



TESTIMONY PREPARED FOR:

NEW YORK STATE

COMMISSION ON

LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

SUBJECT: JUDICIAL COMPENSATION

November 30, 2015

11:00 A.M.

New York City Bar Association

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New York, New York

Presented By:

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Civil Practice

The Legal Aid Society

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The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is an indispensable component of the legal, social and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional

facilities. The Civil Practice provided representation in nearly 49,000 cases last year which benefitted close to 121,000 people.

The Society's Criminal Practice is the primary public defender in the City of New York. , Annually, our Criminal Practice represents over 220,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice the Society represents people accused of crimes from their initial arrest through the post-conviction process. In addition, the Criminal Practice has a Prisoners' Rights Project which handles matters pertaining to the legal and human rights of detainees and prisoners in City jails and State prisons.

The Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency.

In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

The breadth of The Legal Aid Society's representation places us in a unique position to address the issue before you today. We represent clients in hundreds of cases in court on a daily basis. Our attorneys appear on behalf of clients in all of the trial courts in New York City as well as the Appellate Divisions and the Court of Appeals. Our perspective is formed by our extensive interaction with the courts in a full range of civil, criminal and juvenile cases.

The Legal Aid Society strongly endorses substantial pay increases for the judiciary. In our experience, regardless of whether the context is a civil, criminal or juvenile matter, our clients are better served and a just result is more likely to be achieved by a high quality judiciary. Quality can be achieved when the judiciary receives adequate compensation so that it is able to attract and retain high quality talent. We have seen too many reports of experienced judges leaving the bench due to salaries that are being eroded by the cost of living. Judicial independence is threatened when we lose experienced judges due to inadequate pay. A judiciary that is better able attract and retain high quality judges is one that serves the best interests of both our clients and our greater society.

We have a substantial way to go to achieve the goal of adequate compensation. As you know your work is part of an ongoing process. A review of the Final Report of the previous Commission on Judicial Compensation¹ shows that the prior compensation recommendations, which established the amounts of the first judicial pay raises in over twelve years, were strongly influenced by the fact that the State at that time was in the middle of a severe recession. The prior Commission reported that “the economy is faltering and the State is facing an unprecedented budget crisis, both of which have affected every citizen of the State,”² and “the State has and will continue to face multi-billion dollar budget gaps, with a projected deficit of \$2.5 billion next year.”³ In light of the fact that the economy has substantially recovered since 2011 and the State is no longer facing such dire circumstances, this Commission is in a better position to address the real judicial salary needs. Indeed, the prior Commission took some

¹ Special Commission on Judicial Compensation, *Final Report of the Special Commission on Judicial Compensation*, August 29, 2011, available at <http://www.judicialcompensation.ny.gov/assets/FinalReportSpecialCommissionJD.pdf>

² *Id.*, at p. 3

³ *Id.*, at p. 7

comfort from the fact that a subsequent Commission would be in a position to reevaluate its recommendations.

Even in the face of a severe recession the prior Commission was able to only muster a bare majority of votes for its salary recommendations. After setting the benchmark for the New York State judiciary as being the compensation level of the Federal judiciary, it then opted to implement that decision in a protracted way over a number of years. A common theme of the dissenting voters was that the raise amounts were too low and that they should have been given immediate effect.⁴ The delay in implementation merely continued the fact of inadequate compensation over a longer period of time.

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

A representative criticism came from then President of the New York State Bar Association, Vincent E. Doyle III, who expressed concern that the Commission's approval of a salary increase for New York State judges was inadequate. "During the past 12 years, the cost of living increased by 40%, eroding judicial salaries. Yet the commission voted to adjust salaries by only 17% in 2012. By 2014, the third year of the phase-in, judges salaries will have risen 27 percent over a 15-year period, far less than the projected inflation rate." "Salary stagnation is more than a personal hardship for judges. It threatens to undermine our judiciary, making it harder to attract and retain talented judges. New York's judiciary has a well-regarded national

⁴ See Dissenting Statements of Robert B. Fiske, Jr, Kathryn S. Wylde and Mark S. Mulholland, *Id.*, at pp. 11-14

and international reputation. We put that reputation at stake if we continue to devalue our judiciary by not adjusting judge's salaries."⁵

A review of the minutes of this Commission's meeting of November 3, 2015 shows that you are seeking appropriate information to assist with your decision-making process. You are reviewing judicial salary data from other states, including similar large states and for the federal judiciary. You are also reviewing the consumer price index for the Northeast Urban Region. This Commission has recognized judicial salary comparisons between New York and other states should be adjusted to take into account regional variations in the cost of living.⁶

There is substantial data to indicate that state judicial salaries have eroded for an extended period of time as compared with Federal judicial salaries, the consumer price index and expected cost of living adjusted pay. Judicial salaries have been substantially eroded by inflation even when compared with other staff employed by the Office of Court Administration. Had the prior Commission adopted a cost of living model, in 2011 the proper inflation adjusted salary should have been \$192,543 instead of the \$160,000 base that was adopted.⁷

Changes to the federal salary structure since the last Commission's report was issued have caused the current State salary structure to become even more outdated. As a result of litigation regarding the Federal pay structure, the Federal pay levels to which the 2011 Commission pegged its salary scale were ruled to be illegally low due to the historic denial of

⁵ Ryan Thompson, Brooklyn Daily Eagle, *Judicial Pay Raise This Sunday*, March 30, 2012

⁶ New York State Commission on Legislative, Judicial and Executive Compensation, *Minutes of Public Meeting*, November 3, 2015

⁷ See statistical data supplied by the Coalition of New York State Judicial Associations, *Presentation to the New York State Judicial Compensation Commission*, June 10, 2011.

cost-of-living increases to the Federal judiciary.⁸ In January of 2014 Federal District Court judges received a 14% pay increase plus retroactive pay for past improper withholding of cost-of-living pay adjustments.⁹ The current salary of District Court judges is \$201,100 and is expected to be reset to \$203,100 on January 1, 2016.

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

⁸ *Beer v. United States*, 671 F.3d 349 (Fed. Cir. 2012)

⁹ James Rowley, *Federal Judges in U.S. See \$25,000 more as Salary Freeze Falls*, Bloomberg Business, January 13, 2014