the past, vociferously opposed tying
7 pay raises to unrelated issues.

8 So, for instance, when we went back and looked
9 at the substantial fight -- and I have to really
10 characterize it that way, around the last pay raise, we
11 saw that it ended up being tied to a profession which
12 provided funding and permitted charter schools. Over the
13 intervening 17 years, as I'm sure you are way too aware,
14 the question of legislative pay raises were, we believe,
15 improperly tied to the issue of judicial pay raises. And
16 that meant that our judiciary here in New York State was
17 burdened with the same political controversy which the
18 legislature was not bold enough to tackle on their own.
19 Luckily, because of your recommendations and the
20 unhooking of judicial compensation from legislative
21 compensation, the judges are no longer burdened with an
22 unfair freeze of their salary. We'd like to see that
23 same sort of regular review done with the legislative
24 salaries, but we don't think that they should be tied to
25 issues that are collateral. What we do think, and
26 something we argued at the New York City level, is there

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2 are issues which are not collateral which are directly
3 relevant, and that is the way in which the legislature
4 has managed to increase their compensation without
5 increasing their salary and I referenced earlier.

6 So there's certain things that they've done that
7 we think are problematic. One is the use of stipends
8 that are given out to community chairs. This is
9 problematic on a couple of different bases: Number one,
10 the stipends are set at the discretion of the leader or
11 the leadership and we have seen in the past, and they
12 have been used both in the state and the city level, to
13 reward loyal favorites of the leadership and to punish
14 those who have shown a certain degree of independence.
15 So we don't like to see public money being used as a
16 reward or as a disincentive for a vigorous legislative
17 process.

18 It also bleeds to a proliferation of committees.
19 And when you have too many committees, the committees are
20 not as effective as they could be because you have
21 legislators who are on five or six different committees.
22 And no matter how efficient any individual is and how
23 little sleep they may need in their lives, it's
24 impossible to really become expert at the level that we
25 believe legislators should be expert when they're serving
26 on a committee for five or six different committees,

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particularly in a state as large and complicated as New York. So what we see are legislators running from committee to committee and, basically, punching a vote button and then racing out, and a committee system which is not nearly as vigorous and open as it needs to be. So we see that as a contribution. It also means the use of the stipends prevent the public from really understanding what the real compensations were their legislators are. And we believe that there should be complete transparency and that voters should know of what their representatives are being paid and it should be pretty much a set amount for everything.

So the stipends, which here in New York are called lulus, are a problem, and we believe that any raise above a cost of living adjustment should be tied to an elimination of the lulus and that an ultimate total compensation package should include the elimination of lulus and a specific provision in an increase above the cost of living increase for that particular adjustment.

THE CHAIRPERSON: Are the stipends all the same or does it depend on which committee you're on?

MS. LERNER: My understanding is that the stipends are different.

There are also stipends that are given out for having different leadership positions in the conference,

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2 that's also lead to a title proliferation, if you will.
3 So in order to compensate for the fact that there haven't
4 been any raises, we have a very lengthy set of leaders
5 who get different stipend amounts. And, again, this is
6 at the pleasure of the leadership and we think is
7 something which also should be eliminated. So these
8 stipends, these lulus, should be eliminated, but that
9 elimination should be reflected in a increase that is
10 larger than the cost of living.

11 At Common Cause, we are also very strong
12 advocates for an outright ban on outside income for
13 legislators. We are the only Good Government Group that
14 takes the position that virtually all forms of
15 earned -- not necessarily invested, but earned income
16 should be eliminated. And to the extent that there are
17 some categories, that they should be significantly
18 limited. And I'm very happy to say that the Quadrennial
19 Commission in New York City and then the City Council and
20 then the Mayor accepted our recommendations and New York
21 City now has a full-time legislature with outside income
22 prohibited starting in I think it's 2018. We believe
23 that that model or something similar should be adopted at
24 the state level. We would be content with the adoption
25 of limitations similar to the limitations which members
26 of Congress face, and that is a limit -- a percentage

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2 limit on the amount of outside income which could be
3 earned. At the congressional level, it's about 15
4 percent of congressional salaries. The congressional
5 salaries are much higher than what we have here or what
6 we're recommending for an ultimate raise. But
7 nonetheless, 15 percent can be a reasonable amount of
8 money if somebody is making a base salary of between 113
9 to perhaps \$125,000. Being able to get speaking
10 engagements for book royalties, up to 15 percent seems to
11 us an appropriate accommodation if the legislature is not
12 willing to go for an outright ban. And we think, again,
13 that should that limitation be adopted, that there should
14 be an adjustment beyond the cost of living increase to
15 reflect that loss of income.

