





STATE OF NEW YORK  
TEMPORARY STATE COMMISSION ON  
JUDICIAL COMPENSATION

James R. Jones  
Chair

Mary L. Hines  
Coordinator  
(518) 474-1840

Richard J. Bartlett  
Tom Lewis  
Nancy Mackay Loudon  
James F. Niehoff

January 15, 1993

TO: Hon. Mario M. Cuomo, Governor  
Hon. Ralph J. Marino, Temporary President of  
The Senate  
Hon. Saul Weprin, Speaker of the Assembly  
Hon. Manfred Ohrenstein, Minority Leader of  
the Senate  
Hon. Clarence D. Rappleyea, Jr., Minority  
Leader of the Assembly  
Hon. Richard D. Simons, Acting Chief Judge,  
Court of Appeals

FROM: James R. Jones, Chairman

I am pleased to present to you the final report of the  
Temporary State Commission on Judicial Compensation.

In accordance with Executive Order No. 161, we have  
examined the adequacy of judicial salaries; whether judges  
and justice performing the same or similar duties should be  
compensated uniformly; the need to establish a permanent  
process to ensure that judicial pay levels remain adequate;  
and, the potential for increased productivity and enhanced  
revenue generation within the court system.

In 1988 the Temporary Commission on Executive,  
Legislative and Judicial Compensation called for a  
substantial increase in judicial salaries. It was not  
implemented. Since the last judicial salary increase in  
1987, the inadequacy of judicial compensation has had a  
negative impact on the morale of New York State's judges and  
has diminished the ability to recruit judicial candidates  
from a wide range of legal backgrounds. We are persuaded  
that the continuing decline in the purchasing power of  
judicial pay requires prompt increases in salaries.

In formulating specific salary recommendations the  
Commission has diligently considered the State's ability to  
pay, given declining budget resources and critical competing  
interests. Despite these obvious limits on resources, we  
have concluded that fairness and the need to continue to  
attract and retain a highly qualified judiciary warrant

c/o South Swan Street Building, Core 1, 2nd Floor, Albany, NY 12223

adoption of a new salary schedule under which judicial salaries would increase in four steps, becoming fully effective in October 1994.

Salary and related recommendations made in this report were arrived at unanimously by Commission members with the singular exception of one issued addressed in the Minority Report submitted by former Justice James F. Niehoff and included with this report.

In conclusion, the Commission extends its special appreciation to staff who performed exceptionally during the holidays to provide information and produce this report: Mary L. Hines, Staff Coordinator; Michael J. Buckley; Moses M. Kanya; Richard J. Martin; Susan Meier; James E. Overmyer.

On behalf of the members of the Temporary Commission, I thank you for the opportunity to contribute to the assessment of this critical issue.

A handwritten signature in black ink, appearing to read "James E. Overmyer". The signature is stylized with large, flowing loops.

## COMMISSION MEMBERS

### **Chairman:**

*James R. Jones*

Chairman of the American Stock Exchange, former United States Congressman; former White House Special Assistant to President Johnson; former partner in Washington D.C. law firm of Dickstein, Shapiro and Morin.

### **Members:**

*Richard J. Bartlett*

Attorney in private practice in Glens Falls; former State Assemblyman; former Supreme Court Justice; former Chief Administrative Judge; former Dean of Albany Law School.

*Tom Lewis*

Private consultant; former Director of the Governor's Office of Management and Productivity; former Director of the New York State Office of Veterans' Affairs

*Nancy Mackey Loudon*

Associate Division Counsel for Bristol-Myers Squibb Company and former President of the New York Women's Bar Association.

*James F. Niehoff*

Professor of Law at St. John's University School of Law; former Presiding Judge Nassau County District Court; former Supreme Court Justice; former Associate Justice of the Appellate Division, Second Department.

# INDEX

Summary .....	Page 1
Mandate .....	Page 4
Method of Study .....	Page 5
Findings .....	Page 7
Recommendations .....	Page 9
Minority Report .....	Page 18
Staff Support .....	Page 23
Appendices:	
Executive Order 161 .....	Page 24
Charts .....	Page 26

## SUMMARY

Working within severe time constraints, the Temporary Commission on Judicial Compensation has examined the adequacy of judicial salaries and related issues as directed by the Governor in Executive Order 161, dated November 18, 1992. To address the issue of judicial compensation, the Commission held a public hearing in New York City on November 25, 1992. Representatives of judicial associations, bar associations, independent groups, as well as individual judges, testified before the Commission. Written comments from interested parties were also considered. In addition to seeking public comments, the Commission has carefully reviewed prior studies and proposals regarding judicial compensation made by past commissions with similar charters in New York and other states.

It is clear to the Commission that during the last two decades while the obligations of government and the demands on the judiciary have increased, the compensation of nearly all State officials has been eroded by inflation. In 1988, the Temporary Commission on Executive, Legislative and Judicial Compensation, chaired by Honorable Hugh R. Jones, submitted a comprehensive report which stated in part:

In submitting the report at this time, we are cognizant of the substantial shortfall of governmental revenue with which our Governor and Legislature are currently confronted. We are fully persuaded, however, that the prompt provision of adequate compensation to our state officials in all three branches of government is of such fundamental importance to the vitality of government that it cannot be delayed.

In the years since that recommendation, the State of New York, like many other states, has been forced to make drastic cuts in the budgets of nearly every program and function. Thousands of employees at every level have been laid off, transferred and denied wage increases. The services available to citizens and businesses have been affected in many ways, although in many cases productivity improvements have maintained adequate levels of services.

New York State judges have not received a salary increase since 1987. Five years after the Jones Commission recommendations, it is clear that the continued inadequacy of judicial salaries in New York State has negatively impacted judicial morale, the prestige of the bench, the purchasing power of our judges, and the ability to recruit judicial candidates from a wide variety of backgrounds. It speaks well of New York's judges that they continue to serve with distinction in a period of clear difficulty.

The Commission has reviewed the compensation proposal put forth by the Office of Court Administration (OCA) in its 1993-94 budget request. Commission members agreed that, given the difficult fiscal outlook for the State, the requested \$22 million increase was more than can be funded in the 1993-94 budget. OCA proposed financing the first year of the increase through application of surplus funds remaining in the Court Facilities Fund.

In assessing the adequacy of judicial salaries, and in developing specific proposals for salary increases, the Commission has given consideration to comparable judicial salaries in other states and the federal government; the salary history of other elected and appointed state officials and executives; and the general cost of living in the various regions of the State. The proposals put forward by the Commission address the needs of the judges, and are also tempered by consideration of the State's ability to pay.

The Commission concluded that, despite the continued uncertainty of the State's economy, judicial salaries show a definite loss of purchasing power, and may not serve to attract judicial candidates from a wide range of legal backgrounds. Therefore, the Commission recommends adoption of a new salary schedule for the Judiciary which would increase in steps and become fully effective in October 1994.

In addition to the issue of adequate judicial compensation, this Commission was asked to determine whether judges and justices performing the same or similar duties should receive uniform compensation; to investigate the establishment of a permanent process to ensure that judicial pay levels remain adequate; and, to recommend revenue and productivity measures for the court system.

