

JUDICIAL COMPENSATION COMMISSION

STATE OF LOUISIANA

Meeting of the Judicial Compensation
Commission, held on Wednesday, December 17, 2003,
commencing at 1:10 p.m., in the House of
Representatives Committee Room 6, State Capitol,
Baton Rouge, Louisiana.

MEMBERS PRESENT:

JAMES J. COLEMAN, SR., ESQ., Chairman
JUDGE ULYSSES GENE THIBODEAUX, Vice-Chairman
CHARLES C. FOTI, JR.
JUDGE GRACE BENNETT GASAWAY
SIBAL HOLT
DOUG JOHNSON
KIRBY NEWBURGER
SENATOR ARTHUR J. LENTINI
REPRESENTATIVE DANIEL R. MARTINY
REPRESENTATIVE JOSEPH F. TOOMY

STAFF PRESENT:

TIMOTHY J. PALMATIER, C.P.A., Attorney,
Chief Deputy Judicial Administrator, Supreme
Court of Louisiana
JAN JORDAN, Attorney
DIANE MERRITT, Secretary

REPORTED BY:

ASTRA THIBODEAUX
Certified Court Reporter

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1 PROCEEDINGS

2

3 MR. COLEMAN:

4 I'd like to call the meeting to order,
5 and it's such a special time this week, I was
6 wondering if we could just start our meeting with a
7 moment or two with a silent prayer so each in your
8 own religious affiliation can express gratitude
9 the wonderful things that have happened here this
10 past week, and also that we will have Divine guidance
11 for the work that we are going to do today. So let's
12 have a few moments of silent prayer.

13 Thank you so much. Would the Secretary
14 please call the roll?

15 MS. MERRITT:

16 Mr. Coleman?

17 MR. COLEMAN:

18 Present.

19 MS. MERRITT:

20 Mr. Foti? Judge Gasaway?

21 JUDGE GASAWAY:

22 Present.

23 MS. MERRITT:

24 Ms. Holt?

25 MS. HOLT:

1 Present.
2 MS. MERRITT:
3 Mr. Johnson?
4 MR. JOHNSON:
5 Present.
6 MS. MERRITT:
7 Senator Jones? Senator Lentini?
8 SENATOR LENTINI:
9 Here.
10 MS. MERRITT:
11 Representative Martiny?
12 REPRESENTATIVE MARTINY:
13 Here.
14 MS. MERRITT:
15 Judge Marullo? Mr. Newburger?
16 MR. NEWBURGER:
17 Here.
18 MS. MERRITT:
19 Mr. Popwell? Judge Thibodeaux?
20 JUDGE THIBODEAUX:
21 Here.
22 MS. MERRITT:
23 Representative Toomy? Ms. Winters?
24 MR. COLEMAN:
25 We have a quorum. A quorum is present.

1 MS. MERRITT:

2 I have eight members. I have a quorum.

3 (Mr. Foti enters.)

4 MS. MERRITT:

5 Nine members.

6 MR. COLEMAN:

7 My name is Jim Coleman and, as you all
8 know, I'm the Chair of the Commission and appointed
9 to the Commission by the Louisiana State Bar
10 Association. I'd like to announce that even the new
11 members of the Commission and I'm happy today to say
12 that the Attorney General-elect Charles Foti,
13 appointed by the Chief Justice of the Supreme Court
14 of Louisiana, is present. Judge Grace Bennett
15 Gasaway, Hammond City Court appointed by the
16 Louisiana City Court Judges Association, and Mr. Doug
17 Johnson is not here, but Mr. Kirby Newburger is
18 citizen appointee by Senator Hainkel.

19 MR. NEWBURGER:

20 Johnson is here.

21 MR. COLEMAN:

22 Dr. Benny Popwell and Ms. Mary Lou
23 Winters are both citizens appointed by Mr. DeWitt,
24 the Speaker of the House. I think you all know that
25 today our meeting is accessible on the Internet, and

1 since that's true, I'd like each member to introduce
2 themselves before any further remarks, and then we
3 will begin the presentation of evidence before the
4 Commission. So if we'll start to my far right,
5 introduce yourself.

6 SENATOR LENTINI:

7 Art Lentini, representing the 10th
8 Senate district, which is Jefferson Parish.

9 JUDGE THIBODEAUX:

10 Gene Thibodeaux, Third Circuit Court of
11 the Appeal, Lake Charles, appointed by the Conference
12 of Court of Appeal Judges.

13 REPRESENTATIVE MARTINY:

14 I'm Danny Martiny. I'm the state
15 representative from Jefferson Parish.

16 MS. HOLT:

17 Sibal Holt, Louisiana AFL-CIO.

18 MR. JOHNSON:

19 Doug Johnson, Senate appointment,
20 Senate President John Hainkel, State Farm agent,
21 Hammond, Louisiana.

22 JUDGE GASAWAY:

23 Grace Gasaway, president of the
24 Louisiana City Court Judges Association.

25 MR. FOTI:

1 Sheriff Charles Foti, Criminal Sheriff
2 of the Parish of Orleans and Attorney General-elect
3 and appointed by the Chief Justice.

4 MR. NEWBURGER:

5 Kirby Newburger. I'm appointed by the
6 Senate. I'm vice-president with A.G. Edwards in
7 Mandeville, Louisiana.

8 MR. COLEMAN:

9 Thank you so much. As you will recall,
10 a Judicial Compensation Commission was created in
11 1995 with ten members subject to Senate confirmation,
12 two appointed by the Senate, two appointed by the
13 House, one by the Governor, one by the Chief Justice
14 of the Supreme Court, one by the Conference of Court
15 of Appeal Judges, one by the Louisiana District
16 Judges Association, and one by the City Court Judges
17 Association, and one by the Louisiana State Bar
18 Association.

19 As you will recall, the Commission,
20 pursuant to Revised Statute 1346, shall, and I'm
21 quoting, "make a study of salaries payable to judges"
22 -- I'm quoting again -- "and shall submit its
23 recommendations concerning judges' salaries to the
24 legislature 60 days prior to the commencement of any
25 regular session of the legislature."

1 The Commission made its original report
2 in 1996 with a recommendation for a 4 percent
3 increase in judicial salaries effective July 1, 1996
4 and on July 1, 1997, with the understanding that the
5 Commission would not report again with a request for
6 an increase until the year 2000.

7 The Commission filed its year 2000
8 report with a recommendation for a 5 percent increase
9 effective July 1, 2000, July 1, 2001 and July 1,
10 2002. However, the report of the Commission was
11 deferred one year and the 5 percent salary increases
12 became effective July 1, 2001, 2002 and 2003.

13 In addition to adopting the
14 recommendation by the Commission, the 2001
15 legislature made changes to the Commission as
16 follows: One, increasing the membership from 10 to
17 15 with the additional five members to be citizens,
18 with two appointed by the president of the Senate,
19 two appointed by the Speaker of the House of
20 Representatives, and one appointed by the Chief
21 Justice. The second change: The legislature
22 clarified that the Commission could report during any
23 regular session of the legislature in an odd or even
24 numbered year; and third, the legislature chose to
25 require for the recommendation of the Commission to

1 have the effect of law to be by enactment requiring
2 the signature of the Governor, rather than as we had
3 always been, by concurrent resolution, as previously
4 statutorily provided.

5 During the 2003 legislative session,
6 the Commission, in favor of both of the other changes
7 adopted by the legislature, worked actively to
8 restore the authority of the Commission's report
9 recommendation to be effective by resolution rather
10 than enactment, but unfortunately we weren't
11 successful.

12 At our September 12, 2003 meeting, we
13 considered the future of the Commission, recognizing
14 that the upcoming regular session of 2004 is the
15 normal time for consideration of the level of
16 judicial salaries. At that meeting, we received a
17 letter of support from the president of the Louisiana
18 District Judges Association, who advised that the
19 Executive Committee of the Louisiana District
20 Association voted in support of our past work and
21 continued success of the Judicial Compensation
22 Commission; further providing, the Association
23 recognizes and appreciates and is honored by the
24 valued public service that the Commission and its
25 members provide and looks forward to receiving the

1 Commission's report prior to the next legislative
2 session.

3 We also received testimony from Judge
4 Doucet and Judge Kleinpeter indicating that the
5 Conference of Court of Appeal Judges and the City
6 Court Judges Association were in support of the
7 continued success of the Commission's work. We had
8 received individual letters from judges indicating
9 their support and requesting that we would continue.

10 I believe the formation and function of
11 the Commission represents a move towards good
12 government, and prior to the formation of the
13 Commission compensation was, for the most part,
14 subject simply to the whims of politics -- a judge
15 has to be a politician and come up here with a cup in
16 his hand to the legislature. But now, and hopefully
17 for the future, judicial compensation will be based
18 on reason and from a careful study of the factors on
19 which judicial salaries should be based and, of
20 course, on comparison of the Louisiana judges
21 compensation with that of other states.

22 Today represents a fact-finding
23 function of the Commission. I submit that the
24 consideration of the Commission was viewed as reform
25 legislation and its original intent was to take

1 politics out of judicial compensation. The
2 Commission served its function just in that fashion
3 in 1996, in 2000, and 2001, and it is my hope that
4 the Commission is and will be continued to be viewed
5 as a credible and objective organization. The
6 Commission really is a good idea. It's working.

7 This meeting is in preparation for our
8 2004 recommendation to the legislature. I think that
9 the best procedure would be as follows: If the
10 commissioners have a question of a presenter, please
11 feel free to interrupt and ask those questions. I'll
12 ask all of our guests here today to hold their
13 questions until a presenter has concluded his or her
14 remarks, and then we will give you an opportunity to
15 ask any questions you may have.

16 Should we not conclude with a
17 recommendation today, our next meeting will be in
18 January. Prior to that time, the information
19 gathered at this meeting will be transcribed and
20 furnished to Commission members and available to the
21 public. At the January meeting, if necessary, we
22 will form a recommendation that we will make to the
23 legislature, and I invite all of you to come back for
24 that January meeting.

25 Before we start the program though, is

1 there anyone here that would like to be heard first
2 due to any time restraints? Mr. Lee or Judge Tanner?
3 Judge Tanner, we will recognize you if you would like
4 to, or we would be happy if you want to sit through
5 the meeting.

6 JUDGE TANNER:

7 I'll be happy to sit for a reasonable
8 time. I got a small part, Mr. Coleman.

9 MR. COLEMAN:

10 As a matter of procedure, I'm going to
11 request Mr. Timothy Palmatier to take charge now with
12 a formal presentation of evidence before the
13 Commission. Since he's lined up these people who
14 will be presenting, Tim, I'm going to ask you to
15 introduce the presenters as they make their
16 presentation. Thank you, Tim. Please proceed.

17 MR. PALMATIER:

18 Thank you and good afternoon, Mr. Chair
19 Coleman, Judge and Vice-Chair Thibodeaux and Members.
20 My name is Timothy Palmatier. I'm the Chief Deputy
21 Judicial Administrator with the administrative office
22 of the Supreme Court of Louisiana. I thank you for
23 the opportunity to address your commission this
24 afternoon.

25 Let me also provide a little framework

1 for the first three presentations that will be made
2 this afternoon. I will begin by addressing the
3 compensation commission history in Louisiana and by
4 touching upon some of the criteria which the American
5 Judicature Society recommends any compensation
6 commission consider in formulating its recommendation
7 to its funding source, in our case the legislature.

8 I will be followed by Ms. Grace Barry,
9 former staff counsel, House Judiciary Commission, and
10 associate professor of legal research at Louisiana
11 State University, who will make a presentation about
12 the activities of other commissions in other
13 jurisdictions.

14 Ms. Barry will be followed by Dr. Loren
15 Scott, Professor Emeritus of economics, Louisiana
16 State University, and president of Loren C. Scott and
17 Associates, who will address the statistical and
18 economic information relative to judicial salaries
19 and the erosion of purchasing power of judicial
20 salaries as a result of increases in the cost of
21 living, as well as other economic changes.

22 Thereafter, we welcome comments by
23 others and those in the audience who wish

24 I would like to address the history of judicial 01:39:48
25 compensation in Louisiana because I think it is very 01:39:56

1 telling and provides insight into the impetus for the
2 creation of this very commission. Back in 1974, it
3 became apparent to government officials and to the
4 public through articles such as the one I have here,
5 entitled "Politics, Power and the People," that there
6 was something wrong in the judicial branch of
7 government that needed to be reformed.

8 Let me read you an excerpt from the
9 article:

10 "In most hierarchies, whether they
11 pertain to business, industry, labor, government,
12 education, or religion, those individuals who
13 exercise the greatest degree of authority and
14 responsibility receive the highest salaries. The
15 judicial system in the state of Louisiana doesn't
16 work that way. The Louisiana Supreme Court is at the
17 top of the structure; the Courts of Appeal are next
18 highest in jurisdiction. Below these are the various
19 district, family, and juvenile courts.

20 "Despite the structure, the seven
21 judges of the Supreme Court receive salaries which
22 are less than those paid to 29 of the district,
23 family and juvenile courts. Furthermore, 50 of the
24 124 judges at the district level are paid more than
25 the circuit judges on the Courts of Appeal."

1 Almost 30 years ago the public
2 recognized the need for reform. The article closes
3 out with the following recommendations by the author,
4 Mr. James H. Gillis, New Orleans Times-Picayune
5 writer:

6 "What the legislature should do is make
7 an upward adjustment in the salaries of Supreme Court
8 justices and the appellate judges and provide for an
9 orderly pay plan for the entire judicial system."

10 I respectfully suggest that an orderly
11 pay plan includes a methodology for the recognition
12 of cost of living and other economic changes.
13 Unfortunately, Mr. Gillis's recommendation almost 30
14 years ago has not been fully implemented, although
15 our commission has made strides toward that goal,
16 which I will touch on later in my presentation when
17 discussing our commission in its historical context.

18 On January 9, 1975, Governor Edwin
19 Edwards, by executive order, created the Judicial
20 Compensation Commission. Its chair was Mr. Edward
21 Stagg, executive director of the Council for a Better
22 Louisiana. Its charge and function was to conduct
23 studies and make recommendations to the Governor and
24 to the legislature with respect to the factors to be
25 considered and the compensation to be paid to the

1 judicial officers of Louisiana. This commission was
2 created recognizing that it had been several years
3 since the last pay increase was granted the members
4 of the judiciary, leaving them in need of an
5 adjustment as a result of the inflationary process we
6 have experienced since that time.

7 Contained in the January 31, 1975
8 minutes of the Governor's committee, there are
9 reflected sentiments as expressed then by Judge
10 Bowes. Judge Bowes was asked if he didn't think that
11 the district judges should be entirely paid by the
12 state with no supplement from local governing bodies.
13 He agreed that a salary from only the state would be
14 agreeable if the pay was sufficient and if there were
15 automatic pay increases, that is, cost of living
16 adjustments or step/merit increases received by other
17 state employees in Louisiana.

18 The Governor's committee, on February
19 13, 1975, unanimously voted that local supplements be
20 removed in exchange for fair salaries and automatic
21 increases in pay for judges. It should be pointed
22 out that all judges were not in favor of eliminating
23 local supplements, and I believe we have Judge
24 Tanner, who is one of those judges. It was generally
25 felt by district court judges that it would seem

1 reasonable that in order to eliminate local
2 supplements, cost of living adjustments would be a
3 fair approach. It is obvious from all the documents
4 I have reviewed that the cost of living adjustments
5 were a very important part of negotiations in the
6 elimination of local supplements. At least one judge
7 felt that local supplements were forfeited in 1975 in
8 exchange for support of cost of living adjustments
9 for judges.

