

1 STATE OF NEW YORK

2
3 NEW YORK STATE COMMISSION ON LEGISLATIVE,
4 JUDICIAL and EXECUTIVE COMPENSATION

5
6
7 PUBLIC HEARING

8
9
10 HELD AT: New York State Bar Association
11 1 Elk Street
12 Albany, New York 12207
13 October 31, 2023

14
15 HELD BEFORE: EUGENE FAHEY, Chairperson
16 HELENE BLANK, Commissioner
17 THERESA EGAN, Commissioner
18 R. NADINE FONTAINE, Commissioner
19 VICTOR KOVNER, Commissioner
20 ROBERT MEGNA, Commissioner
21 JEREMY S. WEINSTEIN, Commissioner

22
23
24
25

SHARON E. CHERNY, RMR, CRR
Senior Court Reporter

1 OCTOBER 31, 2023, 12:25 P.M.

2 CHAIRPERSON FAHEY: If everybody is all
3 set, we can start a little bit early.

4 I'm Judge Eugene Fahey. I'm the
5 Chairperson of the Commission. We have with us
6 today starting from my far left Robert Megna, the
7 Honorable Jeremy Weinstein, Rose Nadine Fontaine,
8 Helene Blank, and to my right Victor Kovner and
9 Theresa Egan. They're all Commissioners of the
10 State Commission on Legislative, Judicial and
11 exempt employees salaries.

12 I first want to thank the New York State
13 Bar Association for graciously hosting this
14 upstate -- only in New York City do you call this
15 upstate. In Buffalo we don't call Albany upstate,
16 but for hosting this upstate -- public hearing,
17 and I want to preemptively thank all of the bar
18 leaders and other members of the legal community
19 in the public here today to testify. We
20 appreciate you being here and we appreciate the
21 work that you've put in.

22 In order to facilitate everyone's
23 schedule, we're going to limit every speaker to
24 ten minutes. Anything you have in writing, we're
25 happy to accept it, we will make part of the

(Fahey)

1 record after that. And we'll take a break in one
2 hour for about five minutes and then we'll start
3 again at 1:30 and then finish hopefully by about
4 2:30.

5 Our first speaker today we're honored to
6 have, Richard Lewis, who is the president of the
7 New York State Bar Association.

8 MR. RICHARD LEWIS: Good afternoon, Judge,
9 and thank you for having me. I just want to tell
10 you that I'm from Binghamton and we consider that
11 upstate as well.

12 CHAIRPERSON FAHEY: There you go. Good.

13 MR. RICHARD LEWIS: As Judge Fahey has
14 indicated, I'm Richard Lewis, President of the New
15 York State Bar Association and we are the nation's
16 largest voluntary state bar association, and we've
17 worked very hard to shape the development of law
18 and provide input on state policies that impact
19 the legal community since 1876. I'm very pleased
20 to be here. I don't think my testimony is going
21 to be a big surprise because we've held the same
22 position for well over three decades.

23 The Bar Association in 2010 strongly
24 supported a bill mandating the establishment of
25 periodic judicial compensation -- a periodic

(Lewis)

1 properly depends on the judges who serve, and, I
2 might add, the attorneys who appear in front of
3 those judges. We in New York have always been so
4 fortunate to have so many talented, civic-minded
5 jurists who are willing to serve frequently giving
6 up more lucrative private practice positions to do
7 so.

8 However, due to a failure to keep pace
9 with the increases that have occurred at the
10 federal level, salary stagnation at the state
11 level has been an impediment to retaining
12 qualified and experienced judges and made it
13 difficult to continue attracting the best and the
14 brightest, which we presently have.

15 In 2011 our association adopted a report
16 that was the basis for our submission to that
17 year's Commission recommending a substantial
18 increase in judicial salaries. Our position in
19 2011 and subsequently in 2015 was that a raise in
20 pay would be necessary to both bring the
21 compensation in line with what is provided at the
22 federal level and also to reflect considerable
23 cost of living increases that have occurred since
24 the prior wage. Sounds similar to today.

25 We have recommended implementation of a

(Lewis)

1 protocol for the regular adjustment of judicial
2 salaries, thereafter to account for rising costs
3 of living which is critical in our current
4 submission to this Commission.

5 The New York State Bar Association has a
6 long history of advocacy and support for proper
7 funding of our judiciary. Our reports calling for
8 increased funding of the judiciary are attached in
9 my written statement, Your Honor, and I will
10 provide it. And if the Court please, if the
11 Commission please --

12 CHAIRPERSON FAHEY: I'll take it. I'm
13 fine with that.

14 MR. RICHARD LEWIS: We would be happy to
15 provide it electronically as well.

16 CHAIRPERSON FAHEY: That would probably be
17 a good idea.

18 MR. RICHARD LEWIS: Okay, great.

19 New York State is the center of the legal,
20 business and financial communities and our judges
21 and court system play an important role in
22 developing a body of law that is recognized
23 throughout the country and around the world as the
24 gold standard for its treatment of financial and
25 commercial matters. Our bench is world-renowned

(Lewis)

1 for its fairness, its neutrality, its independence
2 and its capacity to handle complex cases. These
3 are among the reasons that New York courts are
4 attractive to businesses from everywhere in the
5 world.

6 Deficiencies in judicial compensation
7 threaten to diminish the reputation of our courts
8 which would in turn threaten to diminish the
9 reputation of our judges, and in turn, would have
10 a negative economic impact on our state as a
11 whole. We must maintain our judiciary's national
12 and international judicial reputation for quality,
13 for fairness, and for independence.

14 We all appreciate and benefit from the
15 important role of the judiciary in our society,
16 but the failure to adequately compensate our
17 judges devalues their work in a way that we at the
18 New York State Bar Association believe is
19 detrimental to the properly functioning justice
20 system. This belief has been the underpinning of
21 the Association's past positions on judicial
22 compensation. It is our continuing belief and I
23 anticipate that that will be our long-standing
24 belief into the future.

25 We are applauding this Commission and its

(Lewis)

1 work at these hearings and we stand ready to serve
2 as a resource, if necessary.

3 Thank you for the opportunity and, Your
4 Honor, I'll provide you with this.

5 CHAIRPERSON FAHEY: Thank you, Mr. Lewis.

6 If there are no questions, I would call
7 our next speaker. Our next speaker is Judge
8 Gregory Gilbert from the New York State Bar
9 Association Judicial Section. Judge Gilbert is a
10 Presiding Member.

11 MR. GREGORY GILBERT: I listened to the
12 tutorial that you gave Dick, so I'll stay over on
13 this side of the table.

14 Judge Fahey and all Honorable Members of
15 this Commission, thank you so much for the
16 invitation and the opportunity to present my
17 testimony this afternoon. My name is Greg
18 Gilbert. I had a large civil litigation practice
19 in Oswego, in central New York, for 25 years, and
20 I answered the call to serve as a judge, and it
21 was the best decision of my life. I was elected
22 to the Supreme Court in the Fifth Judicial
23 District back in 2016 so I'm nearly midterm with
24 another seven years to go.

25 I served primarily as a Supreme Court

(Gilbert)

1 Justice in Oswego County within the Fifth
2 District. My first three years I was assigned
3 exclusively to Onondaga County in Syracuse. I've
4 had the privilege of serving the past four years
5 as Deputy Administrative Judge in our Fifth
6 District.

7 As you know, our judicial district is
8 comprised of six counties. It is quite vast
9 geographically. I, Dick mentioned he's from
10 upstate. I'm farther upstate but not as far
11 upstate as my colleague, the Honorable Mary Farley
12 testifying after me. She comes from the north
13 country, the true north country.

14 I currently have active case loads and
15 juries pending in five of the six counties. The
16 only county I'm not in is Herkimer right now and
17 I've been there, but not currently.

18 It is my pleasure to also serve, as Judge
19 Fahey indicated, as Presiding Member of the New
20 York State Bar Association Judicial Section. In
21 that capacity, I preside over quarterly meetings
22 of our Statewide Council of Judicial Associations.
23 Our associations are rather diverse in all
24 respects. There are nearly, I think, about 20.
25 I'll save a few minutes. I won't give you the

(Gilbert)

1 entire list of our associations, but a number of
2 my colleagues have testified and are here today,
3 and I will mention a few in my remarks.

4 I am here advocating on behalf of my
5 Judicial Section and in support of all of our
6 judicial associations statewide. A number of my
7 colleagues have already testified and/or submitted
8 position papers emphasizing many of the same
9 points supported by the same data that I strongly
10 believe carries our position.

11 Notably, the Honorable Joseph A. Zayas,
12 our Chief Administrative Judge, and also an
13 ex-officio member of our Council of Judicial
14 Associations under our bylaws, as both recently
15 testified and submitted a position paper on behalf
16 of court administration. I join these arguments
17 on behalf of the judicial section and join our
18 chief judge in respectfully requesting that this
19 Commission recommend that the compensation of
20 State Supreme Court justices be not just given a
21 raise, but, to quote Judge Zayas, "restored to a
22 position of parity with that of Federal District
23 Court judges effective April 1, 2024."

24 My colleague, the Honorable John Zoll, as
25 President of the New York State Criminal Court

(Gilbert)

1 Judges has asked that I request on behalf of his
2 organization a continued proportional salary
3 increase at the current level of 93.68 percent of
4 the Supreme Court salary.

5 My colleague, the Honorable Eric S.
6 Pitchal, President of the New York State -- I'm
7 sorry -- New York City Family Court Judges
8 Association submitted a position paper yesterday
9 noting that his membership strongly urges that you
10 support Judge Zayas's proposal as it relates to
11 the salary structure for his judges sitting in New
12 York City in the Family Court. Specifically, he
13 asked that you recommend continued salary parity
14 between Supreme Court judges, Federal District
15 Court judges, and his membership.

16 My colleague, the Honorable Shah Ally,
17 President of the Asian American Judges Association
18 of New York previously testified. The following
19 colleagues offer testimony today:

20 The Honorable Mary Farley, President of
21 the Association of Supreme Court Justices of the
22 State of New York; the Honorable Julia
23 Brouillette, who will testify, I believe,
24 virtually out of Oneida County, President of the
25 New York State Family Judges Association; the

(Gilbert)

1 Honorable Gerald Lebovits, President of the
2 Association of Acting Supreme Court Justices; the
3 Honorable Frank Milano, President of the New York
4 State Court of Claims Judge's Association; the
5 Honorable Lourdes Ventura, President of the Latino
6 Judges Association; and the Honorable Vincent
7 Versaci from the New York State Surrogate's
8 Association.

9 I urge that you support these colleagues
10 and all others that have appeared before you in
11 person or through submission by recommending the
12 salary parity requested by Judge Zayas. I also
13 join Judge Zayas in advocating for cost-of-living
14 adjustments to be implemented over the following
15 three years. This would ensure both maintenance
16 of the salary parity previously discussed and
17 avoid continued diminishment of the value of our
18 judicial paychecks.

19 I have traveled extensively, both within
20 my district and across the state, and I'm not
21 alone in this respect. I know many judges
22 statewide. We share a common commitment to the
23 rule of law in these most challenging times. We
24 continue to meet their challenges. We have worked
25 extremely hard through a global pandemic. We have

(Gilbert)

1 adapted and utilized technology with the help of
2 our technology crew statewide and support staff to
3 meet these exceptional challenges and to make our
4 justice system more inclusive and accessible to
5 all as we continue to move forward. Many of us
6 have been charged to adjudicate the state Red Flag
7 Law, and our job is truly 24/7 as we determine
8 Extreme Risk Protection Orders at all hours of the
9 day and night.

10 Many judges have presided over various
11 problem-solving and treatment courts such as my
12 friend, the Honorable Spencer Ludington, Surrogate
13 in Oswego County who has developed a model Opiate
14 Treatment Court that has received special
15 recognition statewide.

16 However, as Judge Zayas stresses at page 9
17 of his submission, "we have gone without a change
18 in pay for four and a half years. There is no
19 longer parity between New York judges' pay and
20 that of a federal judiciary, and the buying power
21 of state judicial salaries is now 20 percent less
22 than it was in 2019."

23 My wife and I have put three kids through
24 college and two remain. We are not alone. My
25 fellow judges and I are deeply impacted by

(Gilbert)

1 significantly higher prices and interest rates.

2 Before I close, I would again urge you to
3 thoroughly and favorably review Judge Zayas's
4 excellent written summary and analysis of the six
5 statutory factors that this Commission is charged
6 to consider. Together with the position papers
7 and testimony, including that that you're going to
8 hear today submitted on behalf of our member
9 judicial associations. As Judge Zayas emphasized,
10 quote, "restoring and maintaining salary parity is
11 the right thing to do and the state can afford to
12 do it." Thank you so much for all of the
13 courtesies that you have shown me here this
14 afternoon. I greatly appreciate this opportunity.

15 And this concludes my testimony, unless
16 anyone has any further questions of me.

17 CHAIRPERSON FAHEY: Thank you, Judge
18 Gilbert. Thank you for coming here today.

19 COMMISSIONER KOVNER: I have a question.

20 CHAIRPERSON FAHEY: I'm sorry.

21 Commissioner Kovner.

22 COMMISSIONER KOVNER: You and Judge Zayas
23 suggest that if these changes are made and the
24 cost-of-living adjustment is adopted by this
25 Commission and the legislature doesn't modify it,

(Gilbert)

1 that that would assure parity. That presumes,
2 does it not, that there would be no interim change
3 in federal judicial compensation sometime over the
4 next four years. Am I correct?

5 HON. GREGORY GILBERT: You are correct.

6 COMMISSIONER KOVNER: Thank you.

7 COMMISSIONER WEINSTEIN: I have one just
8 for clarification.

9 HON. GREGORY GILBERT: Yes.

10 COMMISSIONER WEINSTEIN: You referenced
11 Judge Zoll who represents as president of -- is it
12 the criminal court?

13 HON. GREGORY GILBERT: The local criminal
14 judges down in the city.

15 COMMISSIONER WEINSTEIN: Yeah. And the
16 current percentage as against the Supreme Court
17 judges is 93.68 percent, as you referenced.

18 But what I seem to recall in his
19 testimony, he said that should those numbers go up
20 in consideration of parity, then the disparity
21 between the lower courts and the Supreme Court in
22 terms of actual numbers will increase, and he
23 seemed to be advocating for a slightly higher
24 percentage. Unless I misheard it.

