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THE NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, &
EXECUTIVE COMPENSATION.

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New York City Bar Association
42 West 44th Street
New York, New York
November 15, 2016

A P P E A R A N C E S:

- SHEILA BIRNBAUM, ESQ., Chairwoman
- HON. BARRY COZIER
- HON. JAMES LACK
- FRAN REITER
- ROBERT MEGNA
- ROMAN HEDGES, Ph.D.

Michael Barfield
Official Court Reporter

1 MS. BIRNBAUM: Good morning on this very
2 rainy day in New York City.

3 MR. MEGNA: Good start.

4 MS. BIRNBAUM: It is -- our new member has
5 trouble pouring, but we will introduce you in a minute.

6 MR. MEGNA: It is water.

7 MR. LACK: I tell you.

8 MS. BIRNBAUM: Welcome to -- this is our last
9 commission meeting. I would like to make some
10 announcements about how today will go.

11 First, I would like to announce that Gary
12 Johnson has left the Commission. He has resigned from
13 the Commission and Governor Cuomo has replaced him with
14 Robert Megna.

15 Welcome, Bob, from all the other commission
16 members.

17 Unfortunately, Mitra had to be -- had
18 meetings in Europe and will not be present at today's
19 meeting. So we will proceed with the present group.

20 Let me make a couple of other announcements.

21 First of all, I want to make clear how the
22 voting today will have to go for us to come to a
23 conclusion. The statute that creates us says that we
24 have to report by today what our conclusions are and if
25 we don't reach any conclusions we will report that, as

1 well.

2 The findings and recommendations of the
3 Commission must be supported by a majority vote and,
4 with regard to executive and legislative compensation,
5 which we are now going to be discussing, it must be
6 supported by at least one member appointed by each
7 appointing authority.

8 So there is a member -- three members
9 appointed by the governor, one member appointed by the
10 senate leader, one member appointed by the Assembly
11 leader, one -- two members appointed by the chief judge
12 of New York, including myself, the chair of the
13 Commission, but pursuant to the legislation on these
14 issues of legislative and executive compensation the
15 chair does not have a vote. So I do not have a vote.

16 So I will try to hear everyone out and we
17 will take a vote on various issues that come up, but I
18 think you now understand what the votes would have to
19 be and how we get there which will be part of this
20 discussion today.

21 So with that, let's start.

22 Fran, do you want to begin?

23 MS. REITER: What I would like to do is read
24 a statement to my fellow commission members and to
25 everyone listening and for the record on behalf of the

1 appointees of the executive; Bob Megna, Mitra Hormozi,
2 and myself.

3 The New York State Commission On Legislative,
4 Judicial, and Executive Compensation was today to offer
5 its final report on legislative and executive salaries.
6 From the beginning of this stage of our work last
7 January there appeared to be a general consensus among
8 all the members regarding the need for a substantial
9 increase in executive compensation for agency heads.
10 We discussed at length a number of approaches and no
11 doubt would have reached a final agreement. Further,
12 regarding the executive, what remained to be had was
13 discussion, deliberation, and a decision regarding any
14 compensation increase for the State Comptroller and
15 Attorney General. However, as regards the legislature
16 there has never been nor is there today a consensus on
17 the issue of a legislative salary increase.

18 Between January and September the Commission
19 held public hearings in New York City and Albany at
20 which it heard testimony from members of the public,
21 good government groups, the chairman of the commission
22 that investigated and recommended a salary increase for
23 the New York City Counsel Frederick A.O. Schwarz, Jr.,
24 and two members of the state legislature. We also
25 received a considerable amount of written testimony and

1 many e-mails and letters. At the direction of the
2 members, commission staff reached out to and gathered
3 relevant information from academia. And finally, the
4 Commission reviewed relevant materials, including;
5 national and regional inflation rates, legislative
6 compensation data from other states and recent
7 compensation history for our own state government.

8 Unfortunately, however, no institutional
9 representative of either the Assembly or Senate
10 testified before the Commission despite our making
11 every effort to accommodate such testimony.

12 We believe and have stated repeatedly in
13 public that any consideration of a legislative
14 compensation increase must be informed both by such
15 institutional legislative testimony and the opportunity
16 for Commission members to question the legislature's
17 representatives.

18 Our legislature appointed commission
19 colleagues and more recently legislative leaders
20 opposed such participation. They argued that the
21 Commission was created "to remove this discussion from
22 politics" and that consideration "be based on objective
23 economic factors."

24 We believe this notion to be deeply flawed.
25 The legislature's position is to deny the very essence

1 of representative democracy. While the actual
2 decisions rest with the independent commission, those
3 seeking increases have an obligation to make their case
4 to the Commission, but more importantly the public they
5 were elected to serve. The judiciary understood this
6 as did the executive.

7 As to the objective economic factors that we
8 are charged to consider, New York State legislative
9 salaries are already the third highest in the United
10 States exceeded only by those of California and
11 Pennsylvania. Our state per diems are the highest in
12 the nation and the additional allowances received by
13 virtually the entire State Senate and two-thirds of the
14 State Assembly increase many values beyond those of
15 California and Pennsylvania.

16 Outside income can and has given rise to real
17 and perceived conflicts of interest. The Commission
18 heard testimony from members of the public and the
19 sentiment was virtually unanimous against any raises
20 for legislators. The legislature's position is that
21 the opinion of the public is irrelevant and they
22 dismiss it as political influence. We believe the
23 opinion of the public is entirely relevant, if not
24 determinative, because the public is the truest
25 definition of the word the employer. Obviously the

1 employer's view on the employee's performance and merit
2 is incredibly important.

