

In The Matter Of:
Public Meeting

November 21, 2019

NY Supreme Court - Civil

Proceedings

1 STATE OF NEW YORK

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2 PUBLIC MEETING

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4 Commission on Legislative, Judicial and
5 Executive Compensation

6 -----X

7 November 21, 2019
8 New York City Bar Association
9 42 West 44th Street
10 New York, New York 10036

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

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13 MICHAEL CARDOZO, Chair
14 MITRA HORMOZI
15 SEYMORE LACHMAN
16 PETER MADONIA,
17 HONORABLE RANDALL ENG (Retired)

18 ROBERT MEGNA (via video)
19 JIM MALATRAS (via video)

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24 MICHELE PANTELOUKAS
25 MONICA MARTINEZ
Senior Court Reporters

25

1 CHAIRMAN CARDOZO: Judge Eng is not here, but I
2 think we should start. Let me note this is being streamed
3 for the public, who may want to observe and listen in. We
4 have a couple of members of the public here as well.

5 But our work today is to begin the debate,
6 discussion of our recommendations. And I laid out in my
7 e-mail the way I thought we should proceed.

8 I thought best first to highlight the issues that
9 we are supposed to decide, remembering this year is just
10 Judge's salaries, but the statute says that we are making a
11 four-year recommendation, what the judicial salaries will
12 be effective April 1, 2020 and the next three years after
13 that. And it will become the law, unless the legislature
14 overrules it by April 1.

15 And under the -- and here is Judge Eng.

16 JUDGE ENG: Yes, in the subway for an extra half
17 an hour.

18 CHAIRMAN CARDOZO: That is not within our
19 jurisdiction.

20 JUDGE ENG: We will fix that next, we will take
21 care of it.

22 CHAIRMAN CARDOZO: Let me note under the
23 statutory amendment, our recommendations have to be
24 approved both by majority vote, but also approved by one of
25 each of the appointing representatives. So the appointee

1 of the Chief Judge, one of the three appointees of the
2 Governor, the appointee of the Majority Leader, and the
3 appointee of the Speaker have to join in the
4 recommendation. So -- and please interrupt me if you have
5 any questions on that.

6 We have gotten a lot of information and I guess
7 the additional information we got I distributed yesterday
8 and maybe a couple of days before.

9 MS. HORMOZI: Yes. Thank you.

10 CHAIRMAN CARDOZO: So, anybody have any
11 discussion about that information or any other information
12 that we should have before we proceed?

13 MR. MEGNA: I am a little confused as to, when we
14 say we are doing this for a four-year period, I guess I am
15 kind of curious about the interpretation on that,
16 especially in relatively uncertain, you know, fiscal times.

17 What does that mean?

18 CHAIRMAN CARDOZO: Well, the statute says that
19 our recommendations, which must be completed by
20 December 31, shall provide what the four years commencing
21 on April of 2020 the annual salaries of the judges shall
22 be. So, what the prior Commission did, as well as the
23 Commission four years before that, is say, effective
24 April 1, 2017, I guess it was, the salaries should be X;
25 and what they said was the same as the Federal District's

1 salaries, and the following year the salary shall be Y, et
2 cetera.

3 So, that's what our statute --

4 MR. MEGNA: So we are making a four-year
5 commitment, so future events could not alter the decisions
6 that we make now?

7 CHAIRMAN CARDOZO: That's my understanding.

8 If you remember, the constitutional issue was
9 debated in the United States Supreme Court because the
10 Congress was -- had not been giving COLA increases, since
11 Judge's salaries constitutionally cannot be decreased, that
12 the Supreme Court decided that it was unconstitutional for
13 Federal Judges not to receive the cost of living increase,
14 and so this Commission -- the prior Commissions, I think,
15 taking that philosophy, said, along with the statute, said
16 this is the salary and since the federal -- and linking it
17 to the federal salary said, whatever the federal salary is,
18 since the federal salary would be getting a built in COLA,
19 that's what they said it would be.

20 MR. MALATRAS: For the purposes of our
21 discussion, we don't -- the linkage to the federal salary
22 is the previous Commission.

23 CHAIRMAN CARDOZO: Yes, that's correct. Because
24 the -- the link to the federal salary, since the federal
25 salary has a built-in COLA, would automatically take that

1 into account.

2 MR. MADONIA: I guess a friendly amendment to
3 that concern, it is a four-year window and not a permanent
4 window, as it is for the federal Judges.

5 CHAIRMAN CARDOZO: Right.

6 MR. MALATRAS: The Legislature has the
7 opportunity to override as of April 1 of 2020 on the entire
8 package, as I understand?

9 CHAIRMAN CARDOZO: Yes. Yes.

10 MR. MALATRAS: That would not be -- of judicial
11 salary because they have to --

12 CHAIRMAN CARDOZO: I am sorry, can you speak a
13 little louder? I didn't hear.

14 MR. MALATRAS: You can't make the argument, I
15 guess the question becomes, could someone make the argument
16 that say we say we are going to relink -- we are going to
17 continue linking to the federal increases, if the
18 legislature, that is for four years, therefore now locking
19 in legally, our response is for four years they get those
20 increases.

21 CHAIRMAN CARDOZO: Yes.

22 MR. MALATRAS: The legislature can't somehow come
23 in -- the legislature could come in and say that all is no
24 good, we are going back down as a package with no
25 increases. No one can make the argument though somehow

1 that because of the four-year length of time it is somehow
2 exceeding their constitutional authority, because they are
3 now making this the future salary for future legislature.

4 CHAIRMAN CARDOZO: Right.

5 MR. MALATRAS: It is a different legislature
6 likely.

7 CHAIRMAN CARDOZO: We have to make a four-year
8 decision. And this legislature by April 1 can overrule it.
9 But after that, barring something that I am not aware of,
10 that will be the salaries for the next four years.

11 MR. MALATRAS: Got it.

12 MR. LACHMAN: Is a simple majority necessary or
13 two-thirds majority?

14 CHAIRMAN CARDOZO: Simple majority signed by the
15 Governor.

16 MR. MADONIA: If we were to make a recommendation
17 to support following the salaries of the Federal Judges, it
18 would be in the context of being funded within the
19 restraints of the existing OCA budget, based on what we
20 heard from them?

21 CHAIRMAN CARDOZO: That's correct, right.

22 MR. MEGNA: I have a question about that.
23 Because I think that's a great question. How could they
24 commit to that for a four-year period?

25 CHAIRMAN CARDOZO: I don't think they can be

1 convinced of it. I think what they are saying is --

2 MR. LACHMAN: Committed.

3 CHAIRMAN CARDOZO: -- historically over the last
4 four years the COLA increase on the federal level would
5 vary between 1 and 1.4 percent. They say that this
6 proposed salary increase that is projected would be about
7 1 percent, and so they say, therefore, it could be easily
8 absorbed within the OCA budget.

9 You know, if there is some -- something happened
10 that caused -- some unrelated event happened that caused
11 the OCA budget to skyrocket, they would obviously have
12 difficult decisions to make down the road.