25 Are you aware of that?

(Gilbert)

1 HON. GREGORY GILBERT: I haven't reviewed
2 his testimony. He sent me an email and currently
3 they are \$14,700 below the Supreme Court salary,
4 which amounted to 93.68 percent. So I will defer
5 to his actual testimony on that, Judge Weinstein.

6 COMMISSIONER WEINSTEIN: All right. I
7 just wanted a clarification. Thank you.

8 HON. GREGORY GILBERT: Thank you. Thank
9 you, everyone.

10 CHAIRPERSON FAHEY: Thank you, Judge.

11 Okay. Our next speaker has been referred
12 to, Judge Mary Farley. Judge Farley is President
13 of the Association of Justices of the Supreme
14 Court of the State of New York.

15 Good afternoon, Judge Farley.

16 HON. MARY FARLEY: Good afternoon. And I
17 won't move the chair either, I promise.

18 CHAIRPERSON FAHEY: It's for the video.

19 HON. MARY FARLEY: I know. And as a
20 woman, we wouldn't mind being off the camera.

21 Chairman, Commissioners, thank you for
22 inviting me to provide testimony before this
23 august commission. My name is Mary Farley. I was
24 elected to Supreme Court in 2015 from the
25 11-county Fourth Judicial District. I am

(Farley)

1 President of the Association of Justices of the
2 Supreme Court of the State of New York, a
3 statewide association of elected Supreme Court
4 Justices formed under New York Judiciary Law
5 Section 217.

6 I commend to you my written testimony
7 which I've submitted, prepared on October 9, but
8 since reciting my testimony would be duplicative
9 of salient points already made by my esteemed
10 judicial colleagues, I will offer only the
11 following highlights:

12 Pay parity with federal judges is
13 appropriate. Previous 2011 and 2015 commissions
14 determined parity between federal judicial
15 salaries and New York State Supreme Court judicial
16 salaries was appropriate given the similar nature
17 of the duties and the functions performed, and we
18 agree.

19 The unintended results of wage stagnation
20 include fears of attrition of our most
21 experienced, talented and efficient judges. Our
22 fears are real, and the inability to attract
23 talent and diversity and the brain drain as
24 testified to by Associate Justice Paul Wooten.

25 Our request to return to pay parity is

(Farley)

1 supported by increased workload. Like New York
2 City, the metrics for outside New York City
3 equally support increased compensation. Civil
4 filings were up 12 percent; dispositions are up 5
5 percent; and we have nearly returned to 2018
6 levels for case management.

7 Notably, New York's Red Flag Law requires
8 Supreme Court justices be on call 24/7/365 for the
9 handling of Extreme Risk Protection Orders, or
10 ERPOs. Since 2019 combined filings exceed 14,000
11 with more than 8,000 of those having been filed
12 just this year. In the Fourth Judicial District,
13 30 percent of all temporary ERPOs are applied for
14 outside working hours seven days a week.

15 Moreover, judges' after-hours work duties
16 now include an additional 98 hours in traditional
17 election years and an additional 143 hours in
18 presidential primary years as a result of the 2019
19 early voting laws. There is no remuneration for
20 these additional after-hours work duties.
21 Contrast this with the additional pay to city,
22 village, and town judges covering off-hours
23 arraignment parts. Uniform Rule 126.3 pays those
24 folks \$250 a day for a daily rate and 125 for half
25 day rate. There's a proposal to increase those

(Farley)

1 amounts to \$400 a day and \$200 a half day. Again,
2 for city, village, and town judges.

3 Financial metric support are requested.
4 Our consumer price index had a 40-year high of 9.1
5 percent in June of last year. Currently remains
6 at 3.7 percent. State legislation now ties
7 minimum wage to the CPI; 30-year mortgages hover
8 at 8 percent, and data released this month reports
9 the annualized rate of supercore inflation, the
10 Federal Reserve's preferred inflation measure, to
11 be at 240 percent of the Reserve's 2 percent
12 inflation target.

13 Social Security COLAs last year were 5.9
14 percent, this year 8.7 percent, and next year to
15 be 3.2 percent, constituting the largest increases
16 since the 1980s.

17 Since 2019 when we last received a raise
18 of 1.39 percent, judges now pay nearly 25 percent
19 more for state-provided health benefits. In 2019
20 we paid 225 biweekly; we presently pay 280
21 biweekly for family health coverage.

22 Similar to our plight of stagnant pay, the
23 governor and our legislators received
24 well-deserved pay increases for legislative action
25 earlier this year, and the state's unionized labor

(Farley)

1 forces successfully negotiated 2023 multi-year
2 contracts exclusive of retroactivity. I cite to
3 you the five-year 13 percent CSEA contract, and
4 the four-year 11 percent UUP/SUNY contracts both
5 with retroactivity. These financial commitments
6 have multi-year budget implications.

7 Instead, however, I would like to focus my
8 testimony on the Division of Budgets presentation
9 earlier this month.

10 In forecasting the state's anticipated
11 income and expenses for fiscal year 2024 for all
12 three co-equal independent branches of government,
13 the Division of Budget after adjusting for
14 executive and legislative pay operates under the
15 assumption that judicial pay will remain stagnant
16 for yet another four years. While this present
17 budgets does not leave out the executive or
18 legislative branches, no simple placeholder was
19 provided for any prospective increase in judicial
20 compensation. And to that point, there's not even
21 a complicated obtuse retroactive component to plan
22 for. I say simple placeholder because the pay
23 schedule for Federal District Court judges is
24 easily accessible online.

25 It appears the Division of Budget chose

(Farley)

1 not to forecast a simple quantifiable fixed
2 expense for long-delayed, justified increase in
3 judge compensation which mathematically is
4 consistent with 2 to 3 percent annual increases
5 other state workers received.

6 Despite having four years' notice of
7 stagnant pay and the quadrennial formation of this
8 year's Salary Commission, it is concerning that
9 the Division of Budget failed to give any
10 financial consideration that a salary increase
11 recommendation would likely be made by this
12 Commission. We are grateful that at this month's
13 earlier hearing, Commissioner Kovner was quick to
14 point out that insincere metric results when
15 comparing salary increases of the state's everyday
16 work force to judges between the years of 2014 and
17 2024 because it fails to take into consideration
18 the 13-year absence of any raise in judicial pay.

19 Notably, everyday workforce was not
20 defined, and Commissioners, does it exclude the
21 more than 900 Executive Branch employees earning
22 more than the governor? A decision not to
23 forecast and budget every four years for a return
24 to pay parity with federal courts premised upon
25 prior Commission's recommendations or for that

(Farley)

1 matter any increase in judicial compensation does
2 not constitute evidence of an inability to pay,
3 but rather, evidences nothing more than a
4 willingness of a minority group of Commission
5 members to recommend a salary increase. The 2019
6 Commission report contains a suggestion which
7 would align the judicial compensation to state
8 contracts.

9 Extrapolated from the state's most recent
10 labor contract with CSEA, including retroactivity,
11 I have calculated 2024 judicial salary would be on
12 par with Federal District judge pay. If, instead,
13 state contracts was meant to allude to goods and
14 services on behalf of my judicial colleagues, it's
15 important to note that while technology has
16 allowed the New York State Thruway gantries to
17 replace some state workers, until ChatGPT and AI
18 are ready for prime time and until our
19 sophisticated New York Court users are accepting
20 of robot judges, competitive judicial compensation
21 is a critical need of this state to be budgeted
22 for, not a luxury want to be added only if funds
23 remain.

24 I would like to cite to Maron versus
25 Silver. "Judicial salaries need not be

(Farley)

1 exorbitant, but they must be sufficient to attract
2 well-qualified individuals to serve. Otherwise,
3 only those with means will be financially able to
4 assume a judicial post, negatively impacting
5 diversity of the judiciary and discriminating
6 against those who are well qualified and
7 interested in serving, but nonetheless unable to
8 aspire to a career in the judiciary because of the
9 financial hardship that results from stagnant
10 compensation over the years," end quote.

11 Earlier this year in "The American
12 Lawyer," Court of Appeals Associate Judge Shirley
13 Troutman relayed her own financial struggles to
14 support her family on a judicial salary when she
15 began her judicial career as a divorced mother of
16 young children.

17 CHAIRPERSON FAHEY: You've got about two
18 minutes left.

19 HON. MARY FARLEY: I am almost done.

20 CHAIRPERSON FAHEY: You've got two minutes
21 left.

22 HON. MARY FARLEY: And she highlighted its
23 dissuasive effect on minorities.

24 In closing, I'll note that our State's
25 Constitution of Article 6 Section 25 sets forth

(Farley)

1 that it was 9:29.

2 Any questions?

3 COMMISSIONER MEGNA: One comment, not that
4 I would ever defend the Division of the Budget.
5 They don't book increases for anything unless
6 there's a union contract in place. They would not
7 book this until this committee opines.

8 CHAIRPERSON FAHEY: Good that we know
9 that.

10 HON. MARY FARLEY: So then that shows --
11 or then their testimony that there's no extra
12 money in the budget isn't evidence of an inability
13 to pay?

14 COMMISSIONER MEGNA: They always believe
15 there is not enough money.

16 HON. MARY FARLEY: I'm so sorry. I had
17 to.

18 CHAIRPERSON FAHEY: Thank you.

19 HON. MARY FARLEY: Thank you.

20 CHAIRPERSON FAHEY: Our next speaker is
21 Joseph O'Connor speaking on behalf of New York
22 State Academy of Trial Lawyers.

23 MR. JOSEPH O'CONNOR: Thank you, Your
24 Honor. Good afternoon, Member of the Commission,
25 Judicial and Executive Compensation. Thank you

(O'Connor)

1 very much for allowing me to testify in support of
2 increasing judicial compensation.

3 My name is Joe O'Connor. I have a law
4 firm O'Connor & Partners. We have offices in
5 Orange, Dutchess, and Ulster County. I'm here
6 today on behalf of the New York State Academy of
7 Trial Lawyers where I am a member of the board of
8 directors. The Academy of Trial Lawyers is the
9 largest state lawyer association in America. It's
10 composed of more than 5,400 plaintiffs' and
11 defense attorneys, members of the judiciary,
12 non-judicial government employees, law professors,
13 law clerks, law secretaries, paralegals, and law
14 students, all dedicated to serving, protecting,
15 and enhancing the civil justice system in New York
16 State. I've been myself practicing law for over
17 25 years and have practiced in at least two dozen
18 county state courts and federal courts before
19 hundreds of judges throughout the state during my
20 career.

21 To me, judges are the face of justice to
22 thousands of people and all of our clients who
23 enter the courts each year. They spend most of
24 the day presiding over the courtrooms and only
25 after court is out and their session is out are

(O'Connor)

1 they able to do the other work that's so important
2 to the functioning of the courtrooms, requiring
3 long hours and incredible dedication to public
4 service.

5 Specifically, two of our offices where I
6 am mostly which would be Dutchess County and
7 Ulster County, our law offices are right outside
8 the courtroom. We, and myself personally, I have
9 the opportunity to see those judges on Saturday,
10 on Sunday leaving the courtroom at sometimes six
11 or seven o'clock at night. I don't think they get
12 enough recognition for how much they have to do
13 now and certainly how often they had to do as far
14 as learning technology and really upping their
15 game during the Covid problems they faced.

16 It's the position of the Academy that it's
17 imperative to provide competitive pay in order to
18 attract and retain competent and vibrant judges.
19 I know there's been testimony, New York has
20 traditionally linked its salary to the judges --
21 the salary of federal judges, but that link has
22 unfortunately not been consistently maintained. I
23 know persons who have spoken before me have gone
24 through the history of the changes in 1999, 2011,
25 2015, and 2019. What I think has clearly changed

(O'Connor)

1 now, not only has there been a gap of at least
2 four years where the salaries haven't caught up
3 with the federal judges, there is a significant
4 increase in inflation and in the cost of living.

5 I live in Ulster County with which for
6 better or for worse the housing costs have
7 skyrocketed post-Covid, and the costs then to the
8 judges and their families has skyrocketed.

9 That high inflation, in addition to
10 federal judges earning 10 percent more than the
11 State's Supreme Court, has caused hardships on the
12 judges.

13 I am, in addition to being an attorney, a
14 trial attorney, I'm also a judicial delegate, and
15 I guess that maybe something that -- a Supreme
16 Court judicial delegate for at least 20 years.
17 When I first started to practice, there were
18 persons lined up and certainly persons who I
19 thought were the best and the brightest to become
20 judges. Now our various county chairpeople and
21 the persons who, they ask us to search out
22 candidates. And in the last five years, I know
23 that I've personally gone to, I think, who were
24 the best possible candidates for new openings for
25 new judgeships, and time and time again they had

(O'Connor)

1 the exact same answer, and I don't think it's a
2 crude answer, I can't take the pay cut. These
3 were folks, many of them didn't come from wealthy
4 families, didn't have wealthy partners or spouses,
5 and have kids in college and they just finished
6 paying law school debts and law school loans,
7 started paying college for their kids. And when
8 it was suggested that, Hey, you would be a
9 tremendous Supreme Court judge, they all gave us
10 the same answer. I can't take the pay cut at this
11 time in my life.

12 If we don't increase the salary for
13 judges, we'll no longer be able to get the best of
14 us, the best of the litigators, and that's not
15 something we can afford for our clients. The
16 clients deserve the best jurist out there. I
17 think for the first time in these last five years,
18 I've really seen that they are not always
19 available or wanting to seek a judgeship.

20 Because the Academy of Trial Lawyers is
21 dedicated to protecting, preserving, and enhancing
22 the civil justice system in New York State and
23 because establishing salary parity between State
24 Supreme Courts and Federal District Court judges
25 will help to attract and retain the caliber of

(O'Connor)

1 judges that New York requires, on behalf of the
2 Academy, we are recommending increasing the
3 current salary for Supreme Court judges from
4 \$210,900 to the Federal District Court salary of
5 \$232,600.

6 I want to thank everybody for allowing me
7 to testify before you today.

8 CHAIRPERSON FAHEY: Thank you, Mr.
9 O'Connor. Any questions? No. Thank you.

10 Our next speaker is Judge Julia
11 Brouillette, President of the New York State
12 Family Court Judges Association by Zoom. The
13 judge is going to testify.

