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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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September 22, 2016

New York City Bar Association
42 West 44th Street
New York, New York

B E F O R E :

MS. SHIELA BIRNBAUM, Chair
HON. BARRY A. COZIER (RET.)
HON. JAMES LACK (RET.)
GARY JOHNSON, ESQ.
DR. ROMAN HEDGES
MS. FRAN REITER

KAREN MENNELLA
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Senior Court Reporters

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Proceedings

CHAIRWOMAN BIRNBAUM: We're about to bring the meeting to order. This is the September meeting of the Commission on Compensation. We are going to continue today some discussions we had at our last meeting.

I'd just like to make some comments. That is, first, we've had numbers of people sending letters, e-mails, et cetera since our last meeting. All of that information has been useful. It has all been distributed to all of the commissioners. And one in particular I'd like to make reference to, which is on our website, from one of the members of the New York State Assembly that just came in last week, and I hope I don't butcher your name, Rodneyse Bichotte, which was a very interesting take on some of the issues we're talking about. The Commissioners have read that with interest, and there have been a number of other people from the Assembly or the Senate who have contacted us. So we are reviewing all of that material.

This morning I was handed a survey, an unscientific survey, but a survey from the -- I'm sorry, I lost the piece of paper, but it's a survey done by one of the TV stations up in Rochester. As you know, we canceled our Rochester meeting because of the fact that we had no one signed up to testify. And they have done a survey of their listeners and they have put together and just given me this morning the results of that survey, which included about 1,500 some-odd

Proceedings

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2 people. We will review it. None of the Commissioners have
3 seen this yet, because I just got it this morning. We will
4 put on our website the conclusions, but I don't think it
5 proper, because there are names and e-mail addresses of
6 people, to put the names and e-mail addresses of the people
7 that submitted this to the survey to submit this to the TV
8 station. So I will distribute this to our commissioners and
9 that they can take that into consideration as well.

10 I think that's all of the introduction. The
11 meeting is now open. At our last meeting I think we had
12 some suggestions on what to do with the executive salaries
13 and commissioners, and we had some early discussions as to
14 what our thoughts were with regard to the Legislature. So I
15 open it up for any comments. Kindly proceed. Thanks.

16 DR. HEDGES: I had made a suggestion the last time
17 that had some specific numbers associated with them. And
18 they were based on, essentially, inflation and a concept of,
19 well, and let's make the number sound like a reasonable
20 round number. And I had started with the A commissioners
21 and the number that I had used was a \$200,000 number for A
22 commissioners, which was roughly a 47 percent, in the
23 aggregate, pay raise. I wanted to first put that into
24 context and then add a thought that has come to our
25 attention since then.

26 If I were to look at that number as an annual

Proceedings

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2 number, which is the way I think people talk about pay
3 raises, what was the annual increase, that's about a
4 2.2 percent over the timeframe that we're looking at.
5 That's based a little bit on how you count the years,
6 whether it's 17 or 18; and that's whether end of the year or
7 beginning of the year, the year that we're in right now.
8 But if I take it as an 18-year period at 2.2 percent. And,
9 to me, that's a modest increase. I understand in the
10 aggregate that adds up to a big number, but it's been a long
11 time.

12 That having been said, that \$200,000 number was a
13 number related to the A commissioners. We just got a letter
14 from the budget director, I just got it this morning, and he
15 indicated, gee, we're having a real problem with our
16 commissioner recruitment process, because there are a lot of
17 people turning us down, our salary isn't competitive. And
18 that's certainly a point that I was trying to make along the
19 way. I agree with that. I think that's a concern.

20 It's a major concern, from my point of view, that
21 public sector employment be at least minimally attractive.
22 It doesn't have to be, like, competitive with the private
23 sector, but it's got to be attractive enough that people
24 will actually take the job even at some personal sacrifice.
25 And so 200,000 to me was -- that's such a big number, such a
26 big increase -- that was a little intimidating to me. But

Proceedings

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2 what the letter from the budget director indicates, he
3 looked at a number of states and a number of positions; and
4 the two that I fastened on for purposes of illustrations
5 were the State Police Commissioner and the equivalent of the
6 Department of Corrections Commissioner. And, to my way of
7 thinking, the round number that summarizes the two numbers
8 that he gave us for California was \$240,000. That's a
9 little bit more than State Police Commissioner and a little
10 bit less than the Corrections Commissioner.

11 And what was clear across the board is that the
12 various states that he used to illustrate his point, wow,
13 very different notions about what the relative merits of
14 different positions are. I don't think I'm in a position to
15 try to get into rearranging or reshuffling. I would have
16 different priorities than what they had. But the point is
17 we have a classification system. They're called A
18 commissioners and it's the big agencies. And to my way of
19 thinking, so let's look at them and then let's look at a
20 couple that were comparable. 240 was that number for the
21 two that, to me, were easy ones to grab a hold of, the
22 public safety positions in California.

23 If I said that's the number, then my 136 for A
24 commissioners goes to 240. Well, wow, that's a pretty big
25 number increase, but as an annual number it's 3.2 percent.
26 It's not a big percentage increase. It's a pretty startling

Proceedings

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2 number, so I guess I would reframe my observations of last
3 time as how about something in the range of 200 to 240 as
4 the range that we should be considering for the A
5 commissioners and everything else should be proportionate;
6 the Legislature, lieutenant governor, governor. I know we
7 don't get to do lieutenant government and governor, but I
8 think that that should be part of our thought process. And
9 certainly we are supposed to do the attorney general and
10 comptroller. So, again, everything proportionate, whatever
11 those numbers are. I didn't try to recalculate all of the
12 various numbers, but, you know, the B commissioners would be
13 a little bit less than 240; the C commissioners would be a
14 little less than that; the E commissioners would be a fair
15 amount less than that.