13 MS. HORMOZI: I apologize.

14 MR. MALATRAS: One more question. If it gets to
15 year one, because you don't usually in a budget have
16 surplus, right? So if it is, I think the numbers that OCA
17 I believe was at 1 percent, \$2.7 million. So they will
18 have to offset those costs by \$2.7 million. The question I
19 have is, are they assuming a 2 percent increase in their
20 request to the executive budget or are they assuming flat?
21 That's an important question by the way, because that
22 either pays for the salaries or does not pay for the
23 salaries or it results in cuts.

24 I don't know what the request of OCA will be,
25 because they have -- I think, Bob sent around, I think

1 there are years where there are deficit areas. The other
2 branches have come in flat as a matter of the budget.

3 So, are we assuming what the normal 1 and a half,
4 2 percent increase, what the federal institutions are
5 getting isn't flat, and it is a box score, it is a question
6 that we should consider is, you compound these increases
7 over four years, I think it is nearly impossible. I mean,
8 without offsetting considerable costs. Am I wrong?

9 MR. MEGNA: No. So, here is what I have done,
10 just so you know. On these questions, because I have been,
11 you know, Jim and I have been obviously thinking about it
12 based on the two very, you know, public hearings we have
13 had.

14 I have actually asked the folks, fiscal folks
15 through the state to give me an assessment of whether they
16 thought -- how reasonable they thought it was that the
17 Court Administration could absorb these kinds of increases
18 over a four-year period, given where we thought the fiscal
19 situation of the state was. And could they do it in a way
20 that there was no net increase, is what they are claiming;
21 right? And so there is that.

22 Then Jim just alluded to it, and I apologize for
23 the lateness, because I know we had said we would try to
24 send some fiscal information around on the state's
25 condition.

1 The problem is, of course, that the government
 2 mid-year report, which is the best overall statement of the
 3 state's fiscal condition, hasn't been released yet. But,
 4 in the state's bonding authority, when the state goes to
 5 market, as all of you know, they give an official
 6 statement. That official statement has information about
 7 the fiscal condition of the state. So, I just pulled two
 8 pages from that latest official statement, which I sent
 9 around to folks just before the meeting started. I just
 10 looked at it yesterday because I was looking for something
 11 to pass around.

12 And I think there is some -- I shaded some pieces
 13 in there. And I think the reason you are hearing these
 14 questions, especially from me, is that I think we are
 15 entering a period where the state is going to have some
 16 very, very difficult fiscal choices to make because of the
 17 Medicaid. Anyway, I sent that material around.

18 CHAIRMAN CARDOZO: I see. I just got it. I
 19 obviously haven't had a chance. We literally just --

20 MR. MEGNA: I apologize. I just wanted -- the
 21 mid-year is the best. That's a 200-page report on the
 22 state's fiscal condition. It is just not out yet, so.

23 MS. HORMOZI: So my question is -- I apologize.

24 MR. LACHMAN: You go first.

25 MS. HORMOZI: You have been waiting.

1 MR. LACHMAN: We are all waiting now, go ahead.

2 MS. HORMOZI: Is there a way to make it
3 conditional? So, if you said, yes, we would approve the
4 increase so long as they would never have to ask for -- do
5 you know what I mean? As long as it is incorporated within
6 a budget that does not then need an increase?

7 CHAIRMAN CARDOZO: In effect impose the 2 percent
8 increase in the -- their budget, I assume, wholly apart
9 from this issue, this issue is out, might increase within
10 the general standard, what is it, 2 percent?

11 JUDGE ENG: Yes.

12 CHAIRMAN CARDOZO: Are you saying they wouldn't
13 increase it on that point? Or as I understand what they
14 are saying, there are saying we think with the ordinary
15 increases, and I am just reading into what they said, with
16 the ordinary increases that are in our budget, that they
17 have increased non-judicial salaries dictated by a
18 collective bargaining agreement, for example.

19 MS. HORMOZI: Right.

20 CHAIRMAN CARDOZO: So they are saying even within
21 those assumed increases we think --

22 MS. HORMOZI: Absorb it by cutting from other
23 parts.

24 Look, I think their point is a good one. That if
25 the state's fiscal year, right, we are doing it to be

1 fiscally responsible, and raises are always wonderful, but
2 if you are in a place where you can't provide the raise
3 given your condition, is this something that you can make
4 conditional to the extent that it is within a budget that
5 is not -- that doesn't need an increase for it? And I
6 don't know if there is so many variables that we would
7 never be able to do that.

8 CHAIRMAN CARDOZO: I think that's getting pretty
9 complicated.

10 MS. HORMOZI: I don't know if we have the
11 authority.

12 CHAIRMAN CARDOZO: I don't know if we have the
13 authority either.

14 JUDGE ENG: This would probably be out of our.

15 CHAIRMAN CARDOZO: Seymore?

16 MR. LACHMAN: Another area. The question, I very
17 much appreciate the material I received over the weekend
18 and before that, but something was missing. I couldn't
19 think of it until today. And that is, I wanted to see the
20 comparability of salaries in terms of states -- not South
21 Dakota, not Wyoming or Montana, but whose population is
22 close to ours. Texas.

23 JUDGE ENG: California.

24 MR. LACHMAN: California, Texas, which have more
25 people than we do, and Florida, which is neck in neck with

1 us, Ohio, Illinois, Michigan. But you can leave out
2 Wyoming and Montana.

3 CHAIRMAN CARDOZO: I am looking at what we had
4 gotten from OCA. Do you recall?

5 JUDGE ENG: I don't.

6 MR. LACHMAN: There is no comparability of
7 salaries.

8 CHAIRMAN CARDOZO: I am not avoiding your
9 question. I am just looking at what --

10 MR. LACHMAN: Right. I spent a couple of hours
11 looking at it, but it wasn't there.

12 CHAIRMAN CARDOZO: It only says how it is set.
13 It doesn't have the amounts.

14 MR. LACHMAN: It would be good to have the
15 comparability, the differences that exist between major
16 urban states and New York State.

17 CHAIRMAN CARDOZO: I guess the only thing, the
18 closest we have to that is OCA's statement that on average
19 we were -- we are the highest gross salaries, but with
20 cost-of-living we are 29th, so they do say that.

21 MS. HORMOZI: But we are the highest, yes.

22 MR. LACHMAN: I think it is important to say or
23 for us to notice what the other large states' salaries are.

24 CHAIRMAN CARDOZO: I am not arguing with you what
25 I am saying, what we have in front of us, as I recall, is

1 just the statement.

2 MS. HORMOZI: That's right. We pay the highest
3 salaries right now.

4 MR. LACHMAN: We pay higher than California?

5 MS. HORMOZI: That's what OCA stated, yes.

6 MR. LACHMAN: California has 36 million people to
7 our 19 million. We are neck in neck with Florida, what
8 about Florida?

9 MS. HORMOZI: We don't have a breakdown.

10 MR. MALATRAS: We have what OCA brought up.

11 MR. LACHMAN: Texas has 5 million more people
12 than New York.

13 CHAIRMAN CARDOZO: Just one second. Let's have
14 one person at a time.

15 MR. MALATRAS: The nominal salary, I think the
16 adjusted cost-of-living index thing, people are unwilling
17 to talk about regional businesses and I don't think we
18 should entertain that. No one says, the Governor of the
19 State of New York's salary is 179,000 but adjusted for
20 regional differences it is only -- we should be going on
21 nominal salaries.