10 The results of the efforts of the
11 compensation commission created by executive order
12 was Act 743, regular session, 1975. That act
13 eliminated local supplements for judges at the
14 district court level and above, and it resulted in
15 uniformity, and it restored the hierarchy of the
16 judiciary as a part of a reform movement. I
17 respectfully submit that the Commission sits here
18 today charged to recommend to the legislature the
19 completion of that reform that began almost 30 years
20 ago.

21 While the original commission was
22 successful in reforming the judicial hierarchy, its
23 successor commissions were ineffective in addressing
24 the second prong of the reform: Cost of living
25 increases. In the same year that the legislature

1 enacted Act 743 of 1975, it created three
2 commissions. The Governor's executive committee
3 ceased to function. Act 542 of 1975 created the
4 Commission on Judicial Compensation to study the
5 compensation of judges and other court personnel paid
6 entirely by the state. It was to issue a report and
7 make recommendations to the Governor and the
8 legislature. Its recommendations had no effect on
9 salaries. The reports were advisory. The minutes of
10 its final meeting on April 14, 1977 provide:

11 Whereas, any recommended increase in judicial
12 salaries would not be favorably received, a report
13 would be submitted stating that the judicial salaries
14 established in 1975 were both appropriate and
15 adequate, and that at such time as cost of living
16 adjustments are considered for other state offices
17 and employees, that an appropriate adjustment should
18 be considered for judicial salaries. The cost of
19 living adjustments were not forthcoming.

20 Act 803, 1975 regular session, created
21 the Compensation Review Commission to study the
22 compensation of elected officials of state, parishes,
23 and districts, members of the legislature, judges of
24 the courts of the state and unclassified employees of
25 state agencies and departments. It would report to

1 the legislature on the first day of April of odd
2 numbered years and a recommendation had no effect on
3 salaries. It was advisory.

4 Senate concurrent resolution No. 136,
5 regular session, 1975, created a commission on
6 judicial compensation for city, parish and municipal
7 courts to study the compensation of judges and other
8 court personnel paid partially by the state. Any
9 report was to be issued to the Governor and the
10 legislature. Recommendations of the commission had
11 no effect. They were only advisory.

12 By 1987, all three of these provisions
13 and commissions that were enacted in 1975 were either
14 repealed or inactive. Their reports on more than one
15 occasion recognized the sacrifices of some district
16 court judges in giving up local supplements, Orleans
17 in particular. They recognized uniformity in
18 salaries and recommended that cost of living
19 increases in judicial salaries be provided to
20 coincide with the cost of living increases in
21 salaries of other state employees. I note from the
22 minutes of that Commission on Judicial Compensation
23 meetings that legislative members of the commission
24 made it clear that there was no chance for a salary
25 increase for judges in this session of the

1 legislature. As a result, the commission voted at
2 its meeting to merge its Commission on Judicial
3 Compensation with the Board of Compensation Review
4 Commission which deals with salaries for all elected
5 and appointed officials and unclassified employees.

6 It is noteworthy that the time of all
7 of this 1975 activity is five years after the judges'
8 previous pay raise. If you'll notice in Dr. Scott's
9 presentation that the length of time is important in
10 that the approximate five year activity level existed
11 up until the creation of our compensation commission.

12 If I may step back from the history for
13 a moment, what is different as a result of the
14 reports of the commission which contained multi-year
15 increases is that the growth of salaries is viewed as
16 a linear function. In previous history, a graph of
17 judicial salaries revealed a staircase approach to
18 setting salaries. You will see no increase for five
19 years, then a spike, five years, like that. That
20 approach encouraged a political process, demanding
21 that all forces be brought to bear on that one
22 adjustment; for example, a 20 percent increase might
23 be headline reported by corresponding perception of
24 gargantuan gains reaped through a political process,
25 but when viewed over a period of years, the increase

1 does not even keep pace with the cost of living or
2 the market place and previously the public was not
3 informed. I think this Commission provides that
4 ity.

5 Let me suggest that the Commission
6 stands as a responsible vehicle to depoliticize the
7 judicial salaries setting process to allow for linear
8 growth in judicial salaries, encouraging a more
9 reasoned, reflective study and certain method of
10 results.

11 Returning to the historical perspective
12 as to local supplements, how do we insure that local
13 supplements not be replaced by increases replaced by
14 local funds to the detriment of the city court
15 judges? The language contained in Act 742 of 1975
16 provides the salaries paid to city judges by the
17 governing authorities of the several parishes and
18 municipalities as of April 21, 1975, pursuant to
19 Revised Statute 13:1875 or any other law authorizing
20 the payment of salaries to city court judges by
21 parishes or municipalities or both, or any motion,
22 ordinance or resolution enacted or adopted pursuant
23 thereto shall be construed as the minimum salaries
24 payable by such parishes and municipalities to the
25 respective city court judges.

1 In addition, in 1977 Act 366 was
2 enacted to provide a cap on city court judges'
3 salaries to maintain the judicial salary hierarchy
4 created in 1975 by Act 743 and is now codified in
5 13:1874.1, and provides the salary of a judge of a
6 city court shall in no case exceed the salary of a
7 district court judge of the judicial district in
8 which the city court is located. In 1977, the
9 judicial salary hierarchy, the first prong of the
10 reform, was now statutorily in place with statutory
11 safeguards for its preservation.

12 Since the inactivity of the three
13 commissions created in 1975, there have been, that I
14 know of, two other attempts at reforming the
15 methodology for determining compensation of judges.
16 In 1985, the Judicial Salary Planning Committee of
17 the Louisiana Judicial Council issued a report
18 outlining the need for increased judicial salaries,
19 along with automatic cost of living adjustments, to
20 insure the compensation would remain fair and
21 adequate so as to attract and retain experienced,
22 successful attorneys to the bench.

23 The report provides: Our state needs
24 to attract experienced, successful attorneys to the
25 bench. We must avoid a situation occurring in some

1 other states where only those attorneys unsuccessful
2 in practice or those young attorneys whose only
3 experience is a few years in government are
4 interested in taking the bench. Equally, we must
5 retain the experience and wisdom of those judges
6 throughout the state who have so ably handled
7 thousands of cases during their judicial careers.
8 Judicial retirement costs the state far more than
9 retirement paychecks alone. Retirement not only
10 requires the state to pay the salary of the judge's
11 successor, but deprives the state of experienced
12 judges who can effectively handle the many complex
13 situations which occur regularly in a judicial
14

15 The other post-1975 attempt at reform
16 came in House Concurrent Study Resolution request No.
17 2, Regular Session, 1989, which created a joint
18 committee to study the methodology of judicial
19 compensation. It was composed of the members of the
20 House Committee on Judiciary and the Senate Judiciary
21 B Committee. As far as I can determine, no report
22 was issued by this committee.

23 I would like to point out that the
24 present compensation commission legislation is
25 different from all its predecessors. It is the first

1 time that a report is required of a commission. It
2 is the first time that the recommendation of a
3 commission is required to be submitted to
4 legislators. Finally, it is the first time that the
5 enabling document provides how the recommendations of
6 the Commission are to become law. Our commission
7 legislation was truly enacted as and continues thanks
8 to the actions of this Commission to be a reform
9 piece of legislation.

10 Our commission has issued two reports
11 recommending judicial salary increases: In 1996,
12 resulting in the passage of House Concurrent
13 Resolution 29 with a 4 percent increase each year
14 effective July 1, 1996 and July 1, 1997 on the
15 state-paid salaries of judges, that is, exclusive of
16 the judges' supplemental compensation fund monthly
17 supplement, which incidentally was reduced by \$100
18 effective April 1, 2002. I'm authorized to report on
19 the judges' supplemental compensation fund if you'd
20 like to hear about the activity of that fund when I'm
21 done the historical presentation of the commissions.

22 During the 1996 session, the Commission
23 was also successful in preventing its sunset and in
24 the preservation of a report recommendation that,
25 according to the opinion of the then Attorney

1 General, must be accepted or rejected without
2 amendment. The second report issued by our
3 commission in 2000 resulted in the passage of House
4 Concurrent Resolution No. 30, regular session, 2001
5 with 5 percent increases effective July 1, 2001, 2002
6 and 2003 on the actual salary of judges, meaning
7 including the monthly supplement received from the
8 judges' supplemental compensation fund.

9 In addition to these salary increases,
10 during the 2001 legislative session Act 225 was
11 passed, which increased the number of Commission
12 members by five, all to be citizen members appointed
13 as follows: Two by the president of the Senate, two
14 by the Speaker of the House, and one by the Chief
15 Justice. Therefore, the legislature appoints eight,
16 or a majority of the members of the Commission. The
17 Commission sought statutory clarification that
18 Commission reports may be filed in even or odd
19 numbered years. And, finally, Act 225 provided that
20 salary increases are only to be effective by
21 enactment, necessitating gubernatorial signature
22 rather than if approved by concurrent resolution
23 adopted by a favorable vote of the majority of the
24 elected members of each House as previously provided
25 by law.

1 Incidentally, the ABA in its August
2 2003 annual meeting resolved to encourage states to
3 adopt the use of compensation commissions -- and
4 Grace Barry, who will speak next, will address how
5 many compensation commissions there are and the
6 nature of them -- in August 2003 to encourage states
7 to adopt the use of compensation commissions whose
8 recommendations should have the force of law unless
9 rejected by a two-thirds majority legislative vote
10 within a fixed period of time following the receipt
11 of the Commission's report.

12 Having laid out the history of judicial
13 salaries and compensation commissions in Louisiana, I
14 would like to suggest that you consider the criteria
15 that the American Judicature Society suggests you
16 consider in your findings and recommendations as to
17 the proper salary for the justices and judges of the
18 state of Louisiana. The American Judicature Society
19 is an independent national nonprofit organization of
20 judges, lawyers, and lay members of the public who
21 support improvements in the justice system at all
22 levels and promote the effective administration of
23 justice. It was founded in 1913 and has thoroughly
24 studied the topic of judicial compensation and
25 commissions and has assessed and endorsed the need

1 for judicial compensation commissions. It has
2 concluded that a commission in determining
3 recommendations as to the proper salary for all the
4 justices and judges of a state should consider at
5 least the following seven factors: The skill and
6 experience required to become a judge; the value of
7 compensable service performed by justices and judges
8 as determined by reference to judicial compensation
9 in other states and the federal government; the value
10 of comparable service performed in the private
11 sector, including private judging, arbitration, and
12 mediation; the compensation of attorneys in the
13 private sector; the average Consumer Price Index
14 commonly known as the cost of living, as well as the
15 changes in such measures; the overall compensation
16 presently received by other public officials in the
17 state, including deans, presidents, and chancellors
18 of the public university systems and also including
19 district attorneys, city attorneys, et cetera; and,
20 most importantly, as outlined in the American
21 Judicature Society publication, that level of
22 compensation adequate to insure that the most highly
23 qualified individuals in Louisiana selected from a
24 diversity of life and professional experiences will
25 be attracted to the judiciary and will be able to

1 serve there and continue to serve there without
2 unreasonable economic hardship and with a level of
3 judicial independence unaffected by financial
4 concerns.

5 I think after hearing from Ms. Barry,
6 Dr. Scott and myself this afternoon, we will have
7 touched upon all of the criteria mentioned by the
8 Society. The first criterion is the skill and
9 experience required to become a judge. The Louisiana
10 Constitution Article 5, Section 24, provides a judge
11 must be domiciliary of the respective district,
12 circuit or parish for the two years preceding the
13 election, and must have been admitted to the practice
14 of law in the state for at least five years prior to
15 the election. The same constitutional provision
16 further provides a judge shall not practice law.

17 That is the barest minimal requirement
18 to become a judge. Let me tell you a little bit
19 about the makeup of our judiciary today, which far
20 exceeds the barest minimum requirement: Supreme
21 Court justices' average years of service, 20.1; Court
22 of Appeal judges, 15 years; district court judges,
23 8.5; city court judges, 10.6. Average, when you
24 consider all the judges in the state, average length
25 of service on the bench, 10.1 years. Further, based

1 on the average length of service of a judge, I
2 respectfully submit it is accurate to assert that the
3 majority of a judge's professional life has been
4 devoted and dedicated to state service. For the
5 overwhelming majority of judges, their salary
6 represents their sole source of income. It must keep
7 pace with the cost of living.

8 The second criterion is the value of
9 compensable service performed by justices and judges
10 as determined by reference to judicial compensation
11 in other states and the federal government. Dr.
12 Scott will address the actual statistical
13 relationship between the salaries paid to Louisiana
14 judges and those of other states and the federal
15 government, but let me give you a few examples of the
16 relationship between the workload of federal and
17 state judges and their compensation.

18 The state judiciary presides over 98
19 percent of the court filings in the country. The
20 figure is from the National Center for State Courts'
21 publication. In addition, the state's general
22 jurisdiction judiciary, despite the legislature's
23 creation of additional judgeships, has experienced an
24 average per district judge filing increase of 24
25 percent, or 651 filings per judge, between 1990 and

1 2002. Finally, consider that the total district
2 court filings increased by 219,807, or 43.38 percent,
3 in the state of Louisiana during the period from 1990
4 to 2002, while the number of judges increased 15
5 percent.

6 As to federal judges' salaries,
7 Congress and the President responded to requests for
8 increases to file legislation to raise salaries of
9 federal judges by 16.5 percent, yielding an average
10 pay increase of \$24,948 across all judicial offices.
11 If enacted, the Chief Justice of the U.S. Supreme
12 Court will go from 198 to 231; circuit judges from
13 164 to 191; district court from 154,700 to 180,200;
14 and magistrate judges, 142,324 to 165,784.

15 I respectfully submit that the
16 underlying rationale as to federal judge salary
17 increases is applicable to the state of Louisiana
18 judiciary. And this is a quote from the Federal
19 Judicial Pay:

20 "The current salaries of federal judges
21 may seem more than adequate at first glance,
22 especially when compared to the salaries of workers
23 in other professions. But the average wage earner's
24 salary is not a fair or reasonable reference point by
25 which to assess the adequacy of judicial salaries.

1 Those lawyers who are most qualified to serve as
2 judges have opportunities to earn two and three times
3 the amount we pay our judges. While judicial
4 salaries will never match private law practice
5 salaries, the amount we are willing to pay our judges
6 needs to be sufficient to attract and retain
7 experienced and well-qualified men and women of
8 diverse backgrounds."

9 As to the relationship of the federal
10 judiciary and the state judiciary to our day-to-day
11 lives, it is the state judge who touches our lives on
12 a day-to-day basis and in a much more meaningful way
13 perhaps than the federal bench, which deals with more
14 removed and subtle legal issues. The state judges'
15 judgments affect us in a more personal and
16 significant way. It is the state judge who presides
17 over our successions, traffic tickets, DWIs,
18 divorces, most contract disputes, divisions of
19 property, and, most heart wrenchingly, our custody
20 battles. The state judge touches us in much more
21 immediate and meaningful ways than the federal
22 judiciary ever could. It is the state judiciary that
23 acts as protector of both Louisiana's society at
24 large and the individual rights of its citizens. Yet
25 an associate justice of the Louisiana Supreme Court,

1 a member of the final court of interpretation of law
2 in this state, could accept an appointment as
3 magistrate at federal district court -- and to the
4 nonlawyers, a magistrate or commissioner is someone
5 who hears evidence, writes a report, and provides a
6 recommendation to the federal district court judge
7 for that judge's review and judgment. In other
8 words, the magistrate is not authorized to issue a
9 judgment or decide a controversy. He or she is only
10 authorized to make a recommendation.

