

Extension of Remarks Delivered by
Hon. John M. Leventhal, President of the Association of
Supreme Court Justices of the City of New York, at the hearing
by the Special Commission on Judicial Compensation in Albany,
New York on July 20, 2011

Chairperson Thompson and Members of the Commission, thank you for giving me the opportunity to address the Commission on behalf of the Supreme Court Justices of the City of New York.

You have heard and will have heard from many individuals and organizations about why it is fair and just to provide the judiciary with adequate and reasonable compensation.

Among those are that judges have had no raises or cost of living adjustments for more than 12 and one half years and only one raise in more than 17 years; that many of the clerks in the court system earn more than the judges with whom they work; that our absolute salaries have been eroded by an increase in the consumer price index; that the disparity of compensation between state Supreme Court Justices and United States District Court Judges has grown since 1999 and during that period

federal judges have received 6 salary adjustments and that the judges in New York State will never be able to make up this difference no matter what salary this Special Commission may recommend.

Cynics may say “so what is the big deal that one in 10 judges are now leaving each year at a far greater rate than ever before. We will be able to replace them with other lawyers willing to serve.” I would respond to that comment by stating do we really want a judiciary made of those who are too wealthy to care about just, fair, and equitable compensation and with those who are not able to make a living practicing law and that any salary would be a step up. I am certain that you would agree with me that what we want is a bench that is comprised of qualified lawyers, the New York judiciary that produced for example Richard Wesley now of the Second Circuit Court of Appeals, and Judges Smith Thompson, Samuel Nelson, Rufus Peckham and of course Benjamin Cardozo, all who were first state Supreme Court Justices and then later became Associate Justices of the United States Supreme Court. Many state judges far too

young to retire have left our bench to private practice, some who have or will give testimony today such as Robert Spolzino, Barry Cozier, Jim McGuire, Michael Corriero, Robert Julian and Allen Hurkin-Torres, who has submitted a powerful statement to the commission which I have attached a copy to my written statement, or those who left to go to the federal judiciary—among these are Sandra Townes, Sandra Feuerstein and Arthur Spatt, all state appellate judges who joined the United States District Court, a trial bench, and Harold Baer, George Daniels, Colleen McMahon, Eric Vitaliano and Dora Irizarry to name a few. Even James Yates who was President Elect of the State Association left and received a greater salary as a counsel to the legislature. Of course we can replace judges, but we cannot substitute the years of judicial experience.

Although no salary adjustments have been made, four governors and the legislature over the last 6-8 years have indicated that an adjustment in judicial compensation has been earned and is well deserved. The most difficult decision that you have to reach in your deliberations is not whether an adjustment

in compensation is due, but how one will be implemented. I propose to the Commission that an immediate “catch-up” is just and reasonable and any salary adjustment should not be made incrementally. One may ask, why shouldn’t the judges receive only incremental salary adjustments given this economic climate? I would answer you and to those who would ascribe to this rationale, that the members of this judiciary, who were unable to have outside employment, have already tightened their belts by having only one salary adjustment in more than 17 years and none in more than 13 years. To provide incremental adjustments rather than to recommend a “catch up” would be almost punitive to those who will soon retire. In effect, for these senior judges, there will have been a salary freeze for almost 16 years as their pensions will not feel the full effect of an adjustment.

You have been given two excellent submissions by Ann Pfau the Chief Administrative Judge of the State of New York and The Coalition of New York State Judicial Associations. It makes no sense now to rehash their analysis and figures. Both of these

submissions, however, have indicated that an adjustment in compensation for Supreme Court Justices in April 2012 to the mid to upper \$190,000 range would move New York compensation up from a rank of 50th to 40th place or 36th if using the ACCRA index. I would ask you, does New York, the Empire State, ever strive to be 40th, or to be in the middle of the pack? Have we ever strived to be in the middle or mediocre in terms of healthcare, literacy or education, crime rate or safety of our children? Why should our state place our judiciary last in the nation in terms of compensation which translates into last in respect when judges are educated and trained and required in most courts in which they serve to have 10 years of experience practicing law?

Make no mistakes about it, inadequate compensation affects judicial independence. In *United States v. Will*, 449 U.S. 200, 217-18 (1980), the Supreme Court had stated: "A judiciary free from control by the Executive and the Legislative is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of

government.” It is only through judicial independence that the Founding Fathers believed that the judiciary could serve as the protector against governmental encroachment of the Constitution and the rights of individuals. (THE FEDERALIST NO.79 , Alexander Hamilton; The Federalist Papers, Mentor Books, 1961 pp 472 - 473).