22 Nominal salaries we are the highest, number one,
23 on top with the District of Columbia. Then California is
24 three. Illinois, Hawaii, South Carolina, Washington.
25 Florida, for instance, is 25th; New Jersey is 12th;

1 Pennsylvania is 11th; Texas is 34th; Massachusetts is
2 9th in the nation.

3 MR. LACHMAN: Can we have that information?

4 MS. HORMOZI: It is on page 21.

5 MR. MILLER: The OCA submission has a chart of
6 nominal salaries.

7 MR. MADONIA: Can I go back to the budget issue
8 for a second?

9 CHAIRMAN CARDOZO: Let me just add, page 17 of
10 the OCA submission has the salaries of every -- the Judges
11 in every state, both nominal salary and cost-of-living
12 salary, so that is set out. So California, the salary of
13 the Judge is 207,000 nominal salary, and on a cost of
14 living basis --

15 MR. MALATRAS: We are still higher than
16 California, even with their cost-adjusted salary we are
17 higher than California, not by a lot.

18 CHAIRMAN CARDOZO: I am sorry?

19 MR. MALATRAS: We are still ranked higher than
20 California in salary.

21 CHAIRMAN CARDOZO: Right. We are \$400 above
22 California on a cost-of-living basis.

23 MR. LACHMAN: On an annual basis?

24 CHAIRMAN CARDOZO: Cost-of-living basis.

25 And Florida is 25th at 160,000 and on a

1 cost-of-living basis is 19th, above us at 154,000.

2 It is on page 17 of the OCA submission.

3 Peter wanted to say something.

4 MR. MADONIA: I want to go back to the issue on
5 the budget. As I listen to OCA, at least in my own way,
6 maybe I made assumptions, because they can self-fund this,
7 notwithstanding increases, no increases, that it is small
8 enough even in the aggregate against their overall budget,
9 they will find the money.

10 MS. HORMOZI: The question is, can we force that?
11 I mean, in theory they can say that. Like, oh, we will
12 self fund it. But next year something happens and they are
13 like, actually, we can't, we need an increase because of X,
14 Y and Z.

15 MR. MADONIA: Who would they make that case to?

16 MS. HORMOZI: In their budget, when they are
17 asking for their budget. That was my very awkward question
18 that I was trying to get at. They did make that comment,
19 which I think is great comment, but then how --

20 CHAIRMAN CARDOZO: They had trouble when they
21 tried to sell their last budget to the legislature.

22 MR. MADONIA: If they are not making the argument
23 now, it gets a lot harder to make down the road once this
24 is resolved.

25 JUDGE ENG: I have to agree. OCA is unique in

1 that the budget is overwhelmingly personnel. Personnel
 2 costs, of course, can be forecast with some accuracy. As
 3 Mr. Cardozo said, subject to collective bargaining
 4 agreements, they have a forecast. They have a forecast of
 5 what it is going to be. So I take that commitment to
 6 heart. I think that they are speaking authoritatively when
 7 they do.

8 MR. MALATRAS: That, Judge, gets to the heart of
 9 the point. It is harder, I think this is an important
 10 question for us to consider. We are the ones setting this
 11 schedule, for instance. And especially if they guide us as
 12 they can contain the cost of this in their dis
 13 appropriation. When we first started -- I'll get to the
 14 point, troubling fiscal times. Budgets were flat. They
 15 were flat from the courts, they were flat from the
 16 legislature and they were 10 percent cut in (inaudible).
 17 But assuming in their analysis of the normal increase,
 18 2 percent. If that's the case, then that's a different
 19 consideration. Especially if there is a fiscal problem
 20 coming down the pike where they are not going to have
 21 2 percent. And if it is all personnel costs, those are the
 22 toughest things because those are fixed costs. So it is
 23 not as if you can say, well, we are going to take away
 24 5 percent of our overhead. If it is largely personnel
 25 costs in a budget, those are actually harder to offset in

1 order to increase raises that you are saying you will do
2 within your old budget without any revenue, is my point.

3 I think those are the concerns we have before we
4 set whatever that price is, this scale is. Those are the
5 concerns we have.

6 JUDGE ENG: In my limited experience with
7 personnel cost, you can offset by allowing a reduction
8 through attrition; through some of the incentivized
9 retirement packages; not filling lines and vacancies.
10 There are devices that I have some familiarity with. So it
11 is not as though you are locked into a particular number
12 that cannot be adjusted or compensated for.

13 MR. MALATRAS: Judge, the argument has been that
14 the courts are overwhelmed with caseload. So if the
15 position of OCA for us is that, we will be fine, they will
16 take on this responsibility, but the Commission forced us
17 to attrit, you can't do buyouts without state approval
18 anyway. You can't do that independently.

19 You can't do collective bargaining and give back
20 outside of the bargaining agreement. Many of those things
21 you have to be entitled to, which is not considered here.

22 But if that's the case, I think we do have to
23 consider that then. If you say four years from now the
24 cost will be \$8 million to the judiciary, but it may be we
25 are now being taken out of 8 to \$10 million or whatever it

1 is the costs that we have to offset, that's a different
 2 conversation. Before we vote as a Commission, we have to
 3 be mindful of or we have to say, that actually isn't a
 4 consideration for us. You cannot actually say
 5 dispositively we will be able to contain these costs
 6 ourselves without some level of payment. We just have to
 7 make a decision independent of what the judiciary is
 8 saying.

9 CHAIRMAN CARDOZO: If --

10 MR. MEGNA: Go ahead, I am sorry.

11 CHAIRMAN CARDOZO: I just ask, if our mandate is
 12 to say what the salary shall be three years from now,
 13 that's what we are required to do by statute, there is a
 14 reality here. Your point may be well taken that assuming
 15 OCA in good faith today, something might dramatically
 16 change three years from now. Does that mean that we should
 17 say the salary won't be whatever we are saying but should
 18 be something less?

19 MS. HORMOZI: We can say that. We can do that.

20 CHAIRMAN CARDOZO: I guess, isn't our choice -- I
 21 guess to make my point, let's assume -- let's assume that
 22 we all agree that the salary next year should be, however
 23 we arrive at it, \$215,000. We have to say the year after
 24 that it will be \$217,000 or link it to something. We can't
 25 say -- what we can't say -- what we can't say --

1 MR. MALATRAS: I guess what we are saying, it
 2 changes our analysis how we consider this. I don't think
 3 then there is a material fact for the commission to
 4 consider to say OCA, I think they are putting it in all --
 5 they are doing this rationally. We are doing this with the
 6 intent of actually trying to take these costs on. I am not
 7 prescribing motivation. I think they are trying to do the
 8 right thing. I don't think we can use that. So it does
 9 change from we can take these costs on ourselves so
 10 therefore this should link us to the federal thing. I
 11 think that would include you do a raise this year and not
 12 the next three years. I think that's a consideration we
 13 have.

