

In The Matter Of:
Judicial Compensation Hearing v.

November 30, 2015

Anne Marie Scribano

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STATE OF NEW YORK

PUBLIC HEARING

Commission on Legislative, Judicial
and Executive Compensation

November 30, 2015

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

B E F O R E:

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

Anne Marie Scribano
William Leone
Senior Court Reporters

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2 THE CHAIRPERSON: Good morning. I welcome you all
3 to the Commission on Judicial Salaries and Executive and
4 Administrative Salaries.

5 This morning, we're going to be only considering
6 the issue of judicial salaries. I'd like to introduce the
7 Commission members that are here this morning.

8 Commissioner Johnson will join us later in the
9 morning when he gets here.

10 I'd like everyone to introduce themselves.

11 Roman, would you start on that end.

12 MR. HEDGES: I'm Roman Hedges.

13 MS. REITER: Fran Reiter.

14 THE CHAIRPERSON: Sheila Birnbaum.

15 JUDGE LACK: Jim Lack.

16 JUDGE COZIER: Barry Cozier.

17 THE CHAIRPERSON: And everybody is welcome.

18 We have an agenda and a schedule of witnesses. As
19 you know, each of the organization witnesses will have
20 10 minutes, and we'll try to give you a little extra if
21 there are questions. The individuals who have signed up
22 have five minutes each. We will continue until about 1:20,
23 1:30, take a short break and then get back at 1:45. We may
24 take a break in between, but it will be very short.

25 We're very anxious to hear from all of the
26 witnesses who have signed up. We have your written

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2 submissions and we have read those submissions, so you don't
3 have to repeat everything that's in the submissions. And we
4 look forward to a very interesting morning.

5 The first witness is going to be the Honorable
6 Lawrence Marks, Chief Administrative Judge of the State of
7 New York.

8 Thank you.

9 JUDGE MARKS: Good morning, Ms. Birnbaum and other
10 members of the Commission. Thank you for the opportunity to
11 speak to you today on this important question.

12 I'm speaking on behalf of Chief Judge Jonathan
13 Lippman and the entire New York State judiciary. And, as
14 you noted, we provided a submission, so I'll try to keep my
15 remarks relatively brief.

16 I hope you have the opportunity to read our
17 submission carefully. It lays out in much greater detail
18 our analysis and the reasons in support of the
19 recommendations that we're making.

20 We've also provided you with a larger appendix,
21 which you have in electronic form, and there's a lot of
22 information in the appendix, probably more than you'll need.
23 But, hopefully, you'll find that to be helpful as well.

24 So, we are recommending that the Commission use
25 the Federal District Court judge salary as a benchmark in
26 making its determinations. The Federal District Court judge

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2 salary on January 1st, in a few weeks, will be \$203,100. In
3 asking you to use that as a benchmark, what that means is we
4 would like you to use that as the benchmark for setting the
5 salary of Supreme Court judges in New York. The Supreme
6 Court, as you know, is the court of general civil and
7 criminal jurisdiction in New York. And so if you, as we're
8 recommending, use that as the benchmark, that would be the
9 salary for Supreme Court judges and then the other New York
10 judges' salaries would be set proportionally to that
11 benchmark amount.

12 We're also asking that you make that new salary
13 effective on April 1st, 2016; that it not be phased in. And
14 we're also asking that you build in cost of living
15 adjustments based on any cost of living adjustments that the
16 federal judges may get in the ensuing three years for this
17 four-year period that you're focusing on.

18 Before I just explain why we think that makes
19 sense and why you should support the recommendation for
20 making it, I want to just put this in a bit of context
21 because I think it's important to do that.

22 This has really been a 40-year history, a
23 difficult and troubled history, for judicial compensation in
24 New York. And it's 40 years because it was approximately
25 40 years ago that the state took over the financing of the
26 state court system, including the responsibility for paying

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2 judges' salaries. And over that 40 years, we've seen very
3 long stretches of stagnation in judicial salaries. Most
4 egregiously was a 13-year period in which there wasn't a
5 single dollar in cost of living adjustment for judges. That
6 was the period 1999 to 2012. So there have been long
7 stretches of stagnation. There have been periodic and ad
8 hoc catch-ups over this 40 years that never made judges
9 whole. There has been lost cost of living adjustments to
10 judicial salaries that have been gutted by inflation and a
11 lack of transparency in the process and, really, this
12 instability, unpredictability, irrationality and unfairness
13 in this process and that is what led the legislature to
14 create a commission process to change that, to make the
15 process more objective, to make it more professional.

16 So the 2011 Commission conducted its work four
17 years ago. It did not, as I'll explain, solve this
18 long-standing problem. It addressed it partially, but it
19 did not solve the problem. And we believe that this
20 Commission has the opportunity to solve this problem once
21 and for all.

22 So, again, we're recommending that the Federal
23 District Court judge salary be used as the benchmark and
24 that that be done immediately, taking effect on April 1st
25 and that COLAs be built in, if judges get COLAs in the
26 ensuing years.

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2 So why does this make sense?

3 So, first and foremost, the one thing that this
4 2000 Commission did get right, we believe, is it did set the
5 federal salary, the Federal District Court judge salary, as
6 the benchmark.

7 And in doing that -- I just want to quote from
8 their report in 2011. The 2011 Commission said that:

9 The Commission recognizes the importance of the
10 New York State judiciary as a co-equal branch of government.
11 It recognizes the importance of establishing pay levels that
12 make clear that the judiciary is valued and respected. The
13 federal judiciary sets a benchmark of both quality and
14 compensation. New York should seek to place its judiciary
15 on par.

16 That is where New York State judicial compensation
17 was in the late 1990s and our recommendation is to
18 reestablish this benchmark. So that is a precedent that the
19 2011 Commission set.

20 That benchmark and that precedent is also
21 consistent with history and past practice. So not only in
22 2011 was the federal salary used as the benchmark, but that
23 was the case in 1999 and also the case in some prior years
24 before that. In effect, State Supreme Court judges made a
25 little bit more than Federal District Court judges for
26 several years in the 1980s.

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Secondly, it would provide, in using that federal salary as the benchmark, it would provide fairer and fuller cost of living adjustment for state judges.

And, interestingly, in 2011, where there had been, at that point, a 12-year drought and stagnation in judicial salaries, inflation had gone up 41 percent at that point since 1999, which had been the last adjustment in state judicial salaries. So there had been a 41 percent increase, but the Commission in 2011 only provided a 27 percent increase in salaries and, in fact, it phased that in over three years. But when it was fully phased in, it was only a 27 percent increase, even though inflation had gone up 41 percent since the last increase in 1999. But 1999, we believe, isn't even the best baseline period because, prior to that, in the 1990s, there were three years when the federal judges missed out on cost of living adjustments. So we would go back to the 1986 -- 1987 state judicial raises, that's the most valid baseline here. And that's the year that's closest in time to the federal legislation, in 1989, the federal ethics legislation that put in place for federal judges what was to be a regular cost of living adjustment process. So we could use 1987 as the baseline year.

If you use that as the baseline year, factoring in the cost of livings between 1987 and today, that would take you to about \$207,000, which is more than the current

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2 Federal District Court judge salary. And we're not
3 advocating for that. We're advocating for parity with the
4 \$203,100 salary that the Federal District Court judges will
5 be getting on January 1st.

6 But the point is that, it almost doesn't matter
7 which year you use as the baseline, because, if you use
8 1999, the cost of living has gone up about 46, 47 percent;
9 inflation has gone up 46, 47 percent since 1999 to today.
10 That would mean a salary of about \$201,000. If you use our
11 baseline year, 1987, it would be \$207,000. It almost
12 doesn't matter which baseline year you use to calculate the
13 increase in inflation. It gets you to within the ball park
14 of what would be the Federal District Court judge salary in
15 2001.

16 And I would just note here that we're not asking
17 for this, we're not asking for retroactive payment, but, you
18 know, frankly, the fact of the matter is that New York State
19 judges, because of this inability, these long periods of
20 stagnation, the catch-ups, not making judges whole, a judge
21 -- a Supreme Court judge who was on the bench in 1999 and is
22 still on the bench today has lost over \$400,000 in cost of
23 living adjustments. That's a fact. That's not an
24 approximate number. The cost in terms of dollars and cents
25 for a judge in that situation is the \$400,000 loss in cost
26 of living adjustments.

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2 The third reason that we think the Federal
3 District Court judge salary is the appropriate benchmark is
4 that New York State, as we all know, is a very expensive
5 state to live in. By some measurements, it's the most
6 expensive state in the country.

7 The National Center for State Courts Analysis,
8 which we provided in our submission, which, by the way, is
9 an analysis that's used by states throughout the country, at
10 least 15, if not more states, in setting judicial salaries,
11 in setting judicial compensation, the National Center for
12 State Courts survey ranks New York, taking into effect cost
13 of living, at the current salary for a State Supreme Court
14 judge, we're 47th in the country. \$174,000 salaries that
15 Supreme Court judges are currently making, 47th in the
16 country, factoring cost of living. And we're dead last
17 among the most populous states in the country. Even bringing
18 us up to the level of the Federal District Court judge
19 salary would only place us, taking into account cost of
20 living, would only place us at 33rd in the country.

21 Lastly, the fourth factor that we think strongly
22 supports the recommendation that we're making is that,
23 unlike in 2011, when the state's fiscal situation was very
24 weak -- there had been a \$10 billion, unprecedented
25 \$10 billion state budget deficit going into that year. The
26 state's economy was very weak. The budget situation was

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2 very weak. Unlike 2011, the state's fiscal condition today
3 is strong and there's no question that the state has the
4 ability to pay the increase that we're advocating. The
5 ability to pay, as you know, being one of the statutory
6 factors that the Commission is required to consider. It
7 would -- it would cost about \$35 million annually to take
8 New York's judges, the Supreme Court judges, to the Federal
9 District Court judge level and for the proportionate
10 increases to other New York State judges. That is
11 twenty-five one-thousandths of 1 percent of the state
12 budget. There's no question that the state has the ability
13 to pay the increase that we're seeking.

14 So those are the reasons why we are recommending
15 using the Federal District Court judge salary as the
16 benchmark, making the full increase effective on April 1st
17 and building in COLAs in existing years, if the feds, in
18 fact, get COLAs in those ensuing years.

19 Just one last problem that I want to mention, and
20 this is important.

21 We think that the Commission should also address
22 the disparities in judges' salaries that we see across the
23 state, where judges in the same level court can earn very
24 different salaries. This, again, is a legacy of the state
25 takeover of the financing of the court system. There are
26 seven salary levels for County Court judges. There are six

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2 for Surrogate's Court judges. There are four for Family
3 Court judges. This is mainly an upstate problem. It makes
4 absolutely no sense. The Commission should take a look at
5 this.

6 We feel that it would not be very difficult to
7 fix. There is a fairly simple solution that we're
8 proposing. What we're proposing is County Court judges,
9 Surrogate's Court judges and Family Court judges be paid at
10 95 percent of the Supreme Court salary; that the New York
11 City Civil Court judges and the New York City Criminal Court
12 judges and the District Court judges on Long Island be paid
13 at 93 percent of the Supreme Court judge salary; and that
14 City Court judges upstate and also some City Court judges on
15 Long Island and the New York City Housing Court judges be
16 paid at 90 percent of the Supreme Court judge salary.

17 And there are some of those judges in those
18 categories who are making higher than those percentages now
19 and we would recommend that they remain at those higher
20 percentages, but that the other judges fall into those three
21 categories that we're suggesting.

22 We think this is a relatively simple solution
23 supported by judges around the state. And we're
24 recommending that the Commission fix this now.

25 THE CHAIRPERSON: Thank you, Judge Marks. We
26 really appreciate it.

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2 Anyone have any questions? Any Commissioners have
3 any questions for Judge Marks?

4 Thank you so much, we really appreciate it.

5 We read your submission and we will reread it,
6 believe me. It was very, very thoughtful and well done.

7 Thank you so much.

8 JUDGE MARKS: Thank you.

9 THE CHAIRPERSON: Let me also introduce one of our
10 Commissioners who just joined us, Mitra Hormozi.

11 We're glad to have you with us.

12 Is David Miranda president of the New York State
13 Bar present?

14 We do have a timer and the timer is in front of
15 you, I think, and we'll try to keep people within their time
16 because we have a very, very long list of witnesses.

17 Thank you, Mr. Miranda.

18 MR. MIRANDA: I appreciate that very much.

19 Madam Chair, honorable members of the Commission,
20 my name is David Miranda. I'm president of the New York
21 State Bar Association. And on behalf of the New York State
22 Bar Association, I'd like to thank you for this opportunity
23 to testify on the subject of judicial compensation.

24 An independent and properly funded judiciary is
25 important, not only to our judges and their families, but
26 also to our New York State Bar Association, every attorney

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2 in the legal profession, people of our great state and, in
3 the end, the stability of our democratic society.

4 In 2011, our association strongly supported the
5 bill mandating the establishment of periodic judicial
6 compensation commissions because they play a critical role
7 in maintaining our system of justice. I'm honored to be
8 here today to reiterate the views of our association and
9 chair our association's support for increased judicial
10 compensation and the continuing importance of this
11 Commission's good work.

12 The New York State Bar Association represents the
13 interests of over 74,000 attorney members and is a voice for
14 the quarter million attorneys licensed to practice in New
15 York State and around the world. For more than two decades,
16 our association has been a strong and steadfast supporter of
17 judicial compensation. Throughout that time, our position
18 has been firm and clear. An independent, well-functioning
19 judiciary accessible to all is a cornerstone of our society.

20 Moreover, we strongly believe that the operation
21 of our justice system depends on competence in the system on
22 the part of both lawyers and their clients and the public;
23 that the judge presiding over a case is qualified,
24 independent and fully focused on the matter at hand.