3 But the public is not the only voice to which
4 the Commission should listen nor has it been.

5 For one thing, their opposition is largely
6 institutional in nature rather than a reflection of how
7 they feel about their respective legislators, most of
8 whom are dedicated, hard-working public servants. And
9 it is unfortunate that the good legislators who work
10 full time, ably and honestly represent their
11 constituents and most assuredly deserve a raise will
12 suffer because there is refusal to right systemic
13 wrongs.

14 The Commission purposely waited to begin its
15 deliberations until after the 2016 legislative session
16 in hopes that the legislature would finally address
17 these issues. Even the New York City Council which
18 recently enacted a pay increase to \$148,000 recognized
19 the need to cap -- for a cap on outside income, as does
20 the United States Congress. Banning outside income is
21 overwhelmingly supported by the public and good
22 government groups as a way to ensure that elected
23 official are working solely for their constituents
24 without any competing interests. The State Assembly
25 has supported limiting outside income whereas the State

1 Senate is opposed the same.

2 The Assembly, however, missed this
3 opportunity to forcibly argue their position to the
4 public and has never pressed the Senate to reform
5 outside income. The state legislature with real limits
6 on outside income would have made a much stronger case
7 for meriting a raise.

8 That said, we believe there is still the
9 possibility of achieving both meaningful reform and
10 recommending a legislative salary increase but not as a
11 result of any action taken by this commission today.
12 Rather, we, the appointees of the executive, will
13 refrain from voting on any recommendations that may be
14 put forth by our colleagues so that no recommendations
15 and/or report can be issued at this time, and we hope
16 our fellow commissioners will follow suit.

17 This will give the Assembly and Senate the
18 opportunity to meet before year's end and pass the
19 reforms demanded by their constituents.

20 We recognize that going 17 years without an
21 increase legitimately puts a financial strain on the
22 majority of legislators who rely solely on their
23 government salary. As such, subject to further
24 discussions and deliberations the executives appointees
25 could consider a modest increase. However, anything

1 more than that would need to address the public's
2 concern and opposition by making the position
3 effectively full time and limiting outside income.

4 Accordingly, should the legislature pass
5 reforms that mirror those of the United States
6 Congress, including a cap on outside income, we are
7 prepared to recommend and approve at a reconvened
8 meeting of this commission a salary substantially
9 higher than any discussed so far by this commission,
10 taking into consideration Congressional and New York
11 City Council values. And at that same meeting we would
12 finish our work by recommending formally an increase
13 for the executive along the lines we have already
14 discussed, or other alternatives, including tying it to
15 performance. There is precedent for such an action.
16 Governor George Pataki was correct in 1999 to include
17 legislature performance measures and that principle
18 should be extended and strengthened.

19 We believe the American public made its lack
20 of faith in government institutions clear in last
21 week's election. Here in New York State we believe
22 that we have an opportunity to restore that faith. We
23 stand ready to reconvene with the Commission prior to
24 year's end when the committee as a whole signals its
25 desire to continue this conversation and progress is

1 made.

2 Thank you Madam Chair.

3 MS. BIRNBAUM: Thank you, Fran.

4 Yes?

5 MR. ROMAN: I don't know exactly where to
6 begin except to say that the reason there is a
7 legislature is to resist the king. And that's why it
8 was first created. That's why it exists. And that's
9 what I just think I heard. Do it my way or don't do it
10 at all.

11 I am going to make a proposal. The proposal
12 I make is a modest one. Increase the legislative
13 values, the executive values, the values for the
14 statewide elected official. And I would recommend that
15 we also suggest to the executive and the legislature a
16 salary increase for the governor and the lieutenant
17 governor, which is outside our jurisdiction, but all be
18 the same. And that increase would be 2.154% annually
19 since the last raise. Round it off to the nearest \$500
20 to make it kind of, like, neat. But all of them
21 increase the same, all of them increased, increased by
22 the cost of living. That's not a raise. That's
23 keeping the values consistent with what it is that all
24 the rest of state government, all the rest of the state
25 has seen, which is a modest 2% or so increase.

1 The reason I think those things are relevant
2 -- and I am going to pass out a piece of paper to the
3 Commission members that simply does that for everyone
4 -- but I understand the bigger picture and we may not
5 get to this detail. But nevertheless, the Consumer
6 Price Index is a relevant standard. It is what
7 everyone thinks about as cost of living. It is
8 increased over the years. The number is 2.154% since
9 2000. And that's the last time -- it the year after
10 the last raise for these people.

11 It is, you know, less than 1% the last year.
12 I think that that's a reasonable thought to
13 incorporate. But it keeps the cost of living in a
14 reasonable range for people who work for the
15 government. It doesn't change the relative status of
16 anyone. The commissioners go up, the comptroller goes
17 up, the legislature goes up. It doesn't change the
18 balance of power.

19 The balance of power is part of the question.
20 It needs to be incorporated in whatever it is that we
21 recommend.

22 The Comptroller and AG are kind of an unusual
23 situation in New York. They head state agencies but
24 they are elected statewide. The current status says
25 they should be paid more than the top level

1 commissioners, the commissioners in statute. I would
2 keep that the same.

3 With respect to the legislature, we got
4 testimony in the form of a written statement from a
5 professor, Professor Squire, who studies these things
6 in a lot of different contexts. He said one of the
7 things we should consider is making the pay enough that
8 we can actually let these people do things like support
9 their own family. That that thought shouldn't be such
10 that these people are presented with choices between
11 doing their job and doing other things.