14 MS. HORMOZI: That's what you are trying to say,
 15 right? A raise next year but flat for the following three.

16 CHAIRMAN CARDOZO: What we are doing then is
 17 saying, even if things turned out the way OCA predicts, the
 18 salary would be that much less. That's, I guess what you
 19 are saying, it is a fact -- we can't mandate what OCA's
 20 budget will be three years from now.

21 MS. HORMOZI: But we can --

22 CHAIRMAN CARDOZO: We can take that fact into
 23 account.

24 MS. HORMOZI: Right, in setting the four years.

25 CHAIRMAN CARDOZO: In setting it. Which has the

1 potentially negative implication for them.

2 MS. HORMOZI: Right.

3 CHAIRMAN CARDOZO: Let's try one at a time here.
4 Peter.

5 MR. MADONIA: I want to be careful. OCA got up
6 there and said, we can self fund this. We will figure out
7 how to do it, over four years. We have to believe them or
8 not. If we believe that they said that in good faith and
9 they run into a problem three years from now, they will
10 have to figure it out. What that means, I don't think it
11 is this Commission's responsibility. I think our
12 responsibility is to make a decision on what they have
13 asked for, and how they decided to pay for it. We either
14 take that on faith or not, I think, at some point.

15 MR. MEGNA: I am not -- let's take one step back.
16 Because maybe I jumped ahead a little.

17 I agree with what Peter just said. My point is a
18 little bit different, which is, I want to be -- because I
19 think Peter started out this conversation by saying, and
20 there was a conversation which I think, because I have done
21 this my whole life, gets confusing, what do they mean by
22 they are going to absorb the cost? That to me is always --
23 does that mean, well, we are going to get 2 percent
24 increases because we have gotten 2 percent increases the
25 past four years and we will fit it in that? Or does it

1 mean, if the world turns to flat, the way the New York
 2 State Budget Commission says it is going to, are we going
 3 to stay and we have to stay flat for the next four years?
 4 We are going to stay flat because we said we are going to
 5 absorb the cost of these salaries. I think that's a
 6 question for OCA which I am sure they can answer. And then
 7 it is up to us to think through the realism of that over
 8 time.

9 I am not -- I am not questioning the fact that
 10 they are committed to doing what they say they are going to
 11 do. The question really is, in the current fiscal
 12 environment, number one, what is it they are actually
 13 saying they will do. They will fit within a growth rate?
 14 What if that growth rate is not reasonable because they are
 15 just not going to be able to do it?

16 CHAIRMAN CARDOZO: What is it --

17 MR. MEGNA: So it would just be -- I think it is
 18 just another question for them, which I think --

19 CHAIRMAN CARDOZO: What would you ask them to
 20 say?

21 MR. MEGNA: It is something for us to think about
 22 is all I am saying.

23 (The following proceedings were stenographically
 24 recorded by Senior Court Reporter Monica Martinez)

25

1 CHAIRMAN CARDOZO: What is it that you think
2 if you ask the question, what is it that you want, that
3 they could say other than saying based upon the facts
4 and our projections, collective bargaining agreement,
5 et cetera, we believe that our budget will not able to
6 absorb within the standard two percent, this increase;
7 what else could they say?

8 MR. MEGNA: Well, I think that it would be,
9 just to me, a fact to know if they are building any
10 growth into their existing assumption about what it
11 means to absorb the salary increase.

12 It is easy enough for every agency in
13 government, everyone that I ever worked for to say I'm
14 going to absorb salary increases at the same time that
15 my computer budget increases by five percent. I mean,
16 all dollars are green in that sense. I guess I'd like
17 to know what their assumptions are about growth in their
18 budget over the next four years.

19 CHAIRMAN CARDOZO: All right.

20 MR. MEGNA: It is a question, really.

21 MR. MALATRAS: I guess they raise this as the
22 way of making it more palatable for us. I think even to
23 make a decision we want, we need a decision pending
24 that, but this was such a sell point when they testified
25 that I think some of these questions are, we want to

1 hear from.

2 CHAIRMAN CARDOZO: Anything else on this point?

3 All right.

4 So then let me turn, if I can, to I think the
5 basic question, leaving the -- I think this is what I
6 will call the COLA issue that we're --

7 MS. HORMOZI: Yes.

8 CHAIRMAN CARDOZO: We also thought the first
9 issue we have to decide is what are we paying the
10 salaries to. Putting the COLA issue aside, the last two
11 commissions pegged it to the federal district court
12 salary. We heard a lot of the testimony as to why that
13 should be.

14 Any suggestions, one way or the other, as to
15 which way we should go?

16 MR. MADONIA: I can't see a reason to change
17 it, at this point. What would be the basis for the
18 change?

19 JUDGE ENG: What other meaningful pay would
20 there be in the judicial world, either federal or state?

21 MR. LACHMAN: Was this discussed in the
22 previous commission, this issue?

23 MS. HORMOZI: It was discussed. And there were
24 descenders.

25 MR. LACHMAN: There were.

1 MS. HORMOZI: Yes.

2 CHAIRMAN CARDOZO: The descent was based upon
3 the future though, from what the standard should be.

4 MS. HORMOZI: I think there was a lot of
5 discussion of why would we, to your point, Seymour,
6 federal judges, state court judges, there was a lot of
7 discussions going on, and then ultimately it was the
8 salaries and the raises and the increase.

9 CHAIRMAN CARDOZO: Right. At least as all I
10 know reading the report that that report is the earlier
11 report, and actually when the federal, when the state
12 occasionally did set their salaries before the
13 commissions existed, they all were tied to the federal
14 district salary so.

15 MS. HORMOZI: Yeah, I mean, it is hard to
16 figure out what else to link it to, but it is not --

17 MR. LACHMAN: What was the position of the
18 minority? Why did they say they wouldn't go on with it?

19 MS. HORMOZI: To the best of my recollection --

20 MR. MALATRAS: OCA included on Page 75 of the
21 report, the descending statement No. 5 which downplays
22 that. It is not very long.

23 CHAIRMAN CARDOZO: Okay. Any -- so how do we
24 feel as a group as to whether linking to federal
25 district court salaries is the appropriate measure?

1 MR. LACHMAN: I have reservations. I had
 2 lunch with a friend of mine who is a New York State
 3 Supreme Court judge, and he said that there are
 4 differences between us, meaning him as a Supreme Court
 5 judge and Federal District judges, and he outlined some
 6 of those differences, and they were cogent in terms of
 7 the Federal District appointees, and his opinion could
 8 be more qualified since they are appointed by the
 9 Governor, approved by the state senate where as the, our
 10 position would be not the same as theirs.

11 Now, this is one state Supreme Court judge and
 12 he gave examples, and they were good, but not permitted
 13 to discuss them now since he is an incumbent state
 14 Supreme Court judge, and he thought there should be
 15 another means by which we can consider these increases,
 16 and --

17 CHAIRMAN CARDOZO: What is the other means?

18 MR. LACHMAN: On their other means, I'm
 19 searching.

20 CHAIRMAN CARDOZO: Well, you know --

21 JUDGE ENG: I don't know any other means in
 22 recent history. I can recall the salary was Supreme
 23 Court justice went from 113 to 136. Pegged dollar for
 24 dollar with the salary of a Federal District judge and
 25 the courts from thereon. So we're talking about going

1 back decades. There hasn't been any other standard.
 2 If you are going to peg it to the standard, we can
 3 identify an arbitrary number.