14 I'm sorry, Judge. We can't hear you.

15 Why don't we take a two-minute recess and
16 give us a chance and we'll just start over.

17 (There was a pause in the proceeding.)

18 HON. JULIA BROUILLETTE: I want to say
19 thank you to the Commission. Thank you for
20 convening, thank you for considering this very
21 important issue, and thank you very much for
22 allowing me to appear virtually. It's going to
23 allow me to handle a lot of my cases today and not
24 have to adjourn them.

25 CHAIRPERSON FAHEY: Judge, it's Judge

(Brouillette)

1 Fahey. I'm standing here holding the phone. So
2 move it along, Judge. We greatly appreciate your
3 appearing.

4 HON. JULIA BROUILLETTE: I am the
5 President of the New York State Family Court
6 Judges Association which is made up of judges
7 across the state. From the city they are
8 appointed; outside the city we are all elected and
9 we all collectively support the proposal submitted
10 by Chief Administrative Judge Zayas. We're
11 strongly in favor of the automatic COLAs pay
12 parity with Federal District Court judges. We
13 would like to see that pay parity extended
14 statewide to include all Family Court judges.
15 That would help send a strong message that our
16 courts are important, that Family Courts are
17 important, and that we are equal to the other
18 courts.

19 As many of you know, the role of the
20 Family Court judge is a little different. We tend
21 to be a little more hands-on. We have a very high
22 percentage of cases with indigent and
23 unrepresented or underrepresented litigants.
24 Whereas other branches of the judiciary can rely
25 on the attorneys to educate them about their case

(Brouillette)

1 or the law or nuances therein, we frequently
2 cannot. We must know the law, retain all the
3 different areas of the law in our heads and be
4 able to apply it in a moment's notice. Many times
5 we're peppered with emergencies throughout the
6 day, again requiring us to know the law and be
7 able to apply it at a moment's notice.

8 Although Family Court is a court of
9 limited jurisdiction, we work with the Domestic
10 Relations Law, the Uniform Custody, Child Custody
11 Jurisdiction Enforcement Act, the Social Services
12 Law, the Penal Code, Family Court Act, which
13 encompasses portions of the Criminal and Civil
14 Procedure Law, and the Decisional Criminal
15 Procedure Law, along with the Uniform Rules for
16 Family Court. The statutes, regulations and
17 appellate law we work with on a daily basis are
18 dense, complex, multifaceted and frequently are
19 being applied in a highly charged atmosphere or
20 being handled as an emergency. We are often
21 tasked with taking people's children, taking away
22 their money, or taking away their freedom or a
23 combination of those things.

24 Family law is very emotional. I think
25 there was an American Bar Association article that

(Brouillette)

1 said family law is an euphemism for people going
2 through the hardest emotional battles of their
3 lives, and unfortunately for the lawyers who fight
4 those battles, sometimes it's their last.

5 As an example, unfortunately, of that with
6 a recent Maryland judge who was killed after
7 rendering a decision in a divorce case. The key
8 difference between family law and criminal law is
9 that there are no handcuffs involved in family
10 law. There is a huge crossover, though.

11 Our -- the Family Court judges are here to
12 try and help our families, help our communities.
13 We try very hard to do that. Unfortunately,
14 oftentimes our clients do not perceive our
15 involvement as helpful. Because of the
16 emotionality of our court cases, many attorneys
17 will simply not practice in Family Court. So I
18 thank everybody who may have had a part in
19 increasing the panel pay rates that has begun to
20 attract more members of the Bar to this field.
21 More difficult jobs deserve higher recompense. If
22 a higher pay isn't offered, we will not attract
23 and retain qualified candidates.

24 As many of you know, we do not have the
25 diversity on the bench that we would like to have.

(Brouillette)

1 Although Family Court has the highest percentage
2 of women on the bench of all the other courts, we
3 lack diversity in other areas. Recently I had had
4 a couple of opportunities to hire court attorneys,
5 and I simply have not been able to hire somebody
6 who is in a minority category. There's just,
7 between the combination of lack of pay, the
8 complexity of the cases, the high case load, the
9 stress associated with Family Court, I simply
10 cannot get that type of attorney to accept the
11 position.

12 So the combination of those issues is
13 devastating to our bench. We appreciate that the
14 only issue before you guys today is the pay rate
15 and we greatly appreciate you addressing this
16 issue. I know that a lot of the other
17 associations have already come before you and they
18 have endeavored to impress upon you how hard they
19 work, and I'm not trying to malign any of them. I
20 know all of my colleagues do work very hard.
21 However, what I would like to say to you is, I see
22 whose cars are here when I come in in the morning.
23 I see whose cars are here when I leave in the
24 evening. My personal experience has been that the
25 Family Court judges are the ones whose cars are

(Brouillette)

1 here first, and they're the ones whose cars are
2 here last.

3 In addition to our overwhelming case
4 loads, our highly charged cases, we are also, many
5 of us, are cross-endorsed. We are periodically
6 tapped to assist with other courts which we do so
7 willingly. I myself have handled many ERPOs, the
8 Red Flag cases, the Red Flag Law cases, and those
9 happen at all hours of the day and night. I also
10 cover on election days, and then we're
11 periodically tapped to handle cases in other ways.

12 CHAIRPERSON FAHEY: Judge, you have about
13 two more minutes, okay?

14 THE WITNESS: Okay. We have been called
15 the workhorses by OCA. We have received heaps of
16 praise, especially during Covid, for our tireless
17 effort, but praise is no substitute for
18 recompense. So a declaration from you that we
19 deserve to receive the same salary as Federal
20 District Court judges would go a long way to
21 enhancing morale. It would also make a statement
22 to the public and other courts that would help
23 with our credibility. It would enhance our
24 ability to attract and retain a diversified
25 qualified bench.

(Brouillette)

1 I thank you very much for your time and I
2 thank you very much for your patience and very
3 much for allowing me to appear virtually.

4 CHAIRPERSON FAHEY: Thank you, Judge.
5 Thank you for your statement.

6 COMMISSIONER WEINSTEIN: One quick
7 question.

8 CHAIRPERSON FAHEY: Judge Weinstein.

9 COMMISSIONER WEINSTEIN: The Family Court
10 judges outside the City of New York are at a
11 percentage of the Supreme Court pay?

12 CHAIRPERSON FAHEY: I think they're paid
13 all the same as the County Court judges.

14 COMMISSIONER WEINSTEIN: Or is it a
15 hundred percent the same?

16 HON. JULIA BROUILLETTE: Outside the city
17 I think it's like 95 percent. It's not a huge
18 leap but, you know, in addition to being
19 underresourced, we're paid a little bit less. And
20 that sends a little bit of a message, doesn't it?
21 It decreases our morale. So we don't get the same
22 security that Supreme Courts do. Until very
23 recently, pre-COVID, many of my microphones in my
24 courtroom were held together with duct tape or
25 masking tape. So we don't get the same resources,

(Brouillette)

1 and that sends a message to our community, it
2 sends a message to judges.

3 COMMISSIONER WEINSTEIN: They let you have
4 duct tape?

5 CHAIRPERSON FAHEY: Thank you, Judge.

6 HON. JULIA BROUILLETTE: Thank you.

7 CHAIRPERSON FAHEY: Everyone else?

8 Okay.

9 Our next speaker is Judge Frank Milano,
10 President of New York State Court of Claims Judges
11 Association Paragraph A.

12 HON. FRANK MILANO: Good afternoon. If no
13 adjustment to judicial compensation is fashioned
14 this year by this Commission, New York State
15 judges will have had adjustments to their
16 compensation implemented by only two decisions in
17 a period of 29 years, and maybe longer than that.
18 Two decisions in 29 years. Adjustments that were
19 decided by previous Commissions in 2011 and 2015,
20 overlying judicial compensation during the period
21 of time from January 1, 1999 to April 1, 2028, and
22 that presumes your successor Commission decides to
23 adjust judicial compensation in 2027, four years
24 hence.

25 Thank you to the Commission for inviting

(Milano)

1 me to provide testimony on this most important
2 issue. My name is Frank Milano, President of the
3 New York State Court of Claims A Judges
4 Association. Court of claims A Judges are the
5 constitutionally established body of judges who,
6 prusuant to Section 2 Subdivision 2 Subdivision A
7 of the Court of Claims Act, are appointed by the
8 Governor and confirmed by the Senate to hear and
9 decide non-jury monetary claims brought against
10 the self-insured State of New York. Other than
11 the small number of claims which involve the State
12 enjoying contractual indemnification, every dollar
13 of damages awarded in the Court of Claims is paid
14 for by the taxpayers of this state. I believe Mr.
15 Megna would be available to confirm that.

16 Our A Judges each with statewide
17 jurisdiction preside in eight districts; Albany
18 Binghamton, Buffalo, New York, Rochester,
19 Syracuse, Utica, and White Plains, and these eight
20 districts cover all 62 counties of our state.

21 In addition to deciding monetary claims
22 against the State, many of our A Judges also
23 preside over civil and criminal cases as
24 designated Acting Justices of the Supreme Court,
25 handling civil and criminal matters from Montauk

(Milano)

1 to Buffalo as the need for additional judicial
2 resources in Supreme Court arises, as the need for
3 additional judicial resources in Supreme Court
4 arises.

5 On a personal note, I well appreciate the
6 appointing authorities you each represent. My
7 first job out of law school was in the New York
8 State Assembly. My three years thereafter were
9 followed by three years in the New York State
10 Senate. After 11 years in private practice, I
11 returned to public service as general counsel at
12 an Executive Department state agency. In 2006 I
13 was appointed and confirmed to the Court of
14 Claims, additionally serving as an Acting Justice
15 of the Supreme Court for almost the entire time
16 since, and I have been reappointed and reconfirmed
17 to the court twice thereafter.

18 I, perhaps more than others, understand
19 the inherent tensions among the three branches of
20 government, having served in each of them. But in
21 the end, those tensions should not disserve doing
22 that which is right and which, in the bargain,
23 demonstrates recognition of a co-equal branch of
24 government. And to that point, I would like to
25 reiterate the essence of my initial remarks.

(Milano)

1 acknowledgement by this Commission for the
2 important societal function our Judiciary fulfills
3 is merited. On behalf of our association, thank
4 you very much.

5 CHAIRPERSON FAHEY: Thank you, Judge.

6 COMMISSIONER WEINSTEIN: Quick questions.
7 What years were you with the Senate?

8 HON. FRANK MILANO: I was with the Senate
9 for the sessions of 1983, '84, and '85. I was
10 working with Senator Roy Goodman.

11 COMMISSIONER WEINSTEIN: I remember him.

12 CHAIRPERSON FAHEY: You guys have the same
13 resume.

14 HON. FRANK MILANO: Chairman of the State
15 Commission on Investigations, Governmental
16 Operations, and Taxation.

17 COMMISSIONER WEINSTEIN: He used to debate
18 on the floor and I need a dictionary to
19 understand.

20 HON. FRANK MILANO: His first question of
21 me during an interview, "Mr. Milano, kindly
22 elucidate for me your qualifications for this
23 position."

24 So anyway, I brought copies, several
25 copies for the Commission of the remarks I just

(Milano)

1 provided.

2 CHAIRPERSON FAHEY: Thank you. Give them
3 to Mindy, who is the Administrator.

4 HON. FRANK MILANO: Thank you, and thank
5 you for your time and consideration.

6 CHAIRPERSON FAHEY: Thank you, Judge.
7 Our next speaker is Judge Gerald Lebovits.

8 HON. GERALD LEBOVITS: Thank you so much.

9 CHAIRPERSON FAHEY: The judge is the
10 President of the Acting Supreme Court Judges
11 Association.

12 Whenever you're ready, Judge.

13 HON. GERALD LEBOVITS: Thank you,
14 Commissioner. I'm Gerald Lebovits and I'm honored
15 to be here on the behalf of the Association of
16 Acting Supreme Court Justices. There are about
17 300 Acting Supreme Court Justices in New York
18 State. We constitute about 20 percent of the
19 State's state-paid judiciary. And here we are
20 again. We are being paid as judges significantly
21 less than first-year associates in New York City
22 who are now getting about \$215,000, is the going
23 rate, plus about 25 to \$30,000 as a bonus. And
24 here we are again because the last Commission did
25 not give us any cost-of-living increase, we're now

(Lebovits)

1 down \$47,400 compared to where I think we should
2 be, and that doesn't include any interest or --
3 and it's badly affected our pensions.

4 I have been in State Court service for
5 almost 40 years. I was a court attorney and I was
6 honored to get a job as a housing court judge, but
7 that meant a drop in pay because the law clerks
8 made more money than the housing court judges.
9 And while I was a housing court judge and a civil
10 court judge, I was part of the judges who for 13
11 years were the lowest paid judges in the United
12 States by cost of living. The housing court
13 judges were paid far lower than the civil court
14 and the criminal court judges in New York City.
15 But the civil court judges in New York City and
16 the criminal court judges in New York City were
17 the second, tied for second lowest paid judges in
18 the nation.

19 And in addition to the 13 years, we now
20 have had four years of no increase whatever. I
21 would like to rely very much on the submissions by
22 the other judicial associations and by OCA as
23 well, but I would like to add a couple of things
24 that were asked about in the earlier proceeding
25 and hearing at the city Bar in New York City by

(Lebovits)

1 this Commission, and one of the questions was, how
2 did it affect the judges and how did it affect the
3 judiciary, and I will tell you how it affected the
4 judges and the judiciary.

5 There were litigation challenges that went
6 up and down in all the courts because of all of
7 this. The judges were so frustrated that we were
8 used as pawns in fights between the executive and
9 the legislative branches, having nothing to do
10 with the line judges.

11 As a housing court judge and being the
12 lowest paid in the United States, we saw all the
13 programs of OCA and the chief judges, Chief Judge
14 Kaye, Chief Judge Lippman. The programs just
15 evaporated because we were talking about raises
16 all the time, so it affected the judiciary in so
17 many ways as well.

18 When I first became a housing court judge,
19 there were 180 plus first interviews for one
20 position. I was blessed to have received that one
21 position, but ten years later, there would be only
22 four or five applicants for every seat and there
23 wouldn't be just one seat, there would be four,
24 five, or six seats. And that's how the judiciary
25 suffered.