11 To return to the example, as of January
12 1, 2003, a federal magistrate earned \$142,342 per
13 year. An associate justice of the Louisiana Supreme
14 Court could accept an appointment and receive a
15 \$24,041 per year increase in pay, or a 20 percent
16 increase. I suggest there is something wrong with
17 that scenario. A district court could accept such an
18 assignment and receive a \$36,562 per year increase, a
19 34.5 percent increase.

20 The third American Judicature Society
21 criterion is the value of comparable service
22 performed in the private sector, including private
23 judging, arbitration, and mediation. Such
24 information is very difficult to ascertain because it
25 is the private sector and a profession still in its

1 infancy stage. We did poll some mediation services
2 to find out that their average per hour charge ranges
3 from \$125 to \$250 per hour. At 2000 hours per year,
4 that yields a gross revenue range of \$250,000 to
5 \$500,000 per year. Assuming a 50 percent overhead
6 rate, the resulting compensation per mediator is
7 \$125,000 to \$250,000 per year. I think I can
8 respectfully submit, based on personal observation,
9 that this new alternative dispute resolution process
10 presents an income source opportunity for judges
11 concerned about salaries and considering departure
12 from the bench.

13 The deterioration in judicial salaries
14 caused by inflation and the lack of cost of living
15 adjustment has become so great that fewer and fewer
16 attorneys are seeking judicial office and many of our
17 ablest judges have begun to count the days until
18 their earliest possible retirement. A review of the
19 LSBA Journal publication on mediation firms in
20 Louisiana revealed many mediation firms in Louisiana
21 have former judges as participants.

22 The fourth criterion is the
23 compensation of attorneys in the private sector.
24 Again, it is very difficult information to obtain
25 because it is in the private sector. However, The

1 National Law Journal did publish such a survey on
2 November 24, 2003. Consider the following: First
3 year out of law school salary range, the Houston
4 area, 91 to 125,000; Dallas area, 110 to 121,000;
5 Atlanta area, 60 to 125,000; New Orleans firms, 80 to
6 98,000, including Adams & Reese, Jones Walker, and
7 McGlinchey Stafford are the three firms that are
8 listed in the publication. Remember, these are
9 starting, first-year associate salaries. The average
10 judge in Louisiana has at least 16 years experience,
11 10.1 years on the bench and five years admitted to
12 the practice of law prior to election to the bench.
13 Average partner salaries are many multiples of the
14 first-year associates' starting salaries. According
15 to the 25th annual survey of the nation's largest law
16 firms, salaries paid to first-year associates at
17 major law firms across the country now average
18 \$112,000. Law firms in major metropolitan areas,
19 including Los Angeles, Washington, D.C., and
20 Philadelphia, continue to pay first-year associates
21 on the average \$125,000 a year and bonuses ranging
22 from 10,000 to \$50,000. Continuing a trend started
23 in the late 1990's, many first-year associates
24 received more compensation in 2002 than district and
25 appellate court judges, all of whom were highly

1 experienced lawyers before they joined the bench. To
2 exacerbate an already demoralizing situation, some of
3 our federal judges report that these higher earning
4 first-year associates clerked for them the preceding
5 year.

6 More experienced private sector
7 attorneys provide a better reference point in terms
8 of comparable knowledge and value to their employer.
9 Not surprisingly, their salaries present an even
10 starker contrast. On average, partners at the major
11 law firms received compensation in excess of
12 \$700,000, general counsel in excess of \$445,000. The
13 one hundred highest paid general counsels in the
14 nation, average salaries more than \$800,000.

15 While the vast majority of federal
16 judges and state judges have the requisite years of
17 experience and excellent legal skills that would
18 enable them to command such salaries in the private
19 sphere, it would be unreasonable to suggest that
20 judges should be paid at levels comparable to those
21 paid to partners at the most prestigious law firms.
22 Over the years, salary studies have used the salaries
23 of leaders of academia or nonprofit institutions as
24 reference points, because the level of education and
25 expertise required of leaders of these institutions

1 is similar to that required of federal judges and
2 state judges, and these leaders, like judges, derive
3 nonmonetary rewards from the work they perform. The
4 Volcker Commission, which was established by the
5 American Bar Association, embraced this approach
6 stating more reasonable comparisons may exist with
7 reference to the leading not-for-profit and academic
8 institutions, but even those comparisons now indicate
9 a significant shortfall in real judicial compensation
10 that requires immediate correction.

11 The average salary of chief executive
12 officers of large nonprofit organizations in 1999 was
13 \$212,000. Many presidents and chancellors of the
14 best public universities are receiving comparable
15 compensation packages. Nationwide, the average
16 salary of law school deans for 2002 and 2003 was
17 approximately \$200,000, while deans of law schools
18 and public and private doctoral institutions earned
19 \$209,000. The Volcker Commission reported that the
20 average salary for deans of the 25 top law schools
21 was \$301,639. Regardless of the selectivity of the
22 group of law schools surveyed, law school deans make
23 substantially more than district court judges.
24 Furthermore, their compensation has not remained
25 stagnant. 2002 to 2003 salaries were approximately

1 \$9,000 higher than the previous year. Even though
2 market conditions alone should be the measure of the
3 adequacy of judicial salaries, they do demonstrate
4 the growing disparity in salaries, the extent of the
5 financial sacrifice judges make to serve the public,
6 and the lure of alternative private employment for
7 those who have significant financial
8 responsibilities. These sizable disparities cannot
9 continue without causing harm to our state's third
10 branch.

11 The fifth criterion in the average
12 compensation question is commonly known as the cost
13 of living as well as changes in such measures and
14 Dr. Scott will discuss that issue in depth. The
15 sixth criterion is the overall compensation presently
16 received by other public officials in Louisiana,
17 including deans, presidents and chancellors of the
18 public university system and district attorneys and
19 city attorneys in major areas. I note that
20 notwithstanding the 4 percent increases granted in
21 1996 and 1997 and the 5 percent increases in 2001,
22 2002 and 2003, the 2003 salaries of district court
23 judges are still much lower than the salaries of the
24 chancellor of LSU law school, full professors at law
25 schools, the accounting chair, the provost, the dean

1 of the engineering school, the football coach, the
2 finance chair, the basketball coach, professors at
3 the medical center, the LSU athletic director, the
4 president of LSU, the commissioner of administration,
5 and many more. I have a whole list of folks. I'm
6 not going to name them by name. It starts at
7 \$350,000 and down to \$105,000 is what a district
8 judge receives.

9 Other states' commissions, for example,
10 Illinois and Alabama, were most persuaded as to the
11 inadequacy of judicial salaries when it was revealed
12 that almost 100 state employees made more than their
13 judges. At the time of our initial report in 1996,
14 there were 718 state employees making more than
15 district court judges. In 1999, it was 990. Today,
16 more than 1075 state employees are paid more than
17 district court judges, and my figures do not include
18 all those state officials who receive local
19 supplements, like district attorneys, sheriffs,
20 clerks of court. The actual count may be well over
21 2000.

22 The seventh criterion is that salaries
23 should be at that level of overall compensation
24 adequate to insure that the most highly qualified
25 individuals in Louisiana selected from a diversity of

1 life and professional experiences will be attracted
2 to the judiciary and will be able to serve there and
3 to continue to serve there without unreasonable
4 economic hardship and with a level of judicial
5 independence unaffected by financial concerns. I
6 submit that Dr. Scott is going to help you quantify
7 that level, but let me submit to you a qualitative
8 definition as contained in "Goodyear vs. Thornburgh":

9 "Adequate salary requires that the
10 salary be sufficient to provide judges with a level
11 of remuneration proportionate to their learning,
12 experience and elevated position which they occupy in
13 society. Factors such as the obligation of judges to
14 their spouses and families, to the rearing and
15 education of their children, and to the expectation
16 of a decent, dignified life upon departure from the
17 bench are to be considered in determining whether
18 compensation is adequate."

19 You may say, well, we're not losing
20 judges. What's the problem? Let me summarize some
21 testimony that we've heard before the Commission in
22 1996 and 1999. In 1996 Judge Keogh testified that he
23 had been a judge for 13 years, left the practice of
24 law earning \$160,000, sold his interest in his law
25 practice thinking that in seven years -- he'd

1 received supplements from the sale of his law
2 practice, thinking that in seven years the salary
3 would catch up. It didn't. He sold his building,
4 thinking it would catch up. It didn't. He cashed in
5 his IRA of \$150,000, and then in 1996 he left the
6 bench prior to the end of his term to practice law.

7 Judge Cox, who is now retired, but in
8 1996 testified that he realized he made a financial
9 sacrifice when he took the bench, but with the
10 passage of time he really realized he'd made a
11 financial sacrifice when he took the bench, eating up
12 more than \$150,000 in savings to educate the children
13 and mortgage his home.

14 Jerry Arbour, who spoke on behalf of
15 the Louisiana Bar Association, former law clerk of
16 the Court of Appeal, Third Circuit, testified he
17 witnessed firsthand sacrifices made by judges and
18 their families. He stated that the mentoring he
19 received by a judge was invaluable and made him a
20 better lawyer and encouraged the Commission to
21 recommend that judges be paid a percentage of federal
22 judges' salaries so they don't have to spend their
23 time and effort spent on pay raises when they can
24 spend it in the courtroom.

25 1999 -- I think this is some of the

1 most compelling testimony -- Judge Pitcher
2 testified -- first minority judge elected to the city
3 court bench in Baton Rouge, first minority elected to
4 the district bench, first elected to the Court of
5 Appeal. His children reached college age and he had
6 to leave the bench. He stated when on the Baton
7 Rouge city court they received regular cost of living
8 increases. When he went to the district court bench,
9 he was prohibited from receiving those cost of living
10 increases. He stated that if he had remained on the
11 bench and received cost of living increases, he would
12 still be a judge today. Also, in 1999, Judge Tanner,
13 who sits behind me, testified and I'll let him
14 testify.

15 As Judge Robert H. Bork astutely
16 observed in an article about federal judicial
17 salaries, which is relevant to Louisiana judges since
18 their salary levels are lower than their federal
19 counterparts:

20 "When law professors make much more,
21 when youngsters two, three and four years out of law
22 school make more and can widen the gap with every
23 year they practice, who will want a career on the
24 bench? The answers are obvious. The independently
25 wealthy, the financially unsuccessful, those who

1 intend to stay only a few years in order to dress up
2 their resumes or, perhaps the most disturbing thought
3 of all, those who crave power."

4 I conclude with the words of Hamilton
5 in The Federalist, No. 79:

6 "Next to permanency in office, nothing
7 can contribute more to the independence of the judges
8 than a fixed provision for their support. In the
9 general course of human nature, a power over a man's
10 subsistence amounts to a power over his will."

11 This concludes my remarks, and I would
12 like to introduce the next presenter, Ms. Grace
13 Barry. Thank you.

14 MR. COLEMAN:

15 Tim, I think your historical background
16 of the commissions and the judges is going to be very
17 helpful to the members of the Commission, and I'd
18 like you to now start presenting your experts that
19 have made a study of this and that are ready to
20 testify.

21 MS. BARRY:

22 Good afternoon, Mr. Chairman, Mr.
23 Vice-Chairman and members of the Judicial
24 Compensation Commission. I was recently asked to
25 come up before the Commission today and review and

1 update my research.

2 MR. COLEMAN:

3 Will you just introduce yourself a
4 little bit more to the Commission?

5 MS. BARRY:

6 Certainly. I was getting ready to do
7 that as an aside but I'm Grace Barry. I'm an
8 associate professor of professional practice at the
9 Paul M. Hebert Law Center, Louisiana State
10 University, and I was asked to come here today to
11 update some research that I began years earlier
12 concerning the creation and success of judicial
13 compensation commissions across the country.

14 My interest in the Compensation
15 Commission began, why I am here today, is that all of
16 this began in the early '90's when I was the house
17 attorney for the House Judiciary Committee and
18 actually participated and helped in the drafting of
19 the legislation that created Louisiana's Judicial
20 Compensation Commission, so this is a continuing
21 research that I update regularly regarding the
22 success of commissions across the country.

23 You should have in your packet
24 something that I included. It is a chart from the
25 National Center for State Courts prepared by Mr.

1 Kenneth Pinkey. You'll see some handwritten
2 adjustments on it from me with the knowledge and
3 approval of Mr. Pinkey, and this chart is something
4 that I will not take up the committee's time and read
5 to you in detail, but should give you a very thorough
6 overview of the 28 states that do have judicial
7 compensation commissions, how they are comprised and
8 their function. This chart was updated in March 2003
9 by Mr. Kenneth Pinkey, and the information that I'm
10 going to present to you today is a combination of
11 some data prepared by both myself, Mr. Ken Pinkey,
12 and Mr. Robert Tobin, both of them with the National
13 Center for State Courts. So, with that today, I will
14 give a brief overview of these judicial compensation
15 commissions, and I will do it in a context of looking
16 at compensation commissions in light of them being
17 one of the three major methodologies for setting
18 judicial salaries across the country.

19 The National Center for State Courts
20 noted that the major objective in any process for
21 determining compensation for judges should be equity,
22 regularity, objectivity and non-political treatment.
23 From there they have looked at the three major
24 sources of setting judicial salaries, the first one
25 being the pure legislative process, the second being

1 the use of commissions, and the third being some sort
2 of automatic annual incremental increase, sometimes
3 called COLAs, or cost of living adjustments, others
4 being considered escalators or longevity pay; and we
5 will briefly look at all three of those today.

6 The first method of setting judicial
7 salaries is, of course, the pure legislative process.
8 While all of the states have not responded to our
9 request for data, by the process of elimination that
10 we have 28 states that do report having some sort of
11 commission, we take the assumption that the other 22
12 states use some form of the legislative process.
13 Looking at some of those states, we found that either
14 it is woefully unsuccessful at the present time or
15 that the states are anomalies of sorts. One where it
16 is unsuccessful is our neighboring state of Texas
17 wherein today in Texas local county court judges,
18 because they are funded locally within their
19 counties, actually have the potential and, in fact,
20 do in some counties earn more money than Supreme
21 Court justices on the Texas Supreme Court. So to
22 speak to the court administrators in Texas, you would
23 find that the legislative process is not working so
24 well at this time, yet two other examples -- and
25 these are just random samples that I pulled from some

1 of our data about those that use the pure legislative
2 process -- are two that are, quite frankly,
3 anomalies.

4 One of them is the state of Virginia,
5 where, in fact, the judges in Virginia are appointed
6 by the legislature, so it is simple to say that the
7 legislature and the judiciary share a very amicable
8 and close working relationship. It does go through
9 the legislative process, but, of course, having been
10 appointed by them, it is pretty much left for debate
11 prior to going to the House floor and, in fact, at
12 some points in time Virginia judges have earned more
13 than federal judges on the bench.

