

In The Matter Of:
PUBLIC HEARING

November 26, 2019

Sheila Robinson and Tal Hahn

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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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November 26, 2019
New York Bar Association
42 West 44th Street
New York, New York

B E F O R E :

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

MICHAEL CARDOZO
SEYMOUR LACHMAN
MITRA HORNOZI
HON. RANDALL ENG (RET.)
ROBERT MEGNA
JIM MALATRAS
PETER MADONIA

Sheila Robinson
Tal Hahn
Official Court Reporters

PROCEEDINGS

1 THE CHAIRPERSON: Welcome everyone. So, I just
2 thought before we started it might be useful that we just
3 review particularly the last sets of facts to put it all in
4 context. Under the law the statute says that we have to
5 set the salaries for four years. And whatever
6 recommendations we make will go into effect unless on April
7 1st of each of the years the legislature overrules it. So,
8 we could make a recommendation, it could go into effect and
9 then two years later the legislature could say no 2022 it
10 won't go into effect. And, what we've also been told is
11 that under OCA's calculations a one percent salary increase
12 would cost about 2.7 million dollars which would be about
13 point 115 percent of their budget of two point
14 three-billion-dollar budget. And over the last four years
15 the COLA increase is averaged one point two eight percent.
16 And in response to I guess Mr. Lachman asked, the pay for
17 federal salaries goes back when the legislature used to set
18 judicial salaries they pegged into federal salaries in the
19 '90s before there was nothing happening for ten years and
20 then the last two commissions also said it should be pegged
21 at the federal salaries.

22 And then finally in the submission that Judge
23 Marks submitted to us that I sent to all of you, in the
24 previous four years because there was a catch up to get
25 the federal salaries the percentage increases were as

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1 high as 17 percent one year, six-point seven percent one
2 year. Now they're on par. And even when they were
3 catching up, OCA lives within its promise of not asking
4 for an increase in their budget beyond the normal
5 increase and that's where he says that he promises that
6 that would happen in the future.

7 So, I think we're really down to the question of
8 should we continue to peg this to federal salaries which
9 in and of itself says that will be the COLA increase.
10 So, the federal salary today is roughly \$210,000. Under
11 federal law the COLA increase would hit on January 1 and
12 if it's not COLA it's some. I mean, it's COLA but
13 it's --

14 HONORABLE ENG: It's below the consumer price
15 index.

16 MR. CARDOZA: Right. I forget what it's called.
17 So if that means next year it will be 212, we recommend
18 that it continues to be pegged to the federal salaries then
19 state judges effect of April 1st will be at 212 subject to
20 the legislature overruling it. So, I think the question
21 is, where should we come out? And why don't we start.
22 Peter, you have anything. You want to start?

23 MR. MADONIA: Sure. I'm happy to. I mean, I
24 think I'm pretty comfortable where we are in terms of those
25 two-pieces of, you know, data and I don't see litigating

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1 where we peg it to. To me that would be personal. There's
2 nothing on the table last I checked. If there is it will
3 take us some time to actually run through that and I'm not
4 sure what value to ask. And, you know, I think it's fair
5 to -- if we don't want to wind up where we wind up after
6 1977 where judges are now, you know, behind the eight ball
7 for a number of years and then you have to make it up with
8 six or seven percent increases, to me it makes sense to do
9 a COLA. Peg it to the feds.

10 MR. CARDOZA: Mitra?

11 MS. HORMOZI: So, I struggle. As you know, I
12 struggled the last time linking it to the federal. It
13 could have been other more restrained ways to do that. I
14 sort of agree it would be very complicated at this point in
15 time to revisit what to link it to. Having said that, I
16 would be very concerned about any further increase. I
17 think the salaries, and I know -- hopefully, I don't know
18 if I expressed it well last time, but the judges are
19 certainly very well paid. I worry about the physical
20 responsibility. Where is the state? Where is the budget?
21 And so, I have reservations about that. Any additional
22 money going to judges not small as the number it seems but
23 it's still a lot of money. So, I'm concerned about that.

24 MR. LACHMAN: So, you're opposed to COLA?

25 MS. HORMOZI: I am.

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1 MR. CARDOZA: Jim? Bob?

2 MR. MEGNA: Jim had to step out for a second.

3 Listen, I kind of share Mitra's concern. Let me put a
4 point on it which is, you know, the budget division figure
5 natural report came out this week. It talked about
6 potential six to seven-billion-dollar hole in the state's
7 budget. And I think given that and given that we're
8 talking about a four-year scenario, and I tend to agree
9 with Peter, I don't see how we would make another standard,
10 I just don't see -- I'm uncomfortable at this point, you
11 know, tying our hands for four years moving forward.

12 MR. CARDOZA: Let me just make sure. If we say
13 we're pegging it to federal salaries that means when the
14 federal salary goes up it goes up as a matter of COLA, then
15 you're saying at that point in time we would not be
16 following the federal salary?