The Commission's proposed salary schedule has taken the first step toward pay parity for those courts where compensation is most diverse. Further analysis of this issue is recommended.

To establish a continuing process for judicial salary review, the Commission recommends the establishment of a Temporary State Commission on Judicial Compensation, charged with the ongoing analysis of judicial compensation and related issues. The Commission would develop recommendations for judicial compensation to be submitted to the Governor

and Legislature for consideration. This Commission recommends the prompt establishment of a temporary commission to ensure that judicial pay levels remain adequate. Routine and systematic consideration of judicial compensation, in a manner which encourages public input and discussion, is in the best interest of the people of the State of New York. It should be noted that establishment of any permanent commission for this purpose would require an amendment to the State constitution.

In considering proposals to generate revenue and increase productivity, this Commission affirms that the Judiciary is a separate, independent branch of government and believes that the salaries of judges should not be contingent upon adoption of specific proposals for fee or other revenue increases. This Commission's mandate is not interpreted as implying that the Judiciary must generate revenues to finance judicial salary increases; but rather that, for the benefit of the State as a whole and like the other two branches of government, the Judiciary must seek to explore revenue increases and productivity improvements to finance or reduce the cost of government. In this context, a number of revenue and productivity proposals are presented in this report.



## MANDATE

Governor Mario M. Cuomo established the Temporary State Commission on Judicial Compensation by Executive Order 161, dated November 18, 1992. (See Appendix.)

The Commission was directed to examine, evaluate and make recommendations to the Governor and the Legislature with respect to:

- A. The existing levels of compensation for all judges and justices of the Unified Court System and the adequacy of such compensation levels, taking into account the general economic condition of the State, and other benefits currently available to the judiciary;
- B. Whether judges and justices performing the same or similar duties should be compensated uniformly;
- C. The establishment of a permanent process to ensure that judicial pay levels remain adequate to retain and attract a supply of good candidates for all courts in the State at the minimum total cost to the public; and
- D. Methods to generate revenues to finance judicial pay increases in the future, including productivity and cost-savings measures and revenue generation.

The Commission is comprised of five persons appointed by the Governor, with the Chair designated by the Governor from among the members.

## METHOD OF STUDY

As part of its research, the Commission reviewed the work of two previous State Commissions on judicial compensation: the 1982 Temporary Commission on Judicial Compensation; and the 1987 Temporary Commission on Executive, Legislative and Judicial Compensation.

In particular, the report of the 1987 Commission, the previous "Jones Commission", was closely examined. The recommendations submitted by that Commission in 1988 were well documented and based on months of independent research. Although those recommendations were never adopted, this Commission has relied upon and updated statistical and salary tables presented in that report. This Commission also conducted salary surveys of other states and related positions as presented in the Appendices of this report.

In the course of its work, the Commission gathered and considered information and testimony from a number of agencies and organizations including:

The Office of Court Administration;

The Administrative Office of U. S. Courts;

The American Bar Association;

The Council on Judicial Administration;

The National Center for State Courts;

Association of Justices of the Supreme Court of the State of New York;

Association of Supreme Court Justices of the City of New York;

Board of Justices, Supreme Court of the State of New York, County of Kings;

Court of Claims Judges Association;

Association of Judges of the Family Court of the State of New York;

Family Court Judges Association of the City of New York;

District Court Judges Association of the State of New York;

Association of Civil Court Judges of the City of New York;  
Association of Criminal Court Judges of the City of New York;  
The Surrogates' Association of the State of New York;  
County Judges Association of the State of New York;  
New York State Magistrates Association;  
Association of Housing Judges of the Civil Court of the City of New York;  
New York State Association of City Court Judges;  
The Federation of New York State Judges;  
New York State Bar Association, Council of Judicial Associations;  
New York State Association of Women Judges, Inc.;  
Association of the Bar, City of New York;  
Bar Association of Nassau County, N.Y., Inc.;  
Onondaga County Bar Association;  
Queens County Bar Association;  
New York County Lawyers' Association;  
District Attorneys Association;  
New York City Legal Aid;  
Civil Service Employees Association;  
New York State Supreme Court Officers Association;  
New York State Business Council;  
The Fund for Modern Courts;  
New York Law Journal;  
The states of California, New Jersey, Maryland and Tennessee.

# FINDINGS

## **1. Inflation Erosion**

New York State judges last received a raise in 1987. Their salaries have not kept pace with the rate of inflation. With the inclusion of an estimated 3.2 percent increase in Consumer Price Index (CPI) for 1992, the cumulative CPI increase since 1987 is 23.7 percent.

By comparison, the Unified Court System's non-judicial employees have received salary increases from 1987 to date which total a compounded 16.3 percent. With salary increases scheduled for FY 1993-94 and 1994-95, the compounded increases will be 21.0 percent and 27.3 percent, respectively, since 1987.

In the Executive Branch, Management/Confidential employees other than Commissioners and Governor's senior staff have received several salary increases since 1987. These salary increases, including those scheduled for FY 1993-94 and 1994-95, are the same as those received by the Unified Court System's non-judicial employees as noted above.

Only Executive Branch Commissioners covered under Section 169 of the Executive Law and Governor's senior staff have faced constraints similar to the Judiciary. These executives have not had salary increases since 1988.

See Appendix, Charts 1 through 3

## **2. New York State Judiciary vs. Other Governments**

When compared with other state governments, the judges in New York State rank within the top three states with the highest paid judicial salaries. Depending on the level of judge compared, New York is second or third only to New Jersey and California.

New York State judges are not compensated as well as their Federal counterparts. At one time, the salaries of some New York State judges were higher than some Federal judges, but recent increases in the salaries of Federal judges have significantly reversed that relationship.

Many of those providing testimony to the Commission have advocated pay parity with Federal judges'. The Commission finds, however, that the recent surge in Federal salaries has made parity an unrealistic and unachievable goal. The Federal government's ability to pay and to incur debt is fundamentally different from New York's constitutionally-imposed requirement for a balanced budget. The Commission finds that linkage between State and Federal judicial salaries must be rejected.

See Appendix, Charts 4 through 7

### **3. Public Sector vs. Private Sector**

As one might expect, the salaries of judges in New York State are significantly lower than the salaries paid to associates in New York City law firms and to full professors at law schools in New York State.

When New York State judicial salaries are compared to the salaries of legal staff in the legal departments of major companies within New York State, judicial salaries are significantly lower.

However, the Commission notes that public service, particularly in higher office has always entailed financial sacrifice relative to the private sector. The Commission cannot accept any arguments that seek parity between judicial salaries and salaries in the private practice of law.

See Appendix, Charts 8 and 9

## RECOMMENDATIONS

The Commission unanimously agreed that, since 1987, inflation has seriously eroded the value of judges salaries; that the current levels of judicial compensation are therefore inadequate; and, that prompt remedial action should be taken.

This inadequacy has been identified in testimony before the Commission as a reason why several well respected, experienced judges have resigned to pursue more lucrative private practice. It is also cited in testimony as contributing to the decline of a pool of judicial candidates with a wide range of backgrounds and experiences. The pool of potential judicial candidates tends more and more to be composed of women and men already in public service and receiving a public service wage.