14 Another example is the state of Idaho.
15 Idaho, they have a long-standing Chief Justice of the
16 Supreme Court and a long-standing court administrator
17 who has a very good working relationship with the
18 appropriations committee in Idaho, and the bottom
19 line in Idaho seems to be that whatever the Chief
20 Justice and chief deputy judicial administrator
21 recommend annually is approved through the
22 appropriations process with little floor debate,
23 controversy, or lots of media attention.

24 So that's just a small sampling of
25 states that do have the legislative process, and they

1 seem to be a good illustration that the process is
2 either woefully unsuccessful or very close and
3 amicable, wherein the judges are compensated, again
4 in Idaho, equal to or greater than the federal
5 judiciary.

6 The second method of setting judicial
7 salaries is, of course, the compensation commission
8 process. The last time I was before this Commission,
9 I believe in 2000, we reported that there were 20
10 states in the nation that have compensation
11 commissions. Today there are 21, and I believe there
12 are a few more states that are in the process of
13 trying to create compensation commissions. I say
14 compensation commissions and not judicial
15 compensation commissions because, of these 21
16 commissions, six of them are purely for the setting
17 of judicial salaries. The others, in fact, recommend
18 and set judicial salaries for elected officials
19 sometimes, other times for state-appointed officials,
20 and yet at other times they also recommend and set
21 the salaries for legislators.

22 How these commissions work across the
23 nation vary as well. Generally, they are broken into
24 two different categories, force of law, or advisory,
25 Louisiana at the current time being, of course, an

1 advisory commission. When I say force of law
2 commission, it does differ somewhat, but generally
3 they are following the recommendations that Mr.
4 Palmatier just mentioned of the American Bar
5 Association wherein the compensation commission,
6 after receiving data and testimony, make a
7 recommendation for salary adjustments, and these
8 adjustments, in fact, become law and become effective
9 unless there is some sort of opposition raised
10 affirmatively by the legislature, which requires a
11 two-thirds vote. In other words, the recommendation
12 is law automatically without it having to have either
13 resolution or a legislative enactment bill to follow
14 it through the process.

15 The advisory commissions also operate
16 somewhat differently. Some commissions that are
17 advisory in nature are simply approved through an
18 appropriations process. Others that are advisory in
19 nature have an appropriations process as well as the
20 creation of a resolution which can either be voted up
21 or down, rejected or accepted, and is not amended,
22 and then there are other advisory commissions that
23 are simply that, advisory, and then from that point
24 the legislature begins the bill introduction process,
25 which it's my understanding -- I wasn't at the last

1 meeting -- is what Louisiana has now become since the
2 inception of the Judicial Compensation Commission.

3 MR. COLEMAN:

4 Your understanding is right on that.
5 At the last meeting of the legislature the House
6 unanimously was changing it, and only at the last
7 minute they dissented, did not approve it, but as of
8 now you have correctly interpreted the duties of this
9 Commission.

10 MS. BARRY:

11 And that's really very interesting,
12 because, although since the last time I've reported
13 we have only gained one Judicial Compensation
14 Commission, that being in the state of New Jersey,
15 both Nevada and Texas, I believe, have employed a
16 force ad hoc commission. They have not created
17 compensation commissions by act of law, but governors
18 do appoint commissions and they are utilizing them,
19 and, more importantly, one of the greatest changes to
20 the compensation commission process since the last
21 time I was here was that after a very lengthy study
22 by the National Center for State Courts working in
23 conjunction with the state of Hawaii most recently in
24 2003, which is the reason for some of my little
25 handwritten edits on the chart I have provided to

1 you, is they have, in fact, changed their commission
2 from what ours has just become to a force of law
3 compensation commission. They, in fact, found out
4 through a very lengthy study that the process of
5 having a compensation commission that was advisory in
6 nature, and then still required the complete
7 legislative process, to be completely ineffective and
8 lacking none of the political process that the
9 commission was created to employ. So that is
10 probably the most significant change since the last
11 time I was here, and that did go into effect in March
12 of 2003 in Hawaii.

13 Of the states that do have compensation
14 commissions, I mentioned there are two different
15 types, advisory and force of law. We have nine of
16 those states are force of law. The other 11 at this
17 time are advisory commissions, but, as I mentioned,
18 the degree of advisory is different.

19 The third method of compensation of
20 judicial salaries across the nation are what we call
21 escalators or cost of living adjustments, and it's
22 important to note that approximately 28 states
23 currently provide for some sort of automatic annual
24 increase for judicial salaries. Some of it is by
25 law; others it has just been by custom. They simply

1 track the salaries or the percentage increase of
2 other state employees, but what's interesting to note
3 is that out of the 28 states that do provide some
4 sort of cost of living adjustment, not all of these
5 are states that employ only the legislative process.
6 In fact, states that have compensation commissions
7 actually overlap some of the states that provide
8 annual incremental increases for judicial salaries,
9 their rationale being that the compensation
10 commission, in fact, convenes and gathers data when
11 it is time to actually reset the base salary of
12 judges for other reasons with the annual incremental
13 pay to be simple cost of living adjustment or, in
14 some cases, longevity pay.

15 With these types of annual increment
16 increases, there are three types. One is linked to
17 state employees, one is linked to the Consumer Price
18 Index or the Department of Labor index, and the other
19 one is simply something that's called longevity pay,
20 and this is where judges are compensated either with
21 a certain increase in percentage of their pay based
22 upon their number of years on the bench, or they are
23 given a certain dollar amount increase for every year
24 they are on the bench. There are about a dozen
25 states that actually link the judges' automatic

1 increase in pay to whatever the percentage is that is
2 set for all state employees. About another six
3 states employ the process of attaching a judicial
4 salary increase to the Consumer Price Index, and then
5 there are another number of states, approximately six
6 of them, that provide, as I talked about, longevity
7 pay. So that should total the 28 states that do
8 provide for this annual increase.

9 Interestingly, the judicial
10 compensation commissions, whether they are created
11 permanently by law as we have or by ad hoc, seems to
12 remain one of the best institutionalized methods to
13 study, review and recommend fair and equitable
14 salaries for judges. That, combined with, of course,
15 an annual increase connected to a cost of living or
16 inflation, is the most ideal of settings, but both
17 the American Bar Association and the National Center
18 for State Courts did point out, as Mr. Palmatier also
19 mentioned, that in the use of the commission process
20 as being one of the most ideal for collecting hard
21 data regarding judicial salaries, that, in fact, they
22 really dilute their effectiveness if they are not, in
23 fact, being given force of law effect; and I don't
24 know whether that's before this committee today to
25 determine whether the Commission -- we have a force

1 of law effect, but that has been the recommendation
2 of the Bar and the National Center for State Courts
3 as being the least political and the most effective.

4 MR. COLEMAN:

5 It will be later in the meeting. I
6 think -- I'm pretty sure that the meeting is going to
7 hear a report regarding the salaries.

8 MS. BARRY:

9 I will turn it over to Mr. Scott to
10 give you the actual salaries. I will say if the
11 chart that I have given you about the compensation
12 commissions does not have all of the data you would
13 like, if you would like some more specific data on
14 which states do provide Consumer Price Index
15 increases, longevity pay, any other information, Mr.
16 Chairman, that you would like, I would be happy to
17 provide to the Commission.

18 MR. COLEMAN:

19 I think the Commission has already gone
20 on record that we hope to have the law go back to how
21 it was originally submitted in the legislature,
22 whereby a resolution approving or disapproving, but
23 it won't be two-thirds vote. It's just a majority of
24 the vote of the House, the Senate, without the
25 signature of the Governor, will be what this

1 Commission will attempt to get the legislature to do
2 at the next meeting of the legislature. I think that
3 was decided at our last meeting, and the committee
4 has already been appointed to start work on that.

5 MS. BARRY:

6 That concludes my remarks. If anyone
7 has any questions, I'd be happy --

8 JUDGE THIBODEAUX:

9 Are you aware of any actions the ABA
10 has taken regarding compensation commissions? I
11 think this July meeting they were supposed to
12 consider that, but I'm not sure if that, in fact, was
13 done.

14 MS. BARRY:

15 They did make some recommendations. In
16 fact, both Mr. Palmatier and I have a copy of the
17 recommendations that they came up with. I believe he
18 may have mentioned some of their recommendations in
19 his presentation.

20 JUDGE THIBODEAUX:

21 Are the recommendations final? When I
22 read it, they were preliminary.

23 REPRESENTATIVE TOOMY:

24 In your opening remarks I wasn't sure
25 when you talked about the numbers, I thought you

1 mentioned 28 compensation commissions, and then is
2 there 21 that addresses judicial salaries?

3 MS. BARRY:

4 No. In fact, that we have 21
5 compensation commissions, six that purely set
6 judicial salaries. The number 28 is the number of
7 states that provide for some sort of annual automatic
8 judicial salary adjustment.

9 REPRESENTATIVE TOOMY:

10 Among those 28 then, you were
11 mentioning there was some link to other employees and
12 some link to CPI and longevity?

13 MS. BARRY:

14 Correct.

15 REPRESENTATIVE TOOMY:

16 Would it only be those few states that
17 are linked to longevity where judges in the same
18 classification might receive different salaries?

19 MS. BARRY:

20 When it is longevity pay, if I'm
21 understanding your question correctly, depending on
22 whether you are a district court judge, appellate
23 court judge, yes, the percentage or the dollar
24 amount.

25 REPRESENTATIVE TOOMY:

1 So it would only be in those cases
2 where there would be a difference in pay for the same
3 classification of judge?

4 MS. BARRY:

5 Correct.

6 REPRESENTATIVE TOOMY:

7 Thank you.

8 DR. SCOTT:

9 Chairman, Vice-Chairman, ladies and
10 gentlemen, you have a really tough job ahead of you
11 because, as Grace said, you have to come up with fair
12 and equitable salaries for judges. Fair and
13 equitable are interesting words to economists. Its
14 always difficult to figure out exactly what those
15 mean and it's going to be a hard job for you, so my
16 objective today is to try to give you some objective
17 tools to use to help you decide what fair and
18 equitable should be. I do have a Power Point
19 presentation. I don't know if it only shows up
20 here --

21 MR. COLEMAN:

22 Why don't you introduce yourself?

23 DR. SCOTT:

24 My name is Dr. Loren C. Scott. I'm
25 Professor Emeritus at LSU. "Emeritus" is a Latin

1 phrase that means "small interior office"; and I'm
2 also president of Loren C. Scott and Associates. I
3 think I've had the opportunity to speak before some
4 of you before. This is my third presentation before
5 this particular committee, so I'm happy to be here
6 and chatting with you.

7 Again, one of the difficult problems is
8 figuring out what should be a fair and equitable
9 salary, so one of the things I did was to try to give
10 you some objective benchmarks to use in trying to
11 figure out what is fair and equitable, so I'm going
12 to go over a few of these.

13 One is, at the very least, that judges
14 should not have to suffer a cut in pay as a result of
15 entering the bench, and one of the things we are
16 going to look at is what has been happening to
17 judicial salaries in the state of Louisiana since
18 1983. Have they been keeping up with Consumer Price
19 Index or have they not been keeping up with Consumer
20 Price Index? If judicial salaries have not been
21 keeping up with Consumer Price Index, then in effect
22 the purchasing power of a judge's salary has been
23 declining, and I think at the very least that is not
24 something that we have to have happen to our judges.

25 The other thing we will look at, we are

1 going to look at the salaries of judges compared to
2 the general work force out there. The Bureau of
3 Labor Statistics actually calculates something called
4 the Employment Cost Index, which enables us to track
5 what is happening to the compensation of the general
6 worker in the U.S. economy, and that way we will look
7 at not only -- these people get not only an increase
8 due to inflation, but they also get an increase due
9 to merit and productivity and those sorts of things.
10 You'll see the Employment Cost Index always tends to
11 rise faster than the Consumer Price Index because
12 workers are getting paid more than just a cost of
13 nt.

14 Then the other thing we will look at
15 is, well, maybe judges are just different in some
16 way, so one of the things we want to do is look at
17 judicial salaries in Louisiana compared to judicial
18 salaries in neighboring states, in the south, in the
19 nation as a whole, and then with federal judges, how
20 do they compare with their peers in other states.
21 Now, one might argue that, well, we may not do as
22 well as judges in other states because maybe
23 Louisiana has been performing more poorly than these
24 other economies and these other areas. So in order
25 to check that out, one of the things we will look at

1 is we are going to compare the growth rates of
2 judicial salaries since 1979, compare it with a whole
3 set of different state government employees and also
4 private sector employees to see if maybe there is a
5 reason why judicial salaries should not be growing so
6 fast, maybe Louisiana workers' salaries have not been
7 growing so fast either because of the state of our
8

9 What I'm going to do is go over all
10 four of these and then end up providing you with some
11 suggested salary schedules that you might want to
12 consider in making your decisions about what is fair
13 and equitable. The first one we want to look at,
14 again, is one that Grace mentioned and that Tim
15 mentioned, too, and that is, what salary increases --
16 are there any salary increases necessary just to keep
17 judicial salaries up with the Consumer Price Index?

18 Well, I actually have a couple of
19 tables where you don't have it in your handout right
20 now, but let's just look at these. If you will look
21 at the different levels of court -- this is higher
22 court salaries. Right now their salary is 118,301.
23 To have kept up with inflation since 1983, to have
24 kept up with inflation in the last 20 years, they
25 would now need to be paid 122,415. So they would

1 need to have at \$4,114 salary increase just to keep
2 up with inflation. Another way of saying this is
3 that judicial salaries actually buy about \$4,114
4 fewer goods and services today than they did in 1983.
5 This would represent about a 3.8 percent salary
6 increase for your higher court judges.

7 When we look at the different models
8 I'm going to present to you later for you to consider
9 when deciding what salary increase should be the best
10 one and the most equitable one, you're going to find
11 that just keeping judicial salaries comparable to
12 Consumer Price Index or up with Consumer Price Index
13 is going to result in the lowest salary increases of
14 all the models possible, and you'll see why in just a
15

16 Now, this is higher salaries. If you
17 look at the appellate court salaries, you see
18 something pretty much comparable. Right now they are
19 paid \$112,040 a year. To have kept up with
20 inflation, the salary today would need to be
21 \$116,532. That's almost a \$4,500 difference. They
22 would need a salary increase of 4.3 percent just to
23 keep up with inflation. So their salaries have not
24 kept up with inflation either.

25 The same thing is true of general trial

1 court salaries. Again, their salaries today,
2 105,780. To have kept up with inflation would need
3 to be 110. This would require about a \$4,900
4 increase in that salaries, or about a 4.8 percent
5 increase in their salaries today. So, judicial
6 salaries have not kept up with inflation; just to
7 keep them up with inflation, this is the order of
8 magnitude of the raises that would be necessary.

9 I think it's important to note that the
10 Judicial Compensation Commission has had an impact in
11 terms of helping judges get caught up to some extent.
12 Tim talked a while ago about this step problem that
13 we have had historically in Louisiana with judicial
14 salaries, where they go for a long time with no
15 increase, then they get an increase and go for a long
16 period of time without any increase.

17 If you go back to 1995 when I made my
18 first report to this group, the salary increases
19 needed to keep each one of these three levels
20 restored, their purchasing power, was anywhere as you
21 can see from 11 percent to 15.6 percent. The good
22 news is since the formation of the Judicial
23 Compensation Commission and the wage increases that
24 you have recommended and have been approved, now this
25 gap is considerably smaller, as you can see.