17 MR. MEGNA: I'm saying at this point I'm
18 uncomfortable committing to that because it commits us for
19 a four-year period of time in a time when the fiscal
20 condition and this stage is pretty stressed. So, you know,
21 that's what I'm thinking now.

22 MR. CARDOZA: Did Jim just step away?

23 MR. MEGNA: He did. I think he got a phone call.

24 MR. CARDOZA: Judge Eng?

25 HONORABLE ENG: Well, my feeling is to peg it to

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1 the salaries of the federal district court and to apply the
2 COLA. As Judge Marks put it out *res ipsa*, there is a
3 safety valve. Of course, as having been mentioned already,
4 the legislature may intervene in each of these years over
5 here if it becomes acute, that is if a budget situation
6 becomes acute. Right now the judiciary has shown that it
7 is responsible, its lived by the commitments that it made
8 in the past and without exception. And I think that they
9 will continue to live up to it because they have to have
10 credibility. And once again, if we find ourselves in an
11 acute situation that is a way out and it's a simple matter
12 for the legislature to pass legislature stopping it cold in
13 year two, in year three, whatever. So, I don't view it as
14 a four-year commitment as such. It is a commitment again
15 that can take into account, you know, interventions and,
16 you know, other things that are unforeseen.

17 MR. CARDOZA: Jim, you accept that? You want to
18 add your views?

19 MR. MALATRAS: I'm just trying to get it right.
20 Peter, I wasn't quite sure what you were saying. Are you
21 saying you are okaying what the Chairman is saying, peg it
22 to the federal salary? Well, peg it to the federal salary
23 and the COLA for four years?

24 MR. MADONIA: Say again. I can't hear you.

25 MR. MALATRAS: I was just trying to get a sense.

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1 I was unclear about what you were saying. Are you saying
2 you agree with the Chairman that you would vote to peg the
3 federal salaries again for four years with the COLA?

4 MR. MADONIA: Well, look, I'm open to both ends of
5 this conversation. I'm listening to what Robert has to say
6 about the standard, you know, of the state's budget. I'm
7 not privy to what the state's budget is so I'd like to hear
8 more about that before I put a final vote in. But
9 conceptually, you know, pegging it to the federal judge's
10 salary makes sense to me. If there's a state budget issue
11 that is going to, you know, override the ability for the
12 OCA to make even a commitment they're making, would do it
13 in the context of their existing budget then I want to hear
14 that. But somebody's got to put something on the table
15 that is a little more dispositive than what I heard which
16 is that, you know, 10,000 feet. But, am I open to like
17 worrying about whether there's going to be money there even
18 if the OCA commits to it? Yeah, sure, I'm going to worry
19 about that just like Mitra and Robert. But, let's hear
20 more.

21 MR. CARDOZA: Jim?

22 MR. MALATRAS: Well, I don't know. I had to step
23 out of the meeting.

24 MR. CARDOZA: I'm sorry?

25 MR. MALATRAS: The shortfall already is six point

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1 one billion. I'm not quite sure what Peter's position is.
2 I don't have a say. I'm more with Mitra. I think she had
3 in 2015 issues with pegging it. What we come up with as an
4 issue, number one, I don't think that issue was mixed
5 whether we should lend it to the federal salaries as
6 opposed to state. I don't think it has to go to the
7 federal salaries. It's not that I don't think the
8 judiciary should be compensated. I am deeply concerned at
9 this moment with the six point one-billion-dollar budget
10 deficit. They'll be talking about raises or anyone quite
11 frankly. There is a judicial concern now. And I do expect
12 the Chairman saying pieces that have a lot us to catch up
13 since 2011. There's been a 54 percent increase in
14 salaries. A lot of that was remedied former situations but
15 I don't know what the six point one billion dollars budget
16 has to come from somewhere. Someone is going to get cut
17 and that we have to be mindful of. And I know we're
18 talking about reasonable differences in salaries, but we
19 have to put a reasonable proposal on the table. So, we can
20 only really talk about salaries and we are the highest
21 paid -- we have the highest paid judges currently in the
22 country. So, I think we have to be mindful of that as a
23 condition and I am concerned like Bob is. Four years out
24 is a long time. I know Judge Eng has made a point saying
25 that it can always be undone. Anything could always be

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1 undone in this world. But I only have my vote. I don't
2 know whether the legislature or the governor or anybody
3 else could do in the future. I'm mindful of my vote. I am
4 deeply concerned about a four-year outlaying. I know that
5 even protecting the OCA \$15 million dollar a year and I
6 don't know. So, I have an issue if it is six point one
7 billion. That's a real number.

8 MR. MEGNA: Yes.

9 MR. MALATRAS: That's a real number of potential
10 cuts and we have -- I'm uncomfortable at this moment if
11 that's where we are today. Someone is going to get cut and
12 we have to be very mindful of what we're doing. I know
13 that zero point zero whatever percent all the time in all
14 sorts of programs. So, that's sort of where my head is
15 right now. I'm respectful, of course, of the position of
16 Judge Eng and what OCA put together and the analysis. But
17 the financial facts are what the financial facts here and
18 that this is a moment in time. It may not be the right
19 moment to do this. Pardon me for one second.