25 New York has been blessed with a fortunate history
26 of many talented, civic minded jurists who gladly sacrifice

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2 financially and personally in their service to the public.

3 However, as we said in 2011, when the judiciary
4 had not received a salary adjustment in more than a decade,
5 salary stagnation is an impediment to retaining qualified
6 and experienced judges and attracting and keeping the best
7 and brightest attorneys on the bench.

8 We submit that our great state needs to continue
9 to take steps to assure that we not repeat the past mistakes
10 of neglect. In short, our justice system's ability to
11 function properly depends on the judges who serve it. That
12 is why our association strongly believes that judicial
13 compensation deserves the highest of priorities.

14 In 2011, our association adopted a report that was
15 the basis for our submission to that commission recommending
16 a substantial increase in judicial salaries. Such increase
17 was necessary to address significant erosion and neglect of
18 judicial pay over the previous 12-1/2 years. We determined
19 that, when adjusted for statewide cost of living, judicial
20 pay in New York State ranked, at that time, last in the
21 nation. In 2011, we recommended what reflected the cost of
22 living increase since 1999, which would have adjusted the
23 annual salary of the Supreme Court justice to \$192,000 a
24 year.

25 That was four years ago and we're still not where
26 we need to be.

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2 At that time, we also recommended implementation
3 of a protocol for regular adjustment of judicial salaries
4 thereafter to account for the rising cost of living, which
5 is a critical concern on our current submission to this
6 Commission.

7 A copy of our materials submitted to the
8 Commission will also be attached to our written submission
9 to this Commission, which will be forthcoming following my
10 testimony.

11 In addition to my testimony and the state bar's
12 history of advocacy and support for proper funding of our
13 judiciary, my testimony and our submission will highlight
14 the independent analysis of our independently retained
15 economist, Orley Ashenfelter, a professor of economics at
16 Princeton University and a former president of the American
17 Economics Association. The New York State Bar Association
18 independently retained Dr. Ashenfelter to analyze judicial
19 salaries in New York in connection with our submission. We
20 will also be submitting his CV, which provides more details
21 about his extensive work in the field of economics, which
22 will be attached to our submission.

23 Dr. Ashenfelter's analysis of judicial salaries in
24 New York State involve the following. A comparison of New
25 York State judges' salaries and federal judges' salaries; a
26 comparison of New York State judges' salaries with the

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2 salaries of judges in other states; a presentation of the
3 cost of living adjusted salary paid to all state judges.

4 The results of this analysis are remarkable in
5 that it shows that the value of compensation of New York's
6 judges is significantly less than that of their counterparts
7 in other states and federally. Compared to other judges,
8 New York State Supreme Court judges earn 87 percent of the
9 salary of federal court judges and 85 percent of the cost of
10 living adjusted U.S. average for all trial court judges.
11 The analysis also compares intermediate appellate courts and
12 the highest state and federal courts with similar findings
13 and ratios. Dr. Ashenfelter found that, in all cases, the
14 salary paid in New York is among the lowest salary paid in
15 any state and is substantially lower than the average
16 salary, once you adjust for cost of living differences
17 across the states. Further, his comparison of the salary of
18 New York State judges with trial level courts of all other
19 states shows that the adjusted salary for New York's Supreme
20 Court justice would be \$204,245.

21 Dr. Ashenfelter's report, as I said, will be
22 included with our written submission.

23 I think it's important to note that our state is
24 home to an international financial center here in New York
25 City. Our judges and our court system play an important
26 role in developing a body of law that is recognized

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2 throughout the country and throughout the world as the gold
3 standard for its treatment of financial and commercial
4 matters. Our judicial bench is world renowned for its
5 fairness, neutrality, independence and its capacity to
6 handle complex cases.

7 These are among the reasons that New York courts
8 are attractive to businesses from around the world.

9 The devaluation of our judges' work through
10 inadequate compensation makes it more difficult to attract
11 and retain the best and brightest to the bench. Such
12 deficiencies threaten to diminish the reputation of our
13 courts with also a negative impact on our state. We must
14 maintain our judicial -- international judicial reputation
15 for quality, fairness and independence as we go forward.

16 Judicial compensation reflects the value that we,
17 as a society, place upon the critical work that our judges
18 perform. We all appreciate and benefit from the important
19 role of the judiciary in our society, but the failure to
20 adequately compensate judges devalues their work in a way
21 that we believe is detrimental to a properly functioning
22 justice system. That is why the New York State Bar
23 Association recommended a substantial increase in judicial
24 salaries in 2011 and that regular cost of living increases
25 be provided as adjustments to the judges. Our association
26 today reiterates its long-standing position on the

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2 importance of adequate judicial salary and recommends
3 implementation of a substantial increase for New York judges
4 in 2016 in accordance with our written support and economic
5 materials.

6 We thank you and I thank you for the opportunity
7 to testify before you on this matter of crucial
8 significance.

9 THE CHAIRPERSON: Thank you, Mr. Miranda.

10 We look forward to reading that report and the
11 economist's report as well.

12 Any Commissioners have any questions for
13 Mr. Miranda?

14 Thank you very much.

15 MR. MIRANDA: Thank you.

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2 CHAIR PERSON: The next witness is the Honorable
3 Paul Feinman, president, and Honorable William Condon
4 president-elect, of the Association of Justices of the
5 Supreme Court of the State of New York.

6 MR. CONDON: Good morning. Madam chair, ladies and
7 gentlemen of the commission. My name is William Condon and
8 seated to my right is the president of the Supreme Court
9 Judges Association of the State of New York Paul Feinman. I
10 am the current president-elect taking office in January. I
11 currently sit in the Tenth Judicial District in Suffolk
12 County. I was elected to the bench in 2008 and I've been
13 working in Riverhead presiding over a criminal term since
14 then.

15 CHAIR PERSON: I would just like to point out that
16 we have a very thorough and very thoughtful written
17 submission from your association and we have read it and we
18 will read it again after your presentation. So thank you so
19 much for that.

20 MR. CONDON: We appreciate that. Thank you very
21 much.

22 You will note, Madam Chair, that there are a number
23 of consistencies between our submission and that of the
24 Office of Court Administration. It's noteworthy that the
25 salary adjustment that we're seeking, of course \$203,100,
26 was the exact same result that was achieved independently by

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2 the Office of Court Administration, as well as the Court of
3 Claims Association.

4 When we all met in New York City to discuss what we
5 might present to the commission virtually everyone was of
6 the same mind, and along those lines we feel that the salary
7 adjustment that we're seeking is not only deserved but it's
8 realistic, it's equitable and ultimately it's fair.

9 I apologize for any redundancies based on what you
10 heard already, but there are a couple of points that I think
11 bare highlighting.

12 We are in the great State of New York. We have
13 traditionally been in the bottom few states in the nation
14 when it comes to judicial salary cost when cost of living is
15 factored in. As you heard Judge Marks say a few moments
16 ago, we are currently 47th out of 50 states. The salary
17 adjustment that we're seeking would only move us up to 33rd,
18 so we're not trying to break the bank. We're trying to
19 achieve a salary that we think would be equitable and fair.

20 The key word there is parity, both with the judges
21 sitting in other states, as well as other government
22 employees, as well as private law firms. As you may know
23 for, as an example, the District Attorney's Association is
24 going to the state and requesting a salary of \$250,000.
25 Currently many senior employees at the various district
26 attorney's office of New York City make more than the

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2 Supreme Court judges do now. First year associates at
3 private firms often out earn what a Supreme Court justice.
4 They also have the benefit of bonuses, which we do not of
5 course.

6 We feel that case filings are up, motion filings
7 are up. In Suffolk County we've been hit with a tidal wave
8 of foreclosure actions. It's actually reached epidemic
9 proportions. Dispositions are up. So I would state with
10 confidence that by and large the judiciary is doing their
11 job.

12 The other factor that I think is a major pivotal
13 role in what we're seeking from this commission is the
14 state's ability to pay which Judge Marks also noted in his
15 statement. The 2011 commission was hamstrung to the extent
16 that it had to deal with significant budget deficit. We
17 don't have that problem this time. In fact, very
18 conservative estimates indicate that New York State will
19 have a surplus budget, surplus, in its operating budget of
20 \$252 million in 2016, \$1.1 billion in 2017 and in excess of
21 \$600 million in 2018.

22 Also, as Judge Marks noted what we're asking for is
23 a fraction of one percent, what that operating budget is.

24 So the economy is doing better, costs rise and it's
25 expensive to live in New York. I don't have to tell anyone
26 here that. So that is why we are asking for the adjustment

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2 of \$203,100. I will also note there's a precedent for
3 obviously the commission in 2011 sought to pay the judges
4 \$174,000 right away. They couldn't. They had to phase that
5 in over a three-year period because of the budget deficit
6 that existed then but does not exist now.

7 I thank you for the opportunity to address you and
8 I defer my remaining time to President Feinman.

9 CHAIR PERSON: Thank you very much.

10 MR. FEINMAN: Good morning. Let me begin by
11 thanking all of you for giving up your time to serve on this
12 commission. It's an important public service.

13 As my colleague just said, my name is Paul Feinman
14 and I am the current president of the Association of Supreme
15 Court Justices of the State of New York. And I've had the
16 privilege of serving as a judge in this state since January
17 of 1997, having previously served as a law clerk to Supreme
18 Court justice, and attorney as Legal Aid Society.

19 I give you that background so that you appreciate
20 the fact that I come at this with someone who has a
21 perspective of someone who has served in the court both as a
22 lawyer and as a judge for almost 30 years now. And the last
23 three years I've served as an associate justice in the First
24 Department.

25 Over the past 30 years I have seen the case loads
26 of judiciary climb ever upward. Cases are more complex and

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2 particularly true in the area of civil commercial
3 litigation. These trends are well documented in
4 association's written submissions to you as well as that of
5 the Office of the Court Administration.

6 I would like to draw your attention to particular
7 aspect of those submissions that I think underscores the
8 necessity of keeping judicial compensation fair and just if
9 New York is to remain an attractive and competitive forum
10 for business.

11 As the OCA's submission of the case, and I quote
12 from them, "A strong judiciary is essential to a healthy
13 state economy and attracting and retaining businesses that
14 generate jobs and tax revenue and contribute to economic
15 prosperity.

16 I think it's recognized by many business and
17 commercial law groups that New York and its judiciary play
18 an important role and that fact that we have a strong and
19 capable judiciary contributes to their decisions to do
20 business in New York, stay in New York and, in particular,
21 they often insert choice of forum clauses into their
22 contract designating New York counties clauses into their
23 contracts and they do this because of their confidence in
24 New York's ability to deliver justice. And that requires
25 capable judges. To attract capable judges, you need to have
26 fair and just compensation. So with the increase in complex

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2 civil litigation you also have a ever rising case load which
3 are documented in our submission.

4 Now, it's no secret that Delaware is one of the
5 principle rivals for New York's commercial law business, if
6 you will. And as our association's submission points out to
7 you Delaware, a very small state, both pays a higher nominal
8 amount to its judges in courts of general jurisdiction, but
9 it is consistently among the top three states when adjusted
10 for cost of living since at least 2010.

11 Indeed, as of January 1, 2015 Delaware is ranked
12 second. Even if you were to adjust the salaries in the
13 manner that has been advocated by this association, as well
14 as the Office of the Court Administration and others, we
15 will still be somewhere around 30 or 33rd. And we will be
16 last among the big states.

17 Compared to our Federal colleagues, New York State
18 Federal judges have lost \$365,000 since 1999 due to
19 inflation and diminished personal power. Unlike our Federal
20 colleagues, we have not received and we do not have the
21 authority to give us retroactive adjustment or lump sum
22 payment to make up for that loss. The ability of New York
23 State's judiciary to continue to attract capable individuals
24 into public service to adjudicate these complex civil
25 matters, and all matters are important, is dependent on this
26 commission's tearing out its charges at fair rate of

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2 compensation. I urge you to adopt our association's
3 recommendation that the salary of the Supreme Court justice
4 be set at parity with the federal district court judges
5 effective April 1st, 2016, and you do so without delay, and
6 that you also built in cost of living adjustments for the
7 subsequent three years until next commission is convened.

8 Any delay in phasing in of raises means we are
9 merely chasing but never achieving fair pay.

10 I thank you for your time and I apologize for being
11 33 seconds over.

12 CHAIR PERSON: That's quite all right. 33 seconds
13 is just fine. Thank you so much.

14 Any of the commissioners have any questions?

15 (No response.)

16 CHAIR PERSON: I, for one, recognize the importance
17 of the commercial part bringing in commercial business to
18 this state. Thank you.

19 Deborah Raskin, president of the New York City Bar
20 Association. I would like to thank you for the use of this
21 facility. And look forward to your comments.

22 MS. RASKIN: Madam chair, distinguished
23 commissioners, welcome to our house. We are delighted to
24 have you here and we are most grateful for the opportunity
25 to testify on the critical topic of judicial compensation in
26 New York State. As mentioned, my name is Deborah Raskin and

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2 I'm president of the City Bar Association, which was founded
3 in 1870. We have over 24,000 members, and our membership
4 includes practitioners, judges, law professors, lawyers of
5 all stripes, but all have had a long-standing interest in
6 the administration of justice in the state and federal
7 courts.

8 My comments and the written submissions are the
9 product of the work of a number of our committees, including
10 the Judiciary Committee, State Courts of Superior Committee,
11 Federal Courts Committee, Civil Courts Committee, Criminal
12 Courts Committee, Litigation Committee and other
13 contributions from experienced court practitioners and
14 administrators.