16 Me, personally, I would say move the Agriculture
17 Department up a bit. I think that safety inspection stuff
18 that they do is pretty important stuff. I think we devalue
19 that too much. But, again, I don't think we're in a
20 position to kind of go through and reshuffle that deck very
21 well. I would do the same thing for the Legislature,
22 proportionate. The last time I didn't include any thoughts
23 on the stipend, but in my mind -- and I should have said
24 something then -- but in my mind those are proportionate as
25 well. I think that that could be a separate discussion for
26 us. But insofar as I kind of made the proposal last time

Proceedings

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and gave the rationale for it, I guess my proposal I would like to modify and say 200 to 240 and everything proportionate. And by everything, I mean everything.

MS. BIRNBAUM: Okay. Yes, Jim.

HON. LACK: Of course, we just got this letter dated yesterday just this morning. When I walked in Mindy handed it to me. I haven't seen it before. It wasn't sent out by e-mail.

I've known Bob Mujica since he was the most junior Senate staffer and I was in, Senate so that's obviously a very long time ago. He is a one of the brightest guys I know. And I've just read the letter. I think a lot of the things he's saying and Roman is saying makes a lot of sense and, obviously, vastly increases the numbers we've talked about, and I don't mind thinking about it. I'm certainly not going to finish the thinking of those thoughts today in doing so. I've said we just got this letter. It is very interesting, it is very good. As I said, Bob Mujica is a very thorough guy. I'd like some time to digest it and we'll have to come back and discuss it. We have almost two months, and I think that's a very, very good idea.

And I'm glad we finally got something like this that we can put our teeth into and look at, but I think that the time is there. By the way, if we're going to do, and I think now we have to in light that of that letter, I know we

Proceedings

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2 closed the hearing to taking people in, but I read Assembly
3 Member Bichotte -- I don't know if I'm pronouncing her name
4 correctly either -- was very interesting. I've looked her
5 up, she's a graduate engineer with an M.B.A., in addition to
6 everything else, and just the type of person I've mentioned
7 here many a time, a junior member of the assembly majority
8 whom could wait eight years to get anything in terms of
9 legislative allowances who is living totally on the salary
10 she receives as a full-time member of the Legislature, she
11 points that out.

12 Quite frankly, since in light of Bob Mujica's
13 letter we're to have another meeting, I would like to open
14 that up, bring her in and get testimony from her. In
15 addition to the written, I think we should meet her and talk
16 to her. She's just the type of a young person who is
17 running to become a member of the Assembly that we need
18 to -- that we need to hear from and get ideas from. So if
19 we're going to do that, I'd like to bring her in.

20 And I haven't seen it at all, the Rochester papers
21 that you're talking about. If somebody wants to come down
22 from Rochester, talk, whatever they want, fine, by all
23 means. I think we should schedule a meeting to do that.

24 CHAIRWOMAN BIRNBAUM: Okay. We'll talk about that
25 in a minute.

26 MS. REITER: Well, my fellow commissioner and I

Proceedings

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2 actually agree on something, which is that I think that
3 there's a real case to be made for an additional public
4 hearing. Our reasons are a little different, but I'm glad
5 to hear that he's supportive of that. We recommend -- well,
6 we have two months. Given how busy everyone here is and how
7 difficult it has been to schedule our meetings, we are
8 coming to the end of our work and things are -- decisions
9 are going to have to be made.

10 I've given a lot of thought to where I am as it
11 pertains to the Legislature right now. That may change, but
12 where I am right now. And I'd like to put a statement into
13 the record regarding my thoughts about that, which actually
14 includes some of what Jim has just raised.

15 CHAIRWOMAN BIRNBAUM: If you could just wait one
16 more minute, I just would like to get the sense of the
17 Commission about another hearing. Are we all in favor of
18 having a public hearing here in New York in -- September is
19 gone already -- in October? Is everyone in favor?

20 MS. REITER: Well, what I would say to that,
21 Sheila, is that I'm very much in favor of it. I think that
22 she has made her case, in writing, given that she didn't
23 think she would have the opportunity. She's the only person
24 from the Assembly or the Senate who wants to come forward.
25 I'm not sure we need to reconvene to hear one person.

26 CHAIRWOMAN BIRNBAUM: But I think there's been a

Proceedings

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2 lot more -- there have been more than one person that has
3 requested to be heard. And I'll get back to all of those
4 people and tell them that specifically and get out the word
5 that we'll have another hearing. So if everybody is in
6 favor of that, after the meeting let's discuss a time when
7 all or most of us can be present. And then, Mindy, our
8 trustee and guide, will take the next steps.

9 Okay. All right. I'm sorry. Now --

10 MS. REITER: Quite all right.

11 CHAIRWOMAN BIRNBAUM: -- I'd like to listen.

12 MS. REITER: And I'd like this -- I'm doing this,
13 really, because I would like it as part of the record. I
14 will hand out copies of it to all of you and request that it
15 go up on our website.