12 I think that's a good thought. The demand
13 for the job are such that no one can have a kind of
14 normal job except to be full time in the legislature.
15 If you think about the kind of schedule that's
16 official, which is the schedule related to legislation,
17 which is only part of the job, well, gee, I don't know
18 of an employer that would be willing to take someone
19 who says, "Gee, for the next six months I don't think I
20 can show up at all. And, oh, maybe periodically I can
21 show up in the other six months."

22 That's not a normal situation. That's pretty
23 close to a requirement that you take this as your job.

24 I think that's part of the deal. You run for
25 office. If you're successful and you are elected your

1 commitment is to be in Albany, not wherever you are
2 from, for six months of the year guaranteed, and then
3 as needed the rest of the year. I don't know of an
4 employer in a regular job who can say that's okay.

5 So who is it that could do that if that's the
6 definition? Six months the year you are gone, some of
7 the time you are available. Well, if you are
8 independently wealthy you can do that. If you are like
9 me and you are retired you could do that. If you're a
10 small business person or a professional or you set the
11 job requirements, I guess you could do that. But that
12 ends up being a really strange mix of people and
13 certainly not representative of the people in the
14 state.

15 I think we want people who are representative
16 of people in the state. I think that's part of what it
17 means to say representative government.

18 So let's not define it in a way that says,
19 "Mmm, I don't think so. Let's make you be unusual,
20 independently wealthy, proprietor of your own business,
21 or old people like me. I don't think that's a good
22 system.

23 I think we need to make it possible for
24 people to say I support my family and I make enough
25 money that I can get by and I am not independently

1 wealthy. That's what a decent salary would require.

2 And oh, by the way, I want to get good, good
3 people. So when we think about human resource systems
4 we think about what it is that's required. Well, a
5 good job description, you know, a reasonable work
6 environment and a competitive salary; a salary that
7 says this is an attractive job.

8 I am not sure what that number is exactly,
9 but I know in metropolitan New York an \$80,000 a year
10 job doesn't get the best people available, doesn't get
11 the best people from all walks of life. It doesn't
12 work. Whether it is New York City literally or the New
13 York City metropolitan area, I don't think there is
14 much of a difference there, but \$80,000 doesn't do it.
15 And if \$80,000 did it in 1999, 2 1/2 percent per year
16 since then, that's pretty close, whatever that number
17 turns out to be.

18 That having been said, I think if you look at
19 other governments, whether they be City Council in the
20 City of New York or City Councils in other big cities
21 throughout the country, or whether you look at
22 comparable kinds of situations in what in the academic
23 world is called subnational regional, whatever you want
24 to call it -- states is what we would call it in the
25 U.S. We look at those kind of situations in the

1 developed world. The numbers that are the 120-ish
2 thousand that result, that puts you on the low end. It
3 is not comfortable. It is not good enough.

4 I think we have to deal with the notion that
5 since before there was a government in New York
6 governors have said, "Legislatures, don't pay them."
7 That's a statement that was reported by Professor
8 Squire, one of the experts that responded to us when we
9 asked the academic world. He noted in 1710 the
10 governor said in New York don't pay them.

11 Well, that's what the governor here is
12 saying, too. I think that's all.

13 When we think about performance of the
14 legislature we think about the fact that the assignment
15 to the legislature is filled with the questions that we
16 as a society disagree about.

17 I can point to a whole bunch of things that
18 have been accomplished that the Governor has identified
19 as major accomplishments in the last few years during
20 the administration that's the current one, things like
21 gay marriage, things like gun control. Those are
22 things we disagreed about. I had a view. I'm glad my
23 view happens to be the one that in the end got
24 supported. But we disagreed about them. It is not a
25 question of right or wrong, it is a question of

1 disagreement and resolution.

2 How do we do the resolution thing? That's a
3 problem if our standard is performance in the typical
4 ways of thinking about performance. That's what
5 legislatures do. They reflect that societal
6 disagreement, they try to resolve. Sometimes they are
7 not successful, sometimes it takes years. In the case
8 of gay marriage, for example, well, that's something
9 that the State Assembly was willing to come to an
10 agreement amongst itself years and years ago. It took
11 decades for the society at large to come to an
12 agreement. This is the right way to proceed.

13 I don't think it matters what I think. I
14 think the point was present those differences, resolve
15 those differences when the society is ready to resolve
16 them. That's a really complicated assignment. That's
17 not something that we know how to deal with. We don't
18 have good metrics for. We don't know what to do about
19 it. So I am not sure how we deal with that except to
20 say we need good people.

21 We need good people. Human resource
22 standards say so pay them well. Attract good people.
23 Get those good people to stay. Let them learn their
24 job, let them learn the issues, let them figure out
25 what to do. And let that disagreement be part of what

1 it is that we do and let that disagreement resolve
2 itself, if that resolution is possible. And if it is
3 not then let's not. But let's not evaluate them any
4 other way.

5 So good people. How do we get good people?
6 You have to pay them.

7 If we have to look at this in a reasonable
8 way we have to look at this in the form of, oh, how do
9 we get good people? Well, part of that is pay them.