15 Judicial pay that compensates our state judges and
16 justices is critical to attract and retaining of qualified
17 judiciary and this is no more true then in New York where
18 judges handle a multitude of complex cases involving
19 international transactions, financial institutions and a
20 ever lengthening docket of family court, housing court,
21 consumer debt and other cases that affect the daily lives of
22 the states residents. New York's unique constituency is
23 immense, variable and racially diverse and our state court
24 system bears the enormous burden of resolving the myriad of
25 problems that are the basis of the financial and social
26 well-being of our state, our municipalities and our

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2 population.

3 We've heard a bit today about the complex and
4 international transactions that find a home and need to be
5 resolved by the state courts here, but I would also point
6 out that many New Yorkers enter the state court system
7 without counsel, which means that our judges not only manage
8 heavy case loads but also must have the skill, patience and
9 efficiency to shepherd through litigants who are proceeding
10 without the benefits of lawyers. According to the New York
11 State Unified Court System in 2013, there were 3.8 million
12 cases filed in the trial courts that year alone and
13 approximately two million litigants who proceeded in civil
14 cases without representation of counsel. For many of those
15 individuals - family, housing and debt matters - the outcome
16 of the cases will be life-changing. Thus, our state court
17 judges bear an enormous responsibility to manage and resolve
18 not only the large complex cases, but in the face of
19 significant obstacles the smaller cases, cases for
20 unrepresented individuals that are no less critical to the
21 well-being of our state. The quality of our judiciary and
22 social and financial impact of the decisions they make every
23 day depend on this.

24 We're so pleased that the Commission has been
25 convened to re-evaluate judicial compensation in New York.
26 As you know, the City Bar actively supported increasing

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2 judicial pay when the Commission first convened in 2011. At
3 that time, as you've heard, judicial salaries had not been
4 increased for over a decade. The Special Commission was
5 able to support phased-in increases bringing the salaries in
6 line over a period of time with those of the federal
7 judiciary. The Special Commission had adopted the
8 three-year phase-in plan. The decision was a significant
9 step in much-needed pay raises for the state court and
10 acknowledged that parity with the federal judiciary was the
11 appropriate benchmark.

12 Unfortunately, there's still much work to be done.
13 New York State, as you've heard, is woefully behind the
14 other states and particularly with major states with the
15 same kind of high level cost of living. The phase-in salary
16 increases over the last three years have simply brought our
17 State Supreme Court justices up to the level of federal
18 courts in 2011. Meanwhile, the federal judges' salaries
19 have been increased, as you heard, to over \$201,000 a year.
20 No mechanism is in place to ensure that state judicial pay
21 keeps pace with that of the federal judiciary.

22 The gulf between the pay for those on the bench in
23 this state and those in the private sector continues to
24 widen. Since we're here in New York City where first year
25 associates are earning between 150 and \$190,000, and
26 midlevel associates at those large firms are earning over

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2 200 to \$300,000, we're asking a lot of our judiciary to
3 forgo that kind of earning power and handle the enormous and
4 complex case level that our state courts face. Increasing
5 judicial salaries is of paramount importance of attracting
6 and retaining highly qualified and experienced state
7 judiciary.

8 Using the prior commission's determination in state
9 court judicial pay should align of that with the federal
10 judiciary, we urge the Commission to increase the
11 compensation for State Supreme Court justices to that of the
12 federal judiciary effective 2016/2017 with proportionate
13 increase for all other state judges. In addition, judicial
14 salaries should be further adjusted every year to reflect
15 changes in the cost of living. Such increases would
16 appropriately reflect a recognition of the critical role of
17 the state judiciary in the administration of justice, as
18 well as respect for the judges who have committed their
19 professional lives to public service.

20 Thank you again for this opportunity. Welcome to
21 our house.

22 CHAIR PERSON: Thank you. Any questions?

23 (No response.)

24 CHAIR PERSON: You're off the hook.

25 Is Barry Bohrer here?

26 MR. BOHRER: Yes. Thank you for this opportunity.

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2 It's my pleasure to follow President Raskin, an old friend
3 and it's my pleasure to be in her house.

4 I am Barry Bohrer. I am the chair of the Fund For
5 Modern Courts. Fund For Modern Courts is a independent,
6 nonpartisans state-wide court reform organization committed
7 to improving the court system for the benefit of all New
8 Yorkers who use our courts.

9 In 2010 Modern Courts was an active supporter of
10 the creation of first Judicial Compensation Commission which
11 reviewed judicial compensation in non-salary benefits and
12 made recommendations that increased judicial compensation
13 for the first time since 1999. We believe that an
14 appropriately and fairly compensated judiciary is necessary
15 to provide New Yorkers who rely on the courts for the
16 resolution of so many issues with the opportunity of having
17 their matters resolved by a well qualified, experienced and
18 diverse judiciary. It is clear to us that New York's judges
19 and justices are not fairly compensated at this time. We
20 call on this Commission to make recommendations which will
21 address that problem.

22 New York State, which was once the nation's leader
23 in judicial salaries for Supreme Court justices, now ranks
24 47th out of the 50 states and the District of Columbia when
25 judicial salaries are adjusted to account for the cost of
26 living. This fact simply cannot be reconciled with New

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2 York's status as a global economic and commercial capital
3 and a state that takes pride in its ability to provide
4 access to justice for all. We note that recognizing the
5 importance of the New York State judiciary is a coequal
6 branch of government and the importance of establishing pay
7 level that demonstrate the value and respect the court of
8 judiciary. The 2011 commission determined that the
9 compensation of New York judiciary should be commensurate
10 with that of the federal judiciary.

11 Consequently, the Commission determined that all
12 New York State judges and justices should receive phased-in
13 salary increases over three fiscal years starting on April
14 of 2012. All other judges of the state paid courts of the
15 Unified Court System and housing judges for the civil court
16 city of New York received proportional salary increases.
17 Modern Courts join the courts in believing parity should be
18 the standard that this Commission uses. Notably, however,
19 the compensation of federal district court judges is now, as
20 you've heard, over \$201,000, having increased from \$174,000
21 in 2010. We urge this Commission to increase compensation
22 of State Supreme Court justices to an amount equal to that
23 received by Federal District Court judges with all other
24 judges receiving proportional salary increases. We believe
25 this is reasonable and fair given the respected workloads
26 and jurisdiction of those courts.

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2 It is regrettable that despite the positive actions
3 taken by the previous Commission, compensation of New York's
4 judiciary has not kept pace with the Federal judiciary and
5 will not do so over the next four years if this Commission
6 follows the example of the earlier commission. We ask that
7 you consider raising salaries of Supreme Court justices to
8 \$203,100 in the fiscal year 2016/17, and to provide for
9 increases in that amount for subsequent years so that
10 compensation of our State judiciary will keep pace with that
11 of the Federal judiciary.

12 Now, over the past few years Modern Courts have
13 focused on improving the operation of Family Court with the
14 view that improvements are essential of the well-being of
15 families and children who rely on that court to resolve
16 significant problems effecting their lives. Therefore, if
17 you determine that the appropriate standard is to achieve
18 parity we are mindful of the fact that there will be
19 consequences for other judges, including Family Court
20 judges, who, in the past, have received proportional salary
21 increases in relation to the compensation level set for
22 State Supreme Court justices.

23 Given the continuing challenges of the economy,
24 many more litigants in these difficult times are turning to
25 the courts to resolve both family and financial problems.
26 Most often, these litigants are unrepresented, requiring the

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2 judiciary to take an ever more active role in the resolution
3 of those problems. Our recommendations take this into
4 account.

5 In addition, an inadequately compensated judiciary
6 has profound implications for New York's economy.
7 Businesses rely on courts to resolve disputes efficiently
8 and capable and the quality of State's court system is one
9 factor that can attract or repel organizations deciding
10 whether to do business in New York. New York is a center of
11 international business and finance and the commercial case
12 load facing our judiciary is particular complex and
13 demanding. New York needs an experienced and well
14 compensated judiciary to resolve these issues.

15 Our message is simple and to the point: Retaining
16 and recruiting diverse and highly qualified individuals to
17 serve as New York judges requires an overhaul of the
18 judicial compensation system. Therefore, Modern Courts
19 urges this commission to make immediate and substantial
20 compensation adjustments for all the judges and justices of
21 the State's paid courts of Unified Court System and Housing
22 judges of civil court of the city of New York.

23 We also recommend that this Commission adopt a cost
24 of living mechanism so that when judicial compensation is
25 established by the Commission effective April of 2016, that
26 compensation will not be eroded over the course over the

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2 next four years when a new Compensation Commission will be
3 established.

4 We are mindful of the economic and budgetary
5 problems that face the state and Modern Courts recognizes
6 that the Commission is charged with taking into account the
7 overall economic climate of the state, but the people of the
8 State of New York need and deserve the best qualified
9 judiciary and increasing judicial compensation we believe is
10 money well spent.

11 I thank you for the opportunity to address the
12 commission.

13 CHAIR PERSON: Thank you so much. Any questions?

14 (No response.)

15 CHAIR PERSON: Thank you.

16 Next witness is Honorable Sheri Roman, Association
17 of Justices of the Supreme Court of New York City.

18 Welcome.

19 THE WITNESS: Good morning commissioner Honorable
20 Commission members. I'm Sheri Roman, the president of the
21 Supreme Court Justices Association of the City of New York.
22 I have served on the Judiciary since 1985.

23 It is with great expectation that the justices of
24 the State of New York await the reported recommendations of
25 this Commission. You are the key component to remedy a
26 wrong of constitutional import impacting judicial

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2 independence. Fair judicial compensation should not be
3 relegated to be abandoned about as a political bargaining
4 chip in state governance. There is no real controversy for
5 the need for judicial pay adjustment. The judiciary has
6 received only two salary adjustments in 16 years. We
7 request the continued use of a previously utilized benchmark
8 that's parity with Federal District Court judges, as well as
9 a mechanism to keep us on par with subsequent cost of living
10 adjustments.

11 Alexander Hamilton in Federal Case 79 wrote that
12 next to permanency in office nothing can contribute more to
13 the independence of the judges than a fixed provision for
14 their support. This Commission is the statutory lifeline to
15 that fixed support. Across the state, judges dedicate their
16 professional life to the rule of law. This is not an
17 abstract confusional concept for us, but the application
18 before you admits the inevitably stream of adversarial
19 clashes that occur during litigation.

20 The panoply of issues that we contend with mirror
21 all of those that impact our collective lives. Judges
22 strive to employ ever scintilla of their legal acumen
23 accumulated throughout their legal career to achieve just
24 resolutions. Simply put, a fair day in court for the level
25 playing field for all. Fairness of course is the bedrock of
26 expectations we are relied upon to mete out to all citizens

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who cross the thresholds of our courtrooms. Justices of
this state trust that we have finally achieved by this
Commission our own path to fair compensation.

(Continue on next page.)

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2 This Commission affords us a transparent process
3 whose mandate is to arrive at a fair compensation for our
4 New York judiciary.

5 The fact that our judiciary, when adjusted for
6 cost of living, is ranked at the salary scale of 47th state
7 in the nation should be of concern to all. This Commission,
8 comprised of successful legal, business and civic leaders,
9 understands the necessity to advance and maintain a
10 seasoned, learned and compassionate bench. It is a
11 prerequisite to the economic vitality and preeminence of New
12 York State.

13 The 12-1/2 year salary freeze diminished the
14 stature of the judiciary in the eyes of our citizens as well
15 as those in the legal profession. That is the very well we
16 need to draw upon to fill the ranks of tomorrow's judiciary,
17 as well as prevent the premature retirement of those who
18 personify judicial talent.

19 A judge embodies notions of equal treatment and
20 fair play, but how can a judge decree a fair solution in
21 cases before them when they are not empowered to achieve
22 fairness for themselves.

23 12-1/2 years with no salary or cost of living
24 adjustment created an adverse financial situation that was
25 not sufficiently ameliorated by the raises decreed by the
26 last salary Commission. The cost of living adjustments,

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2 even though it's getting parity with Federal District
3 Courts, did not include any retroactive pay nor cost of
4 living adjustment past or future. Additionally, they were
5 phased in over three years, which negatively impacted our
6 pensions, particularly true for any jurist who retired.

7 Anyone who chooses a life in public service makes
8 that career decision understanding they will never
9 accumulate the wealth of their colleagues in the private
10 sector. We need diversity of background for those willing
11 to apply for appointment or election to the bench. We do
12 not want a judiciary comprised of those who aspire because
13 it's viewed as a career with a guaranteed paycheck or a
14 bench comprised primarily of those select individuals
15 wealthy enough to retire to the bench. To achieve this
16 diverse judiciary, we need to assure judicial candidates
17 that it is an economically viable aspiration providing fair
18 compensation.

19 Yet New York history reveals otherwise. A
20 stagnant period of 12-1/2 years created a twist and
21 constriction in the pipelines of the bench. Seeds of
22 judicial aspirations certainly lay fallow. Perhaps not in
23 the earliest years of the 21st century, but as the 2000s
24 marched on with no pay increase whatsoever, how many smart,
25 capable men and women looked elsewhere for fulfillment in
26 their careers?

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2 The rippling effects diminish the stature of the
3 judiciary in tandem with diminishing the ability of our
4 jurists to be bread winners for their families.

5 The wage freeze years of 1999 through 2011 were
6 devastating for the judiciary's ongoing quest for a stream
7 of qualified candidates. Indeed, the ripple effect of this
8 disruptive pipeline continues to this day.

9 I am an honored member of the Appellate Division
10 Second Department, the busiest intermediate appellate court
11 in the country. Since the pay adjustments of 2011, we have
12 continued to incur a sobering loss of appellate justices to
13 the private sector, which is where many forged their
14 careers. Dissatisfaction with their judicial role was not a
15 factor whatsoever in my colleagues' early departures. These
16 were preeminent jurists who wrote trail-blazing opinions,
17 shouldering enormous volumes of case loads, an important
18 backbone of our court. However, the accrued effect of the
19 years of missing compensation, which has been calculated in
20 overall deficit of over \$450,000 lost to inflation, was too
21 great a sacrifice for them to sustain.