16 "The New York State Commission on Legislative,
17 Judicial and Executive Compensation, that's what we call the
18 Commission, of which I'm member has been charged with
19 examining, evaluating and making recommendations with
20 respect to salary adjustments for members of the judiciary,
21 the Legislature and certain executive officers. To that
22 end, we have engaged in numerous public hearings and done
23 substantial research, first with regard to the judiciary.

24 At those hearings we heard from a number of
25 witnesses representing the judiciary, in person and via
26 written submission, who individually and collectively

Proceedings

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2 presented a substantive case for the salary increases the
3 Commission ultimately recommended. The events surrounding
4 our investigation of potential legislative salary increases
5 have been very difficult. This is likely the last scheduled
6 hearing before the Commission makes its final
7 recommendation."

8 Obviously, I wrote this before we made the decision
9 we just made.

10 "To date, we have heard from only three
11 legislators, one of which who testified in support of a
12 salary cut. We have neither heard nor received written
13 testimony from the leadership of either the Assembly or
14 Senate making an institutional argument for a salary
15 increase. During the time of these hearings, it appears
16 that more legislators are making public statements against
17 the raise than for it. And some legislators are actually
18 saying they won't accept it, said why would this Commission
19 ever recommend it. At the same time, public sentiment via
20 testimony and written submissions has been unanimous in its
21 rejection of any legislative salary increase.

22 Based on all we have heard, it is my opinion that
23 there is no possible justification for this Commission to
24 recommend any legislative pay raise, whatsoever. Therefore,
25 I am requesting that we reach out formally to the leadership
26 and members of the New York State Assembly and Senate and

Proceedings

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2 invite them to provide the input so sorely lacking from our
3 deliberations. Among the basic issues that need to be
4 addressed if we are to consider a pay raise: Do you believe
5 the annual salary and/or allowances of members of the
6 Legislature warrant a increase. If so, why and how much.
7 And to what extent should dues and travel expenses be
8 considered.

9 If the Legislature will participate, we should
10 schedule an additional public hearing at which they can be
11 heard and answer the Commission's questions before we
12 reconvene to determine our final recommendations. Absent
13 the willingness of the Legislature to contribute meaningful
14 insight for our consideration, I do not see how the
15 Commission has the basis on which to counter the
16 overwhelming public sentiment objecting to such increases."

17 I have made most of these points at several times
18 during our meetings. I continue to be extremely concerned
19 that we have not heard from them in any official way. And I
20 think before we really get into our deliberations we need to
21 give them one more opportunity to do so. But I would ask,
22 if my fellow commissioners agree, that you extend that
23 formal invitation to them; both to individuals who want to
24 appear, but I would suggest also representatives of the two
25 -- of the leadership of the two houses to come here and make
26 their case.

1 Proceedings

2 We've had a lot of discussion amongst ourselves
3 about the propriety of them doing that. I think there have
4 been a couple of people who thought that that was not a
5 proper thing to ask them to do. I have disagreed with that
6 point of view from the beginning of our discussions. I see
7 no reason why it's an improper thing to do. I think anybody
8 who wants a raise, anyone, has an obligation to tell their
9 employer, and in this case their employer are the people of
10 the city -- of the State of New York, to make their case as
11 to why they deserve a raise, and I don't believe they've
12 done that.

13 I'm glad you received the letter, the testimony
14 from the young new assembly member, but I think we need to
15 hear much more than one newcomer's view of this. And I want
16 to give them every opportunity to do that before we make a
17 decision. Because if we called it for a vote today, I don't
18 see how we have the basis for granting a pay increase.

19 CHAIRWOMAN BIRNBAUM: Thank you, Fran. I think
20 you've put on the table a very important issue for us to
21 consider and it is very clear-cut. And I would ask the
22 commissioners whether there are any objections to asking the
23 leadership to respond and inviting them to the hearing.
24 They may not want to appear in person, but they could give
25 us written responses.

26 So let's have any discussion that anyone thinks is

Proceedings

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2 necessary. Barry.

3 HON. COZIER: I certainly support making the
4 request as a final, I think, entreaty to the leadership for
5 some direct input, whether it's testimonial input or written
6 input. I am concerned about, you know, the timeframe in
7 terms of where we are, because I think while we do have a
8 couple of months to complete the process it will not be that
9 easy if we're talking about having several meetings before
10 that time.

11 So my only caveat would be we need to ask for that
12 input and it needs to be submitted within a time certain,
13 whether it's ten days or two weeks, so that we have that --
14 so that we have an opportunity to review that and then
15 consider that before we, you know, start to deliberate. So
16 that would be at least my view with respect to it. But I
17 certainly have no objection. I think it certainly would be
18 helpful to hear from the leadership on this.

19 CHAIRWOMAN BIRNBAUM: Anybody else want to be heard
20 on this issue? Yes.

21 DR. HEDGES: I've said this before, and I want to
22 reiterate this. I think the whole point of setting up a
23 commission was to make it so that the agency heads and the
24 Legislature and the governor and the comptroller and the
25 attorney general and so forth didn't have to publicly say
26 anything, that we were making the decision on their behalf,

Proceedings

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2 on behalf of the people, that we were created for the
3 purposes of removing this from the political process.

4 I think that worked well with respect to the
5 judges. I think it should work well here. I certainly am
6 not in a position to veto anything, so I don't want to make
7 it sound as though I'm trying to. But I think it's
8 something we ought to consider seriously as oh, wow, wasn't
9 this kind of missing the point for us to ask them to do
10 something that they set out to not do. It was to
11 depoliticize.