10 And in the case of the legislature, with this
11 kind of goofy schedule, pretty much full time for part
12 of the year, an expectation that it is actually full
13 time the rest of the year, even though we don't say it.
14 Because we expect that we can call them up, we can say
15 to them, "Hey, I have a problem. I didn't get proper
16 treatment at the DMV. I didn't get proper treatment in
17 the Office of Mental Health. I need somebody to be my
18 advocate. You're it. That's why I elected you.
19 You're in that job. Take care of this for me. Help me
20 with this."

21 We don't put a 24-hour clock on that. We
22 don't put a 10-hour clock on that. We don't say that's
23 from January to June. We don't say anything about the
24 limitation on that. We expect them to be available to
25 us. That's why we elected them. That's what we did in

1 the election. That's the point of it. Be available
2 and help me.

3 So the job is represent me, be my advocate,
4 make laws as appropriate. Like change the law with
5 respect to who you can marry, change the law with
6 respect to who can have a gun, change the law fill in
7 the blank. That's the job. But since you and I
8 disagree about that, oh, well, figure it out. Help me
9 figure it out. That's the job. Wow. 24-7 doesn't
10 even come close to describing what that job is.

11 I want good people in the legislature. I
12 want good people in the court system. I want good
13 people in the agencies.

14 Cost of living has actually increased since
15 2000. That's a long time ago. If you look at what the
16 academics look at, what the Bureau of Labor Statistics,
17 the official repository of this information, what they
18 said is since 2000 it has increased by 43.67%. I can
19 be real precise about that. They are not my numbers.
20 I can noodle about whether they did it exactly right,
21 but that's a long time ago, that's a big increase. But
22 it is not very much if you look at it annually,
23 2.2-plus percent. I think all of the government,
24 whether they be the legislature, whether they be the
25 elected statewide, whether they be the agency

1 commissioners, they need a raise.

2 You need good people. We know in the one
3 place where we kind of keep track of this stuff that we
4 can't get good people to take the job of being agency
5 commissioner. About a third of the agencies don't have
6 people willing to take the job. The Governor tries to
7 attract people. He is unsuccessful. A third. If I do
8 that kind of arithmetic, what I find is, you know, that
9 A Commissioners -- I am not proposing to change any of
10 the relationships. I think that would be beyond what
11 we should be doing here. I might want to argue that
12 some of the them should be paid more, some of them
13 should be paid less, but the A Commissioners, that's a
14 group described in a paragraph of law. They are people
15 like the agency Department of Transportation,
16 Department of Education, Department of Mental Health,
17 those A Commissioners, their values are \$136,000 in
18 law. Let's increase it by the cost of living. Let's
19 make it 195,000. Round it to the nearest 500 and it is
20 195,500.

21 The F Commissioners, another paragraph of
22 law, A through F, you know, the head of the APA, an
23 agency I think should be taken more seriously than F in
24 the state, but that's where it is, it is 90,000 today.
25 It should go to 129,500. I don't know that that will

1 guarantee you will get the best people available. I
2 don't know that for 129,000 I am willing to do the work
3 of the commissioner of the APA. I know that as a
4 personal matter the answer would have been no. I don't
5 think that's enough. It is a hard job.

6 I think that maybe we can do a better job of
7 attracting people than we can at 90. Wow. Let's do
8 something about that. Let's increase it. Let's not
9 get crazy. 2%. 2.15 is what I suggested.

10 So increase everyone by the cost of living
11 from what they are. That means for the legislature
12 from 100 -- you know, 150 members in the Assembly, 63
13 members in the Senate. Well, let's increase that from
14 79,500 to 114,000. Wow. Really big raise. That's
15 what it sounds like. Except it has been nearly 20
16 years of 2%. That doesn't sound so bad. It is less
17 than what F got as a negotiating salary. It is about
18 what the management confidential employees who are not
19 unionized and not represented by anyone. It is less
20 than what I had suggested earlier.

21 It is important that we think about it as
22 something across the board so as to not change the
23 balance of power between the executive and the
24 legislature. I think it is awful that the governor
25 wants to be king. I think it is awful that the

1 governor's representatives here think that he should be
2 king.

3 I would like to recommend that everyone get
4 an increase. I would like to recommend that everyone
5 get an increase that is not tied to anything except for
6 the fact that we need good people.

7 We can go through the litany of things to
8 consider, but mostly we have to think about how we get
9 good people. I think that anything else is a
10 disservice to the public.

11 I understand that when we ask about the
12 institution of the legislature the public says no.
13 When we ask about -- do anything. They are bad people.
14 That's what we think. That's the nature of the beast
15 because when we look at our individual representatives
16 we know that they are good people. They are the people
17 we individually elect.

18 I would like to note that in order to get
19 better people, in order to get them to a place where
20 they can learn what's required, they can disagree with
21 their staff, they can disagree with the governor, they
22 can criticize proposals of the governor, they need to
23 know things. They need to have experience. They need
24 to be competent people. So good people to begin with.
25 And let them learn some things by keeping them in the

1 job for a while.

2 If the people that elect them, agree with
3 that. And when they disagree with that, they elect
4 somebody else. That's the nature of a democratic
5 system and a representative system and it says my local
6 issues count for more than most other people think
7 about. That's why I want somebody to give voice to my
8 view. That's what they are there to do. And that
9 means disagreeing or criticizing or agreeing with what
10 the executive has to say.

11 And let's have really good people running the
12 agencies. I want competent people at the Department of
13 Health. I want competent people at the Department of
14 Transportation. I want better people than we would get
15 for the values that we are currently paying. I think
16 that's really important.