22 Our legal system has not tread water. New York
23 judges now hear over 4 million cases. Supreme Court filings
24 have increased more than 16 percent since the 2011 salary
25 Commission last heard testimony. Justice is delivered in
26 staggering quantities, with judicial implementation of

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2 innovative initiatives to address the astonishing complexity
3 of today's litigation.

4 We have had generous support from academia in
5 analyzing the financial and comparative data, which were all
6 included as exhibits in our association's written
7 submission.

8 The Institute for Compensation Studies at Cornell
9 University School of Industrial Labor Relations has provided
10 us with reliable statistics, including historic data from
11 the archive of the National Center for State Courts. Our
12 ability to pay analysis was compiled under the auspices of
13 James Parrott, Deputy Director and Chief Economist at the
14 Fiscal Policy Institute.

15 We recognize that the state's fiscal picture is
16 eons away from the dismal one that confronted us in the
17 past. The analytic framework to be employed is described in
18 the language of the Commissioner's empowering statute and
19 the state's ability to pay.

20 The state anticipates multi-billions in state
21 budget surpluses and is in its best fiscal position in many
22 years, as described by New York State Budget Director Mary
23 Beth Labate.

24 Our fair compensation request would constitute a
25 small fraction of 1 percent of the state's operating budget.

26 A resounding thank you must be accorded Stroock

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2 and Stroock and Levan, Joe Forstadt, Alan Klinger and Dina
3 Kolker, for their perpetual support of the judiciary's
4 request for fair treatment and compensation.

5 In 1986, a New York attorney, Karen Berger
6 Morello, wrote a scholarly book entitled The Invisible Bar.
7 It documented the history of women lawyers advocating
8 against their exclusion from participation in the legal
9 system. This decade plus exclusion of the judiciary from
10 the economic rewards of their prodigious achievements was
11 propelling the judiciary to an invisible bench posture.
12 Just as the author decried women attorneys being relegated
13 to second tier status, we must insure that the judiciary
14 retains their lawful place as a co-equal branch of
15 government, an essential component of our democracy.

16 The continued declination to promulgate
17 appropriate and fair compensation has created an injury of
18 constitutional proportions and undermines the ability of New
19 York to provide an excellent, enlightened, hard working
20 judiciary. Competitive salaries are required to attract the
21 best and brightest.

22 Supreme Court Justice Steven Breyer remarked in
23 1998 that judicial independence is, in part, a state of
24 mind, a matter of expectation, habit and belief amongst, not
25 just judges, lawyers and legislators, but millions of
26 people.

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2 So we respectfully urge this Commission to
3 recommend immediate salary adjustments and in unison with
4 others who appeared before you today enabling us parity with
5 the Federal District Court and annual cost of living
6 adjustments.

7 Thank you all.

8 THE CHAIRPERSON: Thank you so much.

9 Any questions?

10 Thank you. We really appreciate that.

11 Is Adrienne Holder here?

12 All right, we'll come back to her.

13 The Honorable Conrad Singer, representing the
14 Association of Judges of the Family Court of the State of
15 New York.

16 JUDGE PEARL: Good morning. My name is not Conrad
17 Singer.

18 THE CHAIRPERSON: We can see that.

19 JUDGE PEARL: Good afternoon to the members of the
20 New York State Commission on Legislative, Judicial and
21 Executive Compensation.

22 I begin by stating that I appreciate the
23 commitment that each of you has made to set fair
24 compensation --

25 THE CHAIRPERSON: Can I just say that your name is
26 Jane Pearl?

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2 We welcome you.

3 JUDGE PEARL: Thank you.

4 -- to set fair compensation for New York judges
5 and justices, including trial court judges, throughout New
6 York State.

7 I am privileged to briefly and succinctly address
8 you both as a member of the board of directors of The
9 Association of the judges of the Family Court of the State
10 of New York as well as a member of the board of directors of
11 the New York City Family Court Judges' Association, as well
12 as on a personal basis as a very professionally fulfilled
13 judge of the Family Court of the State of New York, City of
14 New York since February 9, 2000.

15 My commitment to Family Court actually began as a
16 law student in 1987 and I continue that commitment.

17 I say briefly and succinctly, because I believe
18 that Family Court judges throughout the State of New York
19 sit in a bit of a legal emergency room. And while we have
20 to triage cases on a daily basis, much of our scholarly
21 research and writing happens outside court hours.

22 I would like to begin, if I may, by quoting a
23 portion of Judge Singer's November 20th, 2015 letter:

24 The Family Court judges of this state are judges
25 who are responsible for our family units, and for protecting
26 the health, safety and welfare of our children, for

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2 educating parents about proper ways to raise their and our
3 children, for keeping families intact and keeping children
4 safely in homes and out of placement.

5 We respectfully request that this Commission
6 recommend the following to Governor Cuomo and the
7 legislature as it relates to state trial judges' salaries.

8 I emphasize personally the importance of the
9 following, please.

10 Pay parity amongst all New York State Family Court
11 judges. And in doing so, I would just briefly state that,
12 as of today's testimony, we have disparity across the State
13 of New York. New York City Family Court judges earn the
14 same salary as New York State Supreme Court judges. And so,
15 as a member of both boards of directors, it is my privilege
16 to support pay parity for our colleagues outside the State
17 of New York -- throughout the State of New York.

18 If we were to approve parity for New York State
19 trial court judges at the level of New York State Supreme
20 Court judges, that would represent that, among our presently
21 153 Family Court judges, of whom 83 of those judges
22 presently earn the same as New York State Supreme judges,
23 because either they sit in the City of New York or they are
24 acting Supreme Court judges, the difference in the
25 representation and request by OCA, the office of Court
26 Administration, the difference would be approximately

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2 \$710,850, representing the difference in approximately 70
3 judges earning an additional salary of \$10,155.

4 The second issue that the Family Court judges,
5 both of the State of New York and City of New York, ask for,
6 as many others have, indeed, adjustment of all New York
7 State Family Court judges effective April 1st, 2016 to an
8 annual salary of \$203,100 immediately, without phasing
9 increments, based upon the expected reset salary of Federal
10 Court judge, Federal District Court judges that is, on
11 January 1st, 2016, reflecting changes in the cost of living
12 for the Federal Court judges since 1989 and three annual pay
13 adjustments to the salary of all New York State Family Court
14 judges on April 1st, 2017, April 1st 2018 and April 1st,
15 2019, equal to the cost of living adjustments provided by
16 executive order to the federal judiciary effective each
17 preceding January 1st.

18 In closing, if I may, again, quoting Judge Singer:

19 The financial conditions of this state is
20 drastically different than it was in 2011. It should be
21 noted that the State has saved millions over the past
22 17 years by not increasing judicial salaries over the first
23 13 years and then phasing in the judges' increases over the
24 past four years. Increasing New York State judges' salaries
25 to be in parity with that of their federal peers will insure
26 that this state retains a strong, highly qualified and

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2 independent judiciary.

3 Thank you for taking the time to review the
4 contents of Judge Singer's letter, to consider the position
5 of our Family Court judges, state and city, whose dedication
6 to the people of this state is truly second to none.

7 Respectfully, Jane Pearl, New York State, New York
8 City Family Court Judge.

9 THE CHAIRPERSON: Thank you so much, Ms. Pearl.

10 Any questions?

11 JUDGE LACK: No, but I'd like to make a comment,
12 if I could, Judge.

13 Your Honor and Judge Marks talked about pay
14 parity, too, so excuse me if I spend a minute on that.

15 You're absolutely right. The problem, of course,
16 was a political problem 39 years ago when the Unified Court
17 Budget Act was an act that the state took over the court
18 system as it was and it was a disparate court system with
19 salaries all over the place.

20 The reason you and your colleagues, from Putnam
21 County to Suffolk County, in Family Court have an equal
22 salary with Supreme Court justices had nothing ever to do
23 with the legislation, but had to do with an attorney named
24 Frederic Block, who is now a Senior District Court judge in
25 the Eastern District, who represented all those judges with
26 disparate salaries and won in litigation equalizing those

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2 salaries. Unfortunately, there was other litigation
3 throughout the state, between Albany and Rensselaer
4 Counties, for example, in which the judicial system did not
5 recognize equalization and fungibility of judges in the same
6 classification. That has allowed this now to go on for
7 almost 40 years. And there probably isn't an easy
8 rectification of that in sight.

9 And not spending too much time, but let me tell
10 you, the real way to get out of this would be to overhaul
11 the 19th Century system we have for our courts in the state
12 with nine operating different courts, which is absolutely
13 ridiculous. An Appellate Division that when it was last
14 reorganized Brooklyn was a city. And a constitutional
15 retirement age of 70, which makes absolutely no sense. When
16 it was set maybe in the 19th Century, but certainly not in
17 the 21st Century.

18 We want the real answer, the real answer is merge
19 the court systems of this state into a two tier superior
20 court system and a district or lower court system that would
21 allow fungibility of judges who hold Superior Court
22 classification and an equalization of a pay rate for
23 Superior Court judges and for City and District Court, Civil
24 and Criminal Court judges throughout the entire state so
25 they're all paid the same. If that were done, and that has
26 to be done constitutionally, then you'll have your answer.

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2 Unfortunately, starting in the 19th Century, to protect
3 judges, it was thought the best way to formulate the court
4 system was to put it in the constitution, not in the
5 statute. That's why we still have what we do have in the
6 21st Century. And we're in an impossible situation.

7 But pay parity on an absolute scale has not been
8 taken up by the legislature, let alone by one of these
9 Commissions. It is not as easy as you really think it is.
10 And, quite frankly, to establish it at a percentage of pay,
11 when the vast majority of Family Court judges in the state
12 already, from Putnam County to Suffolk County, make equal to
13 a Supreme Court justice, but to tell a Family Court judge
14 elsewhere that "You're only going to get 95 percent of what
15 everybody else is getting," to me, is inequality.

16 JUDGE PEARL: May I respond?

17 THE COURT: Yes.

18 JUDGE PEARL: I so applaud your thoughtful
19 comments. And I recall the cheering when that lawsuit was
20 won. And I was a court attorney at the time. As part of
21 the administration for several years, I've had the privilege
22 to serve in the different realms of family law divisions,
23 both in Supreme and Family Court.

24 And I couldn't agree with you more about the need
25 for merger, not just for pay parity, which, for me, is a
26 small piece of the equation, but also for justice for our

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1 families and for economy of judicial administration.

2 THE CHAIRPERSON: Thank you so much for --

3 JUDGE PEARL: Thank you.

4 THE CHAIRPERSON: -- your comments.

5 Is Adrienne Holder, Civil Practice, here now?

6 Thank you.

7 From the Legal Aid Society.

8 MS. HOLDER: Good afternoon.

9 THE CHAIRPERSON: Thank you so much.

10 MS. HOLDER: Thank you.

11 So sorry I was late.

12 THE CHAIRPERSON: That's okay.

13 MS. HOLDER: So it's wonderful to be able to
14 address you all today.

15 I am Adrienne Holder. I'm the attorney in charge
16 of the Civil Practice of the Legal Aid Society. I'm here on
17 behalf of the entire Legal Aid Society. The entire Legal
18 Aid Society, these days, over 1,900 employees, lawyers,
19 social workers, paralegals, case handlers and support staff
20 and investigators. I'm representing low income New Yorkers
21 in well over 300,000 matters across the City. 220,000 of
22 those matters as the primary defender of indigent
23 individuals accused of crimes, but also on appeals. And we
24 also have a prisoners' rights project, representing
25 individuals who are in the city jail system or the state
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2 prison system. The juvenile rights practice of the Legal
3 Aid Society represents children in Family Court, over 34,000
4 children in court. We also have an appeals unit and a
5 special litigation unit. 4,000 of those children are
6 people -- are individuals arrested by the NYPD and who
7 appear in Family Court in delinquency proceedings. Then you
8 have my practice, the civil practice, with well over 400 now
9 staff. And we represented, last year, individuals -- we
10 impacted about 121,000 individuals on 49,000 cases
11 throughout the city.

12 And, really, when you look at the Legal Aid
13 Society there's really not any forum, whether it's the trial
14 -- the trials, whether it's appeals and, of course, through
15 our law reform -- we have over 42 active law reform cases
16 where we don't appear.

17 So, given the breath and the depth of the Legal
18 Aid Society's representation, it places us in this unique
19 position to address the issues before you today. We
20 represent clients in hundreds of cases in court on a daily
21 basis. And our perspective is formed by our expertise and
22 extensive interaction with the courts on a full range of
23 civil, criminal and juvenile issues.

24 So we strongly endorse substantial pay increases
25 for the judiciary. It's been our experience, regardless of
26 whether the context is a civil, criminal or a juvenile

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2 matter, our clients are better served and a just result is
3 more likely to be achieved by a high quality judiciary.
4 Quality can only be achieved when a judiciary receives
5 adequate compensation so it's able to attract and retain
6 high quality talent. We have seen too many reports of
7 experienced judges leaving the bench due to salaries that
8 are being eroded by the cost of living. Judicial
9 independence is threatened when we lose experienced judges
10 due to inadequate pay. A judiciary that is better able to
11 attract and retain high quality judges is one that serves
12 the best interests of both our clients and the greater
13 society.