(Lebovits)

1 Now in the end, housing court always got
2 great judges, but the application pool was very,
3 very low. And even today as a result of what
4 happened for all those years, we have a bench in
5 housing court that more than half the housing
6 court judges are still in their first five-year
7 term. So many move on to other things. And it
8 was just an awful situation that occurred
9 throughout the state.

10 The Supreme Court judges didn't fare much
11 better. Across the state, according to the cost
12 of living, the Supreme Court judges ranked 47th in
13 the nation for all those years. But in New York
14 City with the cost of living, the Supreme Court
15 judges were 50th. We were the lowest paid judges
16 for a very, very long time. I know judges that
17 had to move to different apartments because they
18 couldn't afford their apartments. I know judges
19 who got divorced because they couldn't pay for
20 their family. I know judges who left the
21 judiciary because of the terrible pay, and they
22 were treated very, very miserably.

23 I would also like to talk about something
24 that everybody else has been talking about, but
25 I'm going to frame it a little bit differently. I

(Lebovits)

1 believe that everybody is asking for parity with
2 the federal judges. I'm not. I'm talking about
3 the federal benchmark. Because if we would get
4 parity, our salaries would be much higher. You
5 know, they get the raises through cost of living
6 on January 1st, but we get it only in April. And
7 the salary for judges was affected not just in New
8 York State but all across the country, including
9 the federal judges. And for many years, the
10 federal judges did not get a raise.

11 Now, when the state judges appeared in
12 state court to ask for a raise, our state judges
13 ruled against the judges, but not in Federal
14 Court. In Federal Court they ruled for the
15 federal judges and they got retroactive pay, which
16 we never got, and they got interest and they got
17 attorney fees and it went back into their
18 pensions. Some judges got checks, federal judges,
19 for \$1 million when it finally was resolved that
20 the federal judges would get a raise, and we were
21 left out.

22 So we don't have a parity, actually, we
23 have a benchmark, and I'm asking that the
24 benchmark be maintained as it was two Commissions
25 ago, with their cost of living increases, whatever

(Lebovits)

1 they get, we would maintain with the federal
2 benchmark.

3 But it also means that, for example, for
4 the -- if there were real parity, the chief judge
5 would get more than \$50,000 currently than our
6 chief judge gets because there's no parity between
7 the chief judge in New York State and the chief
8 justice of the United States or any of the
9 appellate judges. So we don't have parity. We're
10 not asking for parity. They have lifetime tenure,
11 they get paid until they die; we do not.

12 So, but I also want to say that all we are
13 asking for is a modified cost-of-living increase
14 that comes with the federal benchmark.

15 CHAIRPERSON FAHEY: You've got about one
16 minute, Judge.

17 HON. GERALD LEBOVITS: Thank you.

18 It's modified because it's based on the
19 national rate of inflation, not based on the New
20 York State rate of inflation, and because federal
21 employee COLA increases go into effect on January
22 1st. But in addition, we don't ask for pay
23 increase, only the federal benchmark. We don't
24 ask for location pay. We don't ask for different
25 cost-of-living statewide, whereas there should be.

2 You get -- we judges get the same salary
3 on day one as they do after 23 years of service,
4 like I have. There's no merit pay, no overtime,
5 no change in the current rules which dictate
6 residency requirements for most judges and forbid
7 judges from earning extra salary except maybe by
8 teaching or writing books. So it's a modified
9 federal benchmark.

13 CHAIRPERSON FAHEY: Thank you, Judge.

14 Mr. Kovner has a question.

20 HON. GERALD LEBOVITS: Yes.

25 HON. GERALD LEBOVITS: Absolutely, and I

(Lebovits)

1 recommended that when I was a housing court judge
2 in the first Commission and I recommended it for
3 the second Commission, and I recommended it for
4 the third Commission. Fortunately with the second
5 Commission, they bumped up the difference between
6 civil court and housing, but there should be
7 parity between civil, criminal, and housing. They
8 do important work. They deal with evictions, they
9 deal with having safe and habitable housing, they
10 have remarkable amounts of work, they have
11 unlimited jurisdiction monetarily, like a Supreme
12 Court Justice has. Their decisions are
13 immediately appealable so they're not referees.
14 Immediately appealable. They can impose contempt.
15 They are real judges in every sense, and they must
16 receive, they should receive, it's only the right
17 thing that they receive parity with the civil
18 court judges.

19 Whatever you do, please help out the
20 housing court judges. It will make an impact
21 positively not just for the judges, but for the
22 administration of justice.

23 COMMISSIONER KOVNER: Thank you, Judge.

24 COMMISSIONER FONTAINE: You indicated that
25 the housing court judges were making less than the

(Lebovits)

1 law clerks. I don't remember what, though.

2 HON. GERALD LEBOVITS: Oh, yes. When I
3 started, I got less than -- I made less as a
4 housing court judge as I did as a law clerk to a
5 Supreme Court judge. But while I was a housing
6 court judge, most of the housing court law clerks
7 were paid more than the housing court judges. Did
8 you know that? And it went on for years and
9 years. Finally, OCA said the law clerks can't get
10 raises in salary, the court officers can't get
11 raises in salary. The court clerks, court
12 officers, interpreters, they were all forced into
13 stagnation because the judges didn't get an
14 increase in salary.

15 So eventually they got their money and
16 they even got interest, I believe. But the
17 problem was that they should have gotten the
18 raises accordingly, but they couldn't get it
19 because the judges were paid less than the law
20 clerks. My law clerk in housing clerk was paid
21 for years and years more than I was, and people
22 would laugh at us. Don't let them laugh at us.
23 Thank you.

24 COMMISSIONER WEINSTEIN: You had the
25 history, so remind me. I seem to recall prior to

(Lebovits)

1 these Commissions there was a time when, of
2 course, the Legislature was involved in raising
3 pay. And during one of those periods of time,
4 they did not raise the pay of the housing court
5 judges because there was some kind of political
6 issue that was a problem for them.

7 Do you have any recollection of that?

8 HON. GERALD LEBOVITS: Your Honor, I have
9 never heard that, Judge.

10 COMMISSIONER WEINSTEIN: Maybe I just made
11 it up.

12 HON. GERALD LEBOVITS: But the housing
13 court judges have such important jobs and yet,
14 they have five-year terms only. There aren't
15 enough of them. They work incredibly hard. They
16 are appointed on the basis of merit.

17 COMMISSIONER WEINSTEIN: There's no
18 question of that. I just have some recollection
19 going way back that they were skipped over because
20 some, notwithstanding the work that they did,
21 there were some who had some issues -- I'm not
22 justifying those issues -- some who had some
23 political issues with the housing court.

24 Let's leave that alone if you have not
25 heard of it.

(Lebovits)

1 HON. GERALD LEBOVITS: I have not heard of
2 it but I have heard of the real estate industry
3 discriminating against housing court judges. I
4 even, even groups like Legal Aid and Legal
5 Services are very happy that the housing court
6 judges have only five-year terms because they're
7 more susceptible in theory to influence, which
8 does not happen. But they try, anyway.

9 COMMISSIONER WEINSTEIN: All right, thank
10 you.

11 HON. GERALD LEBOVITS: So it would be
12 undeserved, Judge. Whatever happened would be
13 undeserved.

14 CHAIRPERSON FAHEY: Thank you, Judge.

15 Our next speaker is Judge Lourdes Ventura,
16 the President of Latino Judges Association.

17 HON. LOURDES VENTURA: Thank you. Good
18 afternoon, Chairman Fahey and Commissioners. I am
19 Lourdes Ventura, an Associate Justice at the
20 Appellate Division Second Department, and I am
21 also President of the Latino Judges Association
22 here in our great State of New York.

23 Thank you for inviting the Latino Judges
24 Association to provide testimony before you here
25 today.

(Ventura)

1 Like the Office of Court Administration
2 and fellow judicial associations whose
3 representatives have already testified before you,
4 the Latino Judges Association supports the
5 restoration of pay parity with the federal
6 judiciary including annual cost-of-living
7 increases for all members of the New York State
8 judiciary to take effect in April of 2024.

9 The Latino Judges Association was founded
10 in 1985 with one of our primary goals, to increase
11 and promote diversity within the judiciary. And
12 to date, we are now over 100 members strong,
13 serving on every level and in nearly every type of
14 court here in the State of New York.

15 Collectively, we maintain as our highest
16 priority increased diversity and true equity in
17 all of our courts in our great state. As a
18 result, please bear with me as I explain that at
19 the core of our mission, we consider the
20 compensation issue not to be just one of money,
21 but also the impact that the lack of proper
22 compensation will have on diversity in our
23 judiciary.

24 In recent years, the New York State
25 judiciary has made gains with regard to Latino

(Ventura)

1 representation. In late 2021, the Appellate
2 Division First Department made history with an
3 all-Latino bench presiding over an oral argument
4 for the first time in its court's history. The
5 Appellate Division Second Department followed suit
6 just a few months ago and I was proud to be part
7 of that historic bench.

8 Despite these gains, a significant
9 representation deficit still exists in our
10 judiciary when compared to the growing Latino
11 population in our state. According to estimates
12 of the U.S. Census Bureau in 2022, Hispanics and
13 Latinos comprise nearly 20 percent of the
14 population of our state or almost 4 million
15 people, in the state of nearly 20 million. But
16 according to data compiled by the Unified Court
17 System, Hispanics and Latinos comprise just 10
18 percent of the statewide judiciary last year, not
19 including town, villages -- town and village
20 justices which Latinos only represent half a
21 percent. That's .051, as there are more town and
22 village justices than state-paid judges.

23 Within the First Department, which
24 includes Manhattan the Bronx, Hispanics and
25 Latinos comprise 20 percent of the judiciary in

(Ventura)

1 2022, yet they made up 40 percent of the combined
2 population of those two counties, another deficit
3 of roughly 50 percent.

4 The Fourth Department includes counties in
5 western New York among other areas. While
6 Hispanics and Latinos comprise only 6.3 of the
7 population of those counties in 2022, that
8 percentage amounts to nearly a quarter million
9 people. Yet, only 2 percent of the judiciary in
10 the Fourth Department was Hispanic or Latino last
11 year.

12 In the Eighth Judicial District which is
13 part of the Fourth Department, only one Latino
14 judge sat on the bench in 2022. In an area that
15 included over 85,000 Latinos and Hispanics in the
16 general population, not a single elected Supreme
17 Court justice within the Fourth Department is
18 Hispanic or Latino, making it impossible for the
19 governor to potentially appoint an Hispanic or
20 Latino to that department's Appellate Division.

21 A recent report prepared by the Latino
22 Judges Association titled Overview of Latinos,
23 Hispanics in the New York State Court System
24 contains more demographic data regarding Latino
25 representation in our state's judiciary. Despite

(Ventura)

1 the steady increase in the Latino population
2 statewide, our representation in the judiciary
3 fails to keep pace with the ever-growing
4 population and since 1997, has maintained a
5 double-digit deficit. The judiciary should be
6 reflective of the population of our state and it
7 is not. Our report can be found on our website,
8 latinojudgesassociation.org, and will be provided
9 following this testimony.

10 The judiciary is one of the professions
11 where diversity and representation matters the
12 most. Within the confines of law, we have the
13 power to determine critically important matters in
14 a person's life such as removal of children,
15 eviction from homes, loss of liberty, access to
16 education and employment, immigration status,
17 criminal sentencing. In short, most of the things
18 that are central to a person's life, liberty, and
19 usually impacting communities of color.

20 A judiciary that is reflective of its
21 population is best able to understand the life
22 experiences of the people it serves and the lives
23 upon which it rules upon. A judiciary that does
24 not reflect the population it serves fundamentally
25 undermines trust in the justice system. A justice

(Ventura)

1 system loses fundamental trust when its judiciary
2 fails to merit the diversity of the population it
3 serves. The absence of representation within the
4 judiciary corresponding to the varied demographics
5 of the community erodes confidence in the fairness
6 and impartiality of the legal process. A
7 judiciary that does not reflect the diversity of
8 its constituents, risks perpetuating system biases
9 and diminishing the public's faith in the
10 equitable application of the law. This
11 representation deficit in our judiciary is
12 directly linked to the pay issues that this
13 Commission is focused on here today. How are we
14 to retain our judges on the bench and attract new
15 judges to the bench, and how are we to
16 specifically retain existing Hispanic and Latino
17 judges to the bench or attract new ones?

18 Attrition, retention, and recruitment are
19 vital issues to the Latino Judges Association,
20 particularly considering the existing deficit when
21 it comes to representation in our courts. If pay
22 parity with our federal counterparts is not
23 restored, the Hispanic and Latino representation
24 deficit might only worsen. It has been nearly
25 five years without a pay or COLA increase. This

(Ventura)

1 would extend to eight years should this Commission
2 not recommend the pay increase. This would
3 inevitably have a true impact on the makeup of our
4 judiciary and whether it is truly reflective of
5 New York State population.

6 That everyday person hears the word judge
7 and immediately forms certain opinions about who
8 we are, how much money we make, how many
9 properties we may own, how many luxury vacations
10 did we take or other unfounded stereotypes. But
11 most of the Latino Judges Association membership
12 consists of immigrants and first generation
13 individuals. Due to the status, many of us start
14 off our careers with more debt. We not only
15 support ourselves, but we assist our families
16 within and outside of the United States. We
17 support and maintain households. We support and
18 help care for our children, our aging parents, and
19 extended family members as well. Judges are
20 similar to all hard-working people in our great
21 state.