17 So my proposal is simple. 2.15% annualized
18 over the 17 years since the last increase.

19 I have handed out a piece of paper that says
20 here is what that means for groups of agencies, here is
21 what that means for the legislature, here is what that
22 means for the stipends that go with responsible
23 positions in the legislature. As a practical matter,
24 given the number of people we are talking about it is
25 really modest compared to the size of the state budget.

1 I don't think it is a question of affordability, I
2 don't think it is a question of unreasonable ability, I
3 think it is a question of being reasonable and thinking
4 about how you get and retain good people and I think
5 anything other than that is a mistake.

6 MS. BIRNBAUM: You have been going for some
7 time.

8 MR. MEGNA: Really.

9 MS. BIRNBAUM: I know the proposal is on the
10 table. I know some of the other commissioners who
11 haven't spoken yet I think would like to talk to your
12 proposal and do other things and we will get back to
13 you.

14 MR. ROMAN: I would like to make 2.154%
15 annualized.

16 MS. REITER: Personal observation really
17 quick?

18 MS. BIRNBAUM: No, just wait and I will get
19 back to you.

20 MR. MEGNA: I haven't --

21 MR. ROMAN: Across the board.

22 MR. MEGNA: I haven't spoken yet.

23 MS. BIRNBAUM: Mr. Lack is before you.

24 MR. LACK: I certainly have no problem
25 agreeing with Roman in terms of what he presented as to

1 the absolute percentages for a raise.

2 I will not be very long.

3 I will point out in 1999 when the legislature
4 -- December 18, 1998, when the legislature voted for a
5 raise agreed to by the governor without any kind of a
6 commission or anything else, it went into effect in
7 1999 at is a salary then of 79,500. We have all talked
8 about 2%, 40-odd, this is what it comes to.

9 Look at it the other way, what's the worth of
10 that \$79,500 today which the legislature and the
11 governor agreed to in 1999, and you will find that it
12 is way under \$50,000 a year in 2016 money, which in
13 effect means that's what the salary of today's member
14 of the New York State legislature is; way under \$50,000
15 a year, voted for the 79,500 in 1999.

16 I don't think that's proper.

17 I have to tell you, I was first elected to
18 the State Senate in 1978. And I spent 24 years there.
19 And I have watched a whole progression of how the state
20 legislature has changed since then.

21 When I first got elected to the state
22 legislature some of the women members of the
23 legislature who I know told me when they first got
24 elected, way before me, they were criticized if they
25 wore pants on the floor of the State Senate or State

1 Assembly and weren't wearing a dress.

2 The first week I was there I was informed
3 that there was a black tie Senate dinner to honor all
4 new members. I had to go rent a tuxedo. I was the
5 youngest member of the majority. I didn't have one.
6 That, of course, has gone long by the way side.

7 A lot of other traditions, including the vast
8 majority of the legislature, Senate as well as
9 Assembly, having an outside job outside the
10 legislature. According to my calculations, and anybody
11 can find that out just by looking at the financial
12 disclosure statements that are submitted each year by
13 every member of the legislature, a majority of both the
14 Senate and Assembly have indicated they are full-time
15 members of the legislature already without any other
16 incursions, anything to do with outside income
17 limitations or anything else. This is their job. This
18 is what they do. They are full-time members.
19 Translation is the Senate and the Assembly has advanced
20 great steps since I was first elected and we should be
21 respectful of that.

22 So I will agree with what Roman has suggested
23 in terms of percentages. I think they are certainly
24 fair. And they represent only, in effect, an
25 inflationary increase, brought about, of course, by the

1 political impossibility of having to be able to vote
2 for a raise for yourself.

3 Having been elected 12 times and faced this
4 many times in the legislature I understand the
5 complexity of it. Even though I never agreed with it
6 and always announced publicly I would vote for a salary
7 increase, I understand the consternation of my then
8 fellow colleagues in the legislature to say, well, we
9 don't know. Back away from it. The problem with the
10 executive -- whatever it might be.

11 We have now gotten to the point where 79,500
12 in 1999 appears to be \$47,00-48,000 in 2016 and to
13 bring it up to where it was supposed to be equal in
14 1999 is figures that Roman has passed out. I think we
15 should go with that.

16 I know that the legislature, as I have
17 watched this past election, I have watched the
18 editorial process that's going on, everything else,
19 over the next couple of years will be faced with
20 handling some of the issues in which Fran and others
21 have brought up and I assume we will respond to that.
22 If we can't -- and Fran, her colleagues have announced
23 that they are not going to vote for anything today.
24 Well, okay. That means that the legislature, unless
25 there is a special session -- by the way, Fran and

1 everybody else, special sessions as lame duck sessions
2 after elections have been widely criticized since I
3 first got elected in 1978 and nobody seems to like
4 them. And as far as I know there has been no pressure
5 or intention of calling a special session of the
6 legislature. Translation; if today goes by and we have
7 done nothing, come January 1 the 79,500 figure for the
8 state legislature, the A through F figures for the
9 commissioners, will remain the same. The
10 commissioners, obviously, can be changed at any time as
11 a political matter. I know as well as everybody else
12 that will not happen absent a legislative salary so we
13 are now into 2019 before any of this will be considered
14 again.

15 Quite frankly, I think that's a shame,
16 particularly for the year and-a-half efforts that we
17 have had to try to repair the damage to that. If we
18 can't do what Roman suggested then let's come up with a
19 number today in which we can do as a look-forward to
20 something happening in 2017 and '18 state legislative
21 sessions that would, in Fran's words, call for the
22 ability for a much larger raise of whatever that might
23 be come the beginning 2018 -- '20, whatever year that
24 is, I am losing it -- after the next election. Because
25 to do nothing now once again leaves the legislature and

1 the commissioners in a place that I don't think anybody
2 in this room really in their soul really thinks that's
3 where they should be.