4 As I pointed out weeks ago, New York State
 5 Supreme Court justices made more than Federal District
 6 judges until 1976. Before that, they made significantly
 7 more. 25 percent more, as a matter of fact. It was
 8 1976 as a bench mark year. But the --let me ask you
 9 this, did your colleague, friend, speak to differences
 10 in judicial workload, perceived differences in the
 11 caliber of appointee, just generally.

12 MR. LACHMAN: Yes, he did.

13 JUDGE ENG: Both of those?

14 CHAIRMAN CARDOZO: And the difference between
 15 the Wyoming Federal District judge --

16 MR. LACHMAN: And Montana.

17 CHAIRMAN CARDOZO: All part of the criticizing,
 18 but they are living in a very different cost of living
 19 atmosphere than a judge in New York City. And so when
 20 you say that pegging this to Federal District salaries
 21 maybe inappropriate, you are also taking into account
 22 the Federal District judges in New York are paid as a
 23 practical matter a lot less than Federal District judges
 24 in other places, which is why New York pegging it to a
 25 Federal District salary is still 29th in the nation

1 among them.

2 So I don't, you know, there are certainly some
 3 Supreme Court judges like in any world maybe quote,
 4 "better," unquote than others. That is the nature of
 5 life. Having spent my life in the judiciary, I think
 6 there are some terrific judges and not so terrific
 7 judges. And as Judge Eng said, remembering that the
 8 state legislature, when it was setting salaries, always
 9 pegged it at a minimum to the Federal District salary,
 10 sometimes higher. The last time it did things
 11 independently it was just hitting the Federal District
 12 salary, and then the last two commissions, leaving the
 13 inflation issue to decide, at least the majority vote of
 14 the two commissions linked it to Federal District
 15 salaries, and as I, you would he know better than I, as
 16 I read the descent, the descent was concerned on the
 17 COLA point.

18 MR. LACHMAN: COLA.

19 MS. HORMOZI: Yes.

20 CHAIRMAN CARDOZO: And --

21 MS. HORMOZI: To separate.

22 CHAIRMAN CARDOZO: Trying to separate first.

23 MS. HORMOZI: Yes.

24 CHAIRMAN CARDOZO: Seems to me that, you know,
 25 what should the pay be, we can then have the discussion

1 that --

2 MS. HORMOZI: That is right.

3 CHAIRMAN CARDOZO: -- that is suggested. But
4 I think we do want to see, we don't want to pick a
5 number out of the air, and it seems to me that is the
6 most relevant factor.

7 MR. MADONIA: Well, if we are going to change
8 it, we have to explain why.

9 MR. LACHMAN: Why.

10 MR. MADONIA: Rational.

11 CHAIRMAN CARDOZO: I mean, the assurance, I
12 must say we heard testimony to this effect, the
13 assurance that the judges have that they are going to be
14 getting the salary, you know, leaving the COLA point
15 aside a moment, not that that is not part of this, makes
16 a tremendous difference. When you think of a judge,
17 many who obviously take a pay cut when they become a
18 judge, um, think back to what happened when their
19 salaries didn't increase for what was ten years.

20 JUDGE ENG: Thirteen.

21 CHAIRMAN CARDOZO: Thirteen years their
22 salaries didn't increase.

23 JUDGE ENG: I looked every year.

24 CHAIRMAN CARDOZO: And so that we are now into
25 a situation where the judges can say, we heard this from

1 a couple of the witnesses, yeah, I'll take a salary cut
 2 but I'll be a state Supreme Court judge, what have you,
 3 and I know I'll be getting X, Y, is a very significant
 4 recruiting point.

5 MR. LACHMAN: Michael, the same can be said of
 6 the legislature. Our increase, well, we, 19 -- sorry,
 7 2056, with an increase, and then in -- twenty years ago
 8 we had legislative increases. 25 years ago. And it was
 9 the same until last year. So, quarter of a century
 10 there was no increase. It was \$79,500. So we should
 11 also be careful doing not only judicial salaries, but
 12 also legislative salaries, and executive government
 13 salaries. And our consideration should be noticed in
 14 terms of that.

15 CHAIRMAN CARDOZO: But --

16 MR. LACHMAN: Even though we'd be doing
 17 legislative and executive salaries next year, we should
 18 realize that whatever we do with judges will have some
 19 bearing upon the other two that we have to do next year.

20 CHAIRMAN CARDOZO: I think that is a fair point
 21 other than the legislative salaries has the other wild
 22 card in, with respect to the outside income issue.

23 MR. LACHMAN: Right.

24 CHAIRMAN CARDOZO: So that was rejected by, it
 25 was rejected by the court. That -- I don't know that --

1 MR. LACHMAN: That was the New York State
2 Supreme Court?

3 CHAIRMAN CARDOZO: Yes.

4 MR. LACHMAN: Or Appeals?

5 CHAIRMAN CARDOZO: No, the Attorney General
6 withdraw her appeal from it. So the case is over.
7 Okay. I'm not sure -- I hear the concerns. I think
8 there is a general consensus that we have to come up
9 with some standard given the history the standard seems
10 to be that the Federal District salary is the right
11 standard.

12 Is that a fair statement?

13 MR. MALATRAS: I'm not ready to sign off on
14 that. I think that is just one mechanism. I'm not
15 saying --

16 MR. MEGNA: Um, I think I asked, it is material
17 that you sent already. I know Jim read off the states.
18 Do we know if any of the other states are pegged the
19 same way we were discussing?

20 CHAIRMAN CARDOZO: Yes. The material I
21 distributed last night which I just had gotten from OCA
22 lists about four or five states that peg it as a
23 percentage of the federal salary, of the federal salary.
24 Not at hundred percent, but there is, I forget, three or
25 four states. District of Columbia salaries are set at

1 Federal District court salaries. There are three or
2 four other states, stated as a percentage of the Federal
3 District court salaries.

4 MR. MEGNA: Any of the big states?

5 CHAIRMAN CARDOZO: Sorry?

6 MR. MEGNA: Any of the large states?

7 MR. LACHMAN: Texas, Florida.

8 CHAIRMAN CARDOZO: I'm just looking.

9 MR. LACHMAN: Nothing.

10 MS. HORMOZI: Maybe a percentage, certainly.

11 MR. LACHMAN: California.

12 JUDGE ENG: California is 207 as compared to
13 Federal District court of 210. It is sort of right
14 there.

15 CHAIRMAN CARDOZO: Yeah.

16 MR. LACHMAN: What do they pay to get 207?

17 JUDGE ENG: You know, I don't know.

18 MR. MALATRAS: State employees of California,
19 those increases I thought they --

20 MS. HORMOZI: How do our judicial salaries -- I
21 apologize, I'm sure it is in the material, compared to
22 like the salaries of executive, I mean.