12 And the fact that a number of people running for
13 office, particularly non-incumbents, have said, gee, I'm
14 against, wow, that's exactly the grandstanding that I was
15 hoping we could avoid. And now, we didn't avoid it
16 completely, we got the grandstanding. So I understand, but
17 I want to say this as more in the way of a lament than
18 anything else. Wow, did we miss our own point?

19 MS. REITER: I have to say, and I've said it
20 before, we are going to make the decision. They did this so
21 that they didn't have to make that decision because of the
22 politics involved. And we are going to make that decision,
23 Roman, ultimately. But the notion that they should not have
24 to make a case for something I find completely separate from
25 that, from that notion. I don't believe it politicizes it.
26 You can't do anything about -- there's no way this was ever

Proceedings

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2 going to be totally non-political. It's too much of a hot
3 button issue. So we can't -- we can't have any control over
4 what people running for office may or may not do with
5 something like this. But the notion that it's not a
6 political issue even if we make the decision I think is just
7 unrealistic. But for them to have to come in and make a
8 case, it would not be appropriate for commissioners to make
9 the case, it would be appropriate for the person who they
10 report to to make the case. And I'm delighted that the
11 executive has, in fact, sent us, finally, a submission
12 making the case, very succinctly, for raises for the
13 commissioners. I'm delighted they did that.

14 So the governor, in effect, has weighed in. The
15 executive has weighed in. The judges, who are normally the
16 least political of all of the people we're dealing with, who
17 are some of them elected, right, where there are all kinds
18 of restrictions on raising money and campaigning and all of
19 that, they felt -- they felt it was perfectly appropriate to
20 come before here, and leaders from within the judicial
21 community, and make a very, very cogent argument, a
22 rationale, for getting a salary increase. We disagree a
23 little bit in terms of how much, but there was no
24 disagreement after they got done making their case as to the
25 ripeness, if you will, of giving them salary increase.

26 There has been no institutional presentation here

Proceedings

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2 and very, very little by individuals coming forward and
3 making such a case for members of the Legislature. And in
4 the midst of, you know, great discussions about the
5 reluctance of the Legislature to take certain actions and
6 reforms and enact reforms of their own bodies and the way
7 the Legislature does business that, frankly, would have been
8 very positive in terms of our deliberations.

9 So I'm just telling you, I can only speak for
10 myself, that given how little input they've had, if we took
11 a vote today I would not vote for a legislative salary
12 increase.

13 CHAIRWOMAN BIRNBAUM: Well, we're not taking a vote
14 today.

15 MS. REITER: No, no. I'm just saying I want to
16 give them the greatest opportunity to make their case. I
17 think they've had real opportunity to do it. They haven't
18 taken it. Let's give it one more shot. But in terms of the
19 propriety that this Commission was supposed to take the
20 place of their making their case for a raise, on that I
21 respectfully disagree.

22 CHAIRWOMAN BIRNBAUM: Gary.

23 MR. JOHNSON: I just wanted to briefly support and
24 endorse Fran's statement, as she stole all of my thunder,
25 because the original presentation hadn't addressed the
26 political nature of what we're doing. I think this

Proceedings

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2 ultimately is a political process. It's a different device,
3 but it's a political process. And right now we find
4 ourselves in the circumstance where what we've heard from
5 the electorate is that they are opposed to legislative pay
6 raises. And we've essentially heard from the Legislature
7 silence.

8 So the Legislature's position is essentially the
9 status quo at this point, and I don't think -- I mean, even
10 though we will not stand for election ourselves, nor go out
11 of existence when we make this report, we have to be
12 responsive to the electorate. And if that ball is going to
13 be moved at all, I think it's necessary for the Legislature
14 to weigh in and make a case for why this is appropriate and
15 why it is something that the electorate perhaps needs to be
16 educated to understand why it is an appropriate thing to do
17 to raise legislative pay.

18 CHAIRWOMAN BIRNBAUM: Okay. Jim.

19 HON. LACK: I have no objection if you certainly
20 want to send the Legislature's request. I would also not be
21 surprised if they don't receive an answer. The reason we're
22 sitting here is that for 18 years it has been impossible for
23 the Legislature and executives, whoever they might be,
24 Republican or Democrat, to agree upon a salary raise for
25 commissioners and legislators for all the reasons that you
26 have just spelled out with the word politics. As a result,

Proceedings

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2 finally, following in the lead established by then Chief
3 Judge Jonathan Lippman, we were attached to what was a
4 judiciary salary increase commission which established in
5 2011 to be reconvened in 2015, which it was by repealing
6 that commission and establishing as Chapter 60 a proposal as
7 of 2015 this commission because of the political
8 impossibility of getting the legislative executive
9 salary increases all those years.

10 For those who think that we were created out of
11 whole cloth someplace, we were created just by that, by a
12 chapter of law. In order to do that bills had to be
13 introduced in the Senate and the Assembly, reviewed with and
14 by the Governor, passed by the Senate and the Assembly,
15 signed into law, Chapter 60, creating us by the Governor.
16 That was an indication, obviously, by both houses of the
17 Legislature, both parties, that the time has come to revamp
18 the legislative and the executive compensation.