1 This is a graph in which we follow real
2 inflation-adjusted salaries for each one of the
3 levels. The green is the higher court, the red is
4 the appellate court, and the blue is the general
5 trial court. I guess there is two messages here. If
6 you look, for example, at the green line for higher
7 court judges, you can see that in 1983 the dot is
8 higher than it is in 2003. That's an indication
9 again that inflation has eaten away at these judicial
10 court salaries. Their purchasing power is lower
11 today than it was in 1983. On the other hand, if you
12 look right about here in 1995 when the Judicial
13 Compensation Commission was formed, look where this
14 dot is compared to this one here. There's been an
15 improvement. You've moved up. You've reduced some
16 of that deterioration in judicial compensation
17 salary. But from your standpoint one of the most
18 important things is in every case this dot is higher
19 than this dot; this dot is higher than this dot.
20 Judicial salaries have just simply not kept up with
21 inflation.

22 Now, as I mentioned to you, a second
23 peer group we can look at is, should salaries of the
24 judicial sector keep up with just what's happening to
25 the compensation levels of people in general in our

1 economy? And, again, the Department of Labor puts
2 out something called an Employment Cost Index, which
3 tracks what's happening to the compensation levels of
4 all employees in our economy. Well, again, if you
5 look at these different levels -- I'll start with the
6 higher court salaries. Again, today they are making
7 \$118,301. To have kept up with the general
8 population out there in the United States, they would
9 need to be making \$137,277 today. They would need
10 nearly \$19,000 more in salary to have kept up with
11 the general work force in the United States. That's
12 almost a 14 percent increase in their salary, as you
13 can see.

14 You say, Why is that so much larger
15 than the model that we looked at before? Well, the
16 reason is because the tight labor market of the
17 1990's caused workers to get wage rate increases
18 higher than inflation. They were beating inflation.
19 In addition to that, worker productivity is up, and
20 as a result workers get paid according to
21 productivity, especially in the private sector, and
22 that is causing wage rates to go up faster than
23 inflation. Of the models that I'm going to show you
24 that you might use as a benchmark for determining how
25 much our judicial salaries should go up, this model

1 is going to give you the largest increases.

2 In a moment I'll give you suggested --
3 you might say why would we ever want to increase
4 judicial salaries this much? Kind of hang on to that
5 question for just a minute. There might be an
6 absolute reason for us or you considering salary
7 increases on this order of magnitude. If you look
8 across the other areas, the appellate court, again
9 you see the amount needed to increase their salaries
10 so that they keep up with the salaries of other
11 workers in the U.S. economy, \$18,640, or 14.3 percent
12 increase, again very large increase necessary. Then
13 in the case of the general trial court judges, once
14 again a little over \$18,000 increase necessary,
15 nearly a 15 percent increase in salaries just to keep
16 up with what's happening in the rest of the economy.

17 Unlike the case of the inflation
18 where -- keeping up with inflation where the Judicial
19 Compensation Commission has helped narrow the gap and
20 get it narrower, that has not happened with regard to
21 this index, and the reason is because salaries in the
22 U.S. economy have increased much faster than
23 inflation, and as a result if you look at what has
24 happened, if you look at this dot on our chart in the
25 graph I'm showing you, here is 1995 when I started

1 giving reports to you at the Judicial Compensation
2 Commission. This is where higher court salaries were
3 relative to other salaries of other workers in the
4 United States. Look at what 2003 number is. It is
5 below that. So the gap is actually widening. Again,
6 if you look at the very starting point for higher
7 court judges versus the bottom number over here,
8 there is a very significant difference. That's why
9 it requires a large percentage increase just to keep
10 up with workers elsewhere in the U.S. economy. To
11 keep up with other workers in the U.S. economy, we're
12 going to have some substantial raises for the
13 judicial side.

14 Now, this chart here, this second
15 model, we are looking at how judicial salaries
16 compare with just everybody else in the United
17 States, but maybe what we should be doing is looking
18 at judicial peers. You should have a handout that
19 has -- a four-page handout that has a series of
20 tables, and you might want to get that handy because
21 I might want to refer you to Table 2 in this handout.
22 Table 2 in this handout, I've shown you how judicial
23 salaries in Louisiana compare to those in our
24 neighboring states, in the southern states, the
25 national average of federal judges. I did this for

1 1983, I did this for the year 2003, and then what the
2 percentage change has been across all these different
3 regions in this 20-year time period.

4 One of the things you'll notice if you
5 scan down the first column is that in 1983 Louisiana
6 was paying its judges higher salaries than any
7 neighboring state except for higher court judges in
8 Texas. It was paying higher salaries than the
9 southern state average, and it was paying higher
10 salaries than the national average.

11 What has happened since then is that
12 has almost been totally reversed. Now Louisiana is
13 paying its judges lower salaries than any of its
14 neighboring states, except for higher court and
15 appellate court judges in Texas. By the way, I'm
16 going to show you in a second higher court judges in
17 Texas are really weird right now. There is something
18 really strange going on there now; I think Grace
19 alluded to that earlier. And, of course, we are
20 still higher than judges in Mississippi, which, of
21 course, is the poorest state in the nation.
22 Mississippi is number 50 in terms of per capita
23 income in the United States. We are 41st. We are
24 considerably richer state than they are.

25 But we are now in a position where our

1 judicial salaries are lower than the southern average
2 and lower than the national average. Again, the
3 reason for this reversal, I think, is you can tell in
4 the last column of Table 2, if you look at the
5 percentage changes, what you'll discover is salaries
6 at all levels in Louisiana have grown slower than in
7 all these other geographic areas, with the exception
8 of higher court judges in Texas, which again is a
9 weird anomaly that they have over there right now.

10 The other thing that has caused us to
11 fall behind is what Tim alluded to, the stair or the
12 step problem. In Louisiana historically we have had
13 this pattern in our judicial salaries where the
14 salaries for a four-year setting have stayed very
15 stable for two, three or four years, and then they
16 have gone up, and then they have stayed flat for two,
17 three or four years and they have gone up, instead of
18 rising in a steady fashion, which is something Grace
19 alluded to, which is something we'd like to avoid
20 going into the future.

21 Next here is a graph I'm trying to show
22 you for different levels of judges, this very point.
23 If you look -- for example, look at Arkansas which is
24 here in black. This is very easy to see, I think, on
25 the Power Point presentation than anywhere else.

1 Arkansas is this regular, almost constant pattern of
2 going upward in their judicial salaries, whereas you
3 look here in red in Louisiana, you have a constant
4 here for three years, get your step upward, constant
5 for four years, get a step upward, and this has been
6 very important: There is a long period here of about
7 six years where Louisiana judges got no salary
8 increases and one of the major things that got them
9 behind the Consumer Price Index and these other
10 judicial salaries in the rest of the country. Then
11 you got this other kind of step increase. Now the
12 good news is the last two or three years we started
13 to get in a pattern of growing upward.

14 By the way, since we have got this
15 chart up, I mentioned how odd Texas is. Look at the
16 Texas higher court judge numbers here. They haven't
17 changed since 1999. Texas has this weird case. Tim
18 mentioned the problem of keeping the hierarchy in
19 place. You want to make sure there's a difference in
20 salary between your district court judges, your
21 appellate court judges, and your higher court judges.
22 One of the problems in Texas is because they haven't
23 tried to keep this hierarchy in place. In Harris
24 County there is such a large supplement paid to
25 district court judges that most of them are making as

1 much as \$17,000 more than the Supreme Court judges,
2 which I think most of us would say is kind of silly.
3 That's kind of a bad plan.

4 If you look here again for intermediate
5 court, appellate court judges, again you see we have
6 this long stretch right in here where there were no
7 salary increases that really put us in a bad place
8 relative to other states. You look at Arkansas; this
9 nice steady upward growth. Ours has got much better
10 recently in this respect. That's one of the good
11 aspects of the Judicial Compensation Commission
12 recommendations. Again, you see for the general
13 trial court judges, you see Arkansas kind of rocking
14 up through here. You'll see Texas. Texas is in
15 blue. A little more step but getting more constant.

16 And, by the way, you'll notice
17 Mississippi popping up here recently. This is a
18 little bit of -- I wanted to kind of give you this
19 information without throwing you off. This increase
20 that they finally gave to Mississippi judges actually
21 doesn't take place 'til January 2004. I've got it
22 here for 2003, but in reality they haven't received
23 that increase yet. In reality they are still right
24 down here, but they are going to get an increase to
25 this level in 2004.

1 Now, this shows you how our higher
2 court salaries have compared over time. Here we are
3 in green, and once again see this long stretch with
4 no increases here, another stretch with no increases,
5 and here is the U.S. average, the national average,
6 increasing rather steadily, and again we started out
7 higher than them back in 1983 and now we are lower
8 than they are. Notice the problem here that getting
9 this lower than the national average occurred during
10 this time period due to the step increases.

11 If you look at the same thing for
12 appellate court judges, nice smooth upward. We
13 started out higher; we are now well below them at the
14 appellate court level, and the general trial court
15 level, the same picture. Started out higher back
16 here, but these long periods without raises really
17 hurt our relative position there and we are now lower
18 than they are.

19 One of the arguments one might make,
20 they are lower but maybe there is a good reason for
21 that. Maybe that's because the Louisiana economy
22 just performed more poorly than these other areas, so
23 we are justified in having lower judicial salaries.
24 One of the things to help us figure that out and see
25 if that's a righteous argument is let's look at

1 what's happening to the wage rates of other Louisiana
2 workers. Again here this chart just says, Why? And
3 maybe the slow growth, this third bullet point, the
4 slow growth rate of Louisiana judges' salaries is
5 justified just to keep them in line with other
6 Louisiana salaries.

7 If you look at Table 3 in your handout,
8 I don't have everything on this Power Point
9 presentation that's on there, but one of the things I
10 did was go back and gather data for Louisiana judges
11 and for this whole series, some cases governmental
12 workers and some cases you see down there at the
13 bottom, the average wage in manufacturing. I had the
14 wage rate in 1979, the wage rate in 2003, and then
15 the percentage change. I think it doesn't make a
16 whole lot of sense necessarily to compare the
17 absolute size of the salaries you see there in Table
18 3, because there are differences in learning and
19 experience and position the judges have relative to
20 some of these other areas, so that justified their
21 salaries being higher. But the main thing is if you
22 look at the growth rate in higher court, appellate
23 court and general trial court salaries, look at these
24 growth rates compared to the growth rates for
25 unclassified executive branch. These would be the

1 secretaries of the various departments. Classified
2 workers salaries have increased considerably faster
3 than those of judges. Only deputy assistant
4 secretaries is the only group whose salaries
5 increased slower than general trial court judges.
6 They actually increased faster than higher court,
7 appellate court but a little bit slower than general
8 trial court. If you look at doctors employed by the
9 state, and this -- by the way, their salaries have
10 increased much more -- and this is probably not
11 reflective of how much this has increased, because
12 this is just a minimum salary for state-employed
13 doctors.
14 Public school teachers, rising much
15 faster than judges. The average wage of
16 manufacturing rising much faster than judges. If you
17 look at these numbers, what it suggests is the reason
18 that judicial salaries are lower in Louisiana
19 compared to some of these other regions cannot be
20 justified that we had a necessarily poor economy.
21 The other branches of the private sector and the
22 other branches within the state have been getting
23 much larger increases in keeping -- much more in
24 keeping with the Employment Cost Index that I talked
25 to you about earlier. And so we can't say, well,

1 maybe they should get lower rates or raises should
2 not have been growing very fast because of what was
3 happening in the economy. I think this chart
4 indicates that that argument holds no merit.

5 So, a conclusion that I come to from
6 looking at the data there is that the salary growth
7 rate such as we're about to propose to you will not
8 throw the judicial branch out of line relative to
9 other Louisiana workers. So, with that in mind, what
10 I want to do is to give you some benchmarks, some
11 foundation on which could make your decisions about
12 what the range should be for judges, and I'm going to
13 give you four models. One is a model that would make
14 judicial salaries in Louisiana comparable with those
15 in the south. Another would be the same as judicial
16 salaries nationwide. Another would be give judicial
17 salaries that will keep them up with other workers in
18 the U.S. economy. And then the final one, at the
19 very minimum let's give judicial salaries that
20 maintain the purchasing power of judicial
21 compensation over time. In other words, help them to
22 keep up with inflation.

23 So let me go through these each one at
24 a time. To keep them the same as a southern average,
25 the method that I used here -- and, again, if you

1 look at in the third page of the handout I gave to
2 you, I've got four tables on that third page that
3 have an idea of what the salaries would be and what
4 their growth rate would be over time for each one of
5 the levels. Again, I'm giving you not only a
6 proposed salary increase for 2004, but also proposed
7 salary increases going forward so that we can get
8 away from the step problem that has occurred in
9 judicial salaries in Louisiana over time that's not
10 been very good, a step problem that you folks took
11 care of the last round of this Judicial Compensation
12 Commission meeting. So the method we will use here,
13 which you'll see is Table 4 in your handout and also
14 in the report, is suppose we raise the 2004 salaries
15 to the southern state average, and then we allow that
16 to grow over the 2005-2008 period at the average
17 trend rate of these same states over the past 20
18 years? What have they run at for the past 20 years?
19 If you do that, here is what you will find happening.
20 You'll be giving raises to the higher court,
21 appellate court and general trial court that go
22 anywhere from about 9.8 to 9 percent. This is what
23 you need to do in 2004. And then what you would do
24 is you would let each one of these areas grow. In
25 the case of the higher court, in the future they

1 would grow by 3,589 per year; appellate court by
2 3,359 per year; general trial court by 3,278 per
3 year.

4 So, with this model you, number one,
5 bring our judges up with the southern state average.
6 Number two, you build in a step increase over the
7 next four years to get you -- a regular increase over
8 the next four years that gets you away from the step
9 problem we have had in the past. And, number three,
10 it will maintain this hierarchy in salaries among
11 your different trial courts. General trial court
12 will end up being paid less than appellate court, and
13 appellate court less than higher court, which I think
14 is an important thing to do. This, I think, will end
15 up being your second highest wages if you happen to
16 choose this particular model.

17 The second model you'll use, you'll
18 bring the judicial salaries in Louisiana up to the
19 national average, and then you will allow wage rates
20 to rise over the next four years at the same average
21 trend rate of the national judicial salaries over the
22 past 20 years. Under this method you get smaller
23 raises. That might seem weird to you. You might
24 have thought judicial salaries in the south would be
25 on the average lower than the judicial salaries on

1 the nation as a whole. That turns out not to be the
2 case, and I think the primary reason for that, when
3 you look at the national salaries you're looking at
4 including a lot of very small population states,
5 especially in the west, like Montana, Wyoming. Some
6 of you may know that there is actually fewer people
7 in Wyoming than in the Baton Rouge metropolitan
8 statistical area. The Dakotas, they pay their judges
9 very, very low. Those western states -- New Mexico
10 is another one -- have a tendency to really pull down
11 the national average. Just keeping up with the
12 national average, as you can see you need wage
13 increases, 6 percent for general trial court,
14 appellate court, 8.7, and higher court, 5.5, and then
15 what you do is you let their salaries grow over the
16 next four years at these rates that I'm showing you
17 here. About \$3,000 a year for general trial court
18 judges, about 3,200 a year for appellate court
19 judges, and about \$3,300 a year for higher court
20 judges.