20 MR. CARDOZA: Seymour?

21 MR. LACHMAN: Well, at least from where I sit,
22 there's some more information there in terms of what the
23 fiscal situation is longer term for the State. Like, what
24 would a motion look like from the Governor's side? It
25 would be really helpful to understand what an actual motion

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1 would be like. No raises? I mean, what are the options
2 here?

3 MR. MEGNA: Look, at this point I would be, again
4 speaking for myself, very uncomfortable with committing to
5 something that, and I understand Judge Eng's point of view,
6 but I've lived through these kinds of things too many
7 times. When you make your commitment to do something for
8 four years, getting anyone to vote to undue it becomes a
9 complicated process. I you know and I think you could flip
10 that around and say, well, if the world turned out better
11 than we thought it was let say you could always act in a
12 positive way agreeable. So, I think I'm, you know, I'm
13 reluctant to sign on to something right now that would take
14 us down the road of the federal -- keeping the judges at
15 pace with the federal over a four-year period with that
16 kind of CPI. Would I be open to another kind of approach?
17 Right now given the fiscal condition, you know, I would
18 think for me standing at right now seems like the best
19 thing but I'm open to other suggestions that people might
20 have.

21 MR. CARDOZA: Are we arguing in part with the
22 statute which said set it for four years? That's what the
23 legislature told us to do is set the salaries for the next
24 four years. And so, we're at 210 today, roughly 210, and
25 what we're saying, assuming you continue to link it to

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1 federal salaries, that 210 will remain the same subject
2 only to a COLA increase because that's all the federal
3 salary would be. So, the amount --

4 MR. MADONIA: If I understand Bob correctly,
5 actually I appreciate it, if the legislature decides to set
6 it for four years that's a long tail and so if the
7 legislature wants to do something let the legislature do it
8 because nobody can predict what the next four years will be
9 like and therefore they have the power to undo what we do.

10 MR. CARDOZA: Well, that's right. But
11 therefore --

12 MR. MADONIA: But once we do, it's a done deal.

13 MR. CARDOZA: No, it's not.

14 MR. MADONIA: Well, they have to undo it which
15 like let them undo it is I think what Bob is saying, which
16 I sort of get.

17 MR. CARDOZA: Is that what they -- it's not what
18 they did. In fairness, Seymour hadn't had a chance to
19 speak.

20 MR. LACHMAN: Truth be told, if I were still a
21 senator at this time, I would probably ask the question why
22 was parody made between the Federal District Court and the
23 State Supreme Court? If I was on that commission, if it
24 was a four to three vote this wouldn't exist. But, the
25 real world which we have today, and I don't think we could

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1 take the skeletons out of the closet, you know, change that
2 is that I'm leaning towards having COLA increases. But, I
3 would if the statutory law didn't say that these are for
4 four years I would do it for a year or two years and see
5 how the State budget develops. And, what is the
6 possibility of changing that? I don't know.

7 MR. CARDOZA: Well, you need a new law.

8 MR. LACHMAN: You need a new law. That much I do
9 know.

10 MR. CARDOZA: Okay. We have a deadline of
11 December 31 to set salaries for the next four years. Does
12 that mean we could say they should be less or that there
13 should be no increases? We have the power to do that. But
14 I guess what bothers me is the past I think, and I respect
15 that other people have differences of opinion, the past
16 when the legislature set the salaries they were pegged to
17 federal salaries and the last two commissions pegged to
18 federal salary. So, that's where we are now. And, federal
19 salaries will only move now by a COLA. And so, what we're
20 arguing about is a practical matter is are we uncomfortable
21 saying that they should continue to be subject to COLA's.
22 Recognizing that, A, OCA has said if something happens,
23 we're not going to ask for any increases in our budget to
24 do this and the legislature still has the power to overrule
25 it. So, it seems to me, unless we're going to start all

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1 over again, that this is a fairly simple task. And to, in
2 effect, tell the State judges all the positives that have
3 been accomplished by pegging this to federal salaries and
4 allowing present judges and future judges to know that they
5 won't be subject to the inflationary problems which is
6 clearly benefited the judiciary's tracking good judges. I
7 don't see the justification for them recognizing there
8 could be a financial disaster. I mean, I read the same
9 articles about the six-billion-dollar Medicaid issue.
10 There's always going to be something. But there's all
11 these ways out if that happens.