23 CHAIRMAN CARDOZO: It is in the material.

24 MS. HORMOZI: Yeah. Are the judges paid a lot
25 more than executive branch?

1 CHAIRMAN CARDOZO: I don't think you can make a
2 --

3 MS. HORMOZI: Sweeping.

4 CHAIRMAN CARDOZO: -- sweeping statement.

5 MS. HORMOZI: Okay.

6 CHAIRMAN CARDOZO: It is a whole bunch of, the
7 Governor.

8 MS. HORMOZI: Clearly, the Governor.

9 CHAIRMAN CARDOZO: A whole bunch of executive
10 salaries --

11 MS. HORMOZI: In there. I have to go back.

12 CHAIRMAN CARDOZO: I'm not sure you can --

13 MS. HORMOZI: Make a sweeping --

14 CHAIRMAN CARDOZO: Any --

15 MS. HORMOZI: Got it.

16 CHAIRMAN CARDOZO: -- statement.

17 Well, so as I understand, Jim and Bob are
18 saying that they are not quite ready to say we should
19 focus it to the Federal District salary, is that a fair?

20 MR. MEGNA: My concern is slightly different.
21 I really am concerned, maybe just based on past
22 experience given where we are in the economy and other
23 places in terms of this whole issue that I sent around
24 today, I really am looking forward to a little bit more
25 physical material to try to grapple with the question

1 of making a four year commitment. I'm not saying that
 2 linking to the judicial, to the federal judicial process
 3 is the wrong process. I'm saying, I don't know that
 4 linking to a four year commitment right now is the right
 5 thing, and still want to think that through a little
 6 bit.

7 CHAIRMAN CARDOZO: I guess my only point is
 8 we've got, we have to make set four years worth of
 9 salaries. That is what we're required to do. So if
 10 that is what we're required to do, we've got to decide
 11 how we're going to do that.

12 MR. MEGNA: Yes, but that does not mean we have
 13 to increase them from four years.

14 MS. HORMOZI: No, no. So I think the
 15 discussion was --

16 MR. MEGNA: That is all I'm saying.

17 MS. HORMOZI: -- we can say no COLA's, period,
 18 right, but we'll still link it to the Federal District
 19 judge so some of us can say we don't think we should
 20 give any increases, so it is the base, but then it
 21 decreases, right.

22 CHAIRMAN CARDOZO: Yes. I mean, I think --

23 MR. MADONIA: Just on the other issue, if
 24 we're going to peg it to something else, A, what is it?
 25 And, B, we have a limited time to debate that because

1 we're falling into a whole new agenda item on -- I think
2 will be a big one, extensive conversation and time
3 limits. If somebody has an alternative, I hope we put
4 it on the table sooner than later.

5 CHAIRMAN CARDOZO: Seems to me we have to make
6 a decision. Remember, after we decide what to do we
7 have to write, I assume it will be me, to write a
8 report. So I'm not about to -- you know, I'm going away
9 Christmas week. I'm not about to cancel my plans, and I
10 don't think any of us are, and so I'm not disagreeing
11 that we should, if you want more information we should
12 get it, but we've got to get it immediately. And I
13 think, I think past salaries, I think we have the
14 information. Other states, I think we have as much
15 information that as a practical matter we're going to
16 get. If we can get more information from the State of
17 New York in the next couple of days, fine. But I think
18 we then have got to, got to make a decision, because
19 then we have to write a report and you have to approve
20 the report.

21 MS. HORMOZI: Right.

22 CHAIRMAN CARDOZO: So we really are running out
23 of time.

24 Let me just come back.

25 MR. LACHMAN: Excuse me. Before you come back,

1 I would like to go back to what Mitra said and ask the
2 question, can we give them over the next few years
3 COAL's rather than increases in terms of numbers.

4 CHAIRMAN CARDOZO: Well, that is exactly the
5 same thing.

6 MR. MADONIA: Yeah.

7 MS. HORMOZI: Freeze the COLA though.

8 MR. LACHMAN: Yes.

9 CHAIRMAN CARDOZO: Sorry, freeze or free?

10 JUDGE ENG: Freeze.

11 MR. LACHMAN: Freeze.

12 CHAIRMAN CARDOZO: Freeze the COLA.

13 MR. LACHMAN: Or the opposite, give them
14 increases in terms of the COLA they will be getting, and
15 nothing else, depending upon what govern, and how much
16 we think we are in the black or the red in terms of --

17 CHAIRMAN CARDOZO: Not sure what you are
18 saying.

19 MS. HORMOZI: Seymour, I think we can say they
20 don't get any increases in the next four years. We can
21 say this year they get two, begin taking Michael's
22 number, 215, next year they get 215,500, we can then
23 specifically say what they get every year.

24 MR. LACHMAN: Right.

25 MS. HORMOZI: I think what gets harder is then

1 try to theoretically link it to either a budget or
2 trying to keep it within their budget, assuming flat.
3 I think those things then become harder, but correct me
4 if I'm wrong, Michael, we can say this year it is 210,
5 next year it is \$210,900, the year after it is 212, year
6 after that it is 250. I think we can dictate the
7 numbers for each year.

8 CHAIRMAN CARDOZO: Right. That cuts both ways.

9 MS. HORMOZI: Yes.

10 CHAIRMAN CARDOZO: Maybe too much, maybe too
11 little.

12 MS. HORMOZI: Totally agree. If he's trying to
13 figure out how much authority we have, we have the
14 authority to do that.

15 CHAIRMAN CARDOZO: We have the authority.

16 JUDGE ENG: We do.

17 CHAIRMAN CARDOZO: We have the authority. I
18 think as I look at the past, it seems like people agree
19 that what they are being paid today is the right amount.

20 MR. LACHMAN: That is because it is higher, not
21 lower.

22 CHAIRMAN CARDOZO: But then the question that
23 we're struggling with, yes, everything else being equal,
24 if it is right today, then the COLA would seem right
25 going forward.

1 MR. LACHMAN: Next year, and the year after.

2 CHAIRMAN CARDOZO: Barring something unforeseen
3 is really what we're saying, isn't it.

4 MR. LACHMAN: Yes.

5 CHAIRMAN CARDOZO: And how do you do that? The
6 federal COLA automatically goes into effect subject to a
7 declaration of a natural emergency by the President. I
8 don't know that the Governor statement over national
9 emergency.

10 MR. LACHMAN: You mean state emergency, rather
11 national.

12 CHAIRMAN CARDOZO: Well, not sure, but let's --
13 I think there are a couple of other fairly minor,
14 relatively minor issues.

15 MR. MEGNA: Michael, can I on that issue, I'm
16 just kind of curious.

17 So the feds have, sounds like the President,
18 Congress has total discretion over what this percentage
19 increase will be?

20 CHAIRMAN CARDOZO: No.

21 MR. MEGNA: To a federal judge?

22 CHAIRMAN CARDOZO: No.

23 JUDGE ENG: No.

24 CHAIRMAN CARDOZO: It is based automatically on
25 a cost of living index that is --

1 JUDGE ENG: Lower than.

2 CHAIRMAN CARDOZO: Lower than the CPI.

3 JUDGE ENG: Lower, yes.

4 CHAIRMAN CARDOZO: The employment cost index.

5 MR. MEGNA: You mentioned an opt out. If the
6 President what?

7 CHAIRMAN CARDOZO: The federal salary shall be
8 increased based upon the employment cost of increase,
9 cost index, subject only to a negative declaration of,
10 declaration of emergency by the President of the United
11 States.