We often speak about running government more like a business. In some things, that is wise, and I think that judicial pay is one of them. Allow me to explain.

Any smart business person knows that to get, and retain, good people, you need to pay the going rate for people with the necessary skill set and credentials. For jobs that require certain skills, you’ve got to pay what good people with those skills will take. For other jobs with other skill sets, you pay different wages, because the going rate is different. If you don’t, you will not be able to compete well. Of course, you will have some good people who are willing to accept a lower rate, but they will be the exception, and a lot of other good people will not want to work

for you. Some good people will leave. In the end, however, you will not thrive, because you need good people working for you.

No businessperson that wants to thrive can say, “well, I’m willing to pay this much for this position, which I think is a good salary and is a lot more than other people make, and I’m not going to pay any more than that,” when the people who have the skills needed in that position can make more money elsewhere.

So, too, with judicial pay. I know that, to many people, the current salaries of judges seems like a lot of money, and it is more than most people make. But, it is not nearly what most people with the necessary skill set and experience are willing to accept. We are not talking about paying people what partners in big firms earn. That is not the proper comparison.

What is the proper comparison is the going rate for people with the same skill set - lawyers in public service or private practice other than the biggest firms. A District Attorney in New York City earns \$190,000 per year. Many of their top assistants make salaries near that number. Look at the salaries for Inspector Generals, for counsel in city agencies. For example,

the salary of the Chief Administrative Law Judge of the New York City Office of Administrative Trials and Hearings is \$192,000. Look at the salaries for professors at law schools. Then, look at what you are paying judges. Is our state like the businessperson who folds his arms and refuses to pay what you need to pay and who insists that what you pay is more than a lot of other working people get and then complains about the quality of the work force? And wonders why good people don't want to work as judges?

Or will our state be a smart businessperson who pays people what you need to pay them to get top people? In the end, does New York want a judiciary that it can be proud of? Or do we just want to complain about how judges are seeking too much money which most concede is fair and reasonable given the work that they do and their experience and education while your work force deteriorates and you can't get good people?

Think of this as though you are running a business, a most important business which makes life and death decisions

concerning the most complex matters as well as people's liberty and freedom such as the rights of children and parents, toxic tort litigation, domestic violence, class actions, and to which parent a child should live, and whether a person should be declared incapacitated and how many years a convicted person should spend in prison.

If we had received a mere 2.9% increase in salary each year since 1999, the salary of a Supreme Court Justice in 2011 would be more than \$192,000 and in 2012 more than \$198,000 (see attached). This amount does not take into account all the salary lost had these raises been put into effect or the tremendous loss of purchasing power over these 13 years.

Commissioners, you have an opportunity to correct this wrong which is a disservice not only to the members of the judiciary, but also to our citizenry and our system of justice. A failure to provide the judiciary with an immediate "catch up" and with only incremental increases would perpetuate this injustice. I implore you there must be an immediate "catch up"

followed by regular salary increases. The salary range submitted by Judge Pfau and the salary submitted by The Coalition of New York State Judicial Associations are fair, just, sensible, reasonable, rational and correct in light of the history of lack of cost of living adjustment for the past 13 years and in an effort to keep and attract a quality and competent judiciary.

The faith and future of the judiciary has been entrusted to you. This is an awesome responsibility. Kindly return honor and dignity to a just and deserving judiciary.

Dear Commissioners,

Almost a decade ago I was elected to the the New York State Supreme Court. For me it was the highest honor I could ever achieve. Public service was my idea of the greatest contribution one could make as an attorney. While I never expected to get rich, I also never expected not to receive a pay raise during my entire career. Unfortunately, my personal and professional aspirations had to take a back seat to my responsibilities as the father of a ten year old child and my family obligations.

I fully understand that, for most of the public, the current salary that judges receive seems more than sufficient. Unfortunately, the public fails to understand that the government is competing with the private sector. I was fully willing to sacrifice the compensation that I could receive in the private sector - but only up to a point. With no pay raise on the horizon, I made the decision that many other judges are making - to leave a job I loved. This was the most difficult decision I ever made.

At the end of the day, this State must decide - pay judges a salary that will keep and attract qualified judges or accept a judiciary that will decline in quality because of the failure to raise salaries. No other profession would accept a salary freeze for more than a decade.