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Proceedings

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2 In order to do that bills had to be introduced in
3 the senate and the assembly reviewed with and by the
4 governor passed by the senate and the assembly signed into
5 law Chapter 60 creating us by the governor. That was an
6 indication, obviously, by both houses of the legislature,
7 both parties, that the time has come to revamp the
8 legislature and executive compensation.

9 Honestly, I'm sure they didn't do it to diminish
10 their salaries, but to increase their salaries. And that's,
11 that's why we are here in the middle of a political election
12 season.

13 And I can't help noting that the second it was
14 mentioned here about where is the legislature, suddenly
15 within days, five or six, 10 of us, who were a state senate
16 which, of course, is a closely contested house of the
17 legislature, suddenly issued, we don't want salary raises.
18 And that started a -- as a bowling ball down the alley to
19 knock over the pins of all over the state, members of both
20 political parties, particularly the senate, saying, oh, no,
21 we don't want salary increases, no, no, if we're elected,
22 we're not going to take them, et cetera. All the reasons
23 that point out to why for 18 years it was impossible to get
24 that done.

25 And so for us to think that because of all that,
26 that the legislature is going to come here and make

Proceedings

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2 statements that for 18 years it was impossible to do, but
3 they should come before us which was created by them to do
4 what they have not been able to do; although, obviously want
5 to do, which is why we're sitting here as volunteers doing
6 it, okay, but I would not be surprised if we don't get an
7 answer from them.

8 We have the answer. They would like salary
9 adjustments. What that adjustment should be? The
10 legislature purposely is not getting involved saying it
11 should be 2 percent, 25 percent, 42 percent, that Bob
12 Mujica's letter for \$240,000 for A commissioners might be
13 the answer. That's what we're supposed to decide. And they
14 turned it over to us to make that decision. To expect them
15 to come in and to justify or to ask for a specific number
16 is, quite frankly, saying, please, come here and do what you
17 haven't done for 18 years, but now that you have created us,
18 come here and do it, anyway.

19 MS. REITER: Well, it presupposes, Jim, that you
20 get a raise simply because cost of living goes up and time
21 passes, and they haven't been able to do that. I would
22 suggest that as public servants, part of the decision --
23 we're still going to make the decision. You seem to think
24 that by them showing up here and making a case for it, other
25 than we haven't gotten one in 19 years, I don't think that's
26 enough to -- you know, we've done all kind of research,

Proceedings

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2 right? We've done our due diligence. We've looked at other
3 states. In fact, our salaries are not way out of whack.
4 They are exactly two states out of 50 that have higher
5 legislative salaries than we do -- California and
6 Pennsylvania. They are not that much higher than ours. So
7 when you show them the move that a lot of people get, some
8 of our people end up getting more than that. We continue to
9 call ours a part-time. Those two states have full-time
10 legislatures.

11 If you look around the country, one of the things
12 we were supposed to do and do comparisons, just as the
13 executive did comparisons of a whole bunch of states in
14 terms of executive pay. When you look at that, you know, I
15 could make an argument that, that 79,900 plus their per
16 diems is not an outrageously low number, right? I'm not
17 prepared to do that.

18 I am not unsympathetic to giving a raise;
19 particularly, there's some who don't get to take advantage
20 of lulus, and all that, and those who live in New York City
21 who have a higher cost of living. These are all things that
22 are -- that should -- that we should weigh in doing this.
23 But, I also know that this is a body that has refused to do
24 any kind of reforms that have been called for by every good
25 government group that's appeared before us. Not to mention
26 all that we read in -- from news outlets. They -- it's --

Proceedings

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2 they're not doing that either.

3 So I think all of that comes into play in terms of
4 the decision, the independent decision we're going to make.
5 That's what we've been charged with, and that we agree. But
6 the notion that it should be done without their input,
7 again, I respectfully disagree with that notion. They are
8 political beings. They are elected government
9 representatives. This is the way we decided to -- to govern
10 ourselves as a nation and as a state. They have to answer
11 to the public. They might not want to make the decision. I
12 understand that. They haven't been able to. So we'll do
13 it.

14 But, I want their input, and I think I deserve
15 their input, and I think the public deserves that input, and
16 then we'll make the decision. And, you know what, I don't
17 believe the public is the last word on this. I'm not
18 suggesting that the fact that they're -- that the public
19 that has been almost unanimous, I think they have been
20 unanimous in their opposition to any kind of salary
21 increase. Yes, I'm going to weigh that, but I wish I had
22 something that they were prepared to step up and say to
23 counter that.

24 And my point in my statement was that barring that
25 input, I don't know how you can justify countering the
26 public's reaction to the notion of giving them pay raises.

Proceedings

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2 CHAIRWOMAN BIRNBAUM: Okay, I think -- you know, I
3 think everybody has stated their position. Let me just try
4 to put it into a, you know, a motion because I think it's
5 something that we should probably vote on, and that is to
6 invite the majority leader, minority leader, the leadership
7 of the state, the assembly and senate to answer some
8 questions. And I want to see how to put it or to come and
9 testify at our next hearing, which we will have voted or to
10 have in October, respond either in writing or orally in that
11 hearing to get further information with regard to the
12 legislature.

13 Is there anyone opposed to that?

14 DR. HEDGES: Yes, I am. I think it's a mistake to
15 insist that we have input from the legislature as an entity.
16 The republican/democratic, majority/minority, I'm
17 indifferent on the detail of it. I think the idea of it is
18 to miss the point, the creation of the commission.