12 MR. MEGNA: Could New York condition be
13 conditional as well?

14 CHAIRMAN CARDOZO: Well, I guess if we had an
15 objective.

16 MR. MADONIA: Wouldn't that be legislative as
17 such?

18 CHAIRMAN CARDOZO: I don't know that there is
19 the equivalent.

20 MR. MEGNA: There is. I believe budget
21 language there is always the ability of, in certain
22 statutes, for increases to move forward unless there is
23 a physical condition declared by the Governor or some
24 other entity. If language like that existed, would that
25 violate on charge?

1 JUDGE ENG: I think it is beyond --

2 CHAIRMAN CARDOZO: I think that would be a real
3 issue.

4 JUDGE ENG: It is not something that is spelled
5 out.

6 CHAIRMAN CARDOZO: Yeah.

7 JUDGE ENG: I would think so.

8 CHAIRMAN CARDOZO: I think there is a real
9 issue.

10 MR. MEGNA: Just asking.

11 JUDGE ENG: No, I --

12 CHAIRMAN CARDOZO: I certainly don't think any
13 of us would want all our hard work to be thrown out on
14 that.

15 MR. MEGNA: Well, it wouldn't be thrown out.
16 It would be conditional.

17 CHAIRMAN CARDOZO: No, but if the court, if
18 someone challenges and says, then you would be back in
19 the legislature having to set the whole salary
20 structure.

21 MR. MEGNA: Got it.

22 MR. MADONIA: I think you raised two good
23 questions. One is OCA assuming increases or when they
24 say we can fund this internally, we'll fund it
25 internally. And the second is, can you do it without

1 service cuts which is the other issue raised. It is,
 2 you know, can you figure this out, run your place, and
 3 pay for it without reducing what is the big, big issue,
 4 case law, et cetera, et cetera, without affecting those
 5 things. Answer from OCA is, yes, we have to take them
 6 at their word or not. All make an individual decision
 7 around that.

8 MS. HORMOZI: Yeah, although I guess Bob's
 9 question, what I would want to know, assuming there is a
 10 flat budget and not the two percent increase every year,
 11 if they can still afford it and not have service cuts.

12 MR. MADONIA: When you say we can self fund
 13 this, they didn't say we can self fund this under the
 14 following assumptions. I think we are each making the
 15 --

16 MS. HORMOZI: Same.

17 MR. MADONIA: One would be right, one would be
 18 wrong.

19 MR. MALATRAS: Peter, it is an important point.
 20 If I'm putting in budget request, eight percent, that is
 21 what I'm assuming, that is a whole different
 22 conversation upon zero. It is relevant to the --

23 MR. MADONIA: I'm agreeing with you.

24 MS. HORMOZI: I think we all are.

25 MR. MALATRAS: You have to consider, for me,

1 you make whatever decision you want. If the chief, at
 2 the end of the day, made this point that we have to self
 3 fund it, get increases that way, will it require that we
 4 -- ten percent of the work force to do it, I'm almost
 5 uncomfortable with that, quite frankly. In order to get
 6 there, I think it is a relevant question about what
 7 their assumptions are frankly. They made the point, we
 8 would self fund. Bob's point, when people make those
 9 statements, they make it based on something. Are they
 10 going with their budget request or what they normally
 11 get from the legislature and -- and the past practice
 12 over the last previous years when there is physical
 13 crisis, the agencies, institutions have about been flat
 14 board cut. So if they can self fund -- write-offs,
 15 whatever, it is fine, but we want to know what it is
 16 they are talking about. I don't think it is an unfair
 17 thing. It is pertinent to the discussion.

18 MR. MADONIA: I guess I'm not disagreeing with
 19 you.

20 MS. HORMOZI: We are all agreeing.

21 MR. MALATRAS: This is from OCA themselves.

22 CHAIRMAN CARDOZO: Jim, what you are saying is,
 23 OCA explain what you mean that this can be absorbed
 24 within your budget. What assumptions --

25 MR. MALATRAS: Correct.

1 CHAIRMAN CARDOZO: -- are you --

2 MR. MEGNA: Under what parameters.

3 CHAIRMAN CARDOZO: Not arguing. Want to make
4 sure we're asking OCA the right question.

5 MR. MALATRAS: That is right.

6 CHAIRMAN CARDOZO: Anything else?

7 JUDGE ENG: No. I was just, I'm just saying
8 that the Chief Judge over the Excellence Initiative is
9 taking steps towards reducing the backlog and the number
10 of cases. There is mandatory mediation, for example, in
11 cases. In the Appellate Division, mandatory conferences
12 regarding settlement. They are taking affirmative steps
13 towards reducing the backlog.

14 The question is a fair question, but we will
15 see what they can, how they can address this.

16 CHAIRMAN CARDOZO: Okay.

17 So let me go, I think there is another issue
18 which is, the last commission they specify what the
19 salaries should be below the Supreme Court stating it in
20 terms of the percentage that they said the family and
21 county and surrogates would be paid at 95 percent.
22 New York City Civil and Criminal courts at 93 percent.
23 City courts at, Housing court judges at 90 percent. And
24 then --

25 MR. LACHMAN: How are those numbers reached?

1 CHAIRMAN CARDOZO: And they, since the Supreme
2 Court as we all know is the top trial court, and the
3 courts below that are, I don't want to say inferior, I
4 don't mean that in the negative way but, for example,
5 civil court judges, their jurisdiction today is limited
6 to \$25,000. Criminal court judges decide basically
7 misdemeanors and non-felonies, and so barring court
8 merger, which is another issue we discussed in Albany,
9 and with -- but at the moment we have a whole tier of
10 courts, so they impose those percentages, and actually I
11 don't think in all the testimony we received, we've
12 heard from the surrogates, we heard from the family
13 court judges and all. Didn't seem to be any complaints
14 about that.

15 MS. HORMOZI: I think there were a couple,
16 requesting --

17 MR. MADONIA: Yes.

18 JUDGE ENG: Civil court judges clarity.

19 MS. HORMOZI: There were a few that wanted
20 clarity.

21 CHAIRMAN CARDOZO: Seems to me that the status
22 quo is a practical matter. We have to do something.
23 They are not all going to be paid at the Supreme Court.

24 MR. MADONIA: Well, I mean, I defer to both of
25 you. You know a lot more about the structures than I

1 do. They don't fill all the boxes for either one or two
2 to relitigate everything.

3 CHAIRMAN CARDOZO: That is right. But then let
4 me just put on the table one last point. What they did
5 say four years ago was that if a, basically some judges
6 in New York were already at surrogates.

7 MR. LACHMAN: New York State or New York City?

8 CHAIRMAN CARDOZO: New York City, were already
9 at a higher percentage than the 95 percent. They
10 recommended that that continue.

11 So if the family court judge, I think it was
12 basically New York City issue, if his or her salary was
13 96 percent of that, you shouldn't change.