22 Over a decade ago, the Commission
23 recognized in only the second sentence of its 2011
24 report. It is of the utmost important that we
25 attract top talent to the bench by providing

(Ventura)

1 members of the state judiciary pay parity with
2 federal counterparts, but doing so will also
3 support specific goal of recruiting Hispanic and
4 Latino candidates. In New York, again, Latinos
5 are disproportionately represented in the ranks of
6 those living in poverty and on average they earn
7 less than the median income. In order to help
8 convince the brightest young Hispanic and Latino
9 minds in our law schools and among the ranks of
10 young lawyers to pursue a career in the state's
11 judiciary and put themselves on the right career
12 track, we must ensure pay parity with our federal
13 counterparts. Like everyone else, judges pay
14 mortgages, bills, school tuition for their
15 children, many have their own student loans. They
16 also expend money on transportation, mileage, fuel
17 to get to and from work. One of our members
18 relayed having to travel approximately 108 miles
19 round trip each day to get to and from work, yet
20 not fully reimbursed for those expenses. That's
21 over --

22 CHAIRPERSON FAHEY: Judge, you've got
23 about a minute.

24 THE WITNESS: That's over 2,000 miles per
25 month with added service costs on the vehicle due

(Ventura)

1 to wear and tear. That's 60 to \$70 every two and
2 a half days to fill up the gas tank and close to
3 \$500 per month in tolls. And once congestion
4 pricing takes effect in May of 2024, judges will
5 be charged up to \$20 or so if their courts are
6 located below 60th Street in Manhattan.

7 Additionally, judges must deal with the
8 rising costs of our medical health plans and these
9 costs add up. The recent increase by the Social
10 Security Administration of an additional 3.2
11 percent in benefits demonstrates that the rise in
12 cost of living is for everyone and the judiciary
13 is not exempt frommer similar cost of living
14 adjustments. The enduring stagnation of judicial
15 salaries over an extended period is inherently
16 inequitable on multiple fronts, particularly when
17 the compensation and vastness achieved by our
18 state employees through mechanisms such as
19 collective bargaining and other salary
20 negotiations exit.

21 And I'm almost done.

22 At the end of the year, I will be
23 completing my fifth year of service on the bench.
24 Prior to my being on the bench, I served for 20
25 years in the private sector and government sector,

(Ventura)

1 including work in the New York State Legislature.
2 From my experience as a judge and counsel in the
3 Legislature, I personally observed how hard our
4 judges and our state employees work to serve the
5 people of this state. In fact, I was serving in
6 the Legislature in 2010 when this Commission was
7 created. Shortly thereafter, this Commission
8 voted to favor for pay parity with the federal
9 judiciary, and I can only hope that that happens
10 again at this time. It is essential to equitably
11 compensate our judges aligning with practices
12 observed in other states nationwide to ensure the
13 retention and recruitment of highly qualified and
14 independent jurists in our state, and again, the
15 Latino Judges Association supports the restoration
16 of pay parity with our federal judiciary
17 counterparts, including annual cost of living
18 expenses for all members of the bench to take
19 effect in April of 2024. And I thank you for your
20 time and I will be providing a written copy of my
21 testimony as well following this testimony.

22 CHAIRPERSON FAHEY: Thank you, Judge.

23 HON. LOURDES VENTURA: Thank you.

24 CHAIRPERSON FAHEY: Any questions?

25 No. You made a very interesting point

(Ventura)

1 that I think the impact of compensation and its
2 effect on adversity. Judge Wooten from the First
3 Department also talked about that. You were just
4 as articulate as he was about the issue. It's an
5 important issue. Thank you for bringing it up.

6 HON. LOURDES VENTURA: Thank you. We're
7 both in the Second.

8 CHAIRPERSON FAHEY: Close enough.

9 We'll take a break but I think we'll do
10 one more. One or two more at the most.

11 Judge, this is Dawn Lott, President of the
12 Women's Bar Association of New York. Thank you
13 for coming today.

14 MS. DAWN LOTT: And thank you for having
15 me. So good morning, and Dear Chairman Fahey and
16 Distinguished Members of the Commission.

17 As stated, my name is Dawn Lott. I am the
18 President of the Women's Bar of the State of New
19 York, WBASNY. And today I sit before you to
20 represent WBASNY, the nation's largest statewide
21 women's bar association and the second largest
22 statewide bar association in New York with our
23 reach spanning nearly 4,000 attorneys throughout
24 New York State organized into 20 regional chapters
25 stretching from the Adirondacks to Suffolk County.

(Lott)

1 WBASNY has for over four decades been
2 unwaveringly dedicated to advance the rights of
3 women, children, and families. We have also
4 remained steadfast in our commitment to fostering
5 the professional growth, networking and leadership
6 development of women attorneys. Our members are
7 bound by a shared dedication to promoting
8 advancement of women in society and the legal
9 profession, ensuring the fair and equal
10 administration of justice and advocating on
11 matters of statewide national and international
12 significance especially affecting women attorneys.

13 Today I appear before you to request that
14 you consider recommending that the compensation of
15 New York State judges be restored to a position of
16 parity with their counterparts in the federal
17 District Court effective April 1, 2024.

18 Simultaneously, I urge you to institute
19 proportionate increases in the salaries of our
20 state paid judges accompanied by and implementing
21 cost-of-living adjustments over the ensuing three
22 years. Such actions are indispensable to
23 maintaining parity, safeguarding the equitable
24 value of judicial salaries and preventing their
25 diminishment. It is WBASNY's privilege to boast

(Lott)

1 that many judiciary members are among our ranks,
2 and their narratives are inspiring yet concerning,
3 disconcerting. In preparation for this hearing,
4 one of our members, a single mother and graduate
5 of Cornell Law School, shared her journey of
6 commitment to the legal profession. She currently
7 resides in Manhattan, serves as a Commercial
8 Division judge, often working six days a week,
9 tirelessly dedicating 12 hours each day to the
10 noble cause of justice. Despite her unassailable
11 dedication, she relies on the benevolence of her
12 parents to sustain her honorable role, a poignant
13 testament to the sacrifices judges make to fulfill
14 their responsibilities.

15 Other members have underscored the
16 increased judicial workload in recent years, and
17 we've heard that in prior testimony. Notably in
18 2019 the New York Legislature expanded the early
19 voting rights requiring judges to be, quote, on
20 call for 18 days, including evenings, weekends
21 without supplementary compensation. And
22 similarly, the Legislature passed Extreme Risk
23 Protection Order law which more effectively
24 protects victims of domestic violence.

25 However, it mandates that judges be

(Lott)

1 available 24 hours a day 7 days a week to hear
2 applications often involving partner violence,
3 intimate partner violence. These diligent judges
4 have presided over thousands of these cases, many
5 of which were heard after regular hours and during
6 weekends.

7 Now, this is not to suggest that judges
8 have not been, up until now, required to work
9 under similar circumstances, for judges throughout
10 New York State have consistently had such
11 responsibilities as night work duty often
12 requiring them to work during evenings, weekends,
13 and holidays devoid of due judicial compensation.

14 Moreover, numerous county courts bear the
15 weight of multiple roles, adjudicating cases in
16 Family Court, Surrogate's Court, and Supreme Court
17 involving emotionally taxing and complex subject
18 matter. While these judges have inflexibly
19 embraced these additional responsibilities, the
20 conspicuous absence of corresponding financial
21 recognition exacts a toll on their personal lives
22 and their ability to lead affordable lifestyles.
23 This void in additional compensation serves as a
24 testament to their unwavering commitment as public
25 servants, impervious to financial incentives and

(Lott)

1 deserving of compensation commensurate of their
2 contributions to a diverse and intricate
3 judiciary.

4 In conjunction with the burgeoning
5 workload and the rising complelxy of cases,
6 living costs have surged dramatically over the
7 past decade. The prices of essential commodities
8 such as housing and food have near quadrupled
9 while judicial salaries have languished in
10 stagnation. This salary freeze bears immediate
11 and negative consequences for the Court's capacity
12 to serve our most vulnerable constituents,
13 including women, children, and families.

14 In practical terms, this constitutes an
15 annual salary decrease primarily duing to the
16 inevitable erosion of real income values wrought
17 by inflation which undermines judges' capacity to
18 support their families adequately. The
19 repercussions of another four years of salary
20 stagnation are ominous. Seasoned judges may opt
21 to depart the bench in favor of more financially
22 rewarding or lucrative career paths particularly
23 in Family Courts and lower courts when their
24 expertise is quintessential in assessing risk and
25 safeguarding lives. This trend could deter

(Lott)

1 talented lawyers from pursuing a career in the
2 judiciary and periling New York status as home to
3 one of the nation's preeminent judiciaries.

4 It is pivotal to underscore that
5 attracting and retaining the finest legal minds of
6 the judiciary is indispensable to upholding the
7 high quality of justice in our state.

8 Traditionally lawyers aspire to assume judicial
9 roles after many years in practice, often after
10 most of their financial commitments had been met.

11 However, the contemporary landscape
12 reveals that judges now assume these roles at a
13 younger age, a phase in their careers when they
14 might show the significant financial obligations
15 such as raising children, funding college
16 tuitions, and managing mortgages. These judges
17 may not have the luxury of working for a fraction
18 of what they could potentially earn in private
19 sector or at well-endowed agencies. It is
20 imperative that New York State judiciary refrain
21 from losing these exceptionally talented
22 individuals.

23 In addition to the ever-increasing role
24 and the persistence of inflation, we must not
25 overlook the escalating criminal threats of

(Lott)

1 violence, intimidation, harassment, and
2 inappropriate communications directed at our
3 judges and court personnel in recent times.

4 WBASNY has been an ardent advocate for
5 measures ensuring that judges can exercise their
6 duties without fear of retaliation or retribution.
7 The safety of our judiciary, court personnel, and
8 their families constitutes an indispensable pillar
9 for an independent judiciary preserving the rule
10 of law and fortifying our democracy. In the face
11 of these personal attacks, judges have valiantly
12 continued to fulfill their obligations
13 notwithstanding the stagnation of their salaries.

14 It is equally important to emphasize that
15 during the period of salary freezes, judges have
16 not only been restrained to resign, but many have
17 been compelled to retire upon reaching the age of
18 70, leading to pensions that remain capped based
19 on stagnant annual income sustained over a decade.

20 Implementing a yearly cost-of-living
21 adjustment is paramount to ensuring that judges
22 can maintain an affordable lifestyle during their
23 tenure and retirement. The decisions in 2019 and
24 2020 to deviate from the federal parity for
25 salaries, judicial salaries have accommodated a

(Lott)

1 scenario where judges are currently paid nearly
2 \$50,000 less than their Federal District
3 counterparts. It is quintessential to restore the
4 value of judicial salaries by aligning them with
5 the compensation afforded to their counterparts in
6 the federal judiciary. Such a measure underscores
7 the appreciation and esteem with which we regard
8 the labor of our judges, guaranteeing that their
9 equitable and competitive pay as the cost of
10 living escalates.

11 Now, the judicial system will confront a
12 constellation of formidable challenges in the
13 coming years. Most notably in response to
14 prepandemic case backlogs which the pandemic has
15 only exasperated. It is crucial to maintain the
16 morale of our judiciary, retain experienced
17 judges, and attract the most exceptional legal
18 talent to confront these challenges. Any further
19 depreciation of the value of judicial salaries can
20 precipitate the exodus of our most experienced
21 judges precisely when their collective experience
22 is most indispensable.

23 Now, we've already heard Chief
24 Administrative Judge Joseph Zayas illustrate that
25 the recommendation presented here today is one

(Lott)

1 that can be afforded by New York State, so I am
2 not going to repeat that information but defer to
3 his submissions.

4 CHAIRPERSON FAHEY: That's good, Ms. Lott.
5 You've got about a minute.

6 MS. DAWN LOTT: I am at the conclusion.

7 In conclusion, we implore the Commission
8 to judiciously scrutinize the findings of your
9 predecessors, particularly the Commissions of 2011
10 and 2015, which endorsed federal parity as a
11 salient benchmark. The benchmark is both logical
12 and ethical, fostering sustainability while
13 emphasizing appreciation for the invaluable work
14 undertaken by our judges. Such action is
15 essential for ensuring the equitable
16 administration of justice, fostering equal access
17 to justice, and upholding the principles of
18 judicial independence. Indeed, it is the right
19 course of action.

20 We, WBASNY, extend our profound gratitude
21 to your commitment to maintaining a robust
22 judiciary that continues to serve the People of
23 New York with excellence and administers justice
24 for all. The Women's Bar Association appreciates
25 your dedicated efforts on this noble endeavor and

(Lott)

1 we thank you, I thank you for your attention and
2 your time this afternoon.

3 CHAIRPERSON FAHEY: Thank you. Good job.

4 Any questions?

5 Thank you.

6 Our next speaker is Judge Vincent Versaci,
7 and then we're going to take a break because we
8 have to set up the next speaker via Zoom.

9 HON. VINCENT VERSACI: Judge Fahey, good
10 afternoon, Honorable Members of the Commission.

11 CHAIRPERSON FAHEY: I've been hounding
12 everybody. You've got ten minutes, Judge.

13 HON. VINCENT VERSACI: My father told me a
14 long time ago, you should take no more than two
15 minutes, three minutes if you really have
16 something to say. I'm going to keep it to five,
17 I'll do the best I can, because I have to
18 represent not only myself, but the association.
19 And that being said, there are a lot of voices to
20 represent.

21 Good afternoon. My name is Vincent
22 Versaci. I have had the privilege of serving as
23 Surrogate in the County of Schenectady since 2010
24 and have been a member of the New York State
25 judiciary for the last 20 years. I've been

(Versaci)

1 invited here today to testify in behalf of the
2 Surrogate's Association of the State of New York
3 where I currently serve as the Association's vice
4 president. Thank you for the opportunity to
5 address you all today on the important issue of
6 compensation for New York's judges.

7 The Surrogate's Association of the State
8 of New York respectfully requests that this
9 Commission grant the Office of Court
10 Administration's proposal to increase the salaries
11 of New York State's judges by restoring pay parity
12 between State Supreme Court justices and Federal
13 District Court judges commencing April 1st of 2024
14 and to maintain the pay relationship between
15 Supreme Court justices and the other judges of
16 this state.

17 In addition, we ask that pay parity be
18 continued for the following three years till the
19 Commission is convened once again.

20 I know the Commission has been inundated
21 with facts, figures, and a steady barrage of
22 accounts detailing the calamitous history that has
23 plagued New York's judges over the last 46 years
24 to establish a fair system of pay.

25 So, for instance, it is without dispute

(Versaci)

1 that rising inflation and increased costs of
2 medical insurance over the last four years has
3 resulted in a de facto diminishment of judges'
4 salaries. Out of respect for your time, however,
5 I've really made every effort to review all
6 publicly available documents and testimony
7 presented to date so as not to repeat anything,
8 but some of my colleagues were so wonderful, they
9 stole some of my thunder, but I'll try to keep it
10 all to a minimum, the repeats.