19 That having been said, I'm certainly not
20 unavailable. I don't mean it that way. But I think it's
21 something that is a bad idea from an institution, this
22 institution point of view. We are the ones who are supposed
23 to make the decision on the merits of and the reason for any
24 pay increases for the group of people that we were charged
25 to evaluate and make decisions about, that is to say the
26 executive agencies, a couple of the elected agency heads,

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Proceedings

and the legislature, just as we did for the judiciary.

The input that we get is certainly important. But in the end, it's the decision by this group. And that having been said, to condition it on the participation of particular institutions or particular individuals, I think it's a mistake.

CHAIRWOMAN BIRNBAUM: Let me just -- let me --

MS. REITER: That's an individual decision. In other words, I'm not -- I'm not suggesting that they -- you know --

DR. HEDGES: I understand. You asked about a certain sentiment, and my sentiment is I would be opposed to asking.

HON. LACK: I would second that.

CHAIRWOMAN BIRNBAUM: All right.

MR. JOHNSON: And in regard to Roman's comment, I mean, I don't see us as either insisting or conditioning anything that we do on getting a response from the leadership.

DR. HEDGES: But Fran's statement does that.

MS. REITER: No, no. No, no. My personal -- my personal vote -- I have the right -- I have the right -- I have -- well, I have the right to condition my --

DR. HEDGES: Of course, you do.

MS. REITER: -- ultimate decision on this any way I

Proceedings

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want it.

DR. HEDGES: Sure, and for every commissioner who doesn't come and testify --

MS. REITER: I don't want the commissioner.

DR. HEDGES: -- I would not -- no, no. Exactly. I don't want them.

MS. REITER: I don't think they're the appropriate person to do it.

DR. HEDGES: I don't want them to. I don't think the legislators either.

CHAIRWOMAN BIRNBAUM: But we have had some legislators already here. Another legislator is --

DR. HEDGES: Understood.

CHAIRWOMAN BIRNBAUM: -- in the audience, who I will introduce to you later, who certainly has an interest, too.

HON. LACK: But no one said the requirement that the leadership and the legislature shall appear to do anything. We're in the middle of a political election season, as everybody at this table knows, with some very hotly-contested partisan elections going on for which -- not from anything we've done, but because we exist, have become election issues. And to expect those in the midst of that to come in the middle of that, can come here and testify as it were, so what's going on, which involves in effect their

Proceedings

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2 own elections, as well as the election and leadership of
3 their particular house and legislature. Having run and been
4 elected to the legislature 12 times, I can tell you that is
5 not something that any legislator -- I think that's what
6 Roman was talking about -- any legislator of either party
7 and either house is really something wants to do in the
8 middle, middle of an election. Particularly a highly
9 contested election of which there are many, which thankfully
10 there are, it's a democratic process that has been -- that
11 is going on throughout the state. But, I don't think
12 anybody wants to bring it into the association of the bar.

13 CHAIRWOMAN BIRNBAUM: Barry.

14 HON. COZIER: I guess I'm somewhere in between on
15 this. I mean, I do support the fact that we have the right
16 to request broad input, and that we should be as
17 comprehensive as possible in considering various view points
18 that may be expressed.

19 I don't think that there is anything that precludes
20 us from making the request. However, to part, I guess, from
21 Fran and the suggestive, the suggestion I believe that the
22 lack of input from the legislative leaders in some way may
23 be preclusive in terms of our consideration as to whether or
24 not they get a raise. I separate those two items.

25 MS. REITER: I think that's -- I think that's --
26 that's an individual -- individual prerogative. I'm not

Proceedings

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suggesting --

HON. COZIER: Okay, let me finish. Let me finish.

And the reason I say that is because I believe that we as a commission have an independent responsibility pursuant to the legislation to evaluate and to make appropriate recommendations. And to me those are not governed by any single consideration. So, you know, I don't want to elevate it to the point of saying, gee, the legislation doesn't respond, then we know because the consensus is there shouldn't be -- and even on this question of public consensus, we have anecdotal information. We have nothing that would be the equivalent or the semblance of a public consensus because we haven't heard, but from dozens of person as such, not even hundreds of persons have we heard from.

So to say that there is a public consensus, the fact of the matter is the public is not in a great position to evaluate this particular circumstance. Difficult enough for us to evaluate it with the amount of information that we have. But, we do have a responsibility to the public, and certainly we have to discharge that responsibility whether or not we input from legislative leaders. So to the extent they can't be compelled, we understand.

MS. REITER: Of course not.

HON. COZIER: But I don't have no objection to the

Proceedings

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request.

CHAIRWOMAN BIRNBAUM: So I think there's a majority of the commission that wants to invite the leaders of the assembly and the senate to respond. I think, as Barry made very clear, the fact that they do or don't will not in the end affect our decision mostly, some people it might. But with that caveat, I think that we have a majority, and we will get out a request as soon as possible and invite them to attend the next meeting if they'd like or to respond in writing.

That sort of reflects the majority? I think it does.

Okay. What else would we -- do we want to go back and have a discussion -- I would assume that based on what we're talking about that we should put off any discussion of legislative salaries to the next meeting, or is there more to discuss?

Silence means --

HON. LACK: I agree to put it off to the next meeting.

CHAIRWOMAN BIRNBAUM: Okay. So are we prepared to discuss more as to how to handle the commissioners at this point, even without maybe taking a vote and vote on both of them at our next meeting?

HON. LACK: Not really, we just got this letter

Proceedings

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from Bob Mujica.