4 MS. BIRNBAUM: Barry, would you like to make
5 comments?

6 MR. COZIER: Our charge under chapter 60 of
7 the laws of 2015 are that law established this special
8 commission as a quadrennial commission to recommend
9 adjustments to the compensation of legislative
10 statewide elected official and executive branch
11 commissioners, as well as the judiciary. Obviously, we
12 have our charge with respect to the judiciary.

13 The legislation also includes the factors
14 that should be considered. They are not exclusive
15 factors, but the enumerated factors are the following:
16 the overall economic climate, the rates of inflation,
17 changes in public sector spending, levels of
18 compensation and non-salary benefits received by
19 executive branch official and legislators, and
20 legislators of other states and the federal government,
21 levels of compensation and non-salaried benefits
22 received by professionals in government, academia, and
23 private and not-for-profit enterprise and, finally, the
24 state's ability to fund increases.

25 Now, I think that Fran Reiter in her opening

1 statement on behalf of the executive members of this
2 commission did set forth fairly comprehensively the
3 work that has been carried on by this commission since
4 its inception. And it has in fact been substantial
5 with respect to meetings of the Commission, all of
6 which have been public meetings, public hearings, as
7 well as the numerous submissions that have been made to
8 the Commission.

9 Now, with respect to this question of the
10 factors and considerations, I do want to respond in
11 part to the statement made by Fran Reiter on behalf of
12 the executive members with respect to the
13 superimposition of this factor that the legislature
14 must affirmatively come forward and make their case in
15 order for us to consider any adjustment, any increase
16 with respect to their compensation.

17 Now, it seems to me that that was not
18 contemplated by the legislation, that was not
19 contemplated by Chapter 60, and I think as Roman has
20 set forth, to an extent the purpose of Chapter 60 was
21 to depoliticize the process in terms of taking it out
22 of the hands of the legislature and out of the hands of
23 the executive and out of the hands of the judiciary
24 with respect to making recommendations for adjustments
25 or increases in compensation. So I want that make that

1 point because I think to indicate that that is the
2 predominant consideration is certainly a distortion of
3 both the legislation and our charge.

4 Now, I would further note that there is a
5 timetable here. I think it was referred to by Judge
6 Lack. The Commission has until November 15 -- sorry,
7 the first part that pertained to the judiciary, but the
8 Commission has, of course, -- yes, until November 15th
9 of the year following its establishment, 2015, to do
10 its analysis and produce its report as to legislative
11 and executive branch compensation.

12 The tenure of the Commission ends today, on
13 November 15, 2016. There is no carry-over commission,
14 there is no commission to consider what might take
15 place after today and before the end of the year, and
16 in fact this commission will have no authority beyond
17 today.

18 Now, why is that important? I believe it is
19 important because part of the language, again, of
20 chapter -- the enabling chapter is that the Commission
21 is to examine, evaluate, and make recommendations with
22 respect to adequate levels of compensation and
23 non-salaried benefits. Now, the fact of the matter is,
24 the difficulty I have with the position of the
25 executive members is that it seems to me -- and it was

1 -- and there was mention of the fact that the public,
2 of course, is entitled to a certain amount of
3 accountability. Accountability was referred to.
4 Accountability from the members of the legislature to
5 the public.

6 Let me just make this point with respect to
7 public comment. We have acknowledged that with respect
8 to public comment it has been overwhelmingly
9 disfavorable to increases in legislative compensation.
10 But notwithstanding, I think it is also important to
11 note that what we have received from the public is
12 strictly anecdotal information. Anecdotal information
13 to the extent that, yes, we have heard from dozens of
14 members of the public. I don't even think we have
15 heard from hundreds of members of the public. It
16 certainly cannot be taken as being representative of
17 what the public sentiment is, but my comment with
18 respect to the public is that we as members of this
19 commission who accepted appointment to the Commission
20 also have a responsibility to the public, and that
21 responsibility is to discharge the responsibilities,
22 the duties that have been set forth in the enabling
23 legislation. And it seems to me when the position
24 taken by the executive members is one of we will not
25 support any recommendation with respect to adjustments

1 or increases in legislative salary, that is an
2 abdication of our responsibility to the public and to
3 the appointing official.

4 MS. BIRNBAUM: Thank you, Barry.

5 Bob? Do you want to say something?

6 MR. MEGNA: I think -- you know, I think
7 people have expressed their points of view across the
8 board.

9 I concur with Fran's comments at the
10 beginning.

11 I would only add I work with a lot of human
12 resources people every day and I don't know of one of
13 them that would tell me give a big raise to somebody
14 who is going to go out and do something else besides
15 that thing. They would tell me I was crazy. So I
16 think we are not looking at this thing in isolation, we
17 are looking at it as is there a comprehensive solution
18 to a problem we all admit exists. And Fran, I think,
19 outlined the perfect way to move forward.

20 That's really all I have to say.

21 MS. BIRNBAUM: Fran?

22 MS. REITER: Yeah.

23 I think there were just a couple of things I
24 want to say.

25 First of all, Barry, we haven't abdicated

1 anything. The three of us -- and I know how Mitra
2 feels about this, and she has been with among us and I
3 know she has spoken to others about it, she has been
4 adamantly opposed to approving any kind of salary
5 increase for the legislature absent real ethics reform
6 on the legislature apart. So we know how she feels
7 about it.