16 At Common Cause, we've done an analysis, and I
17 know there was some discussion at our first and last
18 meeting about the question of what kind of outside income
19 our state legislators currently enjoy. We released an
20 analysis in December and we have filed that analysis
21 through your website as a comment, looking at the outside
22 income for all legislators who were sitting legislators
23 as of 2014. With the new class, we are able to analyze
24 their pre-legislative service income, but we won't know
25 conclusively, until they file these disclosures in May,
26 what outside income they have retained.

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2 Our sense is that even if the new class -- the
3 vast majority of legislators, and this was borne out by
4 our research on the sitting legislators, not the new
5 class, is that the vast majority of the legislators
6 actually have no outside income already. They recognize
7 that they need to really assure the voters and their
8 constituents that they are putting the interest of the
9 public first above their own self interest and that
10 they're devoting their full attention to the people's
11 business, and we think that that is appropriate.

12 At Common Cause, we don't believe that every
13 legislature should be full time, but in a state the size
14 of New York, with the kind of budget -- which is larger
15 than the budget of so many different states, with the
16 kind of diversity in population, geography and economy,
17 which our state enjoys, we believe that we need the full
18 undivided attention for our lawmakers on the complex
19 problems that our state is facing. And when you factor
20 in the need to run for re-election every two years and
21 raise money and then you add in an outside job, how much
22 time is actually left, not only to be in Albany, but to
23 actually dig into a topic and understand the pros and
24 cons of a complex issue and come to an objective
25 fact-based position. So we believe that it is
26 appropriate for this Commission to say that an increase

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2 would be -- beyond the cost of living would be
3 appropriate if accompanied by a restriction on outside
4 income.

5 That brings me to the question of The
6 Commission's own work and how it's proceeding and what
7 its timing is. I know that its authorization grants you
8 until sometime in November to make your recommendations.
9 I would strongly urge you not to take that full amount of
10 time. It would be tremendously beneficial to the people
11 of New York, and I think to the ongoing discussions in
12 Albany surrounding the crisis in corruption, The
13 Commission were to make a recommendation by early June so
14 that The Commission's recommendations could be discussed
15 within this legislative session and the public would have
16 a clear idea of where its elected representatives stood
17 on this issue. So I know that that puts significant time
18 constraints on The Commission, but that's why I'm hopeful
19 that the work of the Quadrennial Commission and some of
20 the research that we at the Good Government Group have
21 done, can help you start from a more advanced position in
22 your research and get to a discussion of the substance
23 more quickly. It will be helpful if there is a
24 recommendation from The Commission during this
25 legislative session.

26 And, finally, we believe that raises should be

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2 perspective. If you do accept our recommendation and
3 issue, what I would call, a stepped increase suggestion,
4 then, for certain, the raises should be the prospective
5 and the beyond cost of living increases should be tied to
6 specific reforms and go into effect when those reforms go
7 into effect. So if it takes time for the legislature, in
8 fairness, to decide to limit or ban outside income and
9 that is prospective, than any increase beyond the cost of
10 living that you recommend based on the elimination of
11 that outside income, we believe, strongly should not go
12 into effect until the actual limit goes into effect.

13 Same thing with the lulus. The lulus are not
14 going to -- if they are going to remain throughout the
15 session and not be eliminated until the new class in
16 2017, then any bump up beyond the cost of living increase
17 should not go into effect until the lulus are actually
18 eliminated in fairness I think to the taxpayer and I
19 think just to support the basis for the increase in
20 compensation that we think is logical.

21 And that's, basically, our position on this
22 issue. And we will commit to trying to turn out people
23 for your Albany and your Syracuse hearings. We will also
24 let our graduates members across the state know that they
25 have the ability to comment through your website and see
26 if we can get them, because they are concerned about

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2 these issues; to chime in not only through our
3 organization but directly to you.

4 And I would also urge you -- since we will
5 assist with social media as well, but I would also
6 suggest to you that it might be useful to issue actual
7 invitations directly to each legislator to let them know
8 when you're going to be in Albany and to invite them to
9 appear and testify or at least to submit comments. The
10 one unfortunate thing about the proceeding of the
11 Quadrennial Commission in New York City was the fact that
12 the City Council members did not directly participate and
13 as a result, there was too much pressure and criticism at
14 council level when, in a very short timeframe, the
15 council members started to debate back and forth what the
16 raise should be rather than sharing their thoughts with
17 The Commission.

18 I think it would be very helpful to you. It
19 will certainly be helpful to the public and to the
20 government groups for the legislators to advocate for
21 themselves. They are going to have to deal with this
22 issue. And if we are ever going to diffuse this unending
23 controversy around public service raises, we're going to
24 need our elected representatives to show some leadership
25 and courage on the topic. Appointing The Commission was
26 the first good step in showing leadership on this issue,

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2 but participating in this process, I think, is an
3 important statement that they take this seriously, they
4 take their constituents' concerns seriously and they want
5 to have a thoughtful and nuanced discussion about the
6 issue of how raises, how compensation should be set so
7 that at some point in the future, it stops being a
8 political hurdle.