During its evaluation of judicial salaries, the Commission examined the salary structure for the Unified Court System's non-judicial employees and found that salaries of some non-judicial employees will soon reach or exceed the pay levels of the judges under whom they serve. The Commission urges the application of reasonable salary caps to non-judicial employees salaries so that they do not approach the level of the judge whom they serve.

### I. Judicial Compensation

In balancing the current salary levels of judges in New York State against the State's current fiscal situation, the Commission recommends the salary schedule set forth below:

<u>Judicial Level</u>	<u>Current Salary</u>	<u>Salary As of 10/94</u>
Chief Judge	\$120,000	\$129,000
Assoc. Judge, Court of Appeals	\$115,000	\$125,000
Presiding Justice, Appellate Division	\$107,500	\$122,000
Assoc. Appellate Justice, Deputy Admin. Judge, Presiding Judge Court of Claims	\$102,500	\$119,000
Supreme Court, Court of Claims Judges	\$ 95,000	\$113,000
County Level, NYC and District Judges	\$ 82,000	\$ 99,000
Full Time City and NYC Housing Judges	\$ 74,500	\$ 86,000

1. The Commission recommends that this salary schedule be reached in four equal increases, commencing in April 1993, with further increases in October 1993, April 1994 and October 1994. However, should the Governor and Legislature determine a delay is necessary due to the State's fiscal condition, the Commission urges that salary increases commence no later than October 1993, with further increases in April 1994, October 1994, and April 1995.<sup>1</sup> This proposal will cost approximately \$24 million over the two year period. See Appendix, Chart 10 for listing of the judicial levels and numbers of authorized judgeships.
  
2. Although this Commission endorses the previous Jones Commission (1988) recommendation of increases in the salaries of the Governor and other elected officials, the new salary schedule caps the salary of the Chief Judge at a level slightly under that of the Governor. The salaries of the three judicial levels immediately under the Chief Judge reflect caps against the Chief Judge salary level. The Commission recommends that, if the salary level of the Governor increases, the salary levels for the Chief Judge and three upper judicial levels be increased and capped accordingly. Former Justice Niehoff disagreed with the salary cap proposal and has included a Minority Report on this issue.
  
3. Supreme Court Justices and Court of Claims Judges performing the following additional duties and receiving the following additional pay, should be capped at \$119,000:

Appellate Term	\$2,500
Appellate Term Presiding	\$5,000
District Administrative	\$4,000

---

<sup>1</sup>Mr. Bartlett dissents from this recommendation. In his view, the salary increases proposed are already spread out over one and one-half years and further delay in implementation cannot be justified.

4. Certain county-level judges currently paid more than \$82,000 should receive pro-rata increases according to the following schedule:

<u>Location</u>	<u>Current Salary</u>	<u>Salary As of 10/94</u>
Nassau, Suffolk, Westchester (Surrogate), NYC (Family & Surrogate)	\$95,000	\$113,000
Westchester (County & Family)	\$94,000	\$113,000
Dutchess (Surrogate)	\$93,000	\$112,300
Albany, Putnam	\$90,000	\$108,600
Erie (Surrogate)	\$89,000	\$107,400
Sullivan	\$87,000	\$105,000
Dutchess (Family & County), Erie (Family & County), Monroe, Orange, Rockland, New York City Civil and Criminal	\$86,000	\$103,800
Tompkins, Nassau & Suffolk District	\$84,000	\$101,400
Clinton	\$83,000	\$100,200



5. Certain city court judges currently paid more than the full-time salary of \$74,500 should receive the following pro-rata compensation adjustments:

<u>Location</u>	<u>Current Salary</u>	<u>Salary As of 10/94</u>
Yonkers Chief Judge	\$82,000	\$94,600
Yonkers Judge	\$81,000	\$93,500
White Plains Judge	\$80,000	\$92,300
Chief Judge: Buffalo, Utica, Niagara Falls, Syracuse	\$79,000	\$91,200
NYC Housing Judges	\$79,000	\$91,200
Judges: Buffalo, Rochester, Niagara Falls, Syracuse, Utica	\$78,000	\$90,000

6. It is recommended that the two presiding judges of Nassau and Suffolk District Courts continue to receive \$3,500 additional compensation added to their base salaries.

## **II. Uniform Compensation For Judges With Similar Duties**

The adjustment proposed for Supreme and County level judges in the salary plan reflects a modest step toward recognition of parity. However, the Commission has determined this issue to be complex, requiring detailed examination of many factors. Proper consideration of this subject would require extensive study and evaluation. For these reasons, this Commission has recommended that the issue of uniform compensation be studied through the mechanism described below.

## **III. Mechanism For Future Review**

After evaluation of judicial compensation issues and review of various adjustment mechanisms in other states, the Commission recommends that the Governor and Legislature create a commission and staff process to provide for the periodic review of judicial compensation and other issues of importance to the operations of the Judiciary in New York State.

This recommendation is consistent with our mandate "to examine, evaluate, and make recommendations with respect to the establishment of a permanent process to ensure that judicial pay levels remain adequate to retain and attract a supply of good candidates for all courts in the State at the minimum total cost to the public." The establishment of such a process would ensure reasonable and regular salary adjustments; would eliminate the uncertainty and confusion that results from large catch-up adjustments; and would ensure the integrity and independence of the Judiciary.

Specifically, the Commission makes the following recommendations:

1. A Temporary Commission on Judicial Compensation should be created in statute. The statute should have a ten year sunset provision to allow for an examination of the Commission's effectiveness at the end of its term.
2. The Commission should consist of six members; three appointed by the Governor with one designated as Chair, one appointed by the Senate Majority, one appointed by the Assembly Majority and one appointed by the Chief Judge. Members should receive no compensation for service other than reasonable expenses. Appointments should be for two year terms, with no member to exceed a total of three terms.
3. The Commission should make judicial compensation and related recommendations to the Legislature and Governor on or about November 15th of each Legislative election year. This would enable consideration of the Commission's recommendations in the first budget cycle of each new session.
4. In addition to the issue of judicial compensation adjustment, it is recommended that the Commission select an Executive Director to direct studies on other issues of importance to the Judiciary which may require legislative or policy changes. For example, further research and policy analysis are needed in the areas of geographic pay differentials, court merger and parity, pay disparity, and judicial pensions and other benefits requiring actuarial analysis.
5. Further, the Commission endorses the recommendation of the Council on Judicial Administration of the Association of the Bar, City of New York, in its "Report and Recommendations Concerning the Need for Independent Audits of the Unified Court System of the State of New York" (1992). The Council recommended creation of a Independent Audit Commission to perform management audits of OCA and the Courts and to provide the public with audit reports. Transfer of the OCA's internal audit staff to the proposed Independent Audit Commission would provide the most cost-effective approach to

attaining the goals of independent management, performance and revenue audits of the courts. The new Independent Audit Commission should be charged to provide the Executive Director of the Temporary Commission on Judicial Compensation with the body of reliable data necessary for the full understanding of the structure, operations and finances of the Unified Court System as requested by the Governor, Legislature, Comptroller, the bar and the citizenry. Such an independent audit would preserve and enhance the independence of the courts while ensuring open government and accountability.