21 REPRESENTATIVE MARTINY:

22 That's per year?

23 DR. SCOTT:

24 Yes, this is per year. It's
25 misleading. I have growth rates over that; it should

1 be annual growth rate. That's correct. Thank you
2 for pointing that out.

3 This enables us to bring our judges up
4 to the national average. It also builds in a
5 standard growth over time. It also keeps the
6 hierarchy in there, keeps the judicial salaries
7 appropriately different across these different
8 levels. This is about the second lowest model that
9 I'll show you.

10 To keep judicial salaries at the same
11 level as U.S. workers in general, to keep them up
12 with the Employment Cost Index, that's what this
13 model does and then allows the salaries to grow at
14 the projected rate of growth of the Employment Cost
15 Index. There is an outfit called Global Insights.
16 This is the same group that generates the forecast
17 that your revenue forecasting conference uses. Greg
18 Albrecht and his people up there in the legislative
19 fiscal office. In order to bring salaries in 2004 up
20 to the level of the general work force out there over
21 time, these are very large salary increases. This is
22 the one where you would be asking for the largest
23 salary increases of all the models, and then you
24 would let this grow at about a 4.1 percent growth
25 rate a year. That's what Global Insight says the

1 Employment Cost Index is going to grow at.
2 You might say, how can we possibly
3 justify a number this large? The main thing I would
4 say to you is go back and look at, what is it, the
5 second table I asked you to look at, Table 3? Look
6 at Table 3. The appearances are that the other areas
7 of the judicial branch and the manufacturing sector
8 in Louisiana have been keeping up with this, but we
9 have not been allowing our judges to keep up, and so
10 this is -- one rationale for accepting such a large
11 increase is to bring judicial workers' growth rates,
12 judges' wage rates in line with what's happening to
13 other Louisiana workers. So I think there is a
14 reasonable justification for choosing this particular
15 model, even though it suggests the highest wage rates
16 of all.

17 Then the fourth model is the one that's
18 going to result in the lowest wage increases of all,
19 and that's the one -- let's just say we want to at
20 least raise judicial salaries to restore the
21 purchasing power that they have lost since 1983, and
22 to do that you see salary increases from 5.3 down to
23 4.7 percent for higher court judges. What you would
24 do then is to let that grow at 1.9 percent annually.
25 That is the expected growth rate inflation according

1 to Global Insights, and this would result in the
2 lowest wage increases of all the models.

3 Now, I think these are very good
4 reasons for saying these are too low, because this
5 suggests that there has been no increase in judicial
6 overall experience level, there has been no increase
7 in judicial productivity -- and I think Tim gave you
8 some information a while ago that suggests that
9 judicial productivity has increased. Other workers
10 in the economy have been getting raises and merit
11 increases on the basis of that. Our judges
12 apparently have not been. So this one will generate
13 the lowest salary increases of the four models, but I
14 think there is very good reasons for suggesting that
15 this is too low in terms of what should be
16 meritorious here.

17 Now, I wanted to mention to you that in
18 the report you'll notice something that is missing.
19 Representative Toomy has been around in the past and
20 Ms. Holt has been around in the past and we have
21 presented models to you. One of the things we have
22 done in the past, we have also had a fifth model in
23 there, and that fifth model says how judicial
24 salaries in Louisiana do in compare to its
25 neighboring states. I did not prepare that one this

1 year for you for a couple of reasons. The most
2 important reason is, you have demonstrated in the
3 last two years that you thought that was a bad model.
4 You have not paid much attention to that model in the
5 past two years.

6 Reason number two is I think there is
7 very good reasons not to pay attention to that model,
8 and the primary reason for this is that when we are
9 trying to figure out sort of what's fair, when you
10 just look at three states, in this case three weird
11 states as it turns out, I think you run into what I
12 call -- statisticians refer to it as a small numbers
13 problem. Look at the southern states. There is 16
14 of them. If there is a weird state high, a weird
15 state low, that's going to be pretty much offset by
16 the fact that in the middle you've got all the
17 average states. Real high and real low ones is not
18 going to have much of an impact on things. When you
19 come to these three states, one of the states is the
20 poorest state in the nation; that is Mississippi,
21 which is historically paid the lowest rates of all.
22 They got a little raise recently, but they have
23 historically paid some of the lowest wage rates ever
24 to judges. Then you've got Texas. Texas has
25 typically been paying their judges okay, but they

1 have got this problem with their higher court judges
2 where they haven't received a raise since 1999.

3 When you throw all that in there, and
4 they have nice, neat -- Arkansas and they are giving
5 them nice, neat increases, but when you throw in
6 these weird states, Mississippi and Arkansas, you end
7 up with just weird results. Among other things, we
8 would end up making a recommendation to you that in
9 some cases district court judges would get paid more
10 than your higher court judges. Your hierarchy that
11 Tim talked about before gets all screwed up. You'll
12 get compressive salaries, and I think that is
13 something you want to stay away from. I think just
14 looking at three states distorts the numbers too
15 much, especially when you have a real poor state and
16 you have a state like Texas that's got some very
17 strange things going on where the district court
18 judges are getting paid more than the higher court
19 judges. So, for that reason I didn't present a model
20 for you of the neighboring states.

21 If you look at your last handout for
22 you, that is Table 8. Table 8 has, by the way, two
23 typos on it. No, it had one typo on it. I think the
24 Model 8 says southeastern states; that should be
25 southern states instead of southeastern states. That

1 kind of gives you an idea of what the 2004 raise
2 should be across these different models. As you can
3 see, the purchasing power of Model D on the end gives
4 the lowest wage increases; Model C, which is keeping
5 up with other workers, gives the highest; and then
6 the southern state average is the second highest; and
7 then Model B, which is the national, is the third

8

9 So, that's pretty much our report.
10 Hopefully this will be helpful to you in making what
11 I think is a really hard decision, try to give you as
12 much objective data as possible to help you make a
13 decision about what's fair and equitable. Can I
14 answer any questions for you?

15 MR. COLEMAN:

16 Dr. Scott, have you figured, looking at
17 it from the state treasury point of view, have you
18 figured out the cost to the state of each one of the
19 models if we accept it, and also what percentage is
20 that of the budget of the state?

21 DR. SCOTT:

22 I casually anticipated I might get this
23 answer. I want to emphasize the word "casually." I
24 have not sat down -- and I think historically in the
25 past what has happened, you all have voted on

1 something, we have gone back and calculated that for
2 you, but I think there is a general rule of thumb you
3 can use, and that rule of thumb is -- let me do this.
4 Let me show you something. Is it \$400,000? Because
5 I'd calculated a little bit lower than that. Let's
6 look at the southern state average.

7 On the southern state average you can
8 see 9 percent, 9.8, 9.2, 9 percent. That will
9 probably average out across all the branches since
10 there's a whole lot more general trial court judges
11 than appellate, probably going to be about 9.6
12 percent. It's about \$400,000 per percent. Give me a
13 second. I'll calculate it real quickly. In the case
14 of this one here, if you wanted to raise their
15 salaries by this amount, it would cost the state
16 budget about 3.8 million, if I calculated this
17 correctly. I think that's correct.

18 JUDGE THIBODEAUX:

19 Which model?

20 DR. SCOTT:

21 This is the southern state average
22 model. This is the one that will give you the second
23 highest salary increases of them all. So that would
24 be, in your Table 8, that would be Model A.

25 MR. COLEMAN:

1 And that's 3.8 hundred thousand?

2 DR. SCOTT:

3 About \$3.8 million, and are you
4 interested in the other ones? If you want, I can
5 give you a quick shot at each one of those. Let's
6 see. The national average, I think this is going to
7 turn out to be about 6.5 percent on the average.

8 REPRESENTATIVE MARTINY:

9 Dr. Scott, when you're saying 3.8
10 million, this is per year or 3.8 million over the
11 course?

12 DR. SCOTT:

13 That's going to be 3.8 million the
14 first year. It's going to be slightly higher -- it
15 will be an additional 3.8 million after that,
16 approximately 3.8 million after that. It may be a
17 tiny fraction larger because you're actually tagging
18 on a little bit larger wage increases, I think, in
19 some of them, but generally speaking that's a pretty
20 rough number for you, about 3.8 million. And in the
21 total budget, 17 billion, it's a pretty trivial
22 number, is that right?

23 REPRESENTATIVE MARTINY:

24 I need you to come stand down on the
25 floor and present that.

1 DR. SCOTT:

2 A million here, a million there, after
3 a while it adds up, I'm sure.

4 REPRESENTATIVE MARTINY:

5 The problem that we have, it's easy to
6 sit here and listen to all of this data, and I am not
7 in any way questioning it. I'm sure those figures
8 are correct, but from a perception standpoint and
9 from a presentation standpoint there is just no way
10 you can sell that to the legislature, at least under
11 those terms. My question would be, assuming that we
12 have been doing it wrong for the last 15 or 20 years
13 or 25 years, can you come up with a figure that, had
14 we been providing this relief or these increases over
15 the years, assuming we fixed it, we brought it up to
16 where they should be and we decided we were never
17 going to have this Commission anymore and the rule of
18 thumb now is every year the salaries will increase
19 by -- is it 4 percent?

20 DR. SCOTT:

21 It depends on which model. Do you want
22 the salary increases to keep up with the national
23 average as you see here, or do you want it to keep up
24 with the southern state average? Do you want it to
25 keep up with the Consumer Price Index? I think

1 that's something that Grace says some of the
2 commissions do. Or do you want it to just keep up
3 with the Employment Cost Index? It depends. The
4 answer of an economist always says it depends.

5 REPRESENTATIVE MARTINY:

6 I understand that. The problem that we
7 have though is in trying to convince our colleagues
8 where we are going a lot of times, I think you might
9 agree with me, is discussions in committee and on the
10 House floor never come down to what we are discussing
11 here. It's always going to be -- and I'm sure Ms.
12 Holt could give us some figures on it from her
13 experience, where we have come and where we have
14 gone, and how can you compare these judges who have
15 made X number of dollars practicing law to these poor
16 people who had this 15 percent increase last year,
17 which barely brings them over the poverty level?

18 I'm not trying to take a side either
19 way. I'm trying to figure out the best way that we
20 can come up with a solution to this. First of all,
21 we need to decide whether we are going to continue to
22 do it in the fashion that we have been doing it
23 because, by the way, we changed the legislation a
24 couple of years ago. It makes me wonder sometimes
25 what are we doing here anyway, because if it can all

1 be amended, it's going to go by who can make the best
2 arguments. So I'm looking for, assuming we have been
3 wrong in the past, is it 4 percent? Is it 5 percent?
4 I would suggest to you that I'm probably not going to
5 be able to go to anybody and say first we need to
6 give them 15 percent to catch them up. I just don't
7 know it's going to go anywhere. The answer to my
8 question is, no, you can't. You answered it.
9 Depending on the model, there is no rule of thumb as
10 to how much we should be increasing these salaries
11 every year.

12 DR. SCOTT:

13 The words fair and equitable, isn't it?
14 That's a normative idea. What I try to do is give
15 you some objective data on which to say, well, if we
16 did this, decide it's fair to keep our judges equal
17 to the southern state average, here is what we need
18 to do. Now, to help you with the questions you're
19 going to get on the floor about what has Mrs. Holt's
20 constituency been getting paid, that's why I had that
21 chart in here in the report.

22 REPRESENTATIVE MARTINY:

23 With the increases to the workers? I
24 think Ms. Holt is going to have some questions for
25 you on that. I don't want to speak for Sibal, but my

1 experience is, and I've only been in the political
2 business for about eight years, is that the people
3 really don't care whether they are fair to us or to
4 the judges. It's almost like they feel like if we
5 are punishing them, we are doing the right thing. So
6 it's always got to be something in my mind that's
7 going to be palatable to people. Logic is not
8 necessarily required in the arguments that are made
9 on the respective houses' floors. It's going to be,
10 My school teacher only got a two percent raise so I
11 don't care what you tell me, that's what it is, and I
12 don't care what Dr. Scott says, I don't care what
13 anybody says.

14 In the past anyway we have tried to
15 come up with something that -- it never really, in
16 spite of all of your numbers, we always came down to
17 a number what do we think we can pass and what do we
18 think that we can sell, and that was when we had the
19 up or down resolution. Where it's going to go now
20 with this new -- unless we change the process. God,
21 no one knows, so I just wanted to make that comment.
22 I was just curious if you had some more.

23 MR. JOHNSON:

24 Dr. Scott, I appreciate your hard work
25 and the numbers speak pretty loudly, and I think it's

1 going to be a matter of leadership in the end. I've
2 never served on the House floor. I know how
3 difficult it is to sell, but certainly I can tell you
4 this from my own parish. We have four judges that
5 other attorneys in our area say probably aren't
6 qualified to serve on the bench, and I submit to you
7 that unless we get judges' salaries up where they
8 need to be, good people are not going to seek that
9 position. They simply can't send their children to
10 college.

11 I know my attorney, we wanted him to
12 run for judge. His wife said she would leave him
13 because she couldn't raise her three kids on a
14 judge's salary. So at some point you have to make
15 decisions. It's a matter of leadership in the House
16 and in the Senate, and I would submit to you that
17 unless we bring the level of pay of judges up to at
18 least the southern average, we are asking for anarchy
19 and chaos across the judicial system in time. Should
20 it be tied to what the workers are making in the
21 state? I don't think so. I think at some point you
22 have to establish that hierarchy and keep it or we
23 are asking for trouble.

24 MR. COLEMAN:

25 Ms. Holt?

1 MS. HOLT:
2 Dr. Scott, and I was going with that
3 flow 'til you got to Louisiana workers, because in
4 order to keep up, you use the general economy,
5 general population, to come up with this number that
6 would give you the highest model. But when you
7 compared what judges make in terms of percentages and
8 the increases to Louisiana workers, Mr. Martiny was
9 absolutely right. You use public school teachers
10 from poverty levels to bring them above and today
11 they increase 183 percent. So that's a good
12 comparison, but it's not, because we know they were
13 below poverty teaching our kids, educating our state.
14 That's just no comparison, nor is there a comparison
15 with state workers who were making even less than the
16 teachers, who was making 12. I think now the general
17 salary is, like, 18. I'm saying in a state where
18 money is a concern, if you're going to convince these
19 legislators who's representing the state that 50
20 percent is below the legal line of poverty, you have
21 got to come up with a better line of logic than
22 compare with the rest of the nation. I'm not sold,
23 and I'm sitting on the Commission charged with trying
24 to find a way to do it for them. This just won't
25 wash. It just won't. No way in the world you can

1 justify in the general consumer's mind increasing
2 judges' salary, and even legislator's mind, because
3 they are the ones that ultimately have to vote on it,
4 increasing judges' salary where state workers haven't
5 had an increase. Like I said, they had step
6 increases, some of them, merit increases if they felt
7 they were warranted, but generally they haven't had
8 an increase in ten years.

9 We just have to come up with a better
10 analogy, and I agree at some point in time we ought
11 to get to what they deserve and come up with a
12 system, but when you are paying everybody else, like
13 Representative Martiny said, 2 and 3 percent, how do
14 you justify the judges and not the teachers, or the
15 judges and not your doctors, or the judges and heads
16 of universities, or judges and people who are heading
17 our state and running our state making 2 and 3
18 percent?

19 JUDGE THIBODEAUX:

20 We need to compare apples and apples.
21 Are you going to increase the teacher's salary to
22 that of a judge? If you're going to do that, then
23 that comparison is okay, but you can't.