11 With that in mind, given my current role,
12 I begin with an overview of the responsibilities
13 of the judges of the Surrogate's Court, a trial of
14 a court whose jurisdiction can be perplexing
15 certainly to the public and often even at times to
16 the most experienced and knowledgeable members of
17 the bench and bar. The New York Constitution is,
18 first of all, legal and equitable responsibility
19 upon the Surrogate's Court for all actions and
20 proceedings relating to the affairs of decedents,
21 the probate of wills, administration of estates
22 and actions and proceedings arising thereunder.
23 In short, the Surrogate's Court is responsible for
24 addressing any issue that may arise when a loved
25 one passes away.

(Versaci)

1 This broad phrase as is written in the
2 Constitution if a matter relates to the affairs of
3 the decedent's administration of an estate has led
4 the Legislature and the courts in the last 60
5 years to broadly construe and explicitly expand
6 the responsibilities of the New York Surrogates.
7 These responsibilities along with statutorily
8 granting of jurisdictional trusts, guardianships
9 over children and persons with disabilities,
10 adoptions, and even disputes between living
11 persons if there is a sufficient connection
12 between the affairs of the decedent and that of a
13 living party makes Surrogate's Court an integral
14 part of New York's court system.

15 Based upon the variety of matters that
16 come before the Surrogate's Court, it is
17 imperative that New York have Surrogates who are
18 competent, knowledgeable, and above all else
19 dedicated to serving the public.

20 To find such people with the requisite
21 experience, temperament, and willingness to serve
22 sometimes at great personal or financial cost, is
23 not a simple task. Failing to adequately
24 compensate the individuals and trusts to make such
25 personal and far-reaching decisions is not only

(Versaci)

1 unfair to the individuals currently serving, but
2 will ultimately lead to the erosion of available
3 pool of qualified judges who are willing to serve
4 as Surrogates in the future.

5 Additionally, freezing salaries at
6 currently levels will limit the pool of applicants
7 with the requisite credentials such that only
8 those with sufficient personal wealth will be able
9 to seek positions on the bench. Simply put,
10 keeping salaries at current levels for another
11 four years may disproportionately affect our ability
12 to attract a diverse pool of candidates for these
13 positions.

14 There is no better demonstration of the
15 need for qualified, dedicated public servants to
16 serve as Surrogates in the counties in which they
17 are elected than during the COVID-19 pandemic.
18 Throughout the pandemic, the Surrogate's Court
19 continued to operate, performing essential
20 functions unique to their courts as the death
21 tolls rose exponentially and businesses were
22 shutting down.

23 For instance, Surrogates were the ones
24 signing decrees allowing survivors whose loved
25 ones perished during COVID-19 to quickly assess

(Versaci)

1 the funds necessary to pay burial and other costs
2 while weathering the financial and mental toll
3 during the pandemic. During the shutdown,
4 Surrogates continued to process papers and execute
5 orders to allow small businesses to remain viable
6 throughout the state. Surrogates signed
7 guardianship decrees so parents with children with
8 disabilities could get the medical care they so
9 desperately needed.

10 These are about a few of the essential
11 tasks the Surrogates performed during the shutdown
12 to help New Yorkers continue to make ends meet and
13 take care of their loved ones during the
14 challenges of the pandemic. Surrogates
15 demonstrate time and time again they are essential
16 and provide critical services to the public in
17 times of their greatest need, whether during a
18 pandemic or not.

19 In addition, the medical costs and overall
20 inflation, rising property taxes, mortgage rates
21 or rents have taken a toll on judges' salaries. I
22 know you've heard a lot about this so I'll keep
23 this very short. Importantly, while New York's
24 judges salaries have been frozen, Social Security
25 taxes have risen for all judges from \$8,239 in

(Versaci)

1 2019 to \$9,932 this year in 2023 and are scheduled
2 to go up again in January of 2024 to \$10,453.
3 That is after doing simple math more than \$2,200
4 in five years, about 1 percent of the judge's net
5 salary, or more than that, at least in the trial
6 court.

7 Additionally, since 2019, most judges must
8 pay 3.8 percent surcharge for Medicare based on
9 the new income thresholds. These increases in
10 routine costs of living have resulted in
11 significant loss in buying power. It's just
12 simple math. This Commission which I know values
13 the judiciary and wants New York to continue to be
14 a leader in judicial jurisprudence in this country
15 cannot allow these inequities to continue. If New
16 York continues to undervalue and underpay its
17 judges, we will no longer be the gold standard and
18 we will not be able to attract the best and the
19 brightest to the public service in these
20 important, intellectually demanding positions.
21 The Surrogates understand that New York State has
22 many budgetary responsibilities and priorities.
23 However, this Commission must be mindful that one
24 of these responsibilities is to adequately
25 compensate New York's judges.

(Versaci)

1 Respectfully, it is submitted that since
2 1977 and moreso over the last four years, this
3 responsibility has been overlooked. The
4 Surrogates of this state ask you to do what we are
5 required to do each day as judges when we take the
6 bench; make the decision that the law and equity
7 requires. We respectfully request that in this
8 case, the Commission should adjust New York's
9 judges' salaries to be on par with Federal
10 District Court judges and that this parity be
11 continued for the next three years until the next
12 Commission is convened.

13 Thank you for your time and attention. I
14 would be happy to take any questions.

15 CHAIRPERSON FAHEY: Are there any
16 questions?

17 Okay. We're going to recess just for
18 about five minutes, and then we have our last two
19 speakers.

20 (Proceedings recessed at 2:14 p.m.;
21 reconvened at 2:30 p.m.; appearances as before
22 noted.)

23 CHAIRPERSON FAHEY: I'm going to call the
24 Commission hearing back to order. Our next
25 speaker is going to be on Zoom. Mr. Sandro

(Versaci)

1 Tomasi.

2 Mr. Tomasi?

3 MR. SANDRO TOMASI: Good afternoon. Can
4 you hear me?

5 CHAIRPERSON FAHEY: Yes, we can. Thank
6 you. I'm the Commission Chairperson Judge Eugene
7 Fahey. We've asked each speaker to limit
8 themselves to no more than ten minutes. I'll let
9 you know when there's about two minutes left if
10 that's okay

11 MR. SANDRO TOMASI: Okay.

12 CHAIRPERSON FAHEY: All right. There
13 might be a few questions, there may not. But you
14 don't mind, do you?

15 SANDRO TOMASI: I do not mind.

16 CHAIRPERSON FAHEY: Okay. Whenever you're
17 ready, sir.

18 SANDRO TOMASI: Thank you, Judge. Thank
19 you and the Commission for giving us the
20 opportunity to present my side of the story. I'm
21 here to represent myself. I'm not representing
22 any organization. So let me give you a little bit
23 of background so you can quantify my opinion.

24 I've been a court interpreter for about 16
25 years, and I've been an interpreter, freelance

(Tomasì)

1 interpreter for about 32 years all in all. In the
2 past ten years, I've been looking at board
3 interpreter compensation throughout different
4 states in the United States, I would say anywhere
5 about, maybe about 15 different states I've been
6 looking at this and as part of this, I look at
7 what judges are compensated, what law clerks are
8 compensated, and other judicial staff positions.

9 So I would like to, from the outset, tell
10 the Commission that I do support Chief Judge --
11 Chief Administrative Judge Zayas' statement given
12 to this Commission on October 13, 2023 insofar as
13 he says that there will be further erosion of the
14 value of judicial salaries would likely cause an
15 exodus of our most experienced judges at a time
16 when their collective experience at case
17 resolution is most needed.

18 I also would like to endorse former Chief
19 Administrative Judge Lawrence Marks who gave in
20 his submission to this Commission on legislative,
21 judicial, and executive compensation report in
22 which he in part reported on the Board of Appeals
23 where it recognized in the Maron versus Silver
24 case that if salaries were too low, only those
25 with means would be financially able to assume a

(Tomasí)

1 judicial post negatively affecting the judiciary
2 and discriminating against those who are well
3 qualified and interested in serving but
4 nonetheless unable to aspire to a career in the
5 judiciary because of the financial hardship that
6 results from stagnant compensation over the years.

7 So court interpreters, I can speak to you,
8 are paid about half of what Federal Court
9 interpreters are paid, and over the years, we have
10 seen our numbers go down. We have seen a 27
11 percent decrease in staffing from 2009 to
12 currently 2023, and we have also seen less
13 candidates showing up to take the New York State
14 court interpreter exam for Spanish. There is
15 about 60 percent less that are showing up, and
16 also about 60 percent less -- 64 percent less
17 being hired.

18 So for example, this last exam that was
19 given, was finalized in this year, out of the 54
20 candidates that passed the exam, 13 were offered
21 jobs, 2 quit after the second day, leaving 11,
22 which basically demonstrates how lowly staffed we
23 are right now and how much work we have to do to
24 cover everything, and the remaining candidates
25 that passed the test are basically taking the test

(Tomasi)

1 for the credential which serves them well in the
2 private sector, having a certification from the
3 court as a court interpreter, bodes well for them
4 even working for a Fortune 500 companies, for the
5 state Department and other state, federal, and
6 local agencies.

7 So not many people are interested. Here's
8 some really concrete numbers, and that's why I
9 support Judge Zayas, Former Chief Judge Marks in
10 their remarks to this Commission. I think that if
11 pay falls further below federal parity, there will
12 be an exodus of judges as Chief Administrative
13 Judge Zayas has warned and it will create a
14 situation where there will be limited diversity
15 and quality of judges serving at our state's
16 bench. Thank you.

17 CHAIRPERSON FAHEY: Thank you. You have a
18 question from Commissioner Kovner.

19 COMMISSIONER KOVNER: It's more of a
20 comment. Thank you, Mr. Tomasi. You raise a
21 subject that is outside the jurisdiction of this
22 Commission, but is a very important public
23 question, namely the compensation of interpreters
24 at a time when interpreters in the court system
25 are needed more broadly, and not less needed.

(Tomasi)

1 I intend to share, since your testimony is
2 public, I intend to share it with those who may be
3 able to address it. Thank you.

4 SANDRO TOMASI: All right. Thank you.

5 CHAIRPERSON FAHEY: Mr. Tomasi, when I
6 first became a judge, I was in City Court and I'm
7 from Buffalo. But it's a relatively diverse
8 community in Buffalo and the court interpreters
9 were essential, not obviously Spanish, but Asian
10 languages, varieties of languages from Europe and
11 South America. They were essential for us to do
12 our job. So I was always struck by the variety
13 and intensity of their skills and their language
14 abilities and greatly appreciated the work that
15 they did. I greatly admire the work that they
16 did.

17 So you can take Mr. Kovner's expression as
18 the expression of the entire Commission. Thank
19 you.

20 MR. SANDRO TOMASI: Thank you.

21 CHAIRPERSON FAHEY: Our next speaker and
22 our final speaker, I believe, is Mr. Robert Schulz
23 from We the People of New York. Mr. Schulz?

24 Mr. Schulz, you know the rules. You've
25 been sitting here for all this time, but I'll just

(Schulz)

1 let you know when you've got about a minute left.
2 Go ahead whenever your ready.

3 MR. ROBERT SCHULZ: Thank you and good
4 afternoon, everyone. My name is Robert Schulz. I
5 am Chairman of the We the People of New York,
6 Incorporated in 2011. Prior to that, we set up
7 national organizations, 501(c)3, the We the People
8 Foundation for Constitutional Education in 1997,
9 and also 1997 as a 501(c)4, the We the People
10 Congress.

11 I'm a Veteran of the U.S. Air Force and a
12 graduate of one of the five federal academies.
13 I've had a successful career at General Electric
14 Corporate R&D Center, and I've had successful
15 stints of employment in state and federal
16 governments pursuant to the personal requests of
17 the Connecticut Governor Thomas Meskill, New York
18 Governor Hugh Carey, and the U.S. EPA
19 Administrator Doug Costle to assist each of them
20 in the development of statutes and programs
21 designed to solve a widespread problem.

22 Along the way I've taken the oath to
23 support and defend, of course, the Constitutions
24 of New York State and the United States.

25 While our state and U.S. Constitutions

(Schulz)

1 represent a political ideology, I am not political
2 in the common use of that word. Following a very
3 significant eye-opening experience I had in 1979
4 which caused me to see government as self-serving
5 and ready to operate quickly outside the
6 boundaries brought around its power in violation
7 of the law, I have devoted my life full time, 44
8 years, to holding those in government accountable
9 to the rule of law, including our state and
10 federal constitutions and the laws pursuant
11 thereto with full reliance on the natural right of
12 the people to petition the government for redress
13 of grievances, a right secured by not only the
14 First Amendment, the US Constitution, but by every
15 single state constitution.

16 A thorough historical review of that right
17 reveals, it includes an obligation on the part of
18 the government to provide a meaningful response to
19 a proper petition and the People's right of
20 enforcement in the absence of a meaningful
21 response.

22 I as the lead plaintiff together with
23 other citizens of this state have on many, many
24 occasions petitioned the judiciary in New York
25 State for redress of clear violations of the State

(Schulz)

1 Constitution and laws pursuant thereto by New York
2 State's Legislative and Executive Departments. We
3 were quite successful in the early -- in the 1980s
4 and early 1990s. For instance, we succeeded in
5 our cases against the town and county for
6 violating a state statute. In separate cases
7 against governor Mario Cuomo and Comptroller
8 McCall for using public funds in the aid of a
9 private undertaking, a violation of the state
10 constitution. In those days, we also succeeded in
11 having a state statute declared unconstitutional.

12 Then, I suppose, due to intense political
13 pressure, in my opinion, things changed.
14 Thereafter, the Judicial Department united with
15 the Legislative and Executive to proceed full
16 steam ahead, damning the torpedoes being fired by
17 the Constitution and our organization.

18 First in our case against the state's
19 incurrence the state debt without vote of approval
20 in violation of the state Constitution, the Court
21 of Appeals determined the authorizing statute to
22 be unconstitutional, but dismissed our challenge
23 on the basis of laches, even though the bonds had
24 not yet been issued.