12 MR. MALATRAS: I don't think we're saying we
13 disagree that we want a strong judiciary. But it's coming
14 upon us as the Commissioner setting compensation to look at
15 the statute requiring us to look at the larger economic
16 conditions of the state. And, yes, I don't think they
17 should for another 15 years get salary increases and the
18 senate in either theory the entire point under the senate
19 as well. But at the same time, six million dollars is a
20 real number, and someone is going to get cut. Some social
21 service is going to get cut. Some healthcare service is
22 going to get cut. Someone is going to get cut. Some
23 school is going to get cut. We are under a large political
24 context whether we want to or not. With respect to
25 everyone else. So, under the largest group of things, does

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1 a point and a half increase in someone's salary mean
2 anything to people? Maybe not. But, 2.7 million dollars
3 is going to be cut from someone who's hired this year and
4 you have to be mindful of that. And you have to be mindful
5 of it in the large context of a time where there was
6 54 percent increase over the last previous years in
7 salaries. You have to be mindful that we have the top paid
8 judges currently in the country.

9 At the same time I think what Bob was saying and
10 what I was trying to say was the legislature may undo it.
11 The legislature may also override it any time they want
12 to whatever commission they want to do whatever salary
13 increase. Nothing has ever slowed the ability for the
14 legislature to do that either. So, they find, yes,
15 you're put in a position for four years. I say right now
16 I am not comfortable waiting four years.

17 HONORABLE ENG: I respectfully --

18 MR. MALATRAS: And I would say, respectfully, then
19 I would say no doubt if he wants to come back and say,
20 well, reset the clock for next year.

21 HONORABLE ENG: I respectfully differ.

22 MR. CARDOZA: Let him finish.

23 HONORABLE ENG: No, no, I'm sorry. I respectfully
24 differ. I'm sorry. I didn't mean to interrupt.

25 MR. MALATRAS: No, that's fine.

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1 HONORABLE ENG: We're having a discussion. I'm
2 sorry. I was a judge for 34 years and I've seen the
3 vicissitudes of review of judicial compensation. I was the
4 single judge during the 13 years in which there was no
5 adjustment at all to salary. And in many of those years
6 the judicial compensation was held hostage to various
7 political priorities, influence and it took so long to get
8 a commission to remove it from that process. And we speak
9 of discoveriture. Now, isn't anyone uncomfortable of saying
10 to the third and collegial branch of government now that
11 contrary to the finding to the statute first of all and to
12 the determination of the previous commissions you will
13 receive no adjustment, not even a COLA. You are frozen in
14 place for the next four years because of potential
15 budgetary concerns. I think that my level of discomfort
16 would be very high in saying that, particularly in light of
17 the performance of the statute and its concomitant
18 improvement upon the life of the judiciary and to say no
19 and without, you know, without any significant foundation
20 for that would be a disservice that would be very
21 disquieting in my view.

22 MR. CARDOZA: And let me just -- Larry Marks did
23 say, "OCA will fully absorb the cost of the COLA's in its
24 budget." So that if the disaster happens, he's saying
25 they'll absorb it. If all the budgets in the State are cut

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1 or the judiciary budget is cut, he said I'm going to absorb
2 it. It's point 01 or whatever the percentage is of my
3 budget and I'm going to absorb it. And you people who
4 dealt with the legislature a lot more than I, I think,
5 would know if that's what he says and that he doesn't
6 adhere to his promise he's got big, big, big problems.

7 MR. MALATRAS: There's two separate questions.
8 The question is, can we absorb a cut and are we comfortable
9 in giving increases in time of potential outside of a
10 budget I think are the two sets of questions. And I
11 understand Judge Eng's point. This is not to say we're at
12 all disrespectful of the judiciary as an independent
13 branch. And I do think taking politics out of it was a
14 good thing. And I think the commissioner did a good thing.
15 They even had to readjust the statute to give more
16 flexibility. But you're also talking to two guys without a
17 raise. In 2011 I took a ten percent pay cut as did
18 Director Megna. So, we know when the times of financial
19 trouble. We don't need to stay flat. You actually loose
20 the hours. So, it's not a fortunate thing to be part of
21 sometimes but it's understandable.

22 MR. MEGNA: Just one point. I take Judge Eng's
23 point very serious, but I would say because we are talking
24 about different branches of government, even though the way
25 the budgets are presented are different, you know, the

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1 Governor doesn't get to write OCA's budget request. That
2 comes from them. So, the question of how they're eating
3 that salary increase is really something they determine on
4 a piece of paper that they hand to the Governor and then
5 the legislature really has some of the leave to make
6 adjustments to that. But it is on a different level of
7 budget conversation, by the way, as it should be then the
8 executive budget process overall. So, you know, I think it
9 does get complicated to talk about how cuts get absorbed by
10 the Court system. But I do think, again, that given the
11 physical situation and the four-year commitment, you know,
12 that's the part that I'm having a lot of trouble with.

13 MR. CARDOZA: Well, what is it that you two would
14 suggest, I don't mean to exclude others when I say that,
15 what is it that you suggest we recommend?

16 MR. MALATRAS: I would be at zero right now.

17 MR. CARDOZA: Pardon?

18 MR. MALATRAS: I would be at zero.

19 HONORABLE ENG: You would be at zero. We would be
20 on the road then to the absurdities that the prior scenario
21 had produced without exaggeration in my -- as an associate
22 justice of the Appellate Division my salary was less than
23 that of my principle law clerk. My law clerk for one year
24 before we received any relief at all that was when we got
25 that large increase, we're talking about reopening the door

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1 to absurd results that do nothing but undermine the status
2 and the integrity of the judiciary in my view.