14 We have a substantial way to go to achieve the
15 goal of adequate compensation. As you know, your work is
16 part of an ongoing process, and we appreciate the role that
17 you all have played in that process. A review of the final
18 report of the previous Commission on judicial compensation
19 shows that the prior compensation recommendations which
20 established the amounts of the first judicial pay raises in
21 over 12 years were strongly influenced by the fact that the
22 state, at that time, was in the middle of a severe
23 recession. The prior Commission reported that, quote, "the
24 economy is faltering and the state is facing an
25 unprecedented budget crisis, both of which have affected
26 every citizen of the state," unquote, and, quote, "the state

Proceedings

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2 has and will continue to face multi-billion dollar budget
3 gaps with a projected deficit of 2.5 billion next year." In
4 light of the fact that the economy has substantially
5 recovered since 2011 and the state is no longer facing such
6 dire circumstances, this Commission is in a better position
7 to address the real judiciary salary needs. Indeed, the
8 prior Commission took some comfort from the fact that a
9 subsequent Commission would be in a position to reevaluate
10 its recommendations.

11 Even in the face of a severe recession, the prior
12 Commission was able to only muster a bare majority of votes
13 for its salary recommendations. After setting the benchmark
14 for the New York State judiciary as being the compensation
15 level of the Federal judiciary, it then opted to implement
16 that decision in a protracted way over a number of years. A
17 common theme of the dissenting voters was that the raise
18 amounts were too low and that they should have been given
19 immediate effect. The delay in implementation merely
20 continued the fact of inadequate compensation over a longer
21 period of time.

22 It would be a mistake to assume that the salary
23 recommendations of the prior Commission should act as the
24 appropriate base from which you should set your new salary
25 levels. The prior recommendations were strongly criticized
26 by many as being inadequate to meet the real need for

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2 substantial pay increases.

3 A representative criticism came from then
4 president of the New York State Bar Association, Vincent
5 Doyle, who expressed concern that the Commission's approval
6 of a salary increase for New York State judges was
7 inadequate. During the past 12 years, the cost of living
8 increased by 40 percent, eroding judicial salaries. Yet the
9 Commission voted to adjust salaries by only 17 percent in
10 2012. By 2014, the third year of the phase-in, judges'
11 salaries will have risen 27 percent over a 15-year period,
12 far less than the projected inflation rate, was what
13 President Doyle stated. Salary stagnation is more than a
14 personal hardship for judges. It threatens to undermine our
15 judiciary, making it harder to attract and retain talented
16 judges. New York's judiciary has a well regarded national
17 and international reputation. And we put that reputation at
18 stake if we continue to devalue our judiciary by not
19 adjusting judges' salaries.

20 A review of the minutes of the Commission's
21 meeting on November 3rd, 2015, shows that you are seeking
22 appropriate information to assist with the decision-making
23 process. You are reviewing judicial salary data from other
24 states, including similar large states and for the Federal
25 judiciary. You are also reviewing the Consumer Price Index
26 for the northeast urban region. The Commission has

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2 recognized judicial salary comparisons between New York and
3 other states should be adjusted to take into account
4 regional variations in the cost of living.

5 There is substantial data to indicate that state
6 judiciary salaries have eroded for an extended period of
7 time as compared with federal judiciary salaries, the
8 Consumer Price Index and expected cost of living adjusted
9 pay. Judicial salaries have been substantially eroded by
10 inflation, even when compared with other staff employed by
11 the Office of Court Administration. Had the prior
12 Commission adopted a cost of living model, in 2011, the
13 proper inflation adjusted salary should have been \$192,543
14 instead of the \$160,000 base that was adopted.

15 Changes to the federal salary structure since the
16 last Commission's report was issued have caused the current
17 state salary structure to become even more outdated. As a
18 result of litigation regarding federal pay structure, the
19 federal pay levels to which the 2011 Commission pegged its
20 salary scale were ruled to be illegally low due to the
21 historic denial of cost of living increases to the federal
22 judiciary. In January of 2014, Federal District Court
23 judges received a 14 percent pay increase plus retroactive
24 pay for past improper withholding of cost of living pay
25 adjustments. The current salary of District Court judges is
26 \$201,100 and is expected to be reset to \$203,000 on

1 Proceedings

2 January 1st, 2016.

3 For all of the above reasons, we believe that a
4 substantial pay increase should be awarded to the state
5 judiciary. We believe the salary for a State Supreme Court
6 judge should be at least the pay level of the Federal
7 District Court judges. And the salaries of other judges
8 should be set at a proportion of the salary of a Supreme
9 Court justice. Further, the Commission should recommend
10 annual cost of living adjustments to prevent the erosion of
11 state judicial salaries by inflation. In this way, the
12 Commission can help achieve the goal of fair and adequate
13 compensation for our judiciary.

14 I appreciate the opportunity to testify before you
15 today.

16 THE CHAIRPERSON: Thank you so much.

17 The point of view from the Legal Aid Society.

18 Are there any questions from the Commissioners?

19 Thank you again.

20 The Honorable Gerold Lebovits, President, Board of
21 Judges of the Civil Court of the City of New York.

22 Good morning. Or is it almost afternoon?

23 JUDGE LEBOVITS: Good afternoon, Madam Chair,
24 honorable Chairpersons.

25 I feel very privileged to be here before you today
26 representing the New York City Civil Court judges. I feel

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2 very privileged to be a New York City Civil Court judge
3 myself.

4 46 of us serve in Civil Court, where we resolve a
5 quarter of a million cases a year. The balance, 74 judges,
6 serve in other courts. Supreme Civil, Supreme Criminal,
7 Family Court, where they resolve hundreds of thousands of
8 other cases. I think that we're the only body of judges
9 transferred from court to court across the state and from
10 county to county across the state. Our judges move on from
11 our court. About 10 judges a year get elected to State
12 Supreme Court. The Appellate Divisions are filled with
13 Civil Court judge alumni. The Appellate Division First
14 Department its made up mostly of former Civil Court judges.
15 And many of our Civil Court judges have served on the Court
16 of Appeals, including one now; in the past, many more.

17 We do share a few things in common. One is our
18 profound desire to serve the public, to do justice for the
19 people of the great State of New York.

20 And something else that we have in common, we have
21 in common, not only with the other judges of the Civil
22 Court, but also with the judges of the Criminal Court of the
23 City of New York and the judges of the Housing Part of New
24 York City Civil Court.

25 (Continued on the next page)
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2 JUDGE LEBOVITZ: And that is we are the lowest paid
3 judges in America. Not just for this year but for every
4 year for more than a decade. Much has been said that in
5 2011, the Commission found that New York State judges are
6 the lowest paid judges in the country.

7 Now, you have heard that after our modest raise we
8 have risen through the ranks to 47th in the country, but the
9 civil court judges and our colleagues earn only a smaller
10 percentage than should be expected of where we rank compared
11 to the State Supreme Court judges in terms of costs of
12 living. In the past it's been 92 percent, maybe 93 percent
13 in the best of years.

14 So I join together with the New York City Civil
15 Court judges, in the great speeches that we have heard today
16 from Chief Administrative Judge Marks, the fabulous
17 presentations of the Supreme Court justices, Family Court,
18 the Legal Aid Society, the Fund For Modern Courts, the New
19 York State Bar Association, the New York City Bar
20 Association, but I ask you to consider our circumstances as
21 well.

22 We ask for parity with the Supreme Court judges or
23 at least a 95 percent differential. So that's why I would
24 like to speak particularly about the civil court judges.

25 I don't want to continue the situation in which we
26 are the worst paid judges in America. The Supreme Court

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2 judges don't have to live in New York City but we do. They
3 could live outside New York City where its less expensive
4 where they earn so much more than we can do. They can serve
5 until December 31st of the year in which they turn 76 if
6 they get certifications. We must retire on December 31st of
7 the year in which we turn 70. So we lose not merely the six
8 years of salary, but an overwhelming percentage of the
9 pensions that go with them.

10 There are, as others have pointed out just a few
11 minutes ago, extreme differences between the parity of the
12 judges across the state, but in New York City the Surrogates
13 judges get Supreme Court pay and Family Court judges get
14 Supreme Court pay and we are happy for them, but we should
15 be closer as well.

16 The Office of Court Administration happily
17 recommends that the Housing Court judges get 90 percent of
18 Supreme Court pay, but, traditionally, we fall right in the
19 middle between Housing Court and Supreme Court. A further
20 argument for 95 percent raise.

21 It's almost embarrassing for me to come before
22 anyone to ask for a raise for myself. I don't know how to
23 do it and I'm not good at it. And it's difficult as a judge
24 to come before you and particular as a judge to ask for a
25 raise. So I do so for two groups other than myself. One is
26 the judges whom I'm proud to speak on behalf of today and

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2 the other is the public that we all serve.

3 More than any group I feel you have the power to
4 make things right after years of things gone wrong. Perhaps
5 more than the elected officials who appoint the judges.
6 Perhaps more than the elected officials who help judges get
7 elected. It is the 2015 Commission, all of you, who can
8 make the difference on behalf of the judiciary. I ask you
9 to do that.

10 Thank you so much.

11 CHAIR PERSON: Thank you for that.

12 Any questions?

13 (No response.)

14 CHAIR PERSON: Thank you so much.

15 Honorable Gary Knobel, President of New York State
16 District Court Judges Association.

17 I've been handed a message. He's not here at the
18 moment.

19 Is Robert Schulz here? The Chair of We the People
20 of New York?

21 MR. SCHULZ: Good afternoon. And thank you for
22 this opportunity to address the Commission on the questions
23 before it.

24 My name is Robert Schulz and I am the founder and
25 chairman of We the People of New York, which is a
26 nonpartisan, not-for-profit organization, whose mission is

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2 simply to hold the government accountable to the rule of
3 law.

4 I am well educated and experienced in engineering
5 business public finance and public administration. I do
6 make it a point to avoid all political questions except, of
7 course, when I am in the voting booth.

8 For 36 years I have been disposed to litigating, to
9 contend in law, striving in opposition and competition with
10 those in government who would violate the rule of law. So
11 with malice towards none and charity at this and good will
12 towards all I have done my best in defense for the New York
13 Constitution and laws pursuant thereto. To keep those who
14 wield governmental power over the people from stepping
15 outside the boundaries drawn around their power. After
16 hundreds of reported decisions in cases I have filed, I am
17 here today to share an observation, trusting it will be
18 considered of course and will benefit the Commission.

19 It seems the judiciary in New York State is highly
20 politicized and, to that extent, it has deviated from the
21 standard becoming morally and legally unsound. My
22 experiences with State Supreme Court judges and justices at
23 the lowest level on up through Court of Appeals. I believe
24 the judiciary is running into fairness for the leaders of
25 the executive and legislative branches, protecting their
26 rule of whim from the principles, prohibitions and mandates

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2 of the New York Constitution. In my experience, the
3 Judiciary has accomplished this by dispossessing the
4 Constitution of provisions essential to the freedoms, rights
5 and liberties of the people. Including the article that
6 prohibits the state and it's municipalities from reoccurring
7 debt without voter approval, Article 7, Section 11. And the
8 articles that prohibit the state and its municipalities from
9 giving or lending public money or credit in aid of private
10 undertakings both Article 7, Section 8.1 and Article 8,
11 Section 1. And the Article that prohibits the state in the
12 absence of an emergency from enacting a law that has not
13 been on the desks of each of the legislatures for at least
14 three days. Of course, I'm talking there about the
15 three-day rule in Article 3, Section 14.

16 The article that prohibits the state from enacting
17 a special law that effects the property affairs and
18 government of a municipality unless two-thirds of the
19 governing board of that municipality requests that
20 extension. Of course, I'm talking thereabout Article 9,
21 Section 2(b)(2).

22 Finally, the article that protects the people, the
23 right of the people to petition the government for
24 redressing grievances and obligates the government to
25 respond responsibly.

26 Most egregiously, alarmingly, the judiciary now

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2 two-thirds of the way towards removal of the force and
3 significance of the article that guarantees the right of the
4 people to take their ultimate power into their own hands at
5 least once every 20 years in a convention unfettered by
6 anyone regulated by the constitution for the purpose off
7 evaluating the performance of the government and amending
8 the constitution according to the reform minded will and
9 consent of the electorate.

10 It is my experience that in the process of
11 dispossessing the constitution of these provisions the
12 judiciary has issued conclusory judgments that ignore facts,
13 law and framer's intent on serious constitutional challenges
14 assisted by the top law enforcement agency in the state. In
15 my estimation, the judiciary is anything but the great
16 leveler here in New York State. It seems rewarding such
17 behavior would not be in the interest of constitutional
18 governments carried out in decency and good order. For if
19 you subsidize anything you get more of it.

20 The constitution, in my opinion, is hanging by a
21 thread. If judges are not abiding by their oaths of office
22 to support the constitution for the State of New York then
23 it seems it would be unconstitutional to reward them with
24 increased compensation for their time in office. The
25 vitality of the constitution as a set of rules to govern the
26 government to constrain its power based on the will of the

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2 people is truly what is at stake here.

3 Thank you.

4 CHAIR PERSON: Any questions?

5 (No response.)

6 CHAIR PERSON: Elena Sassower.

7 MS. SASSOWER: I take it that Mr. Schulz is
8 deferring to me his three plus minutes.

9 CHAIR PERSON: He's not deferring anything. You
10 will have ten minutes like everybody else. And that's going
11 to be the ten.

12 MS. SASSOWER: Excuse me. I want to raise an issue
13 of your actual bias and self-interest, as well as that of
14 Commissioner's --

15 CHAIR PERSON: Do you want your ten minutes or --

16 MS. SASSOWER: I most certainly do. And I would
17 request that Commissioner Hormozi who I first met in 2011
18 when she was a panelist here speaking about reform that,
19 perhaps, she take the initiative to allow me the extra three
20 minutes that I would request for my witness statement.