25 While that decision was on its way down,

(Schulz)

1 the Legislative and Executive Departments were
2 already on their way to incurring millions of
3 dollars in additional state debt without voter
4 approval in violation of the constitution. We
5 sued. The Department of Justice hired a prominent
6 D.C. lawyer Arthur Liman to oppose me. The same
7 attorney, Arthur Liman, who was hired by Congress
8 to grill Colonel Oliver North during its hearing
9 on the Iran Contra Affair. The Court of Appeals
10 adopted Liman's argument, ruling that if the
11 Legislative Branch authorized the use of state
12 funds to retire bonds, those bonds -- those funds
13 would be, quote, permissible gifts. From then on
14 as if to say we've had enough of these
15 constitution-grounded challenges to the power of
16 our Legislative and Executive brothers and
17 sisters, the Court of Appeals has dismissed each
18 and every one of the dozens of well-pled, in our
19 opinion, well-pled appeals brought by us on the
20 ground that the constitutional provision we had
21 proven was being violated by their colleagues in
22 the Legislative and Executive Branches was not,
23 quote, substantial enough for the Court to look
24 at. Constitutional challenges, direct appeals
25 dismissed because in their opinion, constitutional

(Schulz)

1 challenge with the constitutional provision was
2 not substantial enough.

3 For all intents and purposes, the Judicial
4 decisions have resulted in a Judicial repeal of
5 provisions of the Constitution. For the past 30
6 years when faced with our professional
7 intelligent, in our opinion, professional
8 intelligent rational fact-based
9 constitution-grounded challenges to actions of the
10 Legislative and Executive Departments, the
11 Judicial Department of this state has united
12 itself with the Legislative and Executive
13 Departments in an all-too-apparent effort to have
14 government gain ground. And of course we know as
15 the government gains ground, liberty loses ground.

16 Judicial repeal of provisions of the
17 Constitution has, in our opinion, become the norm.
18 I repeat, prohibitions and mandates prescribed by
19 the Constitution of being repealed not by the
20 people at the ballot box, but ultimately at the
21 whim of the judiciary.

22 I'm here today because as government has
23 been gaining ground in this constitutionally
24 offensive manner, liberty as axiomatically been
25 losing ground. As Hamilton wrote in Federalist

(Schulz)

1 78, liberty can have nothing to fear from the
2 judiciary alone, but would have everything to fear
3 from its union with either or both of the other
4 departments, end quote.

5 By having the judiciary running
6 interference for them including, most egregiously,
7 the unconstitutional addition by the Court of
8 Appeals of a substantiality requirement to appeal
9 submitted to it as of right under Article 6 of the
10 Constitution, the Legislative and Executive
11 Departments have been given a green light to abuse
12 their power, given a green light to violate the
13 prohibitions and mandates prescribed by the people
14 in their State Constitution, nullifying rights
15 secure to the people by the terms of the State
16 Constitution such as borrowing money without voter
17 approval, transferring public funds to private
18 corporations in aid of private undertakings,
19 introduccing and immediately approving legislation
20 in the absence of emergencies, and the list goes
21 on.

22 Unconstitutionally adding a substantiality
23 requirement in right of appeals cases confers
24 discretion not unlike the discretion already
25 available to the Court as constitutionally

(Schulz)

1 authorized in motions for leave to appeal.

2 Just last week the Court of Appeals did so
3 again in our constitutional challenge to the
4 legislative bills introduced by the governor at
5 the last minute in the budget hearings in 2022,
6 then immediately approved by the Legislature and
7 signed by the governor that authorized the
8 transfer of \$600 million from the public treasury
9 of the state and \$250 million from the public
10 treasury of Erie County to be used in the aid of
11 private corporations private undertaking, the
12 construction of a facility, a stadium, to be used
13 exclusively by the Buffalo Bills, a private
14 corporation to which members of the public will go
15 for their private purpose of purchasing
16 non-essential goods and services. Such action by
17 the Judicial Department amounts to a judicial
18 repeal of Article 7 Section 8 and Article 8
19 Section 1 which prohibit such transfers of public
20 funds and opens the door to public funding of all
21 private facilities such as but no way limited to
22 private cruise ships, golf courses, supermarkets,
23 movie theatres and so forth.

24 The New York judiciary has clearly, and I
25 would add -- sorry -- tyrannically united itself to

(Schulz)

1 the other two departments in an effort of
2 long-standing duration to chip away and shift the
3 ultimate power in our state from the People to the
4 government where, according to the history, the
5 meaning, the significance and the effect of the
6 provisions of our constitution, it clearly does
7 not now and was never intended to reside. The
8 ultimate power in our society is meant to rest
9 with the people.

10 Attached is a copy of decisions by the New
11 York Court of Appeals dismissing 22 of our
12 well-plead challenges to actions taken by the
13 Legislative and/or Executive Departments of the
14 state in violation of specific provisions of our
15 state Constitution, each on the ground that no,
16 quote, substantial constitutional question is
17 directly involved.

18 I urgently request the Commission not
19 recommend any increase in judicial compensation
20 until the Commission undertakes and completes an
21 investigation of my complaint presented here
22 today. I stand ready to assist the Commission.
23 For instance, I have a full record of hundreds of
24 cases filed in New York State, similar cases, and
25 that produced upwards of 175 decisions by the

(Schulz)

1 Judicial Department of the state.

2 Finally, although I have a one-page
3 addendum I wish to add because of very recent
4 developments in the Court of Appeals on the
5 Buffalo Bills case, but as I wrote this. Finally,
6 and no offense intended, I am committed to the
7 creation of the check and balance we the people
8 overlooked in April of 1777 when we adopted our
9 State Constitution and set into motion our
10 constitutional republic. Sooner rather than later
11 we will complete the task of institutionalizing
12 citizen villages.

13 You know, there is a law in New York State
14 that's been on the books since 1947? This is what
15 it says, and I'm quoting. It's Section 801.2 of
16 the State Education Law. This is what it says:

17 All teachers of this state will teach all
18 children of this state in public and private
19 schools from grade 8 on, I'm still quoting, the
20 history, the meaning, the significance of the
21 effect of every provision of our state and federal
22 Constitutions as amended and our Declaration of
23 Independence."

24 My wife and I graduated in '57. We
25 weren't taught. Our kids and grandkids weren't

(Schulz)

1 taught. Generation after generation are being
2 raised and they're not anchored to the fundamental
3 principles upon which our nation, our state was
4 established.

5 Sooner rather than later we will complete
6 the task of institutionalizing citizens'
7 vigilance, civic education at the heart of that.
8 There will be a new permanent statewide
9 organization with the soul purpose of comparing
10 government policy wherever it is being made with
11 the provisions of our state and federal
12 Constitutions. It will petition the Legislative
13 and Executive Branches from redress of perceived
14 violations and enforce the rights secured to the
15 people by the terms of the constitution in the
16 absence of a meaningful response from those
17 petition. We will add a new building to those
18 buildings now occupied by our Legislative,
19 Executive and Judicial Departments.

20 The building, and I'm intent on having it
21 look just like Jefferson's home down in
22 Monticello, but that building will house legal
23 talent and skillsets necessary to run a statewide
24 organization of constitution monitors and county
25 and regional coordinators.

(Schulz)

1 The one-page addendum, with your
2 permission, based on the recent developments with
3 the Buffalo Bills case?

4 CHAIRPERSON FAHEY: Go ahead.

5 MR. ROBERT SCHULZ: With reference to my
6 comments regarding our case against the public
7 funding of a new stadium in aid of the Buffalo
8 Bills, there have been some recent developments of
9 the case since I prepared that testimony.

10 On the 19th of this month the Clerk of the
11 Court of Appeals signed what she claimed was a sua
12 sponte order dismissing our direct appeal on the
13 ground that no substantial constitutional question
14 was directly involved.

15 On the 23rd of this month, I filed a
16 four-page letter, and I have these attachments
17 attached to this addendum. On the 23rd, I filed a
18 four-page letter at the Court of Appeals arguing
19 against the assertion that the order was issued
20 sua sponte against an order signed by the clerk
21 with no indication that the judges were actually
22 involved and that the Court was obliged by Article
23 6 of the Constitution to hear the appeal. I
24 closed saying, "this is a most serious matter for
25 if left to stand as is, the dismissal could and

(Schulz)

1 most probably will be seen by those self-serving
2 knuckle heads, I call them, in the Legislative and
3 Executive branches as a repeal even though an
4 unAmerican, unconstitutional judicial repeal of
5 said provision of the state Constitution, thus
6 setting the stage for the widespread,
7 unconstitutional use of public funds for the
8 construction of all sorts of facilities to which
9 members of the public simply go to purchase goods
10 and services and to be entertained.

11 It pains me to say so, but unless your
12 court considers the decision and recognizes --
13 reconsiders the decision and recognizes and honors
14 its jurisdiction and properly addresses
15 plaintiff's complaint, its action will be seen by
16 the people as a contribution to a form of
17 government unintended by the people of this state,
18 the unrestrained use of authority and power.

19 On the 26th, the motion clerk responded
20 saying, the October 19th document was in order of
21 the full court, and she set a return date of
22 November 13th for filing opposition papers.

23 This morning I filed a letter at the Court
24 requesting the names of the judges and how they
25 voted and whether any of them gave any

(Schulz)

1 determination or direction in more detail than
2 what was included in the clerk's October 19th
3 letter; that is, quote, that no substantial
4 constitutional question is directly involved.

5 And I have copies of my comments for each
6 of you.

7 CHAIRPERSON FAHEY: Thank you. Are you
8 all done, Mr. Schulz?

9 MR. ROBERT SCHULZ: Yes, I am.

10 CHAIRPERSON FAHEY: Thank you. Thank you
11 for your presentation. Are there any questions?
12 No. Okay.

13 But Mindy, would you get Mr. Schulz's
14 handouts? That concludes for today our public
15 hearing.

16 If the Commission would be all right, I
17 thought we could take a second and talk about
18 where we're going and our future schedule. We're
19 scheduled right now to meet next Monday in New
20 York, not for a public hearing, though our
21 meetings are open to the public, but there will be
22 no public statements being made, to begin to
23 discuss the conclusions of the Commission. I
24 wanted to see, get some sense of if the
25 Commissioners are comfortable with that, and we

1 have a second meeting scheduled for the following
2 week, the 13th is a Monday. And Monday, the 13th,
3 we're scheduled to have a final vote. Depending
4 on where we are, we may be able to do that sooner.
5 If issues are mostly resolved, if you need to
6 appear by Zoom, we have to have a majority
7 present. But for the last meeting, we can do that
8 if necessary.

9 Is it all right if I just tell everybody
10 what I was thinking? Would that be okay? Would
11 everybody be comfortable with that?

12 Late last night when I was sitting in my
13 Albany hotel room, I wrote out three points and I
14 thought before you begin to draft a report of the
15 Commission, which I would do unless there's two
16 sides -- and then that's fine, if there is a
17 dissent, we can do that, too -- there are three
18 points or three areas we need to look at. The
19 first is whether or not there should be raises at
20 all. I think it's kind of a yes or no question on
21 pay raises for judges. Forgetting what the form
22 would be, but whether or not there should be pay
23 raises is the first step of our journey as we move
24 to the legislators and exempt employees which
25 would be for the following year. So that's a yes

1 or no question.

2 I'm thinking if we answer that question
3 yes or no, that a legislative and exempt
4 Commission could begin in early February, and
5 we'll have to talk about the logistics of that in
6 the future. But I kind of wanted us to get
7 through the holiday season. That's my thought.

8 So the first is raises, yes or no.

9 The second is, should we adopt the OCA
10 recommendations if we agree with them or some
11 variation of the OCA recommendations? And as part
12 of that, should we just address the financial
13 questions in a more limited one or the underlying
14 analysis which is the use of benchmarks in
15 determining pay raises, for instance, on both
16 what's referred to as parity with federal judges
17 and also what's referred to as looking at what
18 other state employees make and the comparison
19 between CSEA, PEF, UUP and the federal pay raise.

20 We're in an odd spot, and I talked to some
21 of you about this because the numbers are almost
22 the same. The pay raise parity for government
23 employees is a little over 9 percent, and the
24 difference between State Supreme Court judges and
25 Federal District Court judges I think is about

1 10.03, or 13 percentage difference. It's not a
2 numbers question, it's an analysis question.

3 I think you have to when you think about
4 that, and I would ask you to think about it, do we
5 need to go into it at all or should we just deal
6 with the pay raise question because every
7 Commission will be able to do what they want one
8 way or the other, but I'm flexible on that and
9 whatever, if we could achieve consensus, that
10 would be my goal. I think that's the most
11 important thing.

12 The third thing is, and it's come up, I
13 think, and Commissioner Weinstein, Judge Weinstein
14 mentioned before in his questions today about the
15 problem of setting the floor for the judges who
16 have been at the lowest end of the pay spectrum,
17 like the housing court judges. I think there is
18 some clear equity arguments that wouldn't be
19 unreasonable to try and address in our analysis.
20 So I thought that -- and that also gets to the
21 percentages that OCA used, 93 percent for some
22 judges. And the way I understood their decision
23 was based on jurisdictions.

24 So city court, housing court people, they
25 were 93 percent, county people, Surrogate's Court,

CHAIRPERSON FAHEY: We have to deal with

1 the COLA problem, whatever we do, implicitly.

2 I would include the question of COLAs is
3 yes or no, but I wouldn't propose that we address
4 that now.

5 COMMISSIONER EGAN: No, no, no. I just
6 wanted to, as we're thinking about it.

7 COMMISSIONER MEGNA: I still say that's
8 Part 2.

9 CHAIRPERSON FAHEY: I say that's Part 2,
10 too. I think it's part of it. But Terry is
11 really right. We have to think about it. Because
12 whatever we do on the judges, it may be simpler in
13 some ways. But when we get to the legislators and
14 the exempts, I don't know if it is similar. And
15 whatever we do is going to kind of model whatever
16 we do for the other groups that we have to
17 address.

18 COMMISSIONER MEGNA: I don't think it's
19 simpler. I think it's more complicated. And I
20 think whatever we do, the other will influence the
21 conversation that we have after that. I don't
22 think you can look at them independently. Just my
23 opinion.

24 CHAIRPERSON FAHEY: I value your opinion.
25 You've got some real experience with the numbers

1 and I'm a liberal democrat. I don't believe in
2 numbers. So I'm listening to you. I want to hear
3 what you have to say.