3 MR. CARDOZA: I think it will make national
4 headlines if you do that. If you're telling the judiciary
5 that because despite all the facts we've just recited and
6 all the safeguards you have and the statute that they're
7 getting no increases I trust the judges won't strike but
8 you're treating the judicial branch as a stepchild and I
9 think you have --

10 MR. MALATRAS: I disagree with the position and I
11 don't feel that you need to attack me and my position. I
12 think my position is a rational one. I think that I
13 consider the statutory obligation. Looking at the large
14 economic conditions has nothing to do with the respect to
15 the judiciary that I may have or may not have which I do
16 have, and I respect Judge Eng because I was clear the one
17 person that stood up for the judiciary repeatedly was me.
18 So, I don't want you to call into question my character. I
19 do think any increases of any sort in the time of a
20 six-million-dollar budget crisis may not be the perfect
21 thing for me. I don't necessarily agree that, I'll let
22 everybody else speak for themselves, this is not an attack
23 on the judiciary. And I don't think it's national
24 headlines. And, if it is then you need to explain it. I
25 do think that we have a commission. The commission

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1 continue to act and that there's issues where you have to
2 adjust, then you should adjust the statute.

3 But I don't think I'm attacking. I don't think
4 we need to go to that level. I do think that what we're
5 all struggling with, I think I mentioned it, Mitra
6 mentioned it and I think Peter mentioned it, in a larger
7 context of what we just got the finances of the State we
8 have to consider this. And in 2015 those same issues
9 were raised. It was four to three, by the way. It
10 wasn't a slam dunk. Everybody was on board with their
11 own position. Three posts.

12 MR. CARDOZA: By that time the percentage
13 increases because they were catching up to federal salary
14 which were much higher.

15 MR. MALATRAS: I just don't want you to attack my
16 character here. What OCA submitted was when he said the
17 economic condition of the state in their report submitted
18 to this commission was strong. Well, if that's a change
19 and that's what the statute requires, it requires us to
20 consider these things. That's all I'm saying. I don't
21 think we need to go to that position of getting on
22 commission.

23 MR. CARDOZA: Mitra?

24 MS. HORMOZI: I think it's unfair to say in any
25 way that being concerned about the fiscal year

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1 responsible --

2 MR. MADONIA: Mitra, I can't hear you.

3 MS. HORMOZI: I said I think it's a little unfair
4 to try and make the concern that some of us have about the
5 budgetary issues being to an attack on the judiciary.
6 Obviously, everyone here has the utmost respect for the
7 judiciary. They are paid due to the last commission. They
8 are paid very well. But, in a time where there's going to
9 be twenty percent, I don't know what the cuts are,
10 throughout the state agencies. It does seem odd to
11 guarantee one group increases when the rest of the State is
12 struggling and the fact that some of us are, I think we're
13 just struggling with what you do given the latest report.
14 Again, if the economy was were strong in the State, I think
15 this would be absolutely a super easy call in this case.
16 We're not in that circumstance. And I don't think it's
17 setting any real precedent if it turns out the economy does
18 turn-around, or the Medicaid issue gets resolved or the
19 next commission or for the legislature of next year to say
20 you know what problem solved. Let's give everyone a raise.
21 But I think we all do need to be mindful that it matters.

22 (Continued on the next page.)

23

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1 HONORABLE ENG: I --

2 THE COURT: Seymour.

3 MR. LACHMAN: I think we reached the point
4 where we have to compromise. I think that the State's
5 position needs a compromise and perhaps our position as
6 well. I don't like pegging the cost of living
7 increase, the Federal -- to the Federal Judiciary.

8 Now, you had said that the Executive Branch
9 could be in favor of no increase. Is it at all a
10 possibility for you to come up to some increase, rather
11 than saying no, there is no increase?

12 MR. MEGNA: I think that at this point I am
13 uncomfortable with any, given, again, the mind-set
14 about the fiscal condition of the state. Of course I
15 always try to be open to suggestions people have but, I
16 mean, I think that is where I am right now. And,
17 again, you know, I think Judge's point -- again, I
18 don't think any of this is an attack on anyone. I
19 think it's just trying to be realistic and I went
20 through too much of this in the past where people have
21 the -- you know, there has been -- I get the fact that
22 when we went the length we did before giving the judges
23 a raise, that was not great policy, it was bad policy.
24 It was ratified. But we are in a difficult place here,
25 and very difficult decisions are going to get made.

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1 So I don't know that I feel comfortable, you
2 know, making a decision right now knowing that there is
3 going to be significant suffering on the fiscal end in
4 other places. Maybe even in OCA. And so I -- you
5 know, that's why I am very cautious.