All departments, divisions and units of State government should be directed to cooperate with the Commission and to provide such assistance and information as the Commission may require to fulfill its charge.

#### **IV. Revenue and Productivity**

The 1980's and early 1990's have witnessed a fundamental change in the nature of society which has created an enormous challenge for the Unified Court System. A rising criminal case workload and an explosion of civil litigation and family court matters have been presented to the courts. The court system has responded to these challenges through the dedicated work of jurists and court staff, and by the development of initiatives designed to restructure the courts, enhance court administration and management, and modernize court facilities.

Executive Order 161 has charged this Commission with the responsibility to explore and recommend additional means of improving the efficiency of the court system, as well as recommending cost-cutting or revenue-raising measures.

In evaluating this issue, the Commission requested the comments and suggestions of bar associations, court organizations, independent groups and individual judges. The Commission has reviewed prior proposals for court reorganization and restructuring. Finally, the Commission has identified improved management programs and the application of new technologies to reduce costs and improve productivity.

Few of the opportunities presented in this report are entirely new. Some have already been analyzed by OCA. Others are less advanced but hold significant promise. Several will require consideration and action by the State Legislature. However, it is clear to the Commission that the Judiciary must accelerate the pace of court restructuring and move aggressively to implement administrative and technological improvements in order to satisfy the requirements of justice and enhance public accountability.

Judicial accountability cannot significantly vary from Executive and Legislative accountability. It begins with the goal of prompt and effective administration of justice, proceeds through the effective and efficient management of judicial programs and resources and, ultimately, resides in the individual contribution of each judge and staff member to the effective administration of justice.

As directed in the Executive Order, the Commission recommends the following revenue and productivity proposals. Each offer substantial opportunities to improve the administration of justice and efficiency of the Courts. Although the Commission has not had an opportunity to fully evaluate proposals for increased revenue for the Judicial branch of government, it does however, recommend serious consideration of the proposals itemized below.

**Revenue Proposals:**

- \$170 fee for counter claims filed by a defendant against the plaintiff or another defendant, thereby initiating another action within the suit (approx. \$13.6 million revenue);
- \$170 fee for a defendant filing a cross claim against a party not yet a part of the case (approx. \$3.4 million revenue);
- \$25 fee for each multiple defendant sued by a plaintiff (approx. \$12 million revenue);
- A one percent fee added to judgments, paid by the defendant in addition to the amount due to the plaintiff (approx. \$23 million revenue);
- \$50 fee for filing a motion (approx. \$10 million revenue);
- An increase of \$50 in the existing biennial attorney registration fee, last raised in 1990 from \$100 to \$300 (approx. \$3.2 million revenue);
- \$50 fee on processing jury service exemptions, with provision for waiver of fee for good cause shown (approx. \$5 million revenue).

### Productivity Proposals:

- Eliminate mandatory sequestration of deliberating criminal juries (approx. savings of \$2 million);
- Expand to selected City, District and Family courts, the electronic recording pilot program begun in 1992 in the Court of Claims and Surrogate's Courts (approx. savings of \$2.6 million beyond what is projected in the existing program);
- Expand the use of mandatory settlement conference to encourage litigants to come to an agreement, such as those successfully utilized in several New York State counties (e.g., Albany and Monroe Counties);
- Increase collection of fees and fines, e.g., when fee or fine is delinquent 90 days, turn the collection over to an outside collection agency; with such an agency closely linked to the court so that a bench warrant may be issued if required;
- Set standards and implement productivity improvements in court security contracts with localities;
- Transfer responsibility for pistol permits from judges to the State Police in areas outside of New York City to reduce judicial workload;
- Encourage the use of alternative dispute resolution proceedings in the civil courts to create forums which can resolve cases more quickly and with the use of fewer resources than are used in hearings before judges;
- Encourage the increased usage of Judicial Hearing Officers (retired judges working on a per diem bases) to perform certain judicial functions;
- Restore the Misdemeanor Trial Law, which allows lower criminal courts in urban areas to limit maximum sentences to six months, allowing cases to be tried without a jury;
- Enact legislation to extend mandatory arbitration above the current limit of \$6,000 to \$15,000;
- Raise small claims jurisdiction to \$5,000;
- Adapt, through collective bargaining, programs such as those successfully negotiated with Executive Branch public employee unions

which generated significant productivity improvements and savings in health benefit packages and workers compensation;

- Explore further innovative and aggressive caseload management techniques employed by administrative judges in several areas throughout the State, e.g., the recent caseload management reforms in the Brooklyn courts.

Finally, the Commission notes that the Judiciary has established a committee of distinguished members to conduct an examination of its management practices, including caseload, personnel management and administrative practices. A comprehensive and objective review, the results of which should be shared with the other branches of government and with the public, is both necessary and desirable.

## MINORITY REPORT BY JAMES F. NIEHOFF

The purpose of my Minority Report is to express a point of view different from that of the majority with respect to the adjustments being recommended for the Judges of the Court of Appeals, the Justices of the Appellate Divisions, the Presiding Justice of the Court of Claims, and the Deputy Administrative Judges, which I consider to be inadequate. I concur in the other recommendations contained in the Majority Report, although I must state for the record that only the fiscal predicament in which the State presently finds itself has caused me to refrain from arguing for the recommendation of greater adjustments for all of the judges.

The majority takes the position that a "cap" of \$130,000, the amount of the Governor's salary, must be employed in determining the adjustments for the judges enumerated above.

Quite understandably, the majority of this Commission is reluctant to recommend that any public official of the State be compensated in an amount greater than that being paid to the Governor as salary. Consequently, the majority has adopted the position that the Governor's present salary must be accepted as a "cap" (See Item 2 of the Report under "Recommendations") and that the compensation of no other state official may exceed that "cap" even though both the "Jones Commission" and all of the members of this Commission agree that such "cap" is too low. By adopting as an immutable premise that \$130,000 must constitute a compensation "cap" for all of the State's judges, the majority is compelled to engage in a "numbers crunching" process with respect to the compensation of the judges of the State's highest courts. That process forces the majority to recommend that the compensation of the judges on the State's two highest courts remain substantially below the amounts which, in my judgment, simple fairness calls for them to receive.

Needless to say, it would be extremely presumptuous of me to suggest that the Governor seek or accept an upward salary adjustment either (a) because he deserves it or (b) because it would eliminate the "cap" and thereby conceivably enable this Commission to reach unanimous agreement on greater salary adjustments for the judges of the State's highest courts than that presently being recommended by the majority. The issue of the Governor's salary which was before the prior "Jones Commission" has not been given to the members of this Commission for the purpose of our making a recommendation with respect to it, and I want to make it abundantly clear that I have no intention of engaging in any ultra vires act by making any such recommendation.

All that I am urging is that when it is abundantly clear, as I believe it is, that the "cap" of \$130,000 is too low to enable this Commission to recommend fair adjustments for certain of the judges, it becomes necessary to propose a reasonable means of going over, under, or around that "cap". I believe this can be accomplished by employing an approach (discussed infra) which will permit those with the power to fix the judges' compensation to do justice and alleviate, in substantial measure, the 23.7% burden of salary erosion that has afflicted the aforesaid judges since their last salary adjustment in 1987 without, in any way, causing offense to the Governor, or without implying that there is any office in the State of greater importance than that of the Governor.