8 The truth is whether it was the three of us
9 when Gary was part of this group, or now with Bob, we
10 are individuals.

11 I have to tell you, Roman, that I take
12 enormous exception to the notion that you put forward;
13 that we are somehow upsetting the balance of power by
14 doing the governor's work for him and thereby creating
15 a king. That's insulting and, quite frankly, it shows
16 how little you know at least about me. I won't speak
17 for anybody else.

18 My opinions during this lengthy process have
19 been my own. I have had zero, no communication with
20 the governor of this state since I left state service.
21 Not by -- not verbally, not by phone, not by e-mail,
22 not by text. None. So I reject that notion and, quite
23 frankly, I am insulted by it.

24 I came to these conclusions independent of
25 anyone else, and I believe I speak for my colleagues in

1 saying that this applies to them, as well.

2 Doing our duty does not require us to agree
3 with you nor does it require us to vote for an increase
4 under some set of negotiated circumstances. We have
5 looked -- we have all looked at the same data. We have
6 all done the same research. There has been a
7 difference, though, from Day 1 in terms of how we have
8 thought about executive employees. And I am not
9 talking about the State Comptroller, either. I am
10 talking about the commissioners, the agency heads.
11 That they are different than elected officials. They
12 are appointees of an elected official. And he or she,
13 who is the governor at any given time, is responsible
14 for those appointees. They do not report directly to
15 the people. They are not elected by the people. They
16 are appointed. And if the people don't like them or
17 like what they are doing they should by all means hold
18 the appointing authority responsible for that. In this
19 case it would be the governor. Whoever that would be
20 at any point in time. They are not the same as our
21 elected officials.

22 You talk about quality people? I am going to
23 tell you something. I spent most of my life in the
24 private sector but I have spent a good deal of time in
25 the public, as well. In any group of people there are

1 really good people, there are people who fall somewhere
2 in the middle, and then there are pretty awful people.
3 That's in the private sector and the public sector.
4 The legislature, I know some really extraordinary
5 people who have served in the state legislature for a
6 very long time who are wonderful representatives and
7 have taken their jobs as full-time jobs. And in fact
8 it applies to many.

9 What is amazing to me in this whole
10 discussion, however, is that if you do that analysis of
11 outside income, which I have done, and sat in front of
12 my computer for several hours looking at all of their
13 reports, I believe there was something around 12
14 members of the State Assembly, and a smaller number, I
15 want to say 6 or 7 --

16 MR. LACK: 6.

17 MS. REITER: -- that have outside income in
18 the State Senate.

19 That the obstinacy of these two bodies in
20 doing the right thing, the thing that the United States
21 House of Representatives and the United States Senate
22 did, that the City Council of New York City did, in
23 recognizing that de facto these are full-time jobs,
24 they should be full-time jobs, and we have to do
25 everything possible to ensure that outside, negative

1 interests do not come into play in their deliberations,
2 that the two houses of the state legislature refused to
3 do away with the allowance for outside income -- which
4 by the way has been at the root of almost every
5 corruption scandal the legislature has --

6 MR. LACK: That's not true, Fran, and you
7 know it.

8 MS. REITER: Well, money has certainly been
9 at the root of it.

10 MR. LACK: Would that change the salary
11 structure?

12 MS. REITER: Listen, let me tell you
13 something, the salary structure, if I feel that this is
14 the carrot that's needed to clean up those houses,
15 that's my decision. I have a right to my opinion.

16 MR. LACK: Absolutely.

17 MS. REITER: It is not reflective of the
18 person who appointed me. He may agree with me, and he
19 says he agrees with me, which I think is great,
20 frankly, and a rarity, but it is my opinion. And I
21 have a right not only to express that opinion but to
22 let it inform how I will vote on these issues.

23 And let me tell you. You have heard me talk
24 about the need for executive increases. I know better
25 than any of you here having overseen state agency

1 operations of this government very recently, two years
2 ago, I know firsthand the difficulties that these low
3 executive values present in the management -- the
4 effective management of our government. It is a huge
5 problem.

6 MR. MEGNA: I was a B Commissioner. I know
7 my alphabet, too.

8 MS. REITER: We know better than anybody here
9 what this means.

10 Here is our point today. I am going to
11 reiterate it and then I think we have all made our
12 cases.

13 Judge Cozier has raised the issue that our
14 tenure ends today. If we in fact were to take votes
15 where everyone participated, I would agree with him. I
16 would agree that if we actually came to a conclusion on
17 these issues per the legislation this commission would
18 be dissolved. However, there is much precedent
19 regarding statutorily created entities like ours, or
20 for that matter the state legislature, where when they
21 don't meet a deadline they are allowed to continue.
22 The obvious example is when we don't get an on-time
23 budget. We are supposed to have a budget by the end of
24 March. How many times in our lifetimes have we seen
25 budgets that go 2, 3, 4, 5, 6 months out. It doesn't

1 mean we don't get a budget.

2 MR. LACK: That example doesn't hold true to
3 us.

4 MS. REITER: Well, I can debate that. Okay?
5 And I think that others may challenge it and it may be
6 open to --

7 MR. LACK: Excuse me, Fran. Can I ask you a
8 question?

9 Do you mean that without any statutory
10 enactment we can just continue?

11 MS. REITER: Until the end of the year, yes.
12 I believe to the end of the calendar year. We are in
13 agreement that we have to do something by the end of
14 the year, okay? I don't want to debate this issue
15 here. We are going to disagree on it, probably.