9 And I'll be happy to answer any questions.

10 THE CHAIRPERSON: Thank you so much. I really
11 appreciate the fact that you're going to reach out to
12 your membership and other good government and bad
13 government groups on your point of view, I guess, to
14 appear at our other hearings or to e-mail us or send us
15 information or factual information. We look forward to
16 reading your comments. But your suggestions are
17 incredibly useful. Thank you for your testimony.

18 Do we have any questions on any of --

19 JUDGE LACK: Thank you. I certainly enjoyed
20 your testimony.

21 Just a couple of things: The legislature -- the
22 way this Commission was enacted into statute, the
23 legislature doesn't have to do anything to consider the
24 result of The Commission except if they want to reject
25 it, they can then reject it. If they do nothing, then
26 any raises proposed, if there are any by this Commission,

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2 goes into effect. So whether we report in June, August
3 or April 1st, if they're not planning on doing anything
4 to reject what we do, then, unlike the City Council,
5 there is no discussion that could take place by either of
6 the legislative bodies. And, of course, the way The
7 Commission is formed, for which nobody here did that, we
8 were just appointed, it basically requires unanimous
9 approval of the four appointing entities: The Court
10 System, the Senate, the Assembly and the Governor for
11 agreement which, hopefully, without the chair, at this
12 point. Again, none of us wrote this --

13 MS. LERNER: No, I know.

14 JUDGE LACK: So that's certainly a fact. And,
15 of course, whether or not there is a part-time or
16 full-time legislature, it is not really within our matter
17 to call. It's within the Constitution of the State of
18 New York, which cannot be amended within the timeframe of
19 the existence of this Commission. So whatever number or
20 numbers that we recommend has to take into fact the
21 current status of the New York State legislature which,
22 in effect, is not a full-time body.

23 So let me ask you this: I suggested, and in our
24 last meeting, that would you be in favor of a bifurcated
25 raise? And that is a legislator in the Senate or the
26 Assembly who files an appropriate document with the

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2 Secretary of the Senate and the Secretary of the Assembly
3 stating that he or she is a full-time legislator, without
4 otherwise earned income, which I'll get to in a moment,
5 should be entitled to a salary of "X" versus a legislator
6 who does not file, who would then get a salary of "Y" in
7 keeping with the constitutional requirement; that they
8 don't have to be full-time; that there would be a
9 difference between the two, whatever the difference might
10 be. Since it's been popping up, I would say 15 percent,
11 just to pick a number; is that something that Common
12 Cause would think about?

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2 MS. LERNER: Well, I have some, I mean, it's an
3 interesting idea, but we have some problems with it
4 because what we see is that the problems come from a
5 very small number of legislators who have significant
6 outside income and, unfortunately, the sad record that
7 resulted in two public corruption jury verdicts at the
8 end of 2015 really implicated the problem of outside
9 income.

10 So allowing -- bifurcating that way continues,
11 unfortunately, the problem we see and that the public
12 sees, which is a divided loyalty and the opportunity to,
13 unfortunately, as the juries found, misuse an office for
14 private gain. So while it's an intriguing idea
15 theoretically, I think on a practical basis, it doesn't
16 get at the problem that the public sees, which is,
17 unfortunately, some people may misuse the opportunity to
18 have large amounts of outside income to abuse their
19 office in an unacceptable and, indeed, criminal way.

20 JUDGE LACK: And, of course, unlike the
21 New York City Charter, we are bound by the
22 New York State Constitution, which doesn't permit us to
23 say, okay, you guys are all are now full time,
24 regardless of whatever you want.

25 There's nothing here that, enabling the statute
26 of the Commission that can override the state

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2 constitution.

3 So if the legislature wants to act on whether
4 or not they should be part time or full time, quite
5 frankly, that's up to the legislature, not up to the
6 Salary Commission.

7 I mean, or in effect you say, well, gee, don't
8 recommend any raise, pack up and go home, because you
9 can't change the constitution. None of us have said we
10 can, so that's the way it is.

11 MS. LERNER: That's not what we're suggesting.

12 JUDGE LACK: Oh, I understand. I'm trying to
13 suggest something in between given the legal scriptures
14 that we have to operate under and have to follow.

15 MS. LERNER: So certainly a recommendation from
16 the Commission that says if there were a ban or a limit
17 on outside income, we believe that, A, an increase of X
18 would be appropriate, would, I think, be an assistance
19 in the discussion which has started, if behind closed
20 doors, but certainly from our point of view out in
21 public, that's being discussed in terms of what is the
22 appropriate salary level, how does it interact with the
23 question of outside income.

24 So an objective recommendation from the
25 Commission, I think, would help to advance that
26 discussion, which can end up in kind of an endless loop

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2 chasing one's tail when, you know, the question of,
3 well, if we don't get a raise and ultimately we do ban
4 outside income, how will that work. It helps to advance
5 the discussion beyond that rut that it can sometimes
6 fall into.