The essence of my argument is that meaningful assistance can, and should, be given to the State's highest judges by a package compensation arrangement containing two components, (1) a base salary number and (2) a supplemental sum to offset the real income loss, even though the Governor's salary may remain at \$130,000.

In my judgment, if the members of this Commission are bound by the "cap" and are unable to propose a package compensation arrangement they are precluded from recommending fair salary adjustments with respect to the State's highest judges.

Fifth year associates in many of New York's prestigious law firms presently earn \$141,700 which is more than that being recommended to be paid to any of the above judges of the State's two highest courts. Surely, the Empire State ought to be able to find a way to pay at least one of its highest judges, the Chief Judge of the Court of Appeals, more than that which a fifth year law firm associate receives, and just as surely the Empire State ought to be able to find a way to pay the six Associate Judges of the highest appellate court in the State more than that which a Federal Trial Judge receives.

Because of the "cap", the percentage adjustment in the Chief Judge's salary which the majority is compelled to recommend (to take place over a two year period) comes to approximately 7%, which will leave the erosion in the Chief Judge's purchasing power at approximately 16.7%, with no immediate prospect for anything other than continued erosion. That erosion will amount to approximately 7% by the time the Chief Judge receives the full adjustments of approximately 7% which have been recommended. The recommended percentage adjustment in the salary of each of the six Associate Judges of the



Court of Appeals, over the two year period, comes to approximately 9%, leaving them with a purchasing power erosion of approximately 14.7%, also with no immediate prospect for anything other than continued erosion at the rate of approximately 3.5% per year.

Additional undesirable results flow from the proposed adjustments, all resulting from the "number crunching" approach to determining what is fair compensation for the State's highest judges. For example, the Justices of the Appellate Divisions as well as the Presiding Justice of the Court of Claims and Deputy Administrative Judges are denied adequate adjustments because of the "crunching" process and the spreads between the various judges on the highest courts are "crunched" or lessened, without any regard to the fact that the spreads presently existing were adopted to reflect the differences in degree or importance of the responsibilities of the different offices.

In an effort to recommend to the Governor and Legislature salary adjustments for the State's highest judges which I deem to be fair, while at the same time preserving a salary "cap" not to exceed \$130,000, I recommend the following:

The salary of the Chief Judge, as such, should be fixed at \$129,000; the salary of the Associate Judges of the Court of Appeals, as such, should be fixed at \$124,000; the salary of the four Presiding Justices of the Appellate Divisions of the Supreme Court, as such, should be fixed at \$121,000; and the salary of the Associate Justices of the Appellate Divisions, Presiding Justice of the Court of Claims, and the Deputy Administrative Judges, as such, should be fixed at \$116,000.

However, in addition thereto, to offset in a meaningful degree, the judges' loss in real income, and cure to some if not the full extent, the injustice that inflation has produced, it is my view that the above enumerated judges and justices should receive supplemental "loss of real income" or "loss of purchasing power" adjustments (designated as such) to be added to their salaries for the years 1993-94 and 1994-95, as set forth below, and remain in force as supplemental adjustments to their base salaries until any further change is made in their salaries. This would enable them to have a purchasing level not equal to, but not sharply below, that which they had five years ago.

	Current Salary	Base Salary at End of Adjustment Period	Loss of Real Income Supplement*	Total Com- pensation Package By 10/94
Chief Judge Court of Appeals	\$120,000	\$129,000	\$13,000	\$142,000
Associate Judge Court of Appeals	\$115,000	\$124,000	\$10,000	\$134,000
Presiding Justice Appellate Division	\$107,500	\$121,000	\$ 8,000	\$129,000
Associate Justice Appellate Division; Presiding Justice, Court of Claims; Deputy Administrative Judges	\$102,500	\$116,000	\$ 7,500	\$123,500

\* To be spread out evenly over adjustment period.

In offering the above figures for consideration by the Governor and the Legislature, I wish to underscore the fact that all I am recommending are adjustments to enable the highest ranking members of the judiciary to regain, in substantial measure, the purchasing power they have lost since 1987. No windfall or undeserved benefit is being proposed.

It may well be that the approach of fixing a base salary and adding a "loss of real income supplement" which I suggest, is novel, and it can be argued that I am endeavoring to do indirectly that which the majority believe cannot be done directly. But, I am not aware of any legal impediment to the adoption of my proposal; the novelty of the suggestion ought not to be its death knell; and if justice calls for granting the judges of the State's highest court compensation in excess of \$130,000 an imaginative way should be found to accomplish that worthy goal.

### CONCLUSION

Centuries ago it was written "Let justice be done though the heavens fall". I believe that in light of the circumstances pointed up in both the Majority Report and Minority Report, justice cannot be done to the judges of the State's highest courts if

a "cap" of \$130,000 is adhered to; that substantial, if not complete justice, should be done for the State's highest judges; that it can be done in the manner indicated above or in some other creative manner; and that if the recommendations contained in the Minority Report are adopted substantial justice will be done without any need for the heavens to fall.

Naturally, if such recommendations are not adopted, I urge the prompt adoption of the recommendations of the majority of this Commission.

Respectfully submitted,

James F. Niehoff

## STAFF SUPPORT

Staff support in researching and preparing this report was furnished to the Commission by the following individuals:

Mary L. Hines, Staff Coordinator  
Governor's Office of Employee Relations;

Michael J. Buckley  
Governor's Office of Management and Productivity;

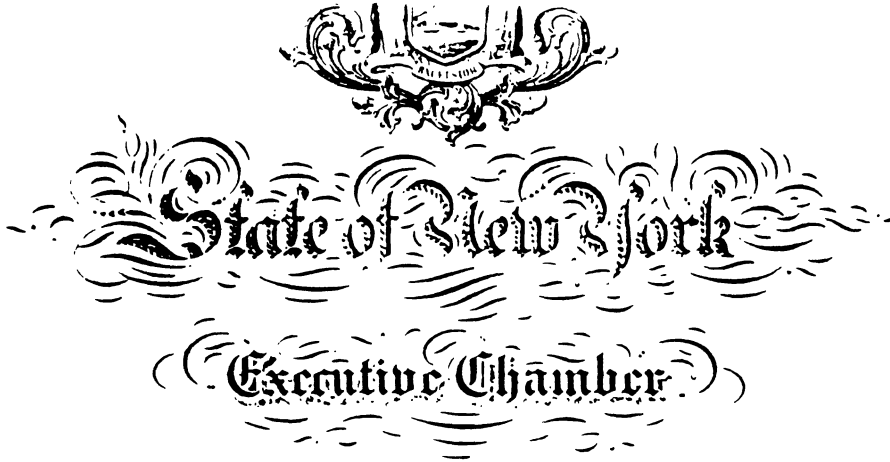
Moses M. Kamyra  
Governor's Office of Employee Relations;

Richard J. Martin  
Governor's Office of Employee Relations;

Susan Meier  
Governor's Counsel's Office;

James E. Overmyer  
Division of the Budget;

# APPENDICES



No. 161

E X E C U T I V E   O R D E R

ESTABLISHING THE TEMPORARY STATE COMMISSION  
ON JUDICIAL COMPENSATION

WHEREAS, the New York State judiciary performs a critical function for the people of the State of New York;

WHEREAS, the residents of the State have an interest in the sound administration of criminal and civil justice systems staffed by qualified and motivated individuals;

WHEREAS, salary disparities exist within the judicial branch of State government among judges who preside on the various courts of original jurisdiction;

WHEREAS, an examination of judicial salaries should be accompanied by the development of a process for continuing review of cost-savings and revenue proposals by the courts, and should take into consideration the State's fiscal environment; and

WHEREAS, other factors which attract individuals to seek judicial positions, including working environment and fringe benefits, are also important to the development of a talented judiciary;

NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby establish the Temporary State Commission on Judicial Compensation.