6 MR. CARDOZO: So your suggestion, Bob, was
7 zero increase; and, Jim, that is what you think too?

8 MR. MALATRAS: Yes.

9 MS. HORMOZI: Peter, you have any
10 suggestions?

11 MR. MADONIA: So I am just trying to
12 calibrate the Judge's -- Judge Eng's concern. You
13 don't want to repeat bad history, I get that. I am
14 trying to calibrate that against this is a four-year
15 commitment, so the Commission is locked into four
16 years, whether you like it or not as far as I could
17 tell. And then put that against the budget facts,
18 where the -- when the financial facts have changed in
19 this conversation from day one to today. Pretty
20 dramatically.

21 And given the Legislature's ability to -- the
22 financial picture or financial scenario clears in the
23 next year, year and a half, they could rectify -- I am
24 sort of leaning with the Governor's folks are, because
25 of the financial facts at this point. And that is an

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1 unknown. I mean, there is six billion dollar potential
2 hold there. If it becomes real, OCA is going to get
3 cut along --

4 MR. CARDOZO: But that is -- I don't quite
5 understand. OCA would get cut presumably if that
6 happened, and they say they will absorb the cut.

7 MR. MADONIA: It's hard to know that --

8 MR. CARDOZO: That is what they say.

9 HONORABLE ENG: And he and his predecessors
10 have lived up to that historically. It's clearly
11 demonstrated.

12 MR. MADONIA: I mean, but I think Jim made
13 this point several days ago. Yeah, they may live up to
14 it, but at what price? And they can't predict that
15 without knowing the potential cut I think is what Jim's
16 point was. I am not going to speak for Jim, but I am
17 trying to calibrate it all at this point.

18 MR. CARDOZO: But a --

19 MR. MEGNA: Especially given the comments
20 about workload and things like that -- I mean, you
21 know, listen, I get it, that that is a sacrifice and a
22 call they may make, but given when the fiscal
23 conditions of the State plays itself out, you know,
24 even people at OCA may have a different view. I don't
25 know that right now.

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1 The condition -- the fiscal condition of the
2 State hasn't played itself totally out yet. But to
3 Peters' point, I -- you don't really know what
4 absorbing the cut means.

5 MR. MADONIA: You know, and the other piece
6 that -- and Mitra mentioned this and I hadn't thought
7 about this. This Commission gets to weigh in on
8 whether judges get raises or not, and I forget how many
9 people work for the State at this point, but everything
10 will get put that that context going forward, and then
11 in the further context of a six billion dollar budget
12 deficit. So, like, that is -- that may create a whole
13 set of challenges down the road that we are not
14 anticipating because we are only focused on judges. I
15 think the Governor's office is probably thinking about
16 that.

17 MR. CARDOZO: Although next year we have to
18 deal with Executive and Legislative compensation and
19 may face the same issues.

20 MR. LACHMAN: Same issues.

21 MR. CARDOZO: Same issues. But as far as the
22 OCA budget is concerned, they can say, yes -- they
23 could be lying, or not hold to their promise, they will
24 say they will live with whatever the budget cut is and
25 still be able to absorb this increase.

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1 MS. HORMOZI: I know, but would that mean you
2 don't hire as many judges or when some retire --

3 MR. CARDOZO: If they have a 2.3 billion
4 dollar budget there are other costs obviously other
5 than judicial salaries.

6 MS. HORMOZI: It's the majority of employees
7 and --

8 MR. CARDOZO: Well, it also means union
9 layoffs and other things, the collective bargaining
10 agreement.

11 HONORABLE ENG: Yes.

12 MR. CARDOZO: All the nonjudicial personnel
13 have collective bargaining agreements, which will
14 obviously call for salary increase, not decreases. So
15 you will start getting into that dichotomy that Judge
16 Eng mentioned.

17 HONORABLE ENG: No, it's true.

18 MR. MADONIA: Right, but this picture is
19 going to clarify in the next, I don't know, year, year
20 and a half. Is that fair, Jim?

21 MR. CARDOZO: It's subject to the next issue.

22 MR. MADONIA: I mean, I hate punting, but to
23 me it does feel right to punt this back to the
24 Legislature -- if the picture clarifies in a way that
25 says we could give raises across the board, to judges,

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1 and whoever we wish, or not; and not leave it to OCA to
2 have to start making cuts we don't know they'll make,
3 which is I think what Jim was trying to say. Like, it
4 may be today, but a year, year and a half from now it
5 may be very hard to make the cuts, even to get to ten
6 million, which is what the cost is over four years,
7 right?

8 MR. MALATRAS: Fifteen.

9 MR. MADONIA: I mean, it's not, in the macro
10 picture, gigantic but fifteen million is fifteen
11 million. And in a heavy personnel budget, some of that
12 you could make up in, you know, turnover savings but
13 not all of it.

14 MR. CARDOZO: You really are taking issue
15 with the fact that the Legislature decided in creating
16 these commissions to say set the salaries for the next
17 four years, and now you are saying because of the
18 uncertainties we shouldn't do that; we should leave it
19 back to the Legislature to take a look.