7 JUDGE LACK: And what is Common Cause's concept
8 of earned income?

9 MS. LERNER: So what we've looked at, it's
10 actually outlined in the report that we released in
11 December. And so, let me take a look at the
12 methodology.

13 Off the top of my head, it is, in essence --
14 I'm not finding it quickly. I don't want to take up a
15 lot of time. But earned income is, in essence, salary.
16 It is compensation for your actual services. It is not
17 investment income. We're not expecting people to sell
18 off all their stock or if they owned rental properties,
19 to suddenly, you know, sell off the rental properties.

20 But in that situation, we make a
21 differentiation between kind of passive investments, you
22 have four or five rental properties, they are managed by
23 somebody else, then we consider that not to be earned
24 income.

25 JUDGE LACK: So it would be in keeping with the
26 current earned income definitions that are for the state

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2 judiciary which is by function, not by amount.

3 MS. LERNER: That's correct.

4 JUDGE LACK: So if you wrote a book, that would
5 be perfectly fine. You could then write the screenplay
6 for the book, by example. But you could not be a
7 producer of the movie that resulted because that would
8 be a business. So it would be divided by function,
9 again, not income.

10 MS. LERNER: So I guess as the wife of a
11 screenwriter I would have to say that I think what he
12 gets for writing a screenplay is earned income, but, you
13 know, that's something which certainly, you know, we can
14 look at.

15 MS. REITER: I have a question for you.

16 Is the -- are there provisions in the state
17 constitution regarding outside income or is that, in
18 fact, something that -- because if you ban outside
19 income, you are, in essence, creating a full-time
20 legislature, whether you -- whether it's dealt with
21 constitutionally or not.

22 If the only income that we're allowing
23 legislators is from legislative duties, with these few
24 exceptions, then you are, in essence, creating a
25 full-time legislature.

26 Do we have the right to do that, to ban outside

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2 income, or is that also a constitutional issue?

3 JUDGE LACK: I would think since the
4 constitution has time for the part-time legislature to
5 do that, at best you're buying a lawsuit from somebody.
6 It's also about a timing question.

7 MS. LERNER: It's a timing question, I think.

8 JUDGE LACK: Sooner or later you're going to
9 have to get into amending the constitution.

10 MS. REITER: Understood.

11 JUDGE LACK: Trying to take a left hook at it
12 probably isn't going to, in my opinion, probably is not
13 going to get you there, which is also part of the
14 problem, which I don't have an answer off the top of my
15 head. I don't know if Sheila or Barry might think of
16 one.

17 The lulus, for example, we certainly have --
18 the lulus are in statute, as is salary, of course. We
19 certainly have from our enacting legislation the power
20 to effect the salary number.

21 Whether or not the lulus, which represent a
22 dollar component, which, in effect, is part of a salary,
23 but they also contain a function component, whether you
24 think it's real or not, they do contain a function. I
25 mean, you have a title to do something.

26 And whether or not we have the ability just to

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2 try to remove, if we wanted to, the dollar part of that,
3 and leave the function, raises a very large question in
4 terms of our ability as the Salary Commission to get
5 involved in that.

6 We certainly have the power to effect salaries.
7 But whether the lulu portion, which can be a salary, can
8 be part of that --

9 THE CHAIRPERSON: Well, what Jim said to the
10 effect that if there was an elimination of lulus, then
11 the salary should be X. If there's not, the salary
12 should be Y.

13 JUDGE LACK: I think you can say that. Whether
14 or not we can effectuate that is something else.

15 MS. LERNER: And that's what we've been
16 recommending. And, actually, this was a discussion that
17 we had with the Quadrennial Commission at the city level
18 where they felt that was actually what was in their
19 authority.

20 So they ended up doing, in essence, that where
21 they said they have a figure and they recommend the
22 following reforms to be included. And I think it would
23 be very appropriate. And I think it would help advance
24 the discussion regarding ethics reforms in Albany if an
25 outside -- an objective body like this were to make some
26 recommendations as to what the compensation consequences

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2 could be for tightening up some of these rather loose
3 type.

4 JUDGE LACK: Once again, we probably need two
5 sets of figures as a result.

6 THE CHAIRPERSON: Right.

7 JUDGE LACK: Because, again, I mentioned,
8 there's nothing that requires a legislature to do
9 anything --

10 MS. LERNER: Right.

11 JUDGE LACK: -- on our report. As a matter of
12 fact, if they do nothing, it goes into effect. It's
13 only if they called a session or are in regular session
14 and they actually want to discuss something as a result
15 of our report that they discuss it at all.

16 MS. LERNER: Well, I think, you know, let's not
17 underestimate, I think, the power of the recommendations
18 that you could make and the way in which you could
19 advance the discussion in Albany and throughout the
20 state on some of these topics.