I made my decision to leave when I was only 47 years old. I was willing to forego the significant increase in pension I would have received if I just stayed on a little longer. Why? Because I completely lost faith that the State appreciated my sacrifice in giving up the significantly greater compensation I could receive in the private sector. I did not need parity with the private sector but I did need to feel that I would receive an increase in compensation that recognized the sacrifice I was making.

I can only hope that the State makes the right decision on this issue. The quality of our judiciary is at stake.

Allen Hurkin-Torres

COMPENSATION ASSUMPTIONS OF SUPREME COURT
JUSTICE'S PAY BASED ON 2.9% INCREASE PER YEAR

<u>YEAR</u>	<u>SALARY</u>	<u>INCREASE</u>
1999	\$136,700.00	
2000	\$140,664.30	\$3,964.30
2001	\$144,743.56	\$4,079.26
2002	\$148,941.12	\$4,197.56
2003	\$153,260.41	\$4,319.29
2004	\$157,704.96	\$4,444.55
2005	\$162,278.40	\$4,573.44
2006	\$166,984.47	\$4,706.07
2007	\$171,827.02	\$4,842.55
2008	\$176,810.00	\$4,982.98
2009	\$181,937.49	\$5,127.49
2010	\$187,213.68	\$5,276.19
2011	\$192,642.88	\$5,429.20
2012	\$198,229.52	\$5,586.64

John M. Leventhal

On January 25, 2008, John M. Leventhal was appointed by Governor Eliot Spitzer as an Associate Justice of the Appellate Division, Second Judicial Department to hear civil and criminal appeals. Justice Leventhal was first elected to the Supreme Court, Second Judicial District in November 1994 and re-elected in 2008. From June 1996 to January 2008, Justice Leventhal presided over the nation's first felony Domestic Violence Court. The "DV Court" was cited for its practices at the Northeast States Domestic Violence Registry Conference in November 1997 and has been observed by jurists and court administrators from New York and other states as well as from other countries. From 2001 to January, 2008, Justice Leventhal also presided over a guardianship part for alleged incapacitated persons. This assignment required the supervision of the management of assets, medical malpractice and personal injury awards as well as other economic issues concerning incapacitated individuals.

Prior to his election to the bench, Justice Leventhal was in private practice from 1982 until 1994 specializing in criminal and civil litigation and appeals. Justice Leventhal is a frequent lecturer on evidence, domestic violence, elder abuse, guardianship and other topics before Bar Associations, law schools, civic groups, court administrators and governmental agencies. In 2009, he was given the Brooklyn Law School Alumni of the Year Award. In 2008, he received the Distinguished Achievement Medal from the New York State Free and Accepted Masons, the Brooklyn Women's Bar Association Beatrice M. Judge Recognition Award "for outstanding service to the women of the Bar, to the community and the law" and the New York Board of Rabbis and Dayenu Voices of Valor "Elijah Award" for male leadership in ending Domestic Violence and the National College of District Attorneys' Stephen L. Von Riesen Lecturer of Merit Award "in recognition of exceptional service in the continuing professional education of all individuals who work on behalf of domestic violence survivors, their families and our communities." In 2005, Justice Leventhal received a Special Commendation from the U.S. Department of Justice "in recognition of his extraordinary contribution to the prevention of violence against women . . . and for his groundbreaking work and leadership on the role of judicial reviews in the supervision and accountability of domestic violence offenders." In 2003, he was a recipient of the Ruth Moscovitz Gender Fairness Award presented by the Second Judicial District. In 2001, he was recognized by the Brooklyn Women's Bar Association "for his continuous support of and commitment to women in law and society." In 2000, he received the Fordham University School of Law's "In The Trenches" award for his work in the Domestic Violence Court. Justice Leventhal has authored or co-authored nineteen articles relating to criminal and civil law. He has written a book entitled *Full Order of Protection* that has not yet been published. His work as a judge dealing with DV cases has been featured in a number of newspaper and magazine articles including a profile in "Public Lives" of the New York Times on April 25, 2001.

Justice Leventhal was the Editor in Chief of the *Barrister*, the legal quarterly publication of the Brooklyn Bar Association (1982 - 1994), *Veritas*, the legal publication

of the Brooklyn Law School Alumni Association (1982 - 1984), as well as a Trustee of the Brooklyn Bar Association (1987 - 1994) and a Director of the Brooklyn Law School Alumni Association (1983 - 2004). He has a J.D. from Brooklyn Law School, an M.S. from Hunter College (CUNY) and a B.A. from Case Western Reserve University.