CHAIRWOMAN BIRNBAUM: And you want more time to consider that as well?

HON. LACK: Well, it raises the bar as it were --

CHAIRWOMAN BIRNBAUM: Right.

HON. LACK: -- substantially, I mean.

CHAIRWOMAN BIRNBAUM: All right. Just keep in mind that Roman sort of put a suggestion on the table that we go up to between 200 and 240, so that's at least the suggestion that we can consider.

MS. REITER: I would just ask for consideration of one other approach which is a little bit different.

CHAIRWOMAN BIRNBAUM: Okay.

MS. REITER: Because I believe that the comparison is incredibly helpful in illustrating just how poorly our folks are paid, and gives a real foundation to the -- to the assertion that this is why we have -- this is a big part of why we have such a hard time filling the spaces.

I don't know that -- and I haven't read Rob's letter yet. I just received it. I don't know that the executive is necessarily making a case that, that what we do needs to match, as an example, what California does, right? I see the 200 range being a little bit more in -- in --

CHAIRWOMAN BIRNBAUM: Keeping.

MS. REITER: -- in keeping -- it's a little more in

Proceedings

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2 line with where my thinking was, both the bottom of that.
3 But the other thing I would ask everyone to consider is
4 that -- is that the notion of a set cost of living increase
5 that we calculate that 47 percent that you raised, certainly
6 in terms of our discussion about the executive, I have a
7 little bit of an issue with, only because there are in the
8 course of, you know, being a public servant, there are years
9 when states' governments can afford raises and years when
10 they can't.

11 And while that won't necessarily apply to, to
12 employment contracts through, you know, they were arrived at
13 through collective bargaining or other kinds of government
14 employees. At the highest levels there are years when you
15 can afford to give a raise, and then you go into a
16 recessionary period, and the cost of living may continue to
17 go up, but there's no way government can afford to give a
18 raise under those circumstances.

19 I -- I -- we discussed one or two meetings ago a
20 slightly different approach, which is to take a look at the
21 raises that in fact government has provided for its other
22 managerials over the course of this period of no, no raises
23 for the commissioners, you know, those MC increases. And
24 use that number which is a little bit lower than -- not
25 hugely lower, but a little bit lower, and I think it's
26 around, Barry, I think it was around 42 percent.

Proceedings

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DR. HEDGES: Forty-two.

HON. COZIER: Forty-two percent.

MS. REITER: And to look at that as sort of the rationale, where we come up with, with a number, a salary increase if in fact we're endorsing a salary increase election before them, because that's a number that's tied into sort of the realities of year-to-year governments, right, a guaranteed -- continuing it on a cost of living, a yearly cost of living increase so that it doesn't only reflects the cost of living increase, not the budgetary reality that government may be facing in any given years. So the MC's can go four years without a raise, and then all of a sudden get a three and a half percent raise, right?

So what I'd like to do is take the numbers that Gary pulled and look at that as a basis for a possible raise. Then over that 19-year period there was that -- there was approximately a 42 percent increase that they got. That's exactly how they got ahead of the commissioners in terms of salaries, right, and that we tie it to that, so that the raise they get immediately puts them ahead of all of their executive deputy commissioners.

And something that I've sort of put out there before was that we only deal with a four-year period. But in each of the next four years, at any point the other managerials get a raise, the commissioners get the same

Proceedings

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2 percentage raise, so that we never run into this issue of
3 them making less than the people that would forfeit it.

4 So I think it's -- I think it's a little smaller
5 number, but it doesn't set any kind of precedent in terms of
6 tying it into a cost of living increase because I think
7 that's a very slippery slope to impose on government when
8 the fiscal situation in government at any one time simply
9 may not be able to support that.

10 CHAIRWOMAN BIRNBAUM: So if -- I'm sorry. You have
11 a response?

12 DR. HEDGES: Just for the nuance, and it is a --
13 and how do we think that through kind of nuance. The 42
14 percent number is one group of employees that went through
15 the history that we're talking about. And it is in rough
16 terms over the 18-year period 2 percent per year.

17 MS. REITER: Uh-huh.

18 DR. HEDGES: If we were to look at another group of
19 employees who are also senior and are subject to the state's
20 budgetary constraint, because it's part of a negotiation
21 process, it's the PAC employees, and their raise over that
22 same period was not 2 percent, but was 2.2 percent, that's
23 the 47 --

24 MS. REITER: Okay.

25 DR. HEDGES: -- that turned out to be cost of
26 living. Which came first? I think it's a fair question.

Proceedings

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2 The 3 percent that is implicit in 3.2 actually in the 240
3 number that I used at the beginning today, that's a little
4 bit more than inflation. It's trying to deal with one
5 concept of who's comparable, and I used California. I think
6 that's the range in my thought someplace in that 2 percent
7 to 3.2 percent per year over the history that they are
8 looking at to catch up. Not to say that's what it has to be
9 going forward. It's to catch up. And so that's the nuance
10 that I guess --

11 MS. REITER: Okay.

12 DR. HEDGES: -- I would put on table, and that
13 translates to something like 192 to 240 as the range for the
14 A commissioners, and then my comment was and everybody else
15 proportion.