I. Membership

The Commission shall be comprised of five persons appointed by the Governor, one of whom shall be designated by the Governor as Chair. The members of the Commission shall receive no compensation for their services.

II. Responsibilities of the Commission

The Commission shall be responsible for examining, evaluating and making recommendations to the Governor and the Legislature with respect to:

A. The existing levels of compensation for all judges and justices of the Unified Court System and the adequacy of such compensation levels, taking into account the general economic condition of the State and other benefits currently available to the judiciary;

B. Whether judges and justices performing the same or similar duties should be compensated uniformly;

C. The establishment of a permanent process to ensure that judicial pay levels remain adequate to retain and attract a supply of good candidates for all courts in the State at the minimum total cost to the public; and

D. Methods to generate revenues to finance judicial pay increases in the future, including productivity and cost-savings measures and revenue generation.

III. Commission Reporting

The Commission shall issue an interim report to the Governor as soon as possible but no later than January 31, 1993. The Commission shall issue a final report to the Governor on or before June 1, 1993. The Commission may issue any other interim reports it deems appropriate.

IV. Assistance and Cooperation

All departments, divisions and units of State government are directed to cooperate with the Commission and to provide such assistance as it may require to fulfill its obligations, including the provision of statistical and program data as the Commission may require.

G I V E N under my hand and the Privy

Seal of the State in the City

of Albany this eighteenth day

of November in the year one

thousand nine hundred ninety-

two.

L.S.

BY THE GOVERNOR

/s/ Mario M. Cuomo

/s/ Andrew J. Zambelli  
Secretary to the Governor

INCREASES IN CONSUMER PRICE INDEX  
VS.  
SELECTED JUDICIAL AND NON-JUDICIAL COURT EMPLOYEE  
SALARY INCREASES  
1988 - 1992

<u>Year</u>	<u>Consumer Price Index (CPI-U)</u>	<u>Judicial Increase</u>	<u>Non- Judicial Increase</u>
1988	4.1%	0.0%	5.0%
1989	4.8%	0.0%	5.0%
1990	5.4%	0.0%	5.5%
1991	4.2%	0.0%	0.0%
1992	3.2%Est.	0.0%	0.0%
Cumulative Compounded Increase	23.7%	0.0%	16.3%
Change in "Real Income" 1988-1992	-----	-23.7%	-7.4%



INCREASES IN CONSUMER PRICE INDEX  
VS.  
SELECTED JUDICIAL AND NYS COMMISSIONER SALARY INCREASES  
1988 - 1992

<u>Year</u>	<u>Consumer Price Index (CPI-U)</u>	<u>Judicial Increase</u>	<u>Commissioner (Exec. 169A) Increase</u>
1988	4.1%	0.0%	5.0%
1989	4.8%	0.0%	0.0%
1990	5.4%	0.0%	0.0%
1991	4.2%	0.0%	0.0%
1992	3.2%Est.	0.0%	0.0%
Cumulative Compounded Increase	23.7%	0.0%	5.0%
Change in "Real Income" 1988-1992	-----	-23.7%	-18.7%

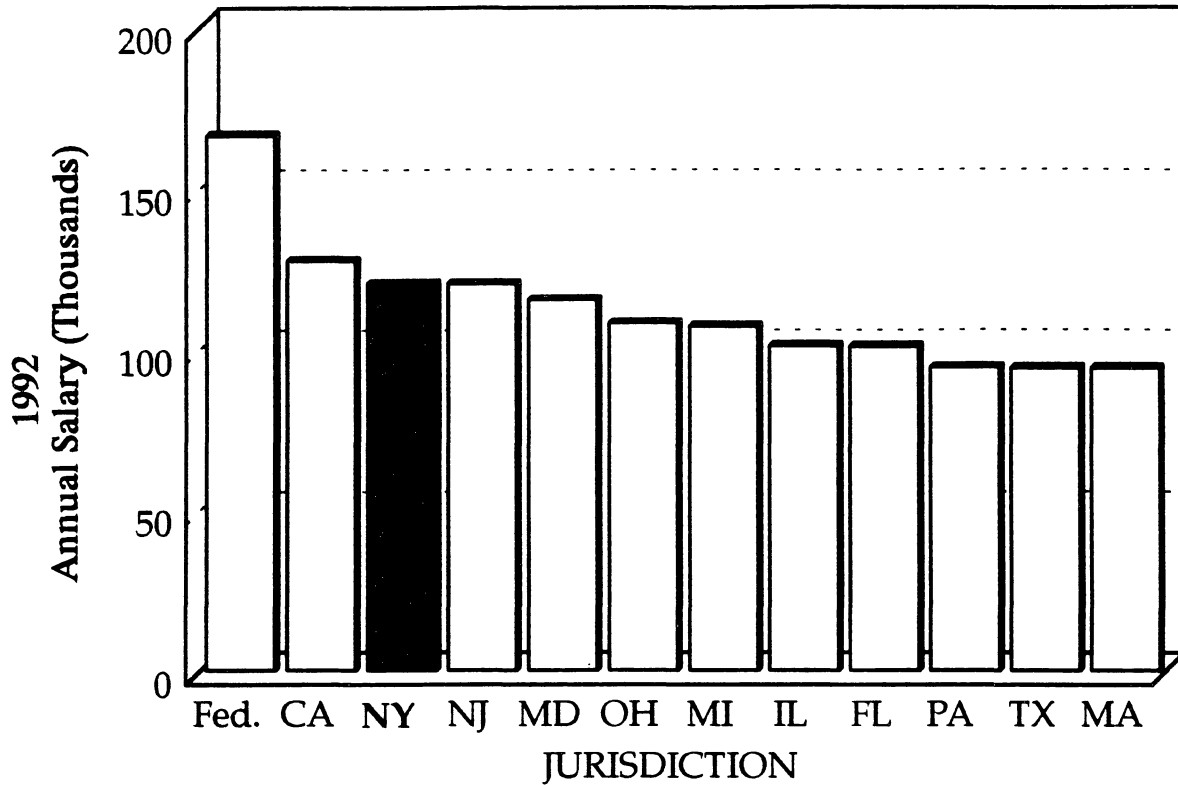
INCREASES IN CONSUMER PRICE INDEX  
VS.  
SALARY INCREASES FOR EXECUTIVE BRANCH EMPLOYEES  
IN THE PROFESSIONAL, SCIENTIFIC & TECHNICAL BARGAINING UNIT,  
THE MANAGEMENT/CONFIDENTIAL GROUP, AND  
JUDICIAL BRANCH EMPLOYEES IN NON-JUDICIAL POSITIONS