21 CHAIR PERSON: Would you please proceed.

22 MS. SASSOWER: I need a moment or so to setup. I
23 would likely testify after lunch.

24 CHAIR PERSON: If you would like we will pass you
25 and go to the next speaker.

26 MS. SASSOWER: That is fine with me. I'm happy to

WILLIAM D. LEONE, SENIOR COURT REPORTER

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2 reserve to the end if that would be --

3 CHAIR PERSON: That would be fine.

4 MS. SASSOWER: If that would enable me to have the
5 12 or 13 minutes that I require.

6 CHAIR PERSON: You have ten minutes. Thank you.
7 Carol Ann, Director of the Health Watch.

8 MS. SASSOWER: She informed me that she would be
9 here at 1:30. She's slated to testify, I believe, at 2:15.

10 CHAIR PERSON: Okay.

11 MS. SASSOWER: I was scheduled to testify about
12 that time as well.

13 CHAIR PERSON: We're moving ahead.

14 Matthew Kapolwitz.

15 Thank you, Mr. Kapolwitz.

16 MR. KAPOLWITZ: Good morning, Ms. Birnbaum and
17 members of the Commission. My name is Matthew Kapolwitz. I
18 thank this Commission for the opportunity to testify.

19 I am an individual who serves pro bono on the
20 Compensation Committee for an international nonprofit
21 disability organization in the public sector. I have also
22 been a litigant in New York State. I will speak about the
23 job performance component of judicial compensation.

24 Compensation in every field is one of the primary
25 drivers of job performance. Regardless of whether someone
26 is a minimum wage worker or a judge, when the compensation

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2 topic is compensation people generally listen. Sometimes
3 it's the compensation discussion that opens the door to a
4 meaningful dialogue about job performance.

5 What are the benchmarks of excellence for judicial
6 job performance?

7 Today's testimony has confined the benchmarks to
8 comparable salaries and costs of living increases, but the
9 benchmarks for excellence in judicial performance go far
10 beyond the computer, the Consumer Price Index. In the final
11 analysis judges sit on the bench to serve the people of New
12 York. Using 21st Century criteria how well are our judges
13 serving the people of New York?

14 From my perspective there are some alarming issues
15 for New York's State's judicial culture. These issues
16 specifically are microaggression and soft abuse.

17 Let me explain.

18 We have all recently witnessed demonstrations in
19 our communities and on college campuses across the country.
20 The roots of these protests have been many years of ignored
21 microaggression, soft abuse and worse. Right here in the
22 New York State court system, judicial microaggression and
23 soft abuse are alive and well. Here are a few of the
24 warnings signs.

25 The judge who rampantly holds ex parte off the
26 record conversations or the overly aggressive judge who

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2 coerces settlements. But it's more than that. These aren't
3 the core problems. I myself have written to five different
4 senior judges, including Judge Marks, and expressed the need
5 to create a work group to study judicial soft abuse and
6 microaggression. I have offered my time and my expertise.
7 The response from these five judges was unanimous. All five
8 of them stuck their heads in the sand. Not even one of them
9 extended the courtesy of a reply. That in itself is
10 microaggression.

11 Consider what's happening right now in communities
12 where senior administrators or managers have turned their
13 backs on reported microaggression or soft abuse or worse.
14 How has this played out? Baltimore? The University of
15 Missouri? Princeton? Yale? Times are changing right in
16 front of us. Consider the parallel with women's rights in
17 the work place. People are no longer quietly accepting
18 microaggression and soft abuse. The New York court system
19 is not immune to this culture shift.

20 What passed for acceptable judicial demeanor in the
21 20th Century doesn't make the grade in the 21st Century.
22 And we're already almost 16 years in. When senior judges
23 perpetuate soft abuse and microaggression it engenders a
24 snowball effect. Lower court judges feel entitled to act
25 out microaggression and soft abuse, too. What is the
26 compensation connection? It's fundamental. When a judge's

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2 compensation is impacted by how respectfully that judge
3 serves the people of New York, the tendency towards judicial
4 soft abuse and microaggression can be reversed.

5 Judge Lebovitz earlier today referred to the power
6 of this Commission to make things right. I urge this
7 Commission to use its policy-making capacities to reduce and
8 ultimately eliminate systemic judicial microaggression and
9 soft abuse, and define the competent, redefine the
10 compensation benchmarks to include job performance.

11 I thank the Compensation Commission. And I wish
12 the Compensation Commission all the best in your objectives
13 and goals.

14 Thank you very much.

15 CHAIR PERSON: Any questions?

16 (No response.)

17 CHAIR PERSON: Is there anybody else who is present
18 who is on this witness schedule who would like to speak
19 before we take a lunch break or a very quick break?

20 (No response.)

21 CHAIR PERSON: It is now 12:52 to be exact. We
22 will resume at 1:30. Thank you all.

23 (Continue on next page.)
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2 THE CHAIRPERSON: Those of you who are here, we're
3 about to begin again.

4 Thank you.

5 We are reconvening for the rest of the public
6 hearing.

7 Our first witness is the honorable Gary Knobel,
8 President of the New York State District Court Judges
9 Association.

10 Judge Knobel, welcome.

11 JUDGE KNOBEL: Good afternoon, members of the
12 Commission. Thank you very much for the opportunity to
13 testify before you today.

14 I am the president of the New York State District
15 Court Judges Association.

16 And the District Court Judges of Nassau and
17 Suffolk Counties have voted to have me urge you to
18 recommend, in your report, that you not only recommend a
19 salary increase for New York State judges, but that you also
20 take this opportunity to correct the unjust and unfair pay
21 disparity that has existed for 40 years and that you
22 recommend pay parity for all trial court judges, regardless
23 of court, regardless of geographic location, at the same
24 salary level of the Supreme Court salary judge.

25 The District Court is sometimes referred to as the
26 people's court. It is a combination of the New York City

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2 Criminal and Civil Court, yet we receive a salary that is
3 less than the Criminal Court judges and Civil Court judges
4 of the City of New York. We also are currently paid \$17,800
5 less than a Supreme Court judge.

6 We work very hard. Our courts are open 365 days a
7 year plus night small claims court. Last year, in Nassau
8 County alone, the 28 judges, who do not have personal law
9 clerks, disposed of 32,480 criminal and civil cases. Last
10 year, there were 65,447 cases filed in Nassau County
11 District Court. We apply the same principles of law in many
12 cases as a Supreme Court judge would. My very first jury
13 trial was a transfer from the Supreme Court, a products
14 liability trial.

15 We believe that it is time to correct the inequity
16 that has existed and we respectfully recommend and urge you
17 to correct that pay disparity.

18 Thank you very much for giving me the opportunity
19 to address you today.

20 THE CHAIRPERSON: Thank you.

21 Does anyone have any questions from the
22 Commissioners?

23 Thank you very much.

24 JUDGE KNOBEL: Thank you, Ms. Birnbaum, thank you.

25 THE CHAIRPERSON: Thank you so much.

26 Is Matthew Turner here yet?

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2 Elena Sassower, Director for the Center for
3 Judicial Accountability?

4 Thank you.

5 MS. SASSOWER: May I just do some housekeeping
6 here? There are an excess of cups in the way.

7 THE CHAIRPERSON: Sure. Just let us know when
8 you're ready and I'll start the clock.

9 Thank you.

10 MS. SASSOWER: There was no press announcement
11 from this Committee, press release sent out notifying the
12 public of this hearing today and, consequently, there are
13 not many people present, nor who requested to testify
14 because they didn't know about this hearing, nor did they
15 ever know or do they know that they have an opportunity to
16 make written submissions.

17 We are so ahead of schedule, I would ask the
18 indulgence of the panel. My statement is only 12 minutes or
19 so.

20 THE COURT: Why don't we just try to stick to the
21 10 like everybody else and then we'll see where we are.

22 MS. SASSOWER: I prefer not to run, race through
23 it.

24 My name is Elena Sassower and I am director and
25 co-founder of the Center for Judicial Accountability, Inc.,
26 a nonpartisan, nonprofit citizens' organization that, for

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2 more than a quarter of a century, has documented that New
3 York's judiciary is not discharging its constitutional
4 function to render fair and impartial justice according to
5 law. Rather, it is pervasively corrupt from trial levels up
6 to the appellate and supervisory levels, throwing cases by
7 fraudulent judicial decisions that falsify and omit the
8 controlling facts and obliterate the most basic adjudicative
9 and due process standards. And making this even more
10 catastrophic and unconstitutional is that all safeguards
11 within the judiciary and within the legislative and
12 executive branches are dysfunctional and corrupted, not the
13 least reason because, when citizens bring suit to enforce
14 black letter, unambiguous law and principles of
15 constitutional governance, judges throw the cases, usually
16 with the connivance with our state's highest law enforcement
17 officer, the New York Attorney General, who, when he has no
18 legitimate defense, defends anyway with litigation fraud,
19 for which he is rewarded by fraudulent judicial decisions in
20 favor of his governmental client.

21 As I stated when I testified before the Commission
22 to Investigate Public Corruption at a September 17, 2013
23 public hearing, cases are perfect paper trials. There's a
24 record, so it's easy to document the judicial corruption.
25 That was at the same hearing at which U.S. Attorney Preet
26 Bharara testified.

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2 Indeed, on CJA's website, www.judgewatch.org,
3 there is a prominent hyperlink on the home page entitled
4 What's Taking You So Long, Preet? CJA's three litigations,
5 whose records are perfect paper trails for indicting New
6 York's highest public officers for corruption.

7 U.S. Attorney Bharara's prosecutions of former
8 Assembly Speaker Silver and his unrelated prosecution of
9 former temporary President Skelos are each for small change.
10 And establishing this resoundingly are those three
11 litigations, accessible from our home page link, bearing his
12 name. These litigations, each of which we brought in the
13 public interest on behalf of the People of the State of New
14 York, involved the open and shut prima facie case of their
15 collusion with each other and with Governor Cuomo and Chief
16 Judge Lippman in grand larceny of the public fisc. This
17 with respect to the judicial salary increases recommended by
18 the August 29th, 2011 report of their appointed Commission
19 on Judicial Compensation, whose fraudulence, statutory
20 violations and unconstitutionality we proved by an
21 October 27, 2011 opposition report presented to all four of
22 these highest constitutional officers without response.

23 This nonfeasance and collusion against the people
24 was the subject of the first of the three litigations. A
25 declaratory judgment action, which we commenced in
26 March 2012, and as to which we sought U.S. Attorney

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2 Bharara's intervention, as part of a fully documented
3 criminal complaint, we hand delivered for him on April 15,
4 2013, a copy of which I handed up to the Commission to
5 Investigate Public Corruption and testified before it five
6 months later.

7 The second litigation, a citizen taxpayer action,
8 as well as a third litigation, our intervention in the
9 legislature's declaratory judgment action against the
10 Commission to Investigate Public Corruption, embraced the
11 multi-billion dollar slush fund judiciary budget in which
12 the judicial salary increases are embedded with direct
13 ramifications on the whole of the state budget, on three men
14 in a room, behind closed doors government and dysfunction
15 borne of a set of assembly rules, vesting autocratic powers
16 in the temporary Senate President and Assembly Speaker.

17 Both of these two subsequent litigations commenced
18 in March and April 2014, arose from U.S. Attorney Bharara's
19 nonfeasance with respect to the April 15th, 2013 criminal
20 complaint and from the corruption of the Commission to
21 Investigate Public Corruption, which he covers up.

22 But for the evisceration of any cognizable
23 judicial process in all three of these litigations,
24 resulting from the double whammy of Attorney General
25 Schneiderman's litigation fraud, rewarded by fraudulent
26 judicial decisions, current judicial salaries would

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2 rightfully be what they were in 2011 and the 2010 statute
3 that created the Commission on Judicial Compensation, which
4 in 2015 became the template for the statute creating this
5 Commission, would have been declared unconstitutional long,
6 long ago.

7 So this Commission has U.S. Attorney Bharara to
8 thank for the ongoing three-branch crime spree involving
9 judicial salary increases and the secreting of them in the
10 budget, sufficient in and of itself to disentitle all the
11 constitutional officers whose compensation is before you
12 from any increase.

13 The judiciary and the judicial pay raise advocates
14 testifying here today and by their written submissions tout
15 the excellence and high quality of the judiciary, implicitly
16 recognizing that judicial salary increases are predicated on
17 judges fulfilling their constitutional function of rendering
18 justice.

19 Plainly, they need a reality check if they are
20 actually unaware of the lawlessness and non-accountability
21 that reigns in New York's judicial branch, notwithstanding
22 our news to them again and again and again.

23 Let them confront with findings of fact and
24 conclusions of law our October 27, 2011 opposition report
25 and our three litigations arising therefrom. This includes
26 our constitutional analysis drawn from the Court of Appeals

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2 February 23, 2010 decision in the judges' judicial
3 compensation lawsuits and from Article 6 of the New York
4 State Constitution that, quote, "The appellate,
5 administrative, disciplinary and removal provisions of
6 Article 6 are safeguards whose integrity or lack thereof are
7 not just appropriate factors, but constitutional ones.
8 Absent findings that these integrity safeguards are
9 functioning and not corrupted, the Commission cannot
10 constitutionally recommend raising judicial pay."

11 For your convenience, I am furnishing you with the
12 starting point of the three litigations, our verified
13 complaints in each, the first of which included a full copy
14 of our dispositive opposition report, identical to what I
15 handed to Chairwoman Birnbaum four weeks ago at the
16 conclusion of your November 3rd first organizational
17 meeting.

18 Of these three litigations, only the citizen
19 taxpayer action is live and unfolding. As to it, I am also
20 furnishing to you our supplemental verified complaint and
21 the very last submission in the case, our November 5th, 2015
22 reply papers in further support of our cross-motion for
23 summary judgment and other relief. Highlighted therein are
24 the uncontested facts and law entitling us to a declaration
25 that the judicial salary increases recommended by the
26 Commission on Judicial Compensation's August 29, 2011 report

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2 are fraudulent, statutorily violative and unconstitutional
3 and that the statute that created that Commission,
4 materially replicated in the statute that created this
5 Commission, was unconstitutional as written and as applied.