16 MR. LACK: To say the least.

17 MS. REITER: Hold on. It would ultimately be
18 something that a court would have to decide.

19 But here is what I know for sure. What I
20 know for sure is that if you make a recommendation
21 today then we have lost any chance of still trying to
22 reach some kind of agreement and giving the legislature
23 the chance to come back before the end of the year and
24 do what I believe would be the right thing for them to
25 do, which is to recognize the needs of their members,

1 of their respective house members, to recognize the
2 need to do away with outside values, or at least cap
3 them substantially as other legislative bodies have
4 done for exactly the same reasons, and come to an
5 agreement on a salary, quite frankly, as I mentioned,
6 that would far exceed what Roman has put forward. The
7 only chance we have of doing that is to buy more time.

8 Since the executive members are not going to
9 vote today on what Roman or anyone else puts forward,
10 that will assure will go down to defeat and you will do
11 away with any opportunity for us to consider at one
12 last meeting sometime before the end of the year what
13 the legislature may do.

14 They may do nothing. They may never come
15 back into special session. But I would like to give
16 them that opportunity. Because I very much want to
17 give their members a raise, but I go back to this
18 obstinacy that I don't understand, makes no sense to
19 me. It is not in keeping with what other legislative
20 bodies are doing and it is a serious issue for the
21 three appointees of the executive.

22 So you can put your recommendation forward,
23 Roman. Absolutely. The chair can call a vote.

24 MS. BIRNBAUM: And she will.

25 MS. REITER: We will refrain from voting and

1 that's it. It is over for everybody. Or you can do
2 nothing, see what happens, and then come back in a few
3 weeks and perhaps get something really, really good
4 done for the people of the state.

5 That's it.

6 MR. LACK: Enough of this. Move the
7 question.

8 MS. BIRNBAUM: Let me just say something.

9 MR. LACK: Sorry.

10 MS. BIRNBAUM: Thank you.

11 MR. LACK: My apologies.

12 MS. BIRNBAUM: That's okay.

13 I am in a terrible position here only because
14 I can't vote and my opinion for that reason doesn't
15 count. But I can tell you that it is my opinion based
16 on the statute that this commission goes out of
17 existence after today. And I have heard from some of
18 the members of this commission that they will not
19 continue to serve after today, including myself. So we
20 are going to vote today and either up or down. That is
21 what I think the commissioners want, some of them, and
22 if we don't proceed I do not read into this statute our
23 ability to continue as a commission.

24 MS. REITER: What if the legislature brought
25 information? What if the legislature came back in and

1 extended our term?

2 MS. BIRNBAUM: The legislature could extend
3 our term. Some commissioners may stay or not stay.
4 But that would be a legislative decision. But it can't
5 sit with the way the statute is written and my
6 understanding of it that we don't continue after today.

7 MR. LACK: Absent legislative action.

8 MS. BIRNBAUM: Absent legislative action.

9 Legislature can come into session, it can
10 appoint the Commission again, it can appoint the same
11 people or different people. There can be a commission,
12 but I don't think this statute allows us to do it.

13 So I am going to --

14 MR. LACK: I agree.

15 MS. BIRNBAUM: I am going to proceed on that
16 basis. I am not a statutory lawyer, but that's what's
17 been told to me by people who have read it.

18 I think we have at least a motion on the
19 table from Roman and a proposal which you all have in
20 front of you. Unless there is any other comments that
21 anybody wants to make on this proposal I will call a
22 vote.

23 Roman, I assume that you still would like a
24 vote called?

25 MR. ROMAN: Yes, indeed.

1 MS. BIRNBAUM: On your proposal?

2 MR. LACK: Absolutely.

3 MS. BIRNBAUM: All those in favor of Roman's
4 proposal.

5 MR. LACK: Aye.

6 MR. ROMAN: Aye.

7 MS. BIRNBAUM: You are not voting or are you
8 voting?

9 MR. COZIER: I am voting.

10 I will abstain with respect to Roman's
11 proposal.

12 I will say I do support in principle
13 increases for both the executive branch values and
14 legislative values, however I do not support Roman's
15 proposal as it has been presented.

16 MS. BIRNBAUM: Okay.

17 All those not in favor? All those abstaining
18 from the vote?

19 MR. COZIER: Here.

20 MR. MEGNA: That would be us.

21 MS. REITER: No, we are not abstaining. We
22 are not voting.

23 MR. MEGNA: All right.

24 MS. BIRNBAUM: There are no votes from --

25 MR. LACK: Why don't you ask all those who

1 don't want to do what you are appointed to do in terms
2 of even voting, what's your vote?

3 MS. BIRNBAUM: To me a non-vote is an
4 abstention, but you can call it whatever you want to
5 call it.

6 We do not have a majority or one from each of
7 the branches of the government who appointed people.

8 Are there any other proposals that anybody
9 wants to make?

10 MS. REITER: I move that we adjourn.

11 MS. BIRNBAUM: There is a move to adjourn.

12 I assume everybody would be in favor of it?

13 We will report that there will be no report
14 coming out of the Commission today, there will be no
15 action, and according to our understanding of the
16 statute the commission's work is done. If the
17 legislature does anything we will see where we are
18 then.

19 I thank you all for your attention and I
20 thank the commissioners for their heartfelt thoughts
21 and opinions. Everyone has been very cooperative, but
22 the commission's work is now over and this meeting is
23 adjourned.

24 Thank you.

25