24 MS. HOLT:

25 That's my point, Judge Thibodeaux. We

1 have apples and oranges here. We don't have a fair
2 comparison, and I am saying that if we have to sell
3 the legislature we have to have a fair comparison.

4 DR. SCOTT:

5 I think that's why in the report I make
6 the point to look at the third column of that table.
7 That's the growth rate in these areas, not the
8 absolute levels. Judge, correct me, and I know Ms.
9 Holt agrees with we are not comparing the absolute
10 salary level of teachers with the absolute salary
11 level of judges. You would expect that, other things
12 being the same, that the judges' salaries would be
13 and should be higher than those of teachers. The
14 educational requirements required are much higher,
15 the position in society is much higher. Whatever you
16 think about that idea, it's still much higher. You
17 would expect again this hierarchy thing to generate
18 higher salaries there.

19 To me, the key thing is you look at
20 this chart I have in front of you, it looks to me
21 like the state is taking -- my impression from this
22 is that the state has taken care of other sectors of
23 the economy better than it has taken care of its
24 judges, and I think when you do that and you have
25 judicial salaries where they are, where it's been

1 eaten away by inflation, I think you get to the
2 problem Mr. Johnson brought out, and I think when you
3 get to the problem Mr. Johnson brought out, that
4 really affects everybody because, as Tim pointed out,
5 somebody is going to be suing somebody, somebody is
6 going to be having a divorce, a domestic dispute, a
7 custody suit, and you want the very best person out
8 there. And if we are not careful, I think that's
9 been the whole problem of judicial salaries. I think
10 the biggest problem that we are facing is if we don't
11 do a good job of pay here, we are not going to get
12 good people, because their opportunity costs are just
13 too great outside of the area.

14 JUDGE THIBODEAUX:

15 I understand it's to depoliticize the
16 process. What I'm hearing is this will not
17 depoliticize the process because in the past one has
18 made emotional arguments and given the legislators
19 soft data. When we give them hard, empirical data
20 that's irrefutable, then we hear that it will not
21 politically fly. I don't know what else to do.

22 MR. COLEMAN:

23 Kirby?

24 MR. NEWBURGER:

25 I look at all this data and I come up

1 with pretty much the same kind of reaction that Mr.
2 Johnson has said and I'm really outraged by these
3 numbers. It is clear to me that we have got a
4 problem as far as comparing what we are paying to the
5 judges compared to what they could get in other
6 sectors, people of their experience, their knowledge,
7 their education, and I think, in fact, that is the
8 reason why, as Tim Palmatier had said, that we have
9 judges that come in -- I mean that start off as a
10 judge with great intentions of hoping that they are
11 going to be able to stay there forever, knowing it's
12 going to cost them some money, and then finding out
13 that they have run through all of their life savings
14 and they have to leave, they have to go get a
15 different job.

16 This is clearly just unacceptable as
17 far as I'm concerned. We don't attract, nor are we
18 able to maintain the high quality judges that we want
19 to have in the state. As pertains to their position
20 in society, the appropriate stature for someone with
21 their education, peers in other sectors of the
22 economy, it just doesn't make any sense. I'd like to
23 just kind of point out -- and I'll go on the floor of
24 the legislature and talk about this if you want me
25 to.

1 REPRESENTATIVE MARTINY:

2 They won't let you on there.

3 MR. NEWBURGER:

4 You know what I'm saying.

5 REPRESENTATIVE MARTINY:

6 In committee.

7 MR. NEWBURGER:

8 In committee. Is that you've got a
9 couple of things that drove up salaries in the last
10 20 years or so, or 30 years as you say nearly, that
11 the judges' salaries have not kept up. One of them
12 is you had tight labor markets throughout the '90's
13 that made salaries go up, and also the other one Dr.
14 Scott said was that you had increased productivity
15 that afforded the ability for workers to make more
16 money and their salaries to rise. That's a long way
17 of saying that those workers, the workers throughout
18 the country, had an increase in their standard of
19 living. Their standard of living went up. Now, that
20 may not refer to all workers. My wife is a school
21 teacher. I can tell you if she wasn't married she'd
22 be in big trouble. We would not be able to have any
23 children, more or less to raise the three that we
24 have.

25 But, having said that, in general the

1 standard of living of the people that live in this
2 country has gone up over the last 20 or 30 years, and
3 what we are talking about, the lowest raise here,
4 that 4 percent or whatever to keep up with inflation,
5 would allow judges to earn as much as they did 20 or
6 30 years ago and have that same standard of living as
7 20 or 30 years ago, whereas the rest of the world has
8 a much higher standard of living. So I think it's an
9 insult to the position in society that judges have or
10 should have to only raise them up to the standard of
11 living that they had 20 something years ago.

12 MR. COLEMAN:

13 Thank you. Representative Toomy?

14 REPRESENTATIVE TOOMY:

15 I have been on this Commission since
16 its inception and I was thinking of taking up your
17 offer of you being on the floor, because I have
18 handled every judicial compensation bill on behalf of
19 the Commission.

20 MR. COLEMAN:

21 And I add, too, that he did a wonderful
22 job in the legislature recently for us.

23 REPRESENTATIVE TOOMY:

24 Well, I think we were in the past
25 successful in the end because of where we started in

1 the beginning. We have -- and I respect Dr. Scott's
2 information, but the information hasn't drastically
3 changed each time that we have met with him, nor has
4 the reality of the budget and dealing with the
5 legislature changed during that period of time, and
6 although he has periodically as we have met suggested
7 that increases of -- double digit increases were
8 necessary just to bring the judges to achieve their
9 purchasing power as it might have been before, if you
10 look at the history since the Commission was started,
11 the annual increases that have been recommended have
12 varied, I believe, from 2 percent to 5 percent. I
13 think that 4 to 5 percent was the ceiling of where we
14 were going to go.

15 What we have done in the past was to
16 spread that out over a number of years and hopefully
17 get a commitment from the legislature to honor the
18 multi-year recommendation of the Commission. It has
19 never been realistic to hope that in one year we
20 could right the situation. It's always been a
21 multi-year recommendation, and I think that's
22 probably the best course of action and the best we
23 could hope for.

24 Again, I don't have to say it, but my
25 interest has always been in providing for the

1 judiciary because of their importance to our societal
2 needs to have an independent judiciary and one that's
3 fairly compensated. I think what was pointed out
4 earlier, that compensation is important, not only for
5 attracting candidates to the judiciary but
6 maintaining the people that we have in the judiciary.

7 That being said, we need to be
8 realistic in our approach of dealing with the
9 statistics as well as dealing with the reality. At
10 this point in time, as close as we are to completing
11 the transition to a new administration and new budget
12 watchers, I would think that if we do have time to
13 wait until January -- I know we have to make a report
14 at some point in January, but if we have time I think
15 it would be healthy to try to have some rapport with
16 the new administration. And, again, this gets into
17 reality of how the recommendation -- what parameters
18 we might have based on the budget perspective of the
19 new administration. So I think we have to set a date
20 early enough in January that we can meet our
21 reporting requirements. Hopefully get some read from
22 the new administration as well as budget
23 implications, but if we don't get that read we will
24 just have to make a recommendation in January and
25 move on.

1 It was pointed out earlier that perhaps
2 the role of the Commission has been diminished
3 somewhat because of legislative changes, and I can't
4 disagree with that, but I do think that we should
5 make, as we did in the past, the best recommendation
6 we could make that we hoped would get through the
7 process. Otherwise, we haven't achieved anything.
8 So I think we need to weigh all of the challenges and
9 to come up with a recommendation that hopefully will
10 make it through the process, and it's not easy. I've
11 handled the legislation in years where the budget
12 wasn't a major problem, and you always have people
13 concerned about, like myself, concerned about other
14 employees as well and always want to weigh one group
15 against another group, so there is a lot of competing
16 interest, and I think we need to be careful and take
17 the time to make a decision that would be good for
18 the judiciary in the long, long run and something we
19 could get part of that accomplished in the next year.

20 MR. COLEMAN:

21 In line with Representative Toomy's
22 recommendation, does anyone have any objection that
23 we all think this over, have an opportunity to have
24 it sink in, and at least the legislature will know
25 that we gave it a great deal of thought when we come

1 to a decision? Is there any objection that we will
2 meet again in January? If there is no objection to
3 that, Tim, what's the date that we have to report?

4 MR. PALMATIER:

5 It's 60 days prior to the beginning of
6 the session, which is March 23, so we will probably
7 have to submit something by the 20th. So I think if
8 we met in the first ten days of January, anywhere in
9 there, we would be okay.

10 REPRESENTATIVE TOOMY:

11 It won't be 'til the 12th 'til
12 everybody is in their offices.

13 MR. COLEMAN:

14 Is there any objection to picking the
15 first week of January?

16 REPRESENTATIVE MARTINY:

17 While Joe and I are sure we are still
18 on this Commission. I think that's probably the best
19 thing to do. Mr. Coleman, can I make a comment,
20 please? I want to apologize to anybody that got the
21 impression that I was in any way making light of what
22 Dr. Scott does. I echo what Joe says in the sense
23 that we have heard all of this before, and I think
24 both of us have been committed to trying to address
25 this problem. But we have also run head first into

1 the realities of a legislative process, and I sure
2 wasn't implying to Mr. Newburger that the fact that I
3 was in legislature makes my role any more important,
4 but the point that I try to make is -- and I make it
5 not only on judicial salaries, but we don't get gift
6 wrapped issues in the legislature where they just
7 said, Okay, are you for making the judges' salaries
8 competitive? We don't get, Are you pro life? Are
9 you pro choice? We get, Are you so pro life that
10 you're willing to risk the loss of Medicaid funds of
11 \$300 million this year?

12 So what's going to come here is not --
13 you might have the chairman of appropriations who is
14 one hundred percent behind you believing that the
15 judicial salaries need to be brought up to speed, who
16 then has to go to the mike after Representative Toomy
17 to say, I agree wholeheartedly with what Joe says.
18 We just don't have the money, so your 8 percent raise
19 can't be an 8 percent raise. So we have to deal with
20 what the legislature is willing to swallow, and then
21 you also have to deal with the guy who comes up and
22 says, You know, my school teacher only got 2 percent,
23 or they aren't getting a raise or whatever. Then
24 you're going to run into "it's great that we have
25 this Judicial Compensation Commission, but how about

1 the school teachers' compensation commission,"
2 because I'm sure they could all come sit in here and
3 give you the same argument as to why they should be
4 brought up to speed with the rest of the country.

5 I'm not trying to be an obstructionist;
6 I'm really trying to be a realist, and to the extent
7 if I offended anybody I apologize, but I was just
8 trying to make that point.

9 MR. COLEMAN:

10 Ms. Holt?

11 MS. HOLT:

12 And my comments were similar, because
13 maybe I'm getting cynical because I've been here so
14 long. When I said the argument just wouldn't wash,
15 I'm the person who lobs on the floor for the raises,
16 and I'm telling you that the logic that we can't get
17 good people to run for judge and state judges is the
18 same argument teachers use, because we can't get good
19 teachers to stay here in the state because they
20 aren't getting paid. We can't get good people to run
21 for the legislature because we can't pay them. The
22 argument just crosses the spectrum. They have heard
23 it over and over again. If we have to sell
24 something, we have to have good reasoning and a good
25 logic to sell it, and that's all we were trying to

1 say.

2 MR. COLEMAN:

3 Thank you. The meeting is now open to
4 any of the people that have been sitting in. Excuse
5 me. Mr. Johnson?

6 MR. JOHNSON:

7 Just one quick question, Dr. Scott.
8 What were the gross revenues to the state treasury?
9 You said something about \$11 billion or \$17 billion?

10 DR. SCOTT:

11 I believe it's 17 billion. Is that
12 right? Representative Toomy probably knows.

13 REPRESENTATIVE TOOMY:

14 That's the total budget.
15 Realistically, you need to look at state funds, which
16 is less than 7 billion.

17 MR. JOHNSON:

18 My question becomes this. I like
19 economics, and I think I read at one point in time --

20 MR. COLEMAN:

21 Dr. Scott, you'll be able to be here on
22 the 6th?

23 DR. SCOTT:

24 I did not bring my calendar with me,
25 and memory is the second thing to go and I can't

1 remember the 6th.

2 MR. COLEMAN:

3 It's Tuesday, the 6th at one o'clock.

4 Mr. Johnson?

5 MR. JOHNSON:

6 Okay, \$7 billion, but this was like --

7 I lost my train of thought. Oh, yeah. The 3.8 was

8 the number.

9 DR. SCOTT:

10 The southern state average increase.

11 MR. JOHNSON:

12 I read somewhere in the economics

13 magazine that in Louisiana, when you take the gross

14 revenues that come into the state coffers, we had one

15 of the highest per capita revenues of any state in

16 the nation. And so my question becomes that 3.8

17 million to get it right, and I think we are getting

18 school teachers right, and we are all heading in the

19 right direction with a lot of things, but to not go

20 for what is necessary to fix this problem if it's

21 such a small percentage. Gross budget seems peculiar

22 to me.

23 DR. SCOTT:

24 That's a statement, not a question.

25 MR. JOHNSON:

1 That is a statement. I went full
2 circle with it. I guess my question was gross
3 revenue, so it's 7 billion in state funding and this
4 is 3.8 million of 7 billion?

5 REPRESENTATIVE TOOMY:

6 I'm rounding it up to 7 billion state
7 funds. Let me tell you something more on point. You
8 would think in today's day and age that whatever
9 monies are requested for anything having to do with
10 the criminal justice system would be available,
11 because it would be a priority. I'll give you a
12 prime example. I've handled this legislation, but
13 just this year I handled the recommendation of the
14 Governor's commission on assistant district attorneys
15 and we met several times, and the Governor's
16 executive counsel was chairman of the committee. We
17 whittled it down to a small figure of well under a
18 million dollars of new money. It never made its way
19 into the budget. It was the Governor's commission,
20 the Governor's executive counsel. It had clearly
21 dealt with the criminal justice system, and we
22 couldn't get that money funded because of other
23 priorities.

24 So, regardless of what percentage of
25 the budget, it's not a done deal, and whether it's

1 one percent or two percent, the bigger it gets, the
2 harder the problem gets.

3 Also, what I had mentioned earlier
4 about perhaps getting with the new administration,
5 I'm not sure that the January 6th date allows us that
6 opportunity. I'd much prefer to meet after the new
7 administration takes office and hopefully have some
8 communication with the new administration, if
9 possible. I'm just not sure between now and the
10 holidays and the transition activities that we are
11 going to be able to get that communication between
12 now and the 6th. I would hope that we would meet
13 perhaps in the third week of January.

14 MR. COLEMAN:

15 Will that still give us time, Tim?

16 REPRESENTATIVE MARTINY:

17 March 29.

18 MR. PALMATIER:

19 60 days before is January 29, I guess.
20 Between the 15th and the 20th, 22nd, 23rd, something
21 like that.

22 MR. COLEMAN:

23 In line with Representative Toomy's
24 recommendation --

25 REPRESENTATIVE TOOMY:

1 As you know, we have the framework of a
2 report. At this point we are just talking about very
3 narrow specifics of the recommendation, so I think it
4 would be more important to try to have some rapport
5 with the new administration than to have excessive
6 time to put the final report together.