16 MS. REITER: Yeah, I have no problem, by the way,
17 with the everybody else proportion, I agree --

18 DR. HEDGES: And I would agree with the
19 legislature, that's the difference.

20 MS. REITER: That is the different between us. The
21 only thing -- the only thing --

22 CHAIRWOMAN BIRNBAUM: It's completely different.

23 MS. REITER: It's a pretty big difference, but I'm
24 glad that we can agree on at least one of them.

25 The only thing I would say is that I think that
26 contracts that are agreed to with regard to collective

Proceedings

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2 bargaining in any of the union employees that work in
3 government is a different kettle of fish, so to speak. And
4 that -- and that the -- that tying it to those increases of
5 which are arrived at in a very, very different way, is a
6 little bit apples and oranges. But I think we're close
7 enough that I have every confidence that we're going able to
8 come up with an agreement on.

9 CHAIRWOMAN BIRNBAUM: And I think whenever a
10 justification that the commission needs to reach their
11 number on maybe their own justification, but there could be
12 a number we could agree to and people can approach it in
13 their own way to justify because it seems to me that the
14 numbers, whichever way you go, are not that far apart.

15 Gary, I'm sorry. I know --

16 HON. LACK: I noticed them, too.

17 MR. JOHNSON: I just wanted to suggest a possible
18 way of thinking about this. Presuming that we get over the
19 hurdle justifying a raise, and that is to consider the
20 possibility of parity with the Supreme Court justices, where
21 we have them at 193 in 2016 and 203, 100 in 2018. And it
22 certainly seems to me that if we're talking about an A level
23 commissioner, it would not be outrageous that that A level
24 commissioner wouldn't have parity with Supreme Court
25 justices.

26 CHAIRWOMAN BIRNBAUM: As I said, it's just very

Proceedings

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2 interesting. There's different ways to get there, but we
3 are all hovering around certain numbers.

4 Jim.

5 HON. LACK: Yeah. I just want to pick on something
6 what Fran said in order to have department heads
7 commissioners regardless of their level making better
8 salaries than those who report to them. I mean, you could,
9 no, we have not, and I'm not even saying we should apply
10 that to the legislature. There is -- I don't know how many
11 senior staff members, one of them probably won more in the
12 assembly than I did, how many senior staff people both in
13 the assembly and the senate who earn 50 to 70 percent more
14 than the speaker or the majority leaders in the senate, all
15 of whom are full-time, which is obviously now a change in
16 the 18-year process that we've had. Both the two leaders in
17 the senate who share leadership responsibilities and the
18 speaker are full-time employees, and have stated so, and
19 indeed that's what they're doing. And to the best of my
20 knowledge, they earn \$60,000, \$70,000 less than people who
21 report to them.

22 And there's a codicil to what Fran was talking
23 about, about how they must feel to have people who work for
24 them make that much more than they do.

25 MS. REITER: I would suggest that elected officials
26 are a different --

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Proceedings

CHAIRWOMAN BIRNBAUM: Breed.

MS. REITER: -- breed, they're a different class, and who run for -- we've got legislatures around this country, and I'm sure they have staff people as well, but they're uncompensated completely. There are different reasons for becoming a state legislator than there are for becoming a staff -- staff member. And I -- and I, you know, I simply -- I don't -- I don't buy into the analogy. That's all.

CHAIRWOMAN BIRNBAUM: Okay. Are there any other issues that we need to raise today or decide on? I think it's going to be a busy month. If we go forward, we will -- we will discuss right after the meeting what dates we will have, and we will put them on our website immediately, so people can be aware of them. There's always another hearing and -- and another meeting in October.

I'd like to introduce you before we go to assembly person Bichotte --

Is it Bichotte?

MS. BICHOTTE: Yes, Bichotte.

CHAIRWOMAN BIRNBAUM: -- who is present today. And I know that you wanted to testify. We are going to set up another date for that.

MS. BICHOTTE: That's fine.

CHAIRWOMAN BIRNBAUM: But if you want to say a

Proceedings

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2 couple of words, you came all this way today.

3 MS. BICHOTTE: No, no. Thank you. Thank you so
4 much. I came today just to listen to the panel. I have
5 another event I have to go to. But I have respected the
6 protocol, and just wanted to listen to the feedback. And I
7 certainly look forward to the next time in October.
8 Hopefully it's not October 20th or 21st. I'll be out of
9 town. But, I look forward to actually communicating in the
10 feedback and the concerns to my colleagues in government
11 so --

12 MS. REITER: We appreciate that.

13 CHAIRWOMAN BIRNBAUM: And --

14 MS. BICHOTTE: Yes.

15 CHAIRWOMAN BIRNBAUM: -- I must say before you came
16 we did comment on your very, very worthwhile letter
17 explaining --

18 HON. LACK: Erudite.

19 CHAIRWOMAN BIRNBAUM: Erudite, there you go. It's
20 worthwhile, there you go.

21 -- explaining a position that I think had not been
22 explained to us before in such an area, so we thank you for
23 your written comments. If you want to testify at our next
24 hearing, we'd love to have you. But you have added great
25 value to our considerations.

26 MS. BICHOTTE: Thank you so much. I appreciate it.

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Proceedings

CHAIRWOMAN BIRNBAUM: All right. Any other
business before the commission?

I call this meeting to a close. Thank you.

MS. REITER: Thank you.

C E R T I F I C A T E

I, Karen M. Mennella, a Senior Court Reporter for the State of
New York do hereby certify that the foregoing is a true and
accurate transcription of my original stenographic notes.

Karen M. Mennella,
Maria Rivera
Senior Court Reporters