14 MS. HORMOZI: Yeah.

15 CHAIRMAN CARDOZO: And they are basically
16 recommending that that continue.

17 With all the other issues we have to deal with,
18 seems to me that that is a logical way to proceed.
19 Hadn't really generated, as someone said in, when we
20 were in Albany, why don't we wait until court merger,
21 which the chief judge is working on occurs, to solve all
22 these problems, but since that is five years away, at
23 minimum, I don't think we can wait five years.

24 (Transcript continues on the next page.)
25

1 MS. HORMOZI: Is that right?

2 CHAIRMAN CARDOZO: It can't be enacted until
3 2021, the second passage.

4 JUDGE ENG: It has to be transitioned, it is a
5 very complex transition.

6 CHAIRMAN CARDOZO: So, is it fair -- is there any
7 other issues we need to decide that I haven't raised? And
8 I don't mean at all.

9 MR. MALATRAS: I know this is a question for
10 Judge Eng, but one testimony from Albany where everybody
11 said that, you know, they would be happy to adjust pretty
12 rapidly, the Housing Judge actually made, I think, a fairly
13 legitimate point with the new rent regulation regime, it
14 tested the value of the Housing issues.

15 I don't know if there is anything there we should
16 consider or that's something that the Chief Judge sort of
17 adjusts on their own with their administrative acts.

18 CHAIRMAN CARDOZO: I didn't understand.

19 MR. MALATRAS: That was raised in Albany as a
20 matter that that sector has -- there is so much going on
21 there that we may consider that. I think it would be
22 better for the Court administratively -- the administration
23 to deal with that if they can. But I would like to reflect
24 that somehow that we could actually adjust for --

25 JUDGE ENG: Right now, as I understand it, the

1 Housing Court Judges are paid 90 percent of what Supreme
2 Court Justices are paid. Which brings them much closer
3 than they had been historically.

4 And Housing Judges are a unique office. They
5 are -- they are not members of a judiciary actually. They
6 are --

7 CHAIRMAN CARDOZO: Administrative Judges.

8 JUDGE ENG: Yes. They are not -- they are not
9 members of the judiciary they are hearing officers, so to
10 speak. And under the Judiciary Law they are entitled to
11 use the title of Judge to enhance their stature, but they
12 are Referees, so to speak, of the Housing part of the Civil
13 Court.

14 So, you can also make an argument like that
15 regarding local Criminal Court Judges. January 1, we are
16 going to have tremendous change in the bail laws, the
17 discovery laws, speedy trial. It is an enormous, enormous
18 undertaking to absorb all of that and to apply it
19 effectively.

20 So, I don't know if we can carve out a
21 distinction. They have a harder chore, more difficult
22 chore, they should be -- they should be given
23 consideration.

24 I think right now the 10 percent differential is
25 certainly very fair historically. And should be maintained

1 in light of the nature of that office.

2 CHAIRMAN CARDOZO: And to keep that let me just
3 add, one of the proposals in the Chief Judge's court merger
4 proposal is to make Housing Court Judges regular Judges
5 which would increase their stature and --

6 JUDGE ENG: Authority.

7 CHAIRMAN CARDOZO: As Judge Eng said, those
8 Judges are neither elected nor appointed by an elected
9 official. Those Housing Court Judges today are appointed
10 by the Office of Court Administration.

11 JUDGE ENG: That's correct, by the Chief
12 Administrative Judge I think with the incurrence of the
13 presiding Justices. They are appointed, but not by an
14 executive.

15 CHAIRMAN CARDOZO: They are really at a lower
16 stature. I think you make a very good argument, that is
17 not deserved. But that is the fact of the structure today.
18 I don't think we can be changing that structure within the
19 salary Commission. That's really a constitutional
20 amendment situation.

21 MR. MALATRAS: The way Judge Eng just said it,
22 there are a bunch of complex new laws on the books across
23 the board among other things, and if we highlight that in
24 the report, because we want to address some of the
25 testimony that people put forward, and this is an easy way

1 to dispose of that argument.

2 CHAIRMAN CARDOZO: We will make a note of it.
3 That's a fair point.

4 Any other issue that we should be discussing?
5 Let me just ask, we have a meeting scheduled for next
6 Tuesday. It seems to me what we have -- no one quite wants
7 to commit on the Federal District Judge linkage, but I
8 sense that we may get there. And that the real issue, if I
9 can call it that, is the COLA issue. That we want to know
10 from OCA what they meant when they said they could absorb
11 it within their budget.

12 And at that point in time, I'll try to get OCA to
13 submit some kind of statement to us, I think we have to
14 make decisions.

15 MR. LACOVARA: Yes.

16 MS. HORMOZI: Yes.

17 MR. MADONIA: Yes.

18 MR. LACOVARA: As difficult as it is, we have to
19 make decisions.

20 CHAIRMAN CARDOZO: So what I will do, I know
21 Larry Marks is in Albany right now testifying on this court
22 merger proposal, but I will speak to him, send him an
23 e-mail now and speak to him tomorrow, and say, he has to
24 spell out in more detail, whatever paragraph he said this,
25 what he meant, what the assumptions are that he did that.

1 JUDGE ENG: Expand on it.

2 CHAIRMAN CARDOZO: And then obviously as soon as
3 I get it I will send it to you. And then we should meet
4 next Tuesday at 3:00 as we have agreed and make some
5 decisions.

6 Is that a fair summary?

7 MR. MEGNA: I think so.

8 MS. HORMOZI: Yes.

9 MR. MADONIA: I would just add, if we are going
10 to make some decisions about what we are pegging this to,
11 and there is some alternative out there, that could happen
12 on Tuesday.

13 CHAIRMAN CARDOZO: If anyone wants to make a
14 suggestion in the interim, you all have the e-mail
15 addresses, please exchange it.

16 MR. MEGNA: It sounds good.

17 CHAIRMAN CARDOZO: Anything else that anyone
18 should raise? Because I -- I would hope -- I don't want to
19 rush inappropriately here. But I think it is time really
20 to make the decisions because you know, this is a report I
21 don't think I can write overnight. And knowing you now for
22 a month or two, I suspect that there may be a comma or two
23 that may be wanted to be inserted in whatever it is that I
24 draft. So I think we really have got to get this done as
25 quickly as possibly can.

1 MR. MALATRAS: Mr. Chairman, we think you are
2 perfect. It is our imperfections that slow the process.

3 CHAIRMAN CARDOZO: Thank you. We will put that
4 in the report too.

5 MR. MALATRAS: That goes without saying, that's
6 just an understood thing.

7 CHAIRMAN CARDOZO: Anything else that anyone
8 wants to raise? If not, next Tuesday at 3:00 we will be
9 meeting here. I assume the two of you will be in Albany?
10 Yes?

11 MR. MEGNA: I think so. I think this works
12 pretty well.

13 CHAIRMAN CARDOZO: Okay. And Peter unfortunately
14 has a meeting, but he can be videoed in remotely as well.

15 All right. Thank you very much.

16 MS. HORMOZI: Thank you.

17 (The meeting stood adjourned to Tuesday, November
18 26, 2019 at 3:00 p.m.)
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