21 I think that it would be extremely helpful to
22 have your considered opinions on these sorts of reforms
23 and, as I said, to help advance the discussion, separate
24 and apart from a question of a recommendation, but
25 certainly taking it out of their hands, in the sense of,
26 as the Chair had suggested, that, you know, a basic

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2 raise that should go into effect is X, and we recommend
3 based on the cost of living, but if additional
4 conditions were satisfied, then there would be a
5 supplement of Y.

6 THE CHAIRPERSON: Are there any other
7 questions?

8 MS. REITER: My only question is whether or not
9 you have any -- obviously you've come here first and
10 foremost to talk to us about legislative raises.

11 Is Common Cause interested in the issue of
12 executive salaries, because we are considering both, and
13 we're doing, sort of, a joint hearing, so as long as
14 you're here, do you have anything to say in that regard?

15 MS. LERNER: Well, we are interested, but I
16 must admit that that is not something that I prepared
17 for for today. So we will supplement in writing some
18 additional thoughts on that.

19 THE CHAIRPERSON: We welcome any comments from
20 Common Cause and you on that issue as well. And you'll
21 send it to us. And we'll make sure all the
22 commissioners get an opportunity to review it and maybe
23 call you back.

24 MS. LERNER: Thank you.

25 THE CHAIRPERSON: Any other?

26 MR. HEDGES: No. That was what I was going to

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1
2 ask as well.

3 The notion that the executive salaries haven't
4 been increased in the same time frame to me does suggest
5 that it would be really important that we do what we're
6 charged to do. And it would be great if you could help
7 us do that.

8 MS. LERNER: Absolutely. And, you know, as I
9 think I've made clear, our basic position is at a
10 minimum salaries need to keep pace with the cost of
11 living. And that's perfectly appropriate.

12 I do want to conclude by saying, again, thank
13 you and how glad we are to see a commission process
14 because we think this is the way it should be done.

15 THE CHAIRPERSON: Thank you so much. You're
16 very informative. And we look forward to your written
17 comments and looking forward to hearing more. Thank you
18 so much.

19 MS. LERNER: Thank you.

20 THE CHAIRPERSON: Mr. Dadey, Citizens Union.
21 You can keep your coat off.

22 MR. DADEY: I'm going to be on camera. I'd
23 better not.

24 THE CHAIRPERSON: It's so warm today.
25 Welcome.

26 MR. DADEY: Thank you.

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2 So I have copies of my testimony here.

3 THE CHAIRPERSON: Thank you very much.

4 MR. DADEY: I assume there's no time limit
5 given the huge crowd we have here.

6 THE CHAIRPERSON: We're making up in quality
7 what we don't have in quantity.

8 MR. DADEY: You're very kind.

9 So good day, Chair Birnbaum and Commissioners
10 Cozier, Hedges, Hormozi, Johnson, Lack, and Reiter.

11 It's nice to see some of you who I know and
12 Citizens Union has worked with through the years. I
13 applaud and thank you for your public service.

14 It's interesting that we are meeting in this
15 large room because I think it reflects the big
16 responsibility that you have been entrusted with.

17 I'm the director of Citizens Union, which is a
18 citywide good government group focused on making
19 democracy work for all New Yorkers.

20 Citizens Union was founded in 1897 in response
21 to the corruption at Tammany Hall, the embarrassment of
22 the city, and has been at the forefront of fighting
23 corruption and proposing all kinds of reforms to our
24 democratic system.

25 Citizens Union is pleased that the Commission
26 has been convened to address this very important issue

1 Proceedings

2 of salary increases for state-elected officials and
3 based objective criteria.

4 We would like to acknowledge the Commission's
5 work to operate transparently by webcasting hearings and
6 meetings, as well as publishing transcripts and
7 submissions from the public. And I also would like to
8 thank you again for your public service.

9 Although I do have my prepared remarks, I do
10 want to just step back and talk -- set the table here.

11 The last time I was here -- I shouldn't say the
12 last time I was here in this room. The last time I sat
13 up there, a number of years ago, to participate in a
14 panel, seated in your chair, Chair Birnbaum, was a state
15 senator, who was chair of the State Ethics Committee.
16 His name is John Sampson. He was soon found to be -- he
17 was soon charged with corruption and found guilty.

18 So it's quite ironic that you're meeting in
19 this room and you're sitting on that very dais where a
20 state senator, who talked about ethics that day, was
21 subsequently charged with corruption and convicted.

22 It brings us to my point of the fact that the
23 last 17 years, since 1999, 33 state lawmakers have been
24 charged, have left office due to corruption or other
25 misconduct. Thirty-three in the last seventeen years
26 alone. In the last five years, half of them, sixteen,

1 Proceedings

2 have been forced from office as a result of that.

3 We have a serious crime wave of corruption in
4 Albany and a crisis of confidence by our citizens in the
5 ability of the state government to operate ethically and
6 in the best interest of the public.