7 MR. COLEMAN:

8 Is there any objection for setting our
9 next meeting after you've considered everything to
10 the 21st?

11 MR. NEWBURGER:

12 Mr. Chairman? I just wanted to make
13 one little comment, because I think it's important to
14 factor this in. And that is, I'm still a little
15 unclear what the charge of this Commission is,
16 because if the charge was as it used to be where we
17 would make a recommendation that would either be
18 thumbs up or thumbs down, then clearly we would want
19 to present something that we thought would be voted
20 through. But if whatever our recommendation is, it
21 is likely to be altered, then I don't know what
22 positioning we would like to take. If we are looking
23 for the biggest possible increase, then we ought to
24 ask for 50 percent maybe or we are going to get
25 laughed at. I don't know.

1 MR. COLEMAN:

2 Danny?

3 REPRESENTATIVE MARTINY:

4 The only thing I would say to that is,
5 if you take that attitude, then you might as well do
6 away with the entire process. I think at least
7 something, if nothing else -- and I think we all
8 agree. I'll speak for myself, and I'll take the risk
9 of suggesting that Ms. Holt and Representative Toomy
10 agree with me: There is no way we are going to sell
11 a 19 percent raise, and I believe we may have some
12 legislation in this year to try to go back to where
13 we were. To say this is stupid -- the whole idea of
14 creating this Commission was to come and say we
15 looked at it. We looked at it the best we could. We
16 came up with what Dr. Scott projected we might could
17 do if we had the money, and then we met with Jerry
18 LeBlanc from the administration and this is the best
19 that the Commission can come up with as a Commission
20 recommendation.

21 If we take the attitude of let's just
22 stick anything in there and throw it out there, the
23 word is going to get out, and you're going to take
24 away in my mind the ability of a legislator to stand
25 up there and jump up and down and say, Why are you

1 wasting this committee's time? Make us come up with
2 recommendations if we are just going to throw them to
3 the wind? So I think it's important that the
4 Commission take a stand and a definitive stand, not
5 necessarily 5 percent is the magic number, but 5
6 percent is the number that everybody agrees will best
7 address the budgetary concerns and the need to
8 increase the salaries. So with that I would just
9 suggest that we meet and come up with something.

10 DR. SCOTT:

11 Can I make one last comment? I want to
12 make sure that you all understand what I feel like my
13 role was, and my role was to provide you with some
14 benchmarks. My role was not here to come and say
15 give everybody a one percent raise, but I was
16 prepared to show you that if you did decide that,
17 here is some reasons why you might reasonably support
18 that. Exactly what the right, fair and equitable
19 raise would be, I'm not sure what that is, but I
20 hopefully gave you some groundwork in making that
21 decision.

22 REPRESENTATIVE TOOMY:

23 Let me say, Dr. Scott, I appreciate
24 your information. Whether the recommendation has
25 been 2, 4, 6 or 10 percent, this documentation has

1 helped to make the argument that we are approaching
2 where we need to be, and I think the best we can do
3 is to make the argument to the legislature that we
4 need to do this and that we are approaching some
5 empirical goal that the Commission has established.

6 MR. COLEMAN:

7 I think that we have all decided that
8 we'll meet if you put in your book, and, of course,
9 you'll get notice again that the next meeting will be
10 on the 21st of January at one o'clock, and if this
11 room is available, here is where it will be in Baton
12 Rouge, and it will give everybody time to consider
13 all the issues that have come up. I think
14 Representative Toomy made it very clear we want to
15 come up with, when we do make a recommendation, that
16 it won't be changed or amended because we will have
17 enough behind it that it will go through, even though
18 we don't have that authority at the moment.

19 MR. FOTI:

20 Are you or one of the legislators on
21 the committee going to take the responsibility of
22 trying to set up something either with the transition
23 administration or with the Governor?

24 MR. COLEMAN:

25 Go ahead.

1 REPRESENTATIVE TOOMY:

2 I think there was a request by the
3 Commission of each of the candidates for governor to
4 meet at some point. Perhaps you can elaborate.

5 MR. COLEMAN:

6 Ned Doucet is chairman of that
7 committee and there was a committee appointed of
8 three, and that committee has spoken to both the
9 candidates originally and has had one meeting and, I
10 think, is fitting in another meeting with the
11 Governor-elect, who has said she's taking it under
12 consideration, and I think there is going to be a
13 second meeting. So the answer is, yes, there is a
14 lot of procedure that's going on with that.

15 REPRESENTATIVE TOOMY:

16 There was, as I appreciate it, a
17 subcommittee of this Commission to meet with the
18 Governor to express our interest in the Commission
19 and where we saw the Commission headed.

20 MR. PALMATIER:

21 That's correct. I believe it was Judge
22 Doucet, Mary Lou Winters and Mr. Johnson, I think.
23 We sent letters to both Governor-elect Blanco and Mr.
24 Jindal. Mr. Jindal never returned our call.
25 Governor Blanco said she wasn't taking any meeting

1 until after the election. We have tried a couple of
2 times to get a meeting and we haven't been able to
3 work out a meeting, but Mr. Coleman tells us that
4 they all met. I just wasn't aware of it.

5 MR. COLEMAN:

6 I think now it's in order that Judge
7 Tanner has been sitting waiting, would you like to --
8 we have to adopt the minutes of the last meeting. Do
9 I hear a motion that the minutes be approved?

10 MR. FOTI:

11 So moved.

12 MR. NEWBURGER:

13 Seconded.

14 MR. COLEMAN:

15 All those in favor signify by saying
16 aye. (Chorus of "ayes.") All opposed? Judge Tanner,
17 thank you for waiting.

18 JUDGE TANNER:

19 I'm Thomas W. Tanner. I'm a retired
20 district judge. I was first elected in 1970 and I
21 retired in 1988, 18 years of active service, and I'm
22 now presently serving as the ad hoc judge in about
23 2,200 asbestos cases, so I'm working still. But I
24 retired in 1988 because I simply could not afford to
25 be a judge any longer. I had children in college. I

1 had two girls who I figured were probably going to
2 get married pretty soon, and they did, and it cost me
3 a lot of money, but I had to go back and start
4 practicing law. I'm going to be very frank with you:
5 I didn't want to do that. I wanted to remain a
6 judge, but I had to go back to maintain the way of
7 living that I raised my older children for those two
8 girls and I couldn't have done that as a district
9 judge. I was an active judge when we went from the
10 local supplements where we used to get the
11 supplements, and we no longer do that now, but we
12 have judges that serve that were making only \$20,500
13 a year. I was making about \$45,000 in my district
14 because we went to the police jury and we got a
15 substantial supplement in those days.

16 I didn't oppose equalizing the judges
17 because I felt like all the judges ought to be making
18 the same salary, but I wish in a way now that,
19 because of where I live in the 22nd Judicial District
20 in St. Tammany Parish, we are financially well off
21 over there and we could have gone to the council and
22 gotten a substantial supplement to add to what the
23 state paid us.

24 But that's neither here nor there. We
25 are back to \$105,000. If that kind of pay was

1 available to me when I was an active judge I'd have
2 stayed on the bench, but I had to get off. I would
3 like to report to you that, along with Mr. Johnson,
4 that several of the judges that have been recently
5 elected in my district are making more money now than
6 they ever made as a lawyer. That tells you
7 something. But when we try to get somebody, a
8 practicing lawyer who is really doing well, he'll
9 flat out tell you that he just can't afford to become
10 a judge. And some of the ones that have been
11 recently elected, they are thinking about having to
12 quit, and they have only been there six years. So
13 I'm very much concerned about that part of it.

14 With that, I want to tell you that I'm
15 the president of the Retired Judges Association,
16 which is really composed of two sets of judges. We
17 have a small number who are in the old system, the
18 old unfunded system, and then we have a much larger
19 number who are in the funded system. Well, the thing
20 that's said about the unfunded system is that the
21 cost of living, the increases and things that come to
22 the State Employees Retirement System, they go
23 through, but at the same time the unfunded people
24 have to come in for a special thing, and we haven't
25 gotten it in several years now. So we are going to

1 ask for -- what we have been trying to do is get a
2 cost of living to be added every year limited to the
3 Consumer Price Index, but what we are going to do
4 this year is put in a bill and ask for a certain
5 percentage to catch us up a little bit and maybe
6 would improve the situation, especially for the
7 widows of old judges who are making less than what
8 Social Security is paying. See, we didn't have
9 Social Security as judges, so it's a critical thing
10 for the widows and we are going to try to introduce a
11 bill. It's not going to talk about a lot of money,
12 because every year we lose some. So I think
13 Representative Toomy is familiar with the Retired
14 Judges, and we have appeared several times in
15 judiciary, and I just appreciate the opportunity to
16 speak to you. I confirm everything that's gone on
17 here today.

18 MR. COLEMAN:

19 We are certainly very happy to have you
20 here. You, of course, recognize that it's not within
21 the prerogative of this Commission to take any
22 action, but we are certainly happy for you to be able
23 to express it so it goes over the Internet and
24 everywhere.

25 JUDGE TANNER:

1 What I am concerned about is I don't
2 want to be in conflict with anything that this
3 Commission is going to do, and we were frankly
4 looking at about a 10 percent raise. That's very
5 little money when you compare it to it, but I don't
6 want to do anything from the Retired Judges that
7 would interfere with the active district judges and
8 other judges, too, on the courts.

9 MR. COLEMAN:

10 Thank you, Judge. Any questions? Next
11 is Wayne Lee. He's been sitting there very
12 patiently. He is the president of the Louisiana
13 State Bar Association, and I know that we are all
14 happy to get a report from him and his feelings in
15 regard to any recommendations or ideas to the
16 Commission.

17 MR. LEE:

18 Mr. Coleman, I appreciate being here,
19 and members of the Commission. I learned about this
20 meeting a few weeks ago, and I understood basically
21 the task that the Commission was assigned, and I felt
22 that it was important for the Bar Association to at
23 least attempt to present something in support of the
24 acts that are being considered. Unfortunately, the
25 House of Delegates, which is the policy-making body

1 of the Bar Association, does not meet until February,
2 but the Board of Governors which serves as the
3 executive council for the Association when the House
4 is not available was meeting in November, and I
5 presented to the Board the fact that this Commission
6 was meeting and considering judicial compensation
7 issues and asked for their support for the actions of
8 the Commission and for increasing or providing
9 adequate compensation for the judiciary. That
10 support was given without hesitation.

11 The Board of Governors is comprised of
12 representatives from the Bar Association from around
13 the state. They are people with different types of
14 practices. They are from different demographic
15 backgrounds. The Bar Association is comprised of in
16 excess of 19,000 members. Our members include, of
17 course, the judges of the state of Louisiana. But as
18 you've seen, when the judges become judges they cease
19 to practice law; they continue to be members of the
20 Association. The reason why we are supportive of
21 adequate compensation for the judges is not because
22 they are members of the Association, but because of
23 what we see as their value to our society and to our
24 frame of government.

25 We have a government which depends upon

1 a strong and independent judiciary. They are one
2 pillar of our government that is essential. They are
3 an essential part of our society. Without a place to
4 go, a forum to provide a means, a mechanism for fair
5 adjudication of disputes, we would really be in
6 jeopardy as a society. We go to the courts to
7 resolve disputes. We go to the courts to seek
8 protection of our constitutional rights, and it is
9 essential that we have a strong judiciary. Lawyers,
10 we practice before the courts. That's where I am a
11 litigator and we go before the courts. We know that
12 one side is going to win, one side is going to lose
13 when you have a case that gets litigated to the end.
14 What's important is not so much the winning and
15 losing part. What's important is that you have a
16 forum in which it is fairly adjudicated, where you
17 have got a forum where the person who will decide the
18 case, who will administer the case, is going to give
19 his time or her time and talent and fairly make
20 decisions and render decisions that are based upon
21 the law and our Constitution, regardless of whether
22 it's a popular result.

23 Our Board of Governors did not have
24 before it the specifics of Dr. Scott's
25 recommendations, so I'm not here to tell you that we

1 are in support of a particular increase or specific
2 recommendation, but we recognize that there is no way
3 to quantify a decision-making process or a
4 decision-maker who decides cases on the basis of
5 what's right and not on the basis of what's popular.
6 We can't put a value or quantify the value of a judge
7 who is willing to spend the time on a complex case
8 reviewing the case law, reading the briefs and
9 spending the time that it takes to make an informed
10 decision. That's what we need to make the system
11 work, and so I commend the Commission.

12 The Board of Governors of the state Bar
13 Association spoke in favor of fair and adequate
14 compensation for the judges and spoke out in favor of
15 a strong and independent judiciary commission that
16 can study and independently review the judicial
17 compensation of our judges versus other factors,
18 whether it's other states, other workers, but to make
19 informed recommendations for compensation. So that
20 is my reason for being here today, to speak in
21 support of an independent judiciary, adequate and
22 fair compensation, and a fair and strong process such
23 as this Commission with diverse representation on the
24 Commission to make recommendations that will help to
25 provide this very important part of our governmental

1 function.

2 I appreciate again being allowed to be
3 here and speak to this Commission and commend you for
4 your hard work, and must say that I don't envy you
5 the task ahead of you next month in having to make
6 the decision to make the final recommendation to the
7 legislature. Thank you. I'm happy to answer any
8 questions if there are any.

9 MR. COLEMAN:

10 Any questions? Thank you so much,
11 Wayne, and we will look forward to the Bar
12 Association supporting the Commission.

13 JUDGE THIBODEAUX:

14 Was that resolution passed by the Board
15 of Governors?

16 MR. LEE:

17 Yes, there was a resolution passed by
18 the Board of Governors. I do not have a copy of the
19 formal resolution, but I would not be here without
20 getting the support from the Board of Governors.

21 JUDGE THIBODEAUX:

22 Can we get one? Can you send one to
23 Chairman Coleman or Mr. Palmatier?

24 MR. LEE:

25 We can do it.

1 MR. COLEMAN:

2 Thank you very much. Is there any
3 other business or anyone else that would like to
4 bring something before the Commission? If not,
5 before we adjourn I'd like to tell all of you how
6 much I appreciate you giving up your time and
7 dedicating your service, each one of the members
8 here, to the work of the Commission. I know the
9 legislators are preparing for an organization session
10 next month as well as the upcoming regular session.
11 We are privileged to have Mr. Attorney General-elect
12 Foti, because we know you're preparing to take your
13 oath of office next month, and all of us have busy
14 schedules and busy dockets, and I certainly
15 appreciate the fact that you're going to give this
16 matter your real hard attention and that you'll be
17 prepared on the 21st of January to come up with a
18 decision that I'm sure will be one that you've spent
19 a lot of time.

20 I thank you to Dr. Scott for your work
21 in preparing all this and we really look forward to
22 hearing from you. The next meeting will be devoted
23 to nothing but just getting right down to the
24 business of what we need to do, and there will be
25 some time spent and I hope a report that the

1 Governor-elect is willing to support the change back
2 to the Commission like we deserve to be, because for
3 this kind of work the legislature certainly should
4 listen to the study that's been made and the
5 decisions we make. So I thank you all very much for
6 your attendance. Do I hear a motion to adjourn?

7 MR. FOTI:

8 Moved.

9 MR. NEWBURGER:

10 Seconded.

11 MR. COLEMAN:

12 All those in favor? (Chorus of
13 "ayes.") Let's stand up.

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ASTRA THIBODEAUX (#84091)
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