6 The judge to whom the case was assigned, who got a
7 \$40,000 salary increase as a result of the Commission on
8 Judicial Compensation's report, does not have to be
9 excellent to render those requested declarations of fraud,
10 unlawfulness and unconstitutionality. He does, however,
11 need to earn his \$174,000 salary, yearly salary, by at least
12 being competent and honest, as that is all that is necessary
13 for rendering the declarations, as you can readily verify
14 from the dispositive presentations in our reply paper. Such
15 declarations mandated by law and the most basic of
16 judicative principles will restore judicial salaries to
17 their 2011 levels and preclude any increase until the
18 systemic corruption infesting New York's judiciary is
19 rectified, including by a lawfully functioning Commission on
20 Judicial Conduct, not the sham that currently exists. It
21 will also require a shutdown of this Commission on multiple
22 grounds of unconstitutionality, which as written grounds --
23 with the as-written grounds being reinforced by those as
24 applied, manifested by how this Commission has been
25 operating in this statutorily violative first month of its
26 operation.

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THE CHAIRPERSON: Ms. Sassower --

THE WITNESS: Looking --

THE CHAIRPERSON: -- you now have nearly
13 minutes.

THE WITNESS: I'm almost done.

THE CHAIRPERSON: Ms. Sassower.

THE WITNESS: You're way ahead --

THE CHAIRPERSON: Ms. Sassower, how much --

THE WITNESS: Let the public hear what I have to
say.

THE CHAIRPERSON: You.

VOICE: I want to hear it.

VOICE: I want to hear it, too.

VOICE: I want to hear it.

VOICE: I'm here.

MS. SASSOWER: This is of sufficient importance --

THE CHAIRPERSON: You can pack the room, Ms.
Sassower, with your colleagues, that's perfectly fine.

MS. SASSOWER: It's the public that needs to hear
and see how this --

THE CHAIRPERSON: You had as much time as anybody
else. You now have had 13 minutes --

MS. CAROL: Elena can have my three minutes and
it's three minutes --

MS. SASSOWER: Thank you.

1 Proceedings

2 THE CHAIRPERSON: You are?

3 MS. CAROL: My name is Carol, Ann.

4 MS. SASSOWER: Thank you.

5 MS. CAROL: She can have three minutes of my
6 10-minute testimony.

7 THE CHAIRPERSON: You're AnnCarol?

8 MS. CAROL: Yes.

9 THE CHAIRPERSON: Okay, take the time.

10 MS. SASSOWER: Thank you.

11 Excuse me.

12 It will also require the shutdown of this
13 Commission on multiple grounds of unconstitutionality with
14 the as-written grounds being reinforced by those as applied,
15 manifested by how this Commission has been operating in the
16 statutorily violative first month of its operations,
17 including at this hearing, conducted as if the current
18 judicial salary levels are not, as each of the Commissioners
19 must by now know them to be, ill-gotten gains stolen from
20 the taxpayers.

21 VOICE: Here, here.

22 MS. SASSOWER: Indeed, based upon my
23 communications with you over the past month, your
24 verification should largely be done.25 As I stated to you on November 3rd, in my e-mail
26 requesting to testify at this hearing, the four weeks until

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2 the hearing were ample time for each Commissioner
3 individually to verify the accuracy of our October 27th,
4 2011 opposition report, quote, "thereby requiring that this
5 Commission's recommendations, having the force of law, be
6 for the nullification, the voiding of the Commission on
7 Judicial Compensation's August 29th, 2011 report and a
8 clawback of the 150 million plus dollars that the judges
9 unlawfully received pursuant thereto," unquote.

10 The only way you can get away with doing anything
11 else in your own report, which is statutorily required by
12 December 31st, 2015, is by obliterating the existence of our
13 opposition report, the record of our three litigations based
14 thereon, and all findings of fact and conclusions of law
15 that are your duty to make with respect thereto.

16 This kind of fraudulent concealment is precisely
17 how the Commission on Judicial Compensation operated and how
18 judges operate when they throw cases by fraudulent judicial
19 decisions.

20 This Commission's threshold duty is, of course, to
21 address issues of the disqualification of its members for
22 actual bias and interest. And my November 3rd e-mail
23 requesting to testify set that forth stating, quote, "Should
24 any of the Commissioners feel themselves unable to discharge
25 their duties with respect to the systemic three-branch
26 corruption issues presented by CJA's citizen opposition and

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2 that other citizens will be presenting as well, they should
3 step down from the Commission forthwith. Two Commissioners,
4 Cozier and Lacks, are absolutely disqualified by reason of
5 their active role in that corruption and Chairman Birnbaum,
6 perhaps, as well," unquote.

7 Time does not permit me to furnish the
8 particulars, suffice to say that all three have demonstrated
9 their utter disregard for case file evidence of judicial
10 corruption, particularly as it relates to the Commission on
11 Judicial Conduct and a court-controlled attorney
12 disciplinary system, whose corruption they have perpetuated.

13 All documentary proof supporting this testimony,
14 including as relates to the disqualifying bias and interests
15 of Commissioners Cozier, Lacks and Birnbaum, will be posted
16 on CJA's website www.judgewatch.org, accessible by the
17 prominent homepage link No Pay Raises for New York's Corrupt
18 Public Officers. The money belongs to their victims.

19 Thank you.

20 THE CHAIRPERSON: Thank you.

21 VOICE: Bravo, excellent.

22 MS. SASSOWER: I have here --

23 THE CHAIRPERSON: Thank you.

24 MS. SASSOWER: -- the verified complaint, the
25 final motion papers in the citizen taxpayer action. I have,
26 additionally --

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2 THE CHAIRPERSON: Thank you. We'll make sure it
3 gets --

4 MS. SASSOWER: -- and a hard copy of my statement
5 with annexed supporting papers.

6 THE CHAIRPERSON: Thank you.

7 If you just leave them that at the table, we'll
8 have somebody pick them up and distribute them.

9 MS. SASSOWER: You already, of course, had the
10 opposition report.

11 THE CHAIRPERSON: Yes, we do.

12 THE WITNESS: Do you need another full copy?

13 THE CHAIRPERSON: No.

14 THE WITNESS: One is sufficient?

15 That being said, I will nonetheless --
16 Commissioner Hormozi was chair of the Commission on Public
17 Ethics and presented in this room, in December 2011, on the
18 issue of reform.

19 MS. REITER: Ms. Sassower, you are way over. And
20 I am finding this offensive at this point. You have been
21 talking for over 20 minutes now. You were supposed to have
22 10. You're done. You got sufficient time.

23 Could you please leave your documents and this
24 hearing --

25 MS. SASSOWER: You virtually have no one here
26 testifying.

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2 MS. REITER: Excuse me?

3 MS SASSOWER: You have no one here testifying and
4 I think we have many people --

5 MR. REITER: We have many people testifying that
6 you don't agree with and I find that most offensive of all
7 that you think anybody who disagrees with you is not
8 actually testifying.

9 MS. SASSOWER: No, no --

10 MS. REITER: Could you finish, finish --

11 MS. SASSOWER: Actually, you have no --

12 MS. REITER: Put yourself over there --

13 MS. SASSOWER: You have no evidentiary
14 presentation.

15 THE CHAIRPERSON: Ms. Sassower, we're done.

16 Please. We have --

17 MS. SASSOWER: The judicial pay raise advocates --

18 MS. REITER: You are done.

19 THE CHAIRPERSON: We have other people. Please.

20 MS. SASSOWER: -- inadequate current --

21 THE CHAIRPERSON: Give up the microphone --

22 MS. SASSOWER: Any problem in attracting qualified
23 candidates --

24 THE CHAIRPERSON: Honorable Matthew Turner, is
25 Mr. Turner here?

26 MS. SASSOWER: Thank you.

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THE CHAIRPERSON: Mr. Turner?

Very good. Thank you.

We'll certainly let you take your coat off.

(Continued on the next page)

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2 CHAIR PERSON: Matthew Turner, New York State
3 Association of Civil Court Judges.

4 Thank you so much.

5 MR. TURNER: Good afternoon, members of the
6 Commission. My name is Matthew Turner. I'm testifying
7 today on behalf of the 169 city court judges who preside
8 over the 61 city courts in cities outside of the city of New
9 York.

10 For the last 17 years I have been one of these
11 judges having been elected three times as city court judge
12 in the city of Troy. Troy is a city of approximately 50,000
13 people across the Hudson River for the city of Albany. For
14 the last decade I also served as Legislative Vice President
15 for the New York State Association of City Court Judges.
16 Our association has been active in seeking to improve the
17 way justice is provided in the cities we serve throughout
18 the state. Our members presides over courts as far south as
19 Long Beach to as far north as Plattsburgh to as far east as
20 Rye rye to as far west as Buffalo.

21 Despite the efforts of my colleagues and I think
22 there remains a misunderstanding of what just the city
23 courts outside the city of New York are and what a city
24 court judge does. This unfamiliarity as to what we do and
25 who we are has led to a frustrating disparity in the way we
26 city court judges are compensated. Our goal is today is to

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2 end this unfamiliarity and provide this Commission with the
3 information necessary to end the pay disparity that exists
4 not only intercourt but also intracourt.

5 Many outside of the city of New York are under the
6 misconception that city court judges are part of the justice
7 court or town and village court's system with exclusively
8 part-time judges that are not required to be lawyers, that
9 preside over relatively minor issues like traffic tickets,
10 minor criminal matters and occasionally small claims cases.
11 These courts generally meet once per week, often in the
12 evening, with the judges being on the bench for a few hours.
13 This is to take nothing away from my justice court
14 colleagues, many of whom I appear before, who serve
15 constituencies well, but commitment of time and expertise
16 between the justice court justices and city court judges is
17 not comparable.

18 City court judges are required to be lawyers who
19 have been admitted to the bar for at least five years. Most
20 of my colleagues, however, arrive on the bench with decades
21 of experience in the practice of law. Therefore, city court
22 judges arrive on the bench with a base of legal knowledge
23 developed not only by their law school experience but also
24 through their required continuing legal education and their
25 years of practice.

26 All of this training is well used each day by my

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2 colleagues and I as members of the city court bench.
3 Although, we sit in cities smaller than the city of New
4 York, problems of our cities are similar in nature and in
5 some instances may be even be more acute because they
6 involve people we may know that we come into contact with
7 every day, whether at the supermarket, in church, at our
8 kids' schools or supporting events or in our neighborhood.

9 Crime in our cities related to gangs, domestic
10 violence and poverty persist. Individuals with mental
11 health, drugs and alcohol addiction related issues,
12 regularly appear before us. In order to achieve the best
13 outcome possible and to avoid recidivism my colleagues and I
14 have developed specialty courts within our courts. This
15 courts includes drug court, domestic violence court, mental
16 health treatment court and veterans courts.

17 In addressing these issues in a individual way and
18 seeking to get at the root of what may have brought each
19 person before the court, my colleagues and I take an intense
20 interest in the individuals before us and invest tremendous
21 amounts of time and effort to get the result that best
22 serves the needs of justice for the community as well as for
23 the individual.

24 In addition to presiding over criminal matters that
25 are reflected above, however, we also preside over civil
26 cases with amounts in controversy up to \$15,000 with the

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2 same rules of evidence, same rules of practice as exists in
3 Supreme County Court. We are bound by the same rules of
4 evidence discovery, motion practice, etc. Layer on to these
5 cases, ones involve evictions between both private landlords
6 and tenants but also public Housing Authority's and their
7 tenants, Building Code violation and traffic and you get a
8 flavor of the workload involved in being a city court judge.

9 It should also be noted that one none of my
10 colleagues have full-time law clerk to assist with this
11 large caseload and many of my colleagues do not have a
12 full-time law clerk to assist with this large and diverse
13 workload. Many of them like me together with my two,
14 full-time co-judges share a law clerk. Some others have a
15 part-time clerk, while many city court judges have no law
16 clerk at all.

17 Finally, it should be noted that often times the
18 individuals that appear before us do so without a lawyer so
19 it is up to us to make sure that we protect the substantive
20 legal rights of the individuals that appear before us
21 without providing legal assistance to them.

22 As you can see and I can sure you appreciate this
23 job that my colleagues do is a difficult one. Despite these
24 difficulties and challenges I have yet to find one of my
25 colleague who do not find the work rewarding and worth
26 doing. However, even the most rewarding of jobs can have

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2 it's downside. For us, the city court judges one, of the
3 down sides is a lack of pay parity, not only as it relates
4 to our place within the court system itself, but also within
5 the city court level of the court testimony system.

6 Currently, there are six different levels of pay
7 for a full-time city court judge. The highest pay rate is
8 at a rate of \$156,000 with the lowest rate being paid at
9 \$138,000. A difference of more than \$12,000. As compared
10 to a justice of the Supreme Court that is currently paid
11 \$174,000, regardless of where they sit. The highest paid
12 city court judge is paid 86 percent of its Supreme Court
13 justice with the lowest paid full-time city court judge
14 being paid 79 percent of the Supreme Court justice.

15 For part-time city court judges like myself, a
16 distinct minority of among 169 total city court judges there
17 is a second level of pay disparity. My two full-time
18 co-judges are each paid \$145,000, the middle level of the
19 six levels of city court pay. Logically you would think
20 that my pay would be a percentage of \$145,000 since we sit
21 in the same court and have the same duties and obligations
22 to maintain a calendar and have our judicial
23 responsibilities take priority over all other professional
24 responsibilities. However, my compensation is a percentage
25 of the lowest peer pay full-time city court judge.

26 On behalf of my colleagues I call on this

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2 Commission to end the disparity both on the inner intercourt
3 level but also the intracourt level and to fashion more
4 appropriate and equitable pay relationships between judges
5 of different courts throughout the state.