<u>Year</u>	<u>Consumer Price Index (CPI-U)</u>	<u>PS&amp;T Increase</u>	<u>M/C* Increase</u>	<u>Non- Judicial Increase</u>
1988	4.1%	5.0%	5.0%	5.0%
1989	4.8%	5.0%	5.0%	5.0%
1990	5.4%	5.5%	5.5%	5.5%
1991	4.2%	0.0%	0.0%	0.0%
1992	3.2%Est.	NA	0.0%	0.0%
 Cumulative Compounded Increase	 23.7%	 16.3%	 16.3%	 16.3%
 Change in "Real Income" 1988-1992	 -----	 -7.4%	 -7.4%	 -7.4%

\* Management/Confidential Salary Grades 18 and above.

# HIGHEST COURT

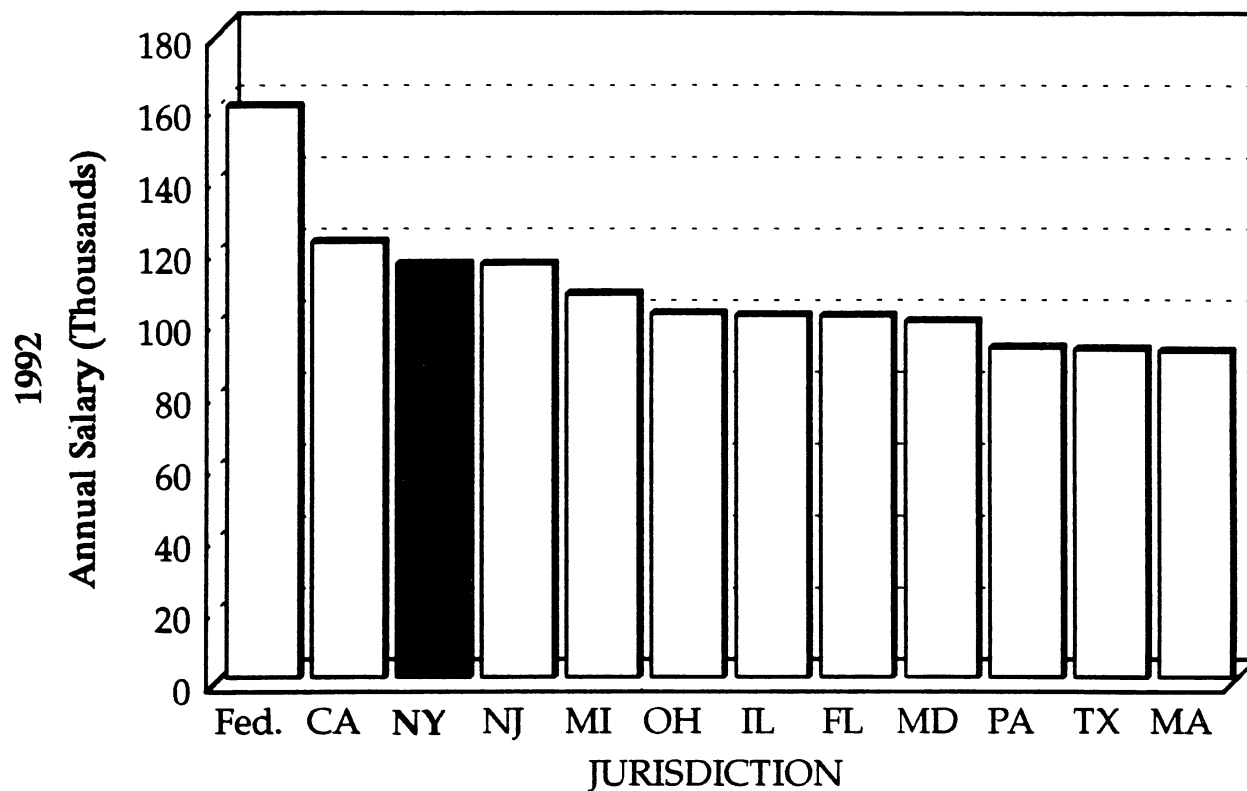
## Chief Judge



Jurisdiction	Annual Salary
Fed.	166200
CA	127104
<b>NY</b>	<b>120000</b>
NJ	120000
MD	115000
OH	107650
MI	106610
IL	100681
FL	100443
PA	94000
TX	93713
MA	93706

# HIGHEST COURT

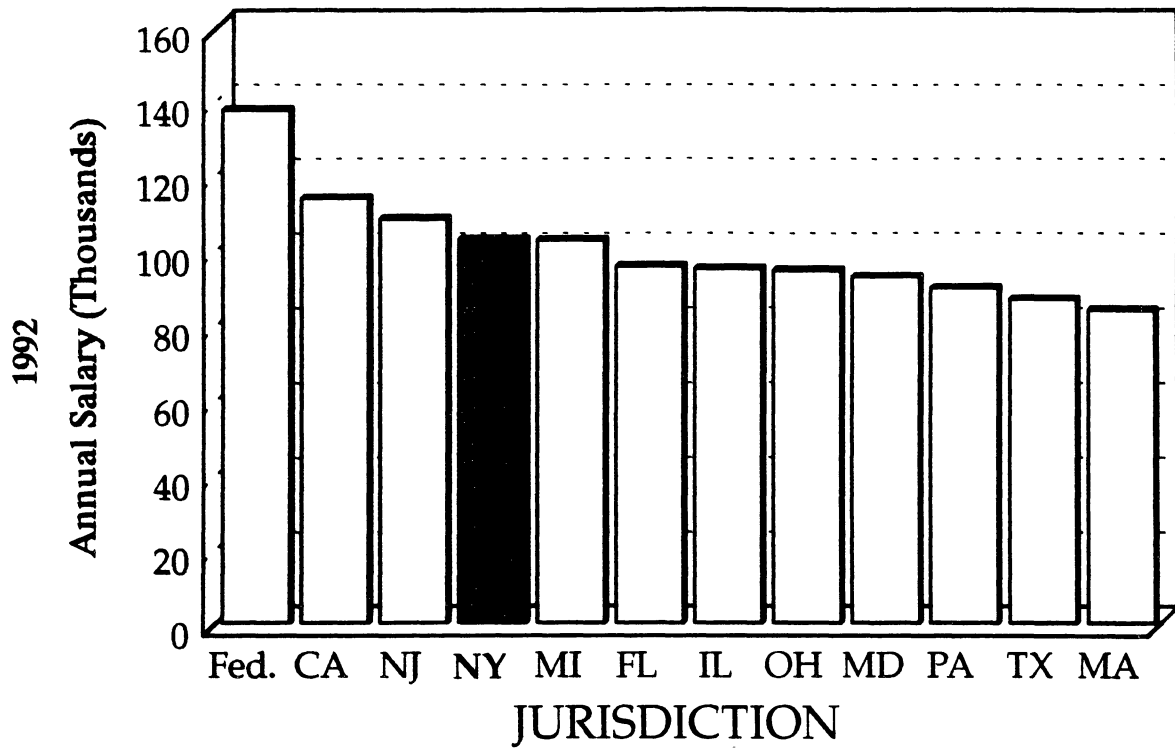
## Associate Judge



Jurisdiction	Annual Salary
Fed.	159000
CA	121207
<b>NY</b>	<b>115000</b>
NJ	115000
MI	106610
OH	101150
IL	100681
FL	100443
MD	99000
PA	91500
TX	91035
MA	90450