7 We need to address this issue of compensation
8 seriously. And we believe that the recent ethics
9 reforms that have occurred over the last ten years have
10 been important incremental steps in addressing this
11 issue of corruption. But they have been more about
12 enforcement and oversight and less -- and about
13 punishment, and less about preventing corruption.

14 And we think that one of the ways in which to
15 prevent corruption is to address this issue of
16 compensation.

17 Because of those 33 that I mentioned, ten were
18 forced from office because of issues dealing with their
19 income as legislators using their private funds --
20 public funds for private gain.

21 And so it's a big, big issue that you need to
22 address. And we have a number of recommendations here
23 that I would like to talk with you about.

24 You know, we value public service. We want to
25 be able to attract -- we want to be able to have
26 New York State attract good quality people running for

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1 office.

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3 I think there are a lot of hurdles for people
4 who want to challenge an incumbent to come forward and
5 actually put a lot of their resources into running for
6 office. There's a disincentive given the many
7 advantages that incumbents have.

8 But if we're going to attract the kind of
9 challengers or we're going to attract the kind of people
10 to public service here in New York State, we need to pay
11 them accordingly. We need to pay them for their service
12 and acknowledge the important role that they play in our
13 state government.

14 The last time they had a raise, the state
15 legislators, it was part of a political deal which I
16 think was an unfortunate occurrence. It was the first
17 time that legislative salaries were seen as negotiable
18 for something in return that the Governor wanted. In
19 1999, it was about bringing charter schools to
20 New York State.

21 And as a result of that deal, because the state
22 legislators prior to that had not received a raise in,
23 you know, I think 10 or 12 years, they were interested
24 and quite desperate, rightfully so, to get an increase.
25 So they bartered for their increase by agreeing to let
26 charter schools in. And I'm not having -- I'm not

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2 passing any judgment on the issue of charter schools,
3 but it was part of a legislative deal.

4 And since then, any time that we've talked
5 about increasing legislative salaries, it involved what
6 would the Governor want in exchange.

7 And I remember a couple of years ago, Citizens
8 Union and Common Cause were part of a discussion with
9 Governor Cuomo about trying to pass finance reform. And
10 there was a window of where he thought that maybe we
11 could trade campaign finance reform for an increase in
12 the legislative salaries.

13 Citizens Union opposed that, even though we
14 wanted campaign finance reform, because we didn't think
15 it was the appropriate thing to do. Legislative
16 salaries, salaries of our public officials, should be
17 decided on their merits and separate and apart from any
18 other issue.

19 And we're so glad this Commission has been
20 charged with that responsibility in taking it out of the
21 political wrangling, as defined for so many years.

22 More than three months really have passed since
23 New York State had its Watergate moment, you know, with
24 the historic and shameful convictions of two former
25 legislative leaders, when Sheldon Silver and Dean Skelos
26 abused their public posts for private gain, they

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2 utilized combinations of outside income, discretionary
3 funding, and campaign donations to centralize their
4 power and money.

5 These shocking examples, unfortunately,
6 illustrate the deep need for compensation reform in
7 New York.

8 90 percent of New Yorkers believe that
9 New York State is consumed or New York State
10 legislature, our government, is consumed with unethical
11 behavior. And that is a very serious problem that needs
12 to be addressed.

13 We've created actually the perfect system for
14 corruption in Albany. What do I mean by that? We pay
15 our legislators way too little. They haven't had a
16 raise since 1999. We allowed them to earn unlimited
17 amounts of outside income. We have a travel
18 reimbursement program that there has not been much
19 oversight on. And we have a campaign finance system
20 that allows them to use their campaign funds for
21 personal use. And so we have created a recipe for
22 corruption by creating this system.

23 And so it's important that in addressing this
24 issue of corruption, we need to raise legislative
25 salaries and address the entire issue of compensation.

26 So we recommend that you come forward with the

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2 very bold and big proposal, not recommendation, but
3 actually a decision to raise legislative salaries
4 significantly.

5 I think that if you look at the City Council
6 hearing, if you look at the report that Mr. Fred Schwarz
7 submitted, it has a lot of useful information that could
8 be used as a guide for you.

9 Citizens Union would not be opposed to anything
10 that would resemble the \$143,000 salary that New York
11 City Council have been granted, I mean granted, that
12 they decided to actually take.

13 I mean, if you came up with \$150,000, I think
14 that would be something that would be acceptable to us,
15 provided that there are a number of additional reforms
16 attached to it.

17 Eliminate stipends or lulus. I think it's an
18 interesting question as to the extent to which you have
19 the power to do that, but I think that if you go as high
20 as \$150,000, you should recommend strongly that
21 legislative stipends and lulus be eliminated outright.
22 You may want to give an additional salary for the
23 majority leader or for the speaker, but that should be
24 eliminated.