4 COMMISSIONER MEGNA: If you're careful
5 with money, you can do more progressive things, is
6 always the way I think about it. But -- no. But
7 I defer to others on the first question. I think
8 it's reasonable to have a conversation about an
9 overall increase. I just don't know --

10 CHAIRPERSON FAHEY: What the numbers are,
11 yes, of course. I wouldn't ask anybody to commit
12 to numbers. But the idea of a pay raise, are the
13 people comfortable saying yes or no? That seems
14 to be where we're headed.

15 COMMISSIONER KOVNER: We were listening to
16 overwhelming testimony now on two hearings with a
17 broad range of witnesses. It is compelling and
18 bears a case for a raise. I would go on but I
19 don't expect that there's going to be substantial
20 disagreement within this Commission.

21 COMMISSIONER BLANK: I think that he said
22 it eloquently based on the evidence that we heard,
23 it's compelling, all this testimony.

24 CHAIRPERSON FAHEY: It has been strong.
25 It has been strong.

1 Anybody else?

2 COMMISSIONER WEINSTEIN: I just want to
3 understand. You want us to, are you saying now,
4 just take a vote on the general issue of whether
5 there should be a raise?

6 CHAIRPERSON FAHEY: Yes.

7 COMMISSIONER WEINSTEIN: And then when we
8 meet at the next meeting, discuss the parameters?

9 CHAIRPERSON FAHEY: Yes.

10 COMMISSIONER WEINSTEIN: And I would ask
11 at that time, although I trust your memory, I
12 would like to know the statutory percentages that
13 exist now so that we have that in front of us when
14 we discuss the other judges as well.

15 CHAIRPERSON FAHEY: Okay. We will make a
16 note of that. It's in the OCA report, but we'll
17 go back to it.

18 COMMISSIONER MEGNA: Actually, it would be
19 important to me to know that, too, because I think
20 item 3 that you mentioned is a separate issue.
21 Right?

22 CHAIRPERSON FAHEY: Bringing the housing
23 people up to the floor?

24 COMMISSIONER MEGNA: Yes.

25 CHAIRPERSON FAHEY: I think you're right.

1 They could be seen separately.

2 COMMISSIONER MEGNA: I'm not saying we
3 shouldn't discuss it; I'm saying it would be nice
4 to see for me what those differences are.

5 COMMISSIONER EGAN: Agreed. You're
6 totally right.

7 Are you guys comfortable talking about it?

8 COMMISSIONER WEINSTEIN: Yes, sure.

9 COMMISSIONER FONTAINE: Are we still
10 assessing all the information and the data that
11 we've received to date? I think as Victor has
12 indicated, they've provided compelling arguments.
13 So that I'm prone to suggesting or recommending an
14 increase, but I just want to make sure that I have
15 all the information before me so I can make a
16 sound decision.

17 CHAIRPERSON FAHEY: That's very fair.

18 COMMISSIONER MEGNA: I would put myself in
19 the same place. And while I agree we have heard
20 compelling evidence with only two exceptions that
21 has been from sitting judges, so I want -- I think
22 it's fair to think about that in the context of
23 other, you know, what I might hear from other
24 folks.

25 CHAIRPERSON FAHEY: Well, Terry, did you

1 want to say something?

2 COMMISSIONER EGAN: I echo kind of -- I'm
3 more in the Nadine/Bob camp, and the other pieces
4 we've got to remember is the ability to pay
5 factor, the Legislative factor piece.

6 I would like to take a little bit more
7 time and review what DOB said and critically take
8 a look at that. I don't believe we can forget
9 that factor. Certainly the testimony that we've
10 heard is pretty unanimous and understood, but I
11 don't want to lose track of that last factor that
12 we have to consider.

13 COMMISSIONER WEINSTEIN: It's my
14 understanding, Judge Fahey, that from us right
15 now, you're asking would this Commission support
16 pay raise. You're not saying what those numbers
17 should be.

18 CHAIRPERSON FAHEY: Oh, God no.

19 COMMISSIONER WEINSTEIN: You're saying,
20 we're going to have a full discussion of that at
21 our next meeting.

22 CHAIRPERSON FAHEY: Yeah.

23 COMMISSIONER WEINSTEIN: Because I'm fully
24 prepared based on everything I have heard to give
25 you an answer on that question, just so you know.

1 CHAIRPERSON FAHEY: I would rather us try
2 to be all together. And with three of you it's a
3 qualified yes and with four of us, including me,
4 it's a yes, then I'm willing to live with that for
5 now if you guys are comfortable with that and then
6 we can work on it some more over the week. So
7 return my phone calls so I can make sure I'm
8 asking the right question and getting the right
9 information for you, okay?

10 And if there's nothing else, then we'll
11 leave it at that.

12 Nadine?

13 COMMISSIONER FONTAINE: With respect to
14 getting additional data, there's been a lot of
15 discussion about retention attrition, but we
16 haven't gotten any specific numbers. Is there any
17 way that we can ask --

18 CHAIRPERSON FAHEY: Do you mean attrition
19 because they don't get pay raises?

20 COMMISSIONER FONTAINE: Right.

21 CHAIRPERSON FAHEY: I don't know of any
22 numbers. I'm sure we would have heard them by
23 now. So much of that kind of information is
24 anecdotal. I talked to so and so and he said I
25 can't afford to run for judge because my kid wants

1 to go to Georgetown and I can't afford it on a
2 judge's salary. That, of course, I believe is
3 totally real, but there's no quantification of it
4 that I saw. I'm not familiar with anything.

5 COMMISSIONER KOVNER: I would assume you
6 have two pieces of testimony, one from Judge
7 Lebovits that said when he applied for a single
8 spot there were hundreds of applications and in
9 recent years, where there were multiple spots,
10 they are happy to get three or four applicants,
11 which is one indicator.

12 And then we have --

13 COMMISSIONER MEGNA: So if they had that
14 data.

15 COMMISSIONER KOVNER: That's a narrow
16 sliver of data as the housing court only. I don't
17 think it applies, because the housing court judges
18 are chosen in an unusual manner unlike the other
19 judges.

20 CHAIRPERSON FAHEY: Aren't they just
21 directly appointed by the mayor?

22 COMMISSIONER KOVNER: No. They're
23 appointed by the Chief Administrative Judge. That
24 may have been the problem that you were
25 suggesting. And then we heard it from Mr. Tomasi

1 who said that they're short of interpreters which
2 he argued was directly related, and of course he
3 could make an inference from that, but it's going
4 to be hard to get more detail than that.

5 COMMISSIONER WEINSTEIN: I just want to,
6 to your point, because I was elected to the bench
7 in 1993, and I have a very strong recollection,
8 because it was at that period of time that
9 legislative pay was purely in the hands of the
10 Legislature. And at a time when we had a raise,
11 the housing court was denied a raise completely by
12 the Legislature because there were members of the
13 Legislature, the majorities were different at that
14 period of time who felt that there was a bias
15 within the housing court and it was unacceptable
16 to them and it struck me and others as almost
17 punishment. That's my reference, but that
18 predated Judge Lebovits.

19 COMMISSIONER BLANK: It may have been what
20 Dr. Lebovits did sort of allude to that the real
21 estate industry has not been favorable to the
22 housing court judges which may have something to
23 do with, Judge Weinstein, what you're talking
24 about because especially the balance of the
25 Legislature was different back then and whose

1 voices were heard more loudly in the Legislature,
2 so that could have been what was happening,
3 especially Downstate in New York City especially.
4 But I just want to say something having listened
5 to all this testimony and the Commission that
6 we're on. Keeping in mind that judges haven't
7 gotten a raise in four years.

8 What bothered me most, and I've been
9 practicing law probably the second or third
10 longest of the people sitting here, 45 years, the
11 judiciary is not a service we provide. The court
12 system is not a service these People of the State
13 of New York are providing. It's part of our
14 democracy. And we're talking and listened to all
15 of these people talking about the judiciary
16 unfortunately, the way we treat the third branch
17 of government as sort of like your local
18 government decides that this year we're not
19 picking up your leaves. It is a vital function.
20 We all know that here.

21 We do want, when I started out as a young
22 lawyer, most of the judges on the bench looked
23 like you, Judge Fahey and you, Judge Weinstein.
24 They didn't look like Nadine and they didn't look
25 like Terry and they didn't look like me. And it

1 has changed dramatically and we've heard that
2 testimony of how we need to keep that change going
3 and make sure that we have a really
4 well-functioning judiciary that everything they've
5 talked about as far as the morale and things are
6 greatly changed. We know that. We have a new
7 Chief Judge, we have a new Chief Administrative
8 Judge. We've heard that that has made a great
9 difference with our judiciary, but it's important
10 that I think for me listening to the testimony and
11 being a practicing lawyer for so many decades that
12 we have the diversity and we have a judiciary that
13 we've always had, I thought as a practicing lawyer
14 in New York, one of the finest judiciaries in the
15 country and that we keep that up and that it's
16 important that we don't think of this in the way
17 we think of other branches of government. I
18 shouldn't say other branches of government; other
19 services. It's not a service that the People of
20 the State of New York are being provided; this is
21 the judiciary. It's the same part of the
22 government as the Legislature and the Governor,
23 and it's important that we keep that in mind, I
24 think, when we talk about the raises that they're
25 entitled to after having not had one for these

1 past four years and, of course, we don't have to
2 talk about the 13 years that they got no raises
3 and they didn't get back pay.

4 And, you know, the UAW is coming to terms
5 with GM, if you heard the news today. They're not
6 only getting raises, the retired workers are
7 getting money from this contract that the UAW is
8 agreeing to, and none of these people are asking
9 that the retired judges who didn't get a raise.

10 COMMISSIONER WEINSTEIN: I don't know. I
11 think that's a good point, actually.

12 COMMISSIONER BLANK: Yes, Judge. And so
13 it's important at least for me as a member of this
14 Commission to keep in mind who we're dealing with,
15 not just the Legislative branch, the Executive
16 branch, but it's too often talked about as though
17 it's a service, as though it's the Governor can
18 say well today, the courts are closed because
19 we're not picking up your leaves. They're an
20 essential tool and we have to keep up the fact
21 that in New York, we have a very independent
22 judiciary. Yes, it's political, we all know that,
23 how you get there is political. But once the
24 judiciary is there, I think we can be kind of
25 proud that they are independent and we need to

1 keep it that way.

2 CHAIRPERSON FAHEY: Thank you, Helene.
3 That was very articulate, very well expressed. As
4 an ex judge -- and I'll speak the same thing for
5 Judge Weinstein, too -- I think the aim here is to
6 have a decent life, a normal middle class house,
7 you own a house, you own a car, you can pay for
8 your kids to go to school. That's all a judge
9 should really expect.

10 But the other thing is, I want to say that
11 being a judge was a privilege. It was a great
12 job. It was an interesting, important job. But
13 it was also a privilege to serve the community I
14 live in, and through my time, I worked in all the
15 courts, I worked in City Court, State Supreme
16 Court, I was a Commercial District judge,
17 Appellate Division judge, and then I ended up in
18 the Court of Appeals which was a great honor at
19 the end of my career.

20 But the two best jobs were City Court and
21 Court of Appeals, you guys. I want you to know.
22 The top and the bottom were the two best jobs.
23 But I also, though, considered it, this was a job
24 where your character matters. It's just not a
25 question of intellect. You have to have the

1 ability to be a judge to do the hardest thing in
2 life, which is to say no to people. It's easy to
3 say yes to people. As we all know in government,
4 your goal is usually in a democracy to say yes to
5 people as often as possible. But what preserves
6 your democracy is the ability to do both, to say
7 yes when necessary and no when necessary.

8 So I view the Commission, if we're just
9 weighing the evidence here today, there would be
10 nothing to discuss really. It would be easy
11 because there is only evidence on one side. But I
12 think we have to look at the larger picture and
13 look at the larger picture in this context, and I
14 believe that the timing is right for us to do
15 something, but I also believe that we should
16 fundamentally maintain our respect for the special
17 place that the preservation of the judiciary as a
18 unique institution in our society, and I believe
19 everybody here thinks that way. I really do. But
20 I thought that you said it well. And that unique
21 institution is what saves us in this particular
22 crisis that we're in today, and the integrity of
23 that unique institution is partially preserved by
24 them making a decent living, but it's also more
25 than anything else, it's preserved by the

1 characters of the individuals involved and their
2 life experiences expressed through their ability
3 to do their job.

4 So I think we're moving in the right
5 direction. I do. I think it's, you know -- the
6 devil is in the details and we'll work on that the
7 next week, but we can do this. I just think we
8 have to be flexible and respect each other. And
9 you've all been great. You really have. So I
10 agree with your sentiments. Thank you for saying
11 them. You've been a great Commission. If we
12 don't have anything else, I think we can adjourn
13 now.

14 COMMISSIONER FONTAINE: I want to review
15 my request for the data. I think it would be
16 helpful in demonstrating, there has to be a way
17 Judge Zayas can provide information from the
18 period of 2011 to present, the number of judges,
19 whether there has been a decrease in the number of
20 minority judges.

21 CHAIRPERSON FAHEY: Which date are you
22 looking for? Do you want to tell Mindy exactly
23 what you're looking for and then we'll give it to
24 everybody?

25 COMMISSIONER FONTAINE: Sure.

1 CHAIRPERSON FAHEY: Just so I'm clear.

2 COMMISSIONER FONTAINE: Okay.

3 CHAIRPERSON FAHEY: Is that all right?

4 COMMISSIONER FONTAINE: That's fine.

5 CHAIRPERSON FAHEY: If there is nothing
6 else, we'll adjourn and we'll see each other next
7 week. Monday at 10:30.

8 (Proceedings recessed at 3:18 p.m.)

9

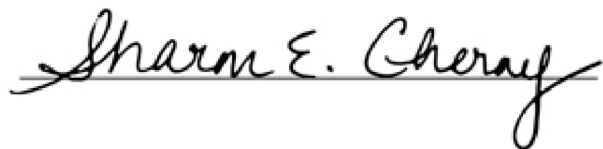
10

11 Certified to be a true and accurate transcript.

12

13

14



15

16

17

18

19

20

21

22

23

24

25