20 MR. MALATRAS: I think there will be --

21 MR. MEGNA: I think as Jim said several
22 times, I don't know what the exact language is, but he
23 asked us to look at economic conditions at the time we
24 make the judgment. That, by definition, assumes that
25 circumstances can change.

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1 HONORABLE ENG: You have something to say?

2 MR. LACHMAN: Yes. If I had to vote for all
3 of this today, I would probably vote yes for these
4 COLAs. But --

5 MR. MADONIA: I can't hear.

6 MR. LACHMAN: I would probably vote yes for
7 the COLAs. But I think there is a need to compromise
8 on this issue. And just to say there is no compromise
9 because of the financial situation, which -- which we
10 don't know that much about, I find it to be un --
11 apolitical. And, at the same time, I am not ready to
12 make a final decision today. I am looking for a
13 compromise here.

14 HONORABLE ENG: Well, the compromise could
15 take several forms, I would say. We have to set it for
16 each of these exceeding years. So I am wondering
17 about, if we need to compromise, if we could have one
18 in place for the first year, one in place for the
19 second year, and no COLA adjustments in the final
20 years. That's because I don't -- I don't think we will
21 have a catastrophic budget crisis immediately. These
22 things always take time to develop, so my thinking then
23 would be that -- if we were to do that, the next
24 commission would -- we'll have an opportunity to review
25 and make necessary adjustments in light of the then

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1 current situation.

2 But to say no is counterproductive, I think.
3 Counterproductive of the entire Commission scheme which
4 has been well-received.

5 MS. HORMOZI: These judges are the highest
6 paid judges in the country. And so, you know, look, on
7 the one hand it's easy to say -- it -- you know, I
8 think --

9 MR. LACHMAN: Let her finish.

10 HONORABLE ENG: Sorry.

11 MR. CARDOZO: Judge Eng, go ahead. Explain
12 it the for twenty-ninth --

13 HONORABLE ENG: The judicial salary raises
14 across the country are absurd. Because, you know, the
15 judges have comparable jurisdictions and duties. I
16 mean, the highest level -- you want to talk about the
17 highest paid judges in the country, we are talking
18 about, you know, joining the pay status of the Federal
19 Judiciary. We are not exceeding them. We are talking
20 about, you know, just being at the level of a branch of
21 the judiciary in that sense. Believe me, we are not
22 luring it over everyone saying we are the highest paid
23 judges. And, really, the absurdities that I have seen
24 over the years, I was Presiding Justice of the
25 Appellate Division as recently as two years ago; my

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1 salary was lower then than the principal of my public
2 high school. And today it remains the same. I checked
3 the principal's salary. It's still higher than the
4 Presiding Justice's salary. And that is what we became
5 accustomed to. And we compare our responsibilities,
6 our duties, and the level of skill you have to have to
7 do these various jobs, there is no comparison.

8 This has been something of a lifeline to the
9 judiciary regarding respectability. And to just close
10 it off in this fashion is not going to sit well. I am
11 not saying that that should decide the matter for us,
12 but I think that it would be something that we can't
13 ignore either.

14 MR. LACHMAN: I would recommend that we don't
15 make a final decision at this meeting.

16 MR. MADONIA: I cannot hear.

17 MR. LACHMAN: I would recommend that we not
18 make a final decision at this meeting, but meet between
19 Thanksgiving and the holidays of Christmas and Hanukah.
20 We have about a month before that, and perhaps we can
21 reach some sort of compromise between the two
22 positions.

23 MR. CARDOZO: Well, first of all, remember
24 that whatever recommendation, assuming we come up with
25 one, you have to write a report.

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1 MR. LACHMAN: I understand that.

2 MR. CARDOZO: And I don't think any of us
3 want to be working the last week in December.

4 MR. LACHMAN: I just said between the last
5 week in December and Thanksgiving.

6 MR. CARDOZO: And since I doubt very much you
7 would -- you would know better -- that the situation
8 will be further clarified factually --

9 MR. LACHMAN: It might.

10 MR. CARDOZO: I don't disagree that we
11 shouldn't make a decision today. I think that would be
12 a mistake given the difference of views. I would
13 suggest that we aim for a meeting perhaps at the end of
14 next week or something like that.

15 MR. LACHMAN: Good.

16 MR. CARDOZO: And that we all think about
17 these issues.

18 MR. LACHMAN: Very good suggestion.

19 MR. CARDOZO: Does that -- I mean, I think --

20 MR. MEGNA: Fine with me.

21 MR. CARDOZO: Pardon?

22 MR. MEGNA: I said that is fine with me. I
23 agree that -- I agree that I don't think the basic
24 facts will change between now and then. I agree with
25 your assessment and that that is correct.

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1 MR. CARDOZO: Peter?

2 MR. MADONIA: I mean, I am available through
3 Wednesday of next week and then I am back down in
4 Miami. I am not available in a public forum. If you
5 want to do something again, I am not sure what will
6 change, but that is -- I am available through Wednesday
7 of next week.