25 We do not believe that the legislature should
26 be considered full time. We do not think that the

1 Proceedings

2 constitution should be changed. But we should pay
3 legislators a salary on which they can live and raise a
4 family and not have to worry about outside income if
5 they choose not to earn outside income.

6 Citizens Union continues to support, we do not
7 support an outright ban, but we support a cap of 15 to
8 25 percent on outside income. We believe that it's
9 important --

10 THE CHAIRPERSON: Did you say 15 or 20?

11 MR. DADEY: 15 to 25 percent. It really
12 depends upon where you come out on the salary itself. I
13 mean, if you come out with \$150,000, I don't think you
14 should be going as high as 25 or even 15. If you come
15 out at 100, you probably should look at 25 percent cap.

16 But we really do think that if we're going to
17 attract the best and brightest in the state government,
18 we need to have a salary on which legislators can
19 survive and raise a family and live comfortably here in
20 the State of New York.

21 Additionally, I think you can come forward with
22 some recommendations that go above and beyond what was
23 recommended last year and enacted in the statute that --
24 it deals with this issue of conflict, really trying, if
25 there is outside income, then it really is strictly
26 limited to businesses that do not have any other

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2 business before the state and really try and get as
3 tight as it can. There were some partners made last
4 year. We just don't think it was as tight as it should
5 be.

6 We also believe, in your earlier question, we
7 do need to raise the salaries of the statewide elected
8 officials. I think that they should be comparable, if
9 not higher, than those recently approved for the three
10 citywide offices here in New York, that of the mayor,
11 the public advocate, and the comptroller. And that
12 would involve a significant increase, but I think that
13 the increases that we're talking about reflect the
14 reality of the level of responsibility and authority
15 that we grant our elected officials.

16 The budget of the state is now \$130 billion.
17 The legislature should have a more robust oversight role
18 over how that money is spent.

19 I think that if you raise the salary, you'll
20 see more interested New Yorkers coming forward to run
21 for office and to hold office, because many people do
22 not do that. I know many people who would like to be
23 able to do that but do not because they do not feel like
24 they can take the salary decrease from their current
25 jobs.

26 So those are the core of our recommendations.

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2 And I would be happy to answer any questions that you
3 have.

4 THE CHAIRPERSON: Thank you very much. That
5 was very helpful.

6 Anything from the Commissioners?

7 MS. REITER: You know, I am -- well, it's not
8 within our province to create a full-time legislature,
9 I'm interested, it's curious to me that you don't
10 support the creation of a full-time legislature.

11 You are, in essence, doing that, as I stated
12 earlier, by doing away with virtually all outside
13 income.

14 I'm a little bit wary of the notion of trying
15 to define business before the state. You know, there's
16 been -- there has been -- there have been many attempts,
17 as an example, for tort reform. So if the speaker is, I
18 mean, it's not exactly business before the state, but if
19 you have the speaker of the state assembly who is being
20 paid outside income for whatever reason, and for
21 whatever services, by a tort firm, then there is an
22 inherent conflict of interest, even though that firm has
23 no exact business before the state.

24 So I just -- I think there are other examples
25 of that. I think it's just very hard when you start
26 trying to define what is and what isn't business before

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2 the state.

3 MR. DADEY: Correct.

4 MS. REITER: The truth of the matter is there
5 are very few professions that allow one to work part
6 time. The legal profession is one of the very few.

7 I know a few doctors who can take off six
8 months, leave their practices, and go become
9 legislators. And whether you're a teacher, I -- a
10 teacher can't do it either.

11 There are just very, very few opportunities to
12 simply pick up and leave whatever it is that provides
13 that outside income and go be a legislator, unless you
14 are in the legal profession.

15 So it's a narrow -- it's a narrow group of
16 professions, very narrow, that can even provide outside
17 income to a legislator.

18 So I'm just -- I'm just curious as to why a
19 full-time legislator is not of a particular interest to
20 you. We can't do anything about it, but it doesn't
21 mean--

22 MR. DADEY: I mean, we think you should pay the
23 legislators as if they were working full time because
24 many of them do work full time. And that's why we would
25 be comfortable with a salary of up to \$150,000.

26 If council went from, you know, outright banned

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2 outside income, with a few exceptions, and they
3 grandfathered in a number of council members who were
4 currently serving, then that's significant outside
5 income. We supported the Commission's recommendation on
6 a 15 percent cap. Because we think that you're going to
7 limit people from running for office if you insist that
8 the only salary that they can earn is that of serving in
9 the legislature.

10 I think it will be a disincentive for certain
11 lawyers, real estate, insurance, people who sell
12 services that would want to keep those professions that
13 they have at least still available to their clients or
14 to whomever they wish to serve.

15 So I think you will limit the pool of people
16 who would be interested in running for office. I mean,
17 if a lawyer who has a small private practice, you know,
18 wills, estates, real estate, and has to give it up
19 entirely, he may -- he or she may think twice about
20 whether that's worth the sacrifice.