6 It's in the final report dated August 29, 2011, the
7 First Quadrantal Judicial Salary Commission wrote, "We have
8 determined that the appropriate benchmark at this time for
9 the New York State Judiciary is the compensation level of
10 the Federal Judiciary." That's final report of page eight.
11 We certainly agree with that position and we hope that this
12 Commission will retain that position going forward.

13 However, as indicated above, we hope that this Commission
14 will take the next step as it relates to the states lower
15 courts.

16 The 2011 Commission recommendation was only made
17 applicable to the justices of the Supreme Court, with the
18 judges of the lower court receiving pay adjustments
19 preserving the existing salary relationships with the
20 Supreme Court justices and continuing the disparity
21 reflected above.

22 As you may or may not be aware, this disparity and
23 current intercourt judicial pay relationships largely date
24 from the late 1970s when the state took over funding
25 responsibility for the courts outside of the Town and
26 Village Courts. At that time, judges outside of the Town

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2 and Village Courts became state employees at salary levels
3 that had been fixed by their former local employers.

4 Because some of these localities paid these judges
5 more highly than others, the result was that judges at the
6 same court level often were paid vastly different salaries.
7 This all fostered result in which no coherent pay
8 relationship existed between judges of different courts.
9 While the state has granted judges pay adjustments since the
10 year funding take over, these adjustments have invariably
11 been straight percentage increases which has done nothing to
12 change the disparity pay relationships among other judges.
13 During this period some judges took this pay disparity issue
14 in their own hands and brought successful litigation that
15 mitigated some of the pay disparities. Nonetheless, it
16 remains the case that today, 39 years after the funding
17 takeover, the judicial pay schedule remains a hodgepodge
18 with dramatic different salaries for many judges of the
19 states 61 city courts and we believe disproportionate pay
20 differentials between the highest paid city court judges and
21 judges of other courts, including some that exercise the
22 same jurisdiction as do we.

23 To illustrate this last point, city court judges
24 exercise exactly the same jurisdiction that as district
25 court judges on Long Island who all earn \$156,200 annually
26 and judges of the New York City Criminal Court who all earn

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2 \$159,000.

3 To those who would argue that these pay disparities
4 among the judges of the 61 city courts could be justified,
5 whether population differences and/or costs of living
6 differences, it bears noting that all Supreme Court
7 justices, all Court of Claim judges and all nonjudicial
8 court system employees in the state are in the same salaries
9 regardless of where they serve. It makes no sense that the
10 judges of the city courts should be treated in any different
11 fashion.

12 As indicated above, there are 169 city court judges
13 outside of the city of New York. These 169 city court
14 judges make up approximately 13 percent of the state
15 judicial work force. This 13 percent of the judicial work
16 force who are the front line of the judicial system remains
17 disadvantage among the pay disparities inherited back in
18 1970s.

19 I hope I've been able to demonstrate by this
20 testimony the unfairness of these disparities and be
21 corrected by your recommendation.

22 On behalf of the New York State Association of City
23 Court Judges, I thank you for your service on this
24 Commission and for your time and attention and for your
25 support on these important issues.

26 CHAIR PERSON: Thank you. Any questions?

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2 (No response.)

3 CHAIR PERSON: Thank you.

4 Sara Moss, Executive Vice President and General
5 Counsel of Estee Lauder.

6 MS. MOSS: Thank you. Good afternoon.

7 Thank you for the opportunity to speak on this
8 important issue. I am Executive Vice President General
9 Counsel of the Estee Lauder companies. I am responsible for
10 the worldwide legal function of the company.

11 If I could give you just a moment about my
12 background, I think that certainly informs you how I came to
13 these views.

14 Before coming to Estee Lauder I was a general
15 counsel Pickney Bowes in Stamford, Connecticut. I began my
16 career as a law clerk of the Southern District of New York.
17 I was litigation associate at Davis Polk. I was U.S.
18 Attorney's office in the Southern District of New York. I
19 became litigation partner in a small firm Howard Smith &
20 Levin which merged with Covington Burling and then I had the
21 general counsel positions.

22 In each of these positions which were varied
23 obviously during the course of my career. I recognized the
24 importance of high quality, well-informed, efficient
25 judiciary.

26 My company, like many others, is incorporated in

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2 Delaware. We're headquartered in New York on 59th and Fifth
3 Avenue. So when we defend a litigation or initiate
4 litigation and sometimes we defend litigation we have
5 choices, generally three choices for venue - New York State
6 Supreme Court, Southern District of New York or the Delaware
7 Chancery Court.

8 In deciding which venue to bring the litigation the
9 quality of the judges and the efficiency of the court is a
10 critical factor for me and I know for other businesses and
11 general counsel as well. We need to insure that New York
12 remains an attractive venue for business dealings, as well
13 as for the resolution of business disputes. When I read
14 some of the reports in connection with these hearings,
15 frankly, I was appalled to learn that Delaware ranked second
16 with cost of living adjustment with judicial salaries and
17 New York 47th. I don't know how we can continue to attract
18 the best and brightest with that kind of salary.

19 New York State correctly requires that Supreme
20 Court judges have at least ten years of experience and
21 judges with complex commercial experience generally have
22 been partners at law firms. Of course they accept pay cuts
23 to serve on the bench, but the salaries of the judges, I
24 think, really are unconscionable in light due to the fact
25 that second year associates in some of the top firms earn
26 more than they do.

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2 When I first came to Davis Polk in 1975 I was
3 earning \$20,000 a year which was a princely sum at the time
4 and I remember one of my law school professors said to me,
5 You're smart but you don't know anything. How can they be
6 paying you that much money? He was right. Certainly didn't
7 know anything.

8 So to me in many ways that comparison between
9 second or third year associate and what we paid our Supreme
10 Court justices is just so wrong. I think it cannot go
11 unsaid but it seriously devalues our judges to have them
12 compensated at that kind of rate. To insure the bench
13 receives the respect, its appropriate and necessary judges
14 should be paid commensurate with the importance to our
15 society and the functioning of businesses in our community.
16 I think judicial pay is severely misaligned with the value
17 of the community and what we expect of a judge.

18 We need the best and brightest on the New York
19 State bench. The Commission should raise judicial pay with
20 parity to federal judicial pay and establish a system that
21 maintains parity with those judges through cost of the
22 leaving adjustments.

23 Thank you.

24 CHAIR PERSON: Any questions?

25 (No response.)

26 CHAIR PERSON: Jonathan Ettricks here?

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2 (No response.)

3 CHAIR PERSON: That ends --

4 MS. NOE: I have not said.

5 CHAIR PERSON: So you have two minutes.

6 Carol Ann, the director of Health Watch, Public
7 Charging Reports under Judicial Corruption and Enforcement
8 Task Force.9 MS. NOE: My name is Carol Ann Noe. The last name
10 is spelled N-O-E.11 I had Health Watch, which oversees private
12 organization volunteer and it oversees the safety, health
13 and rights of patients, including the protections under the
14 New York State Human Rights Commission, as well as ADA Title
15 Two Rehab Back 504 in state courts.16 I also head -- I'm chief investigator for the
17 Judicial Corruption Enforcement Task Force. This is the
18 first Judicial Corruption Enforcement Task Force of its kind
19 in the City and State of New York and this task force has
20 gone national. We have had assistance from Washington and
21 the federal government to ensure that New York State Supreme
22 Court judges, both in civil and criminal courts, are not
23 violating due process rights, civil rights and
24 constitutional rights, and that they are not engaged in any
25 form of deprivation of rights in civil cases.

26 I'm going to talk firsthand about my experience in

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2 the matrimonial part of New York County, New York County
3 State Supreme, 60 Centre Street. The investigation that we
4 conducted beginning August 2013 through and including
5 November 2015 was done through the Judicial Corruption
6 Enforcement Task Force, which is a private organization of
7 volunteers. We sought help from various federal branches of
8 the federal government to assist us in placing under
9 surveillance key civil judges in New York State matrimonial
10 courts, as well as family courts, as well as the First
11 Department Appellate Division.

12 I'm going to talk about a particular judge that I
13 had the firsthand experience in dealing with in the
14 matrimonial part. Now, you know, I want to preface that our
15 investigation is simply focused on matrimonial Family Court
16 in New York County, the First Department and the First
17 Department Appellate Division. Our public charging report
18 will be published by a national major news organization and
19 it covers the intensive two and a half year investigation of
20 our findings.

21 The findings include firsthand accounts of pro se
22 litigants, litigants who are also represented by counsel,
23 counsel itself, as well as sources and whistle blowers who
24 work in the matrimonial part, the family court and First
25 Department Appellate Division.

26 Access to the courts is not a right. It is a

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2 privilege that only I deem the litigant worthy of.

3 These statements are repeatedly uttered on the
4 record and in order after order after order in over 128
5 cases by Justice Ellen Gesmer. Ellen Gesmer in 2016 will be
6 removed off the bench. She will be formerly and officially
7 federally criminally indicted.

8 The second judge to be removed off the bench of
9 matrimonial part will be Matthew Cooper. The third will be
10 Laura Drager. The fourth is Deborah Kaplan, which I believe
11 has moved onto another area. We have judges in the First
12 Department Appellate Division who will also be removed off
13 the bench in 2016. All of these will be federally,
14 criminally prosecuted as a result of the Judicial Corruption
15 Enforcement Task Force investigation.

16 Ellen Gesmer began a systematic campaign against
17 128 litigants and their lawyers to retaliate, seek
18 retributions, seek retaliation and punishment by
19 systematically destroying exhibits and evidence in cases so
20 she would be able to file false instruments. It's called
21 destruction of evidence and filing of false instruments. In
22 my case alone she deprived me of all statutory rights. When
23 the legislature passed a statutory law in 2010, they did so
24 because they did not trust the matrimonial judges would be
25 fair, impartial and unbiased, and they were correct in their
26 session.

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2 So statutory requirements require that you receive
3 counsel fees if you are the non-moneyed spouse. If you are
4 indigent and permanent medical disabilities and permanent
5 medical conditions you are required to receive payment for
6 your medical bills. I was deprived of a trial under Ellen
7 Gesmer where she used my disabilities and my permanent
8 medical conditions against me and she rendered a medical
9 opinion. So Justice Gesmer is also, as far as we know, now
10 a doctor.

11 There are federal cases filed under seal because of
12 the explosive amount of surveillance evidence that we
13 uncovered under this judge and the other judge in the
14 matrimonial part. Again, this is only First Department. We
15 do not have the resources to go after every single
16 department but at some point that will happen.

17 To discriminate and retaliate against any litigant
18 under ADA Title Two Act 504 and in violation of the New York
19 State Human Rights Disability Statutes. This is a very,
20 very serious thing.

21 More importantly, we uncovered a pattern of
22 practice of systemic ongoing retaliation, vengeance,
23 punishment and retribution by these matrimonial judges when
24 any litigant, whether pro se litigants or represented by
25 counsel, files formal complaints against these judges. And
26 the people in charge of investigating these judges on the

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2 state level, the Appellate Division, the administrative
3 court judge, Commission on Judicial Conduct, Attorney
4 General, and District Attorney, all aid and abet and protect
5 these judges from these types of egregious criminal frauds
6 that continue. So when you dispose of litigants' exhibits
7 and their evidence in order to justify false, fraudulent
8 rulings, these are very, very serious charges. And the fact
9 that people's due process rights are ignored -- I am here
10 today under a gag order.

11 A judgment was entered on my case just recently
12 when no complaint was ever filed in this case, should never
13 had been entered because this particular judge does not want
14 anybody exposing her ongoing patterns of practices. We are
15 exposing them in 128 cases and thankfully we have a branch
16 of the federal government who looked at the evidence and
17 said, You know what? We're going to remove these judges and
18 there's nothing the state can do about it.

19 Does anybody have any questions? You really should
20 have questions.

21 CHAIR PERSON: Maybe not right now.

22 MISS NOE: I'd --

23 CHAIR PERSON: You had your seven minutes.

24 MISS NOE: I have two more minutes. I'd like to
25 finish.

26 CHAIR PERSON: All of you who want to speak out

WILLIAM D. LEONE, SENIOR COURT REPORTER

1 Proceedings

2 write to us, write to us. We'll be very happy to hear from
3 you. We have heard this --

4 MISS NOE: I would just like to say I would like to
5 submit --

6 CHAIR PERSON: Submit, submit. We'd like to see
7 anything.

8 MS. REITER: Why don't you stay afterwards and you
9 can discuss it. The person who appeared before this person
10 was rudely interrupted repeatedly by a group of you who were
11 sitting there to the point where this gentleman taking down
12 the testimony was unable to hear. So could we please get
13 real here? There are rules. You have the same amount of
14 time to testify. You're not special. You have the same
15 amount of time that --

16 MISS NOE: I think I have two more minutes left.

17 CHAIR PERSON: I will give it to you and that's it.

18 MISS NOE: Thank you.

19 I think it's nice for judges to talk about how
20 great each other is, but the bottom line is what are they
21 doing in the court of law? How are they dispensing justice?
22 They are not above the law. They will not be above the law.
23 And these kinds of systemic deprivations of due process,
24 constitutional and civil rights, with destruction of
25 evidence, filing false orders, willfully excluding material
26 information and orders in order to justify the frauds that

Proceedings

1
2 themselves perpetrated, luckily they were under surveillance
3 so we have a massive amount of evidence and I think the
4 federal government for moving on 2016 on federally
5 criminally indicted and these judges will be removed from a
6 bench, including a substantial amount of judges from the
7 Appellate Division.

8 Thank you so much for your time.

9 CHAIR PERSON: Any of the commissioners anything
10 they want to say?

11 (No response.)

12 CHAIR PERSON: This public hearing will now be
13 ended and thanks to all of the witnesses and all written
14 submissions that we received. We will review them all and
15 we thank you again for your involvement and your attention.

16 (Whereupon, the public hearing matter was
17 concluded.)

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