8 MR. CARDOZO: And when will you then be back?

9 MR. MADONIA: Not until the 11th, 12th.

10 MR. LACHMAN: Let's have a meeting next week.

11 MS. HORMOZI: I am not here.

12 MR. CARDOZO: Peter, you are here on the 4th
13 or not?

14 MR. MADONIA: I can do the same setup as
15 today.

16 MR. CARDOZO: Could you get Wednesday?

17 MS. HORMOZI: I think I fly back on
18 Wednesday.

19 (Brief pause.)

20 HONORABLE ENG: I am in court on Wednesday.

21 MR. CARDOZO: Wednesday is out.

22 MR. LACHMAN: Tuesday? Oh, you won't be
23 here?

24 MS. HORMOZI: No.

25 MR. LACHMAN: We could always have Peter

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1 Skype in from Florida.

2 MR. CARDOZO: Legally that --

3 MR. MADONIA: Has to be public.

4 HONORABLE ENG: Is there any room for
5 compromise or suggestion now, or, is there not?

6 MR. CARDOZO: And, Peter, you said --

7 MR. MALATRAS: The facts on the ground are
8 the facts on the ground. I am hoping if both sides of
9 the Commission think that by having more time will
10 change the facts on the ground and if you want to
11 consider those things, I am open to meeting in December
12 to make a decision, but I will be -- I will be working
13 that week anyway. I know others have breaks and you
14 want to be respect of that. But I think right now I
15 don't think I am in the position, I don't know about
16 you, Bob, but I -- it's not disrespectful, and I don't
17 think --

18 MR. CARDOZO: I hope we all keep an open
19 mind. I don't think we should give up today. I think
20 that would be a mistake.

21 MR. LACHMAN: I agree completely.

22 MR. CARDOZO: So I would suggest that we -- I
23 am not sure -- Peter, you don't get back until the
24 11th, is that what you said?

25 MR. MADONIA: Yes.

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1 MR. CARDOZO: Are we free on the 11th?

2 MR. LACHMAN: Yes.

3 HONORABLE ENG: I am good also.

4 MR. CARDOZO: You gentlemen in Albany are
5 free on the 11th?

6 MR. MEGNA: Yes. I have a meeting on the
7 11th. I want to see if I can move it. Why don't we
8 get back to you with the times?

9 MR. CARDOZO: All right. Other than Jim and
10 Bob, is there any time on the 11th okay just to --

11 MR. MADONIA: The afternoon for me. I get
12 off a plane in the morning.

13 MR. CARDOZO: So what about aiming for 2:00
14 in the -- on the 11th?

15 MR. MADONIA: How about like this time?

16 MR. CARDOZO: Sorry?

17 MR. MALATRAS: My -- we could start at 1:00
18 and go for several hours, I guess.

19 MR. CARDOZO: Well, what do people think
20 about starting at 5:00 for a couple hours on the 11th?

21 HONORABLE ENG: I am good.

22 MR. MADONIA: I am good.

23 MR. LACHMAN: I am not. But I will change
24 the date.

25 MR. CARDOZO: Could we do 5:00 on the 11th?

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1 MR. MEGNA: We will try to make that work.
2 If that is the problem, we will get back to you but I
3 will try to make that work.

4 MR. CARDOZO: All right.

5 MR. LACHMAN: 5:00?

6 MR. CARDOZO: 5:00. And if somebody changes,
7 because we are, you know -- there is no more time if --
8 that is a practical matter. So if you have any other
9 suggestions in the interim, let me know. In terms of
10 substance, I mean. But otherwise I guess we have no
11 choice. I -- no way to get together before the 11th;
12 is that right?

13 MR. LACHMAN: I will try to come up with a
14 proposal.

15 MR. MADONIA: What about the 2nd or 3rd?

16 HONORABLE ENG: No good. I am in court.

17 MR. CARDOZO: All right. And you are out
18 after that?

19 MS. HORMOZI: Yes.

20 MR. CARDOZO: Okay. I guess the law doesn't
21 preclude a Saturday or Sunday.

22 HONORABLE ENG: No. No.

23 MS. HORMOZI: The 9th and 10th are no good?

24 MR. CARDOZO: I am just throwing out the 7th
25 on Saturday.

1 MR. LACHMAN: I can't make it any Saturday.

2 MR. MADONIA: I am in Miami.

3 MR. CARDOZO: Forget it. Seymour can't --

4 MR. LACHMAN: I can't make it on any
5 Saturday.

6 MR. MALATRAS: I agree. For a public
7 meeting, any Saturday --

8 MR. CARDOZO: All right. I guess we have no
9 choice. 5:00 on the 11th. Let's all try to be
10 creative in our thinking in the interim.

11 HONORABLE ENG: Yes.

12 MR. CARDOZO: Anything else anyone want to
13 raise?

14 Okay. Thank you all.

15 HONORABLE ENG: Thank you.

16 (Whereupon, at this time, the matter was
17 adjourned to December 11, 2019, at 5:00 p.m.)

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