21 (Continued on the next page.)
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2 MS. REITER: Fifteen percent of \$150,000 is not
3 a particularly large sum of money.

4 MR. DADEY: No.

5 MS. REITER: Even for a smaller city lawyer.

6 MR. DADEY: Fifteen or 25 percent. But, you
7 know, some may just still might have an active practice.

8 THE CHAIRPERSON: Any other questions? Yes?

9 MR. HEDGES: One of the charges that we have is
10 not simply the elected and the legislatures, but other
11 executives in state government, commissions, most
12 notably; any thoughts about that area?

13 MR. DADEY: Sure. I mean, I think that
14 the -- yes, not specifically. But generally, commissions
15 should not be paid more than the governor or the other
16 three -- two statewide elected officials. I think that
17 is not the case now. And so --

18 MS. REITER: Right now, I think the case is
19 that the Commissioners aren't even paid as much as their
20 Deputy Commissioners.

21 MR. DADEY: I know. That's pretty strange.
22 Only in New York.

23 MS. REITER: Only in New York.

24 MR. DADEY: So I don't think -- you know, if
25 you can structure it in such a way that doesn't exceed
26 that as of the elected officials.

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2 I mean, the top CEO, the Governor, should be the
3 most highly paid person in New York State, unless -- and
4 there may be certain exceptions, and we've seen it in
5 terms of the ability to attract talent to serve in
6 government that specifically such as we've seen in the
7 industry outside of Albany -- I forget the tech industry,
8 under SUNY.

9 MR. HEDGES: One of the other points of
10 reference, when you think about commissioners, is public
11 authorities in the state. In many instances, the
12 statewide authorities are, in fact, paid more than the
13 governor. Thoughts about that arena, not that specific
14 issue.

15 MR. DADEY: I think public authorities may be a
16 different animal given that they struggle for
17 responsibility than state agencies. So in terms of the
18 agency commissioners that report directly to the
19 Governor, probably you would want them at a salary
20 lower -- just lower than the chief executive where there
21 are other public authorities; when there is a Board that
22 they report to and there's a hiring process, you may want
23 to create a separate compensation schedule for them. And
24 we haven't looked at it in great detail, but that is our
25 general approach to thinking on that.

26 THE CHAIRPERSON: Thank you so much.

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2 I mean, we are really grateful. As I said, we
3 didn't have a lot of quantity today, but we certainly had
4 quality. And we look forward to reading your written
5 remarks and Ms. Lerner's written remarks. And if you
6 want to drum up business for us in Albany, we appreciate
7 it.

8 I should say we had invited Fritz Ross, the
9 Chair of the City Commission. He couldn't make it today.
10 We're hopeful that he will be able to make it at one of
11 our other meetings.

12 MR. DADEY: If I can just -- one thing in terms
13 of notification: Being I was in Albany in the last
14 couple of weeks talking to state legislators about the
15 effort to deal with corruption and talking about
16 compensation issues, none of them knew that you were
17 holding public hearings. Everyone I talked to said, Oh,
18 I would love to testify, when is it. And I've actually
19 sent the schedule. So there is a breakdown in
20 communication with the legislature.

21 THE COURT: But we'll definitely -- and I think
22 Ms. Lerner made that comment as well. We will invite
23 them to our hearings in Albany and, hopefully, we will
24 get some of them to testify.

25 MR. DADEY: Chairman Birnbaum, just one more
26 thought, if I may, on this matter, and it is to what

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2 Susan Lerner said earlier: It would be great if you came
3 out with a recommendation, or at least let them know what
4 you're thinking before the legislative session ends, and
5 here's why: Because we talked to legislators up there
6 about trying to put a cap on outside income, as part of
7 any ethics reform package that we now hear, it's not
8 going to be a part of this budget. It actually has been
9 taken out of budget discussions, from what I've been told
10 and will partly opposed by the legislative session.

11 But when we've met with legislators, we met with
12 staff and they said, Well, we don't know -- we've been
13 saying to try to agree to a cap of outside income when we
14 don't even know what the legislative salary will be. And
15 so if you can come out early with a decision or even a
16 preliminary recommendation as to what you're thinking so
17 they could guide the legislators' decisions about outside
18 income, it would be very, very helpful.

19 THE COURT: Thank you very much. We really
20 appreciate it.

21 The next hearing of The Commission is going to
22 be in Albany on March 23rd. We will continue to invite
23 people and try to extend the number of people we have
24 testifying. And we are scheduled to have a hearing on
25 April 23rd in Syracuse. So if you can reach out to
26 members, et cetera, we would be appreciative of hearing

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from them as well.

Commissioners, do you have any other comments?

If not, we stand adjourned until our hearing in Albany on
March 23rd.

Thank you very much.