# INTERMEDIATE APPELLATE COURT

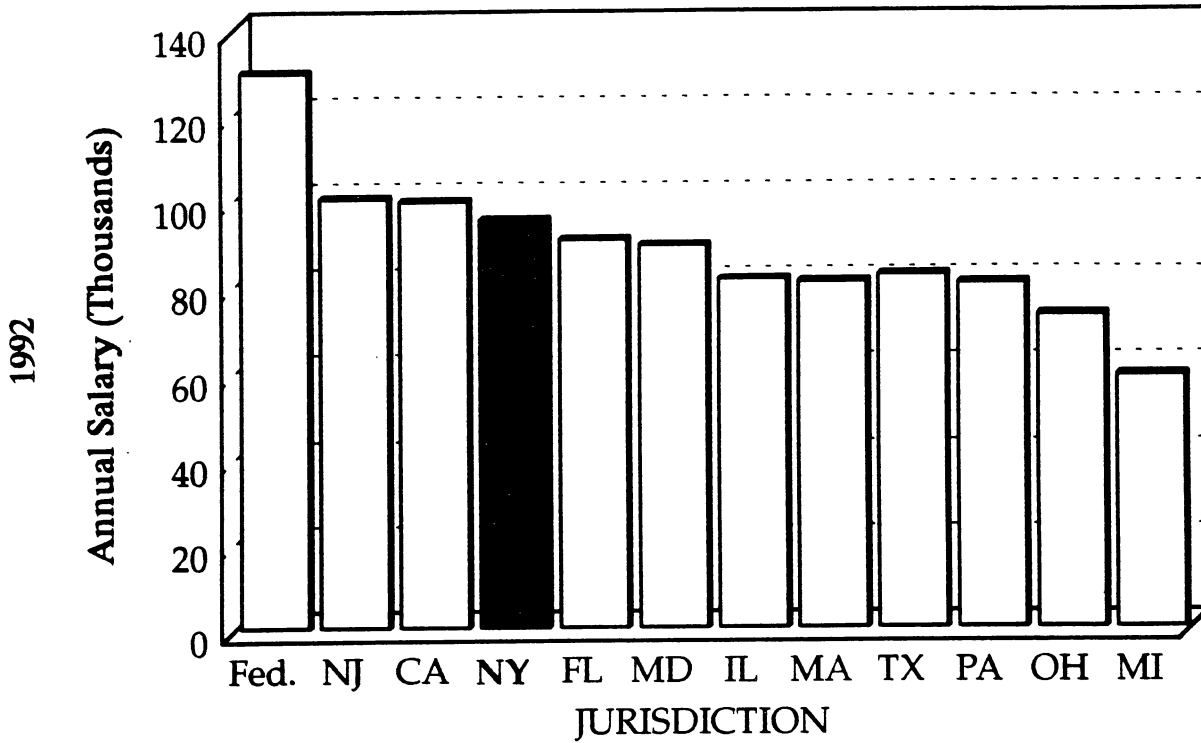
## Associate Judge



Jurisdiction	Annual Salary
Fed.	137300
CA	113632
NJ	108000
<b>NY</b>	<b>102500</b>
MI	102346
FL	95421
IL	94758
OH	94200
MD	92500
PA	89500
TX	86484
MA	83708

# GENERAL TRIAL COURT

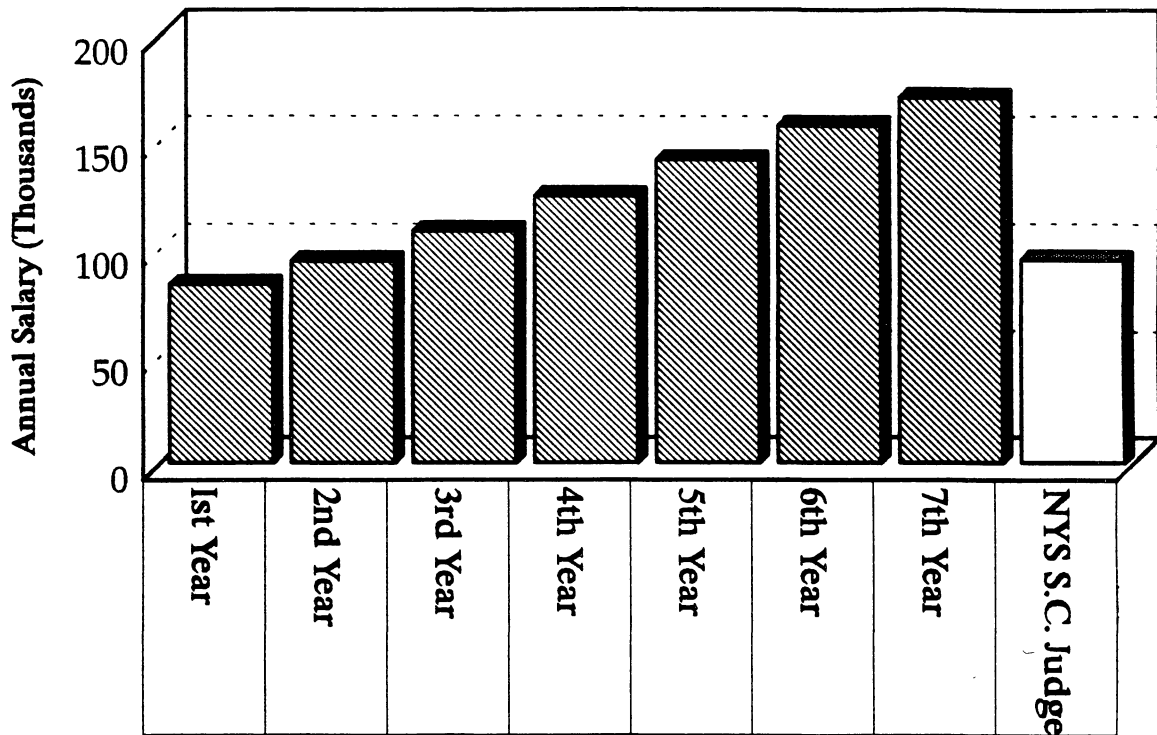
## Associate Judge



Jurisdiction	Annual Salary
Fed.	129500
NJ	100000
CA	99297
<b>NY</b>	<b>95000</b>
FL	90399
MD	89000
IL	81044
MA	80360
TX	81932
PA	80000
OH	72650
MI	58633

# Salaries in the Private Sector

## NYC Associate Attorneys at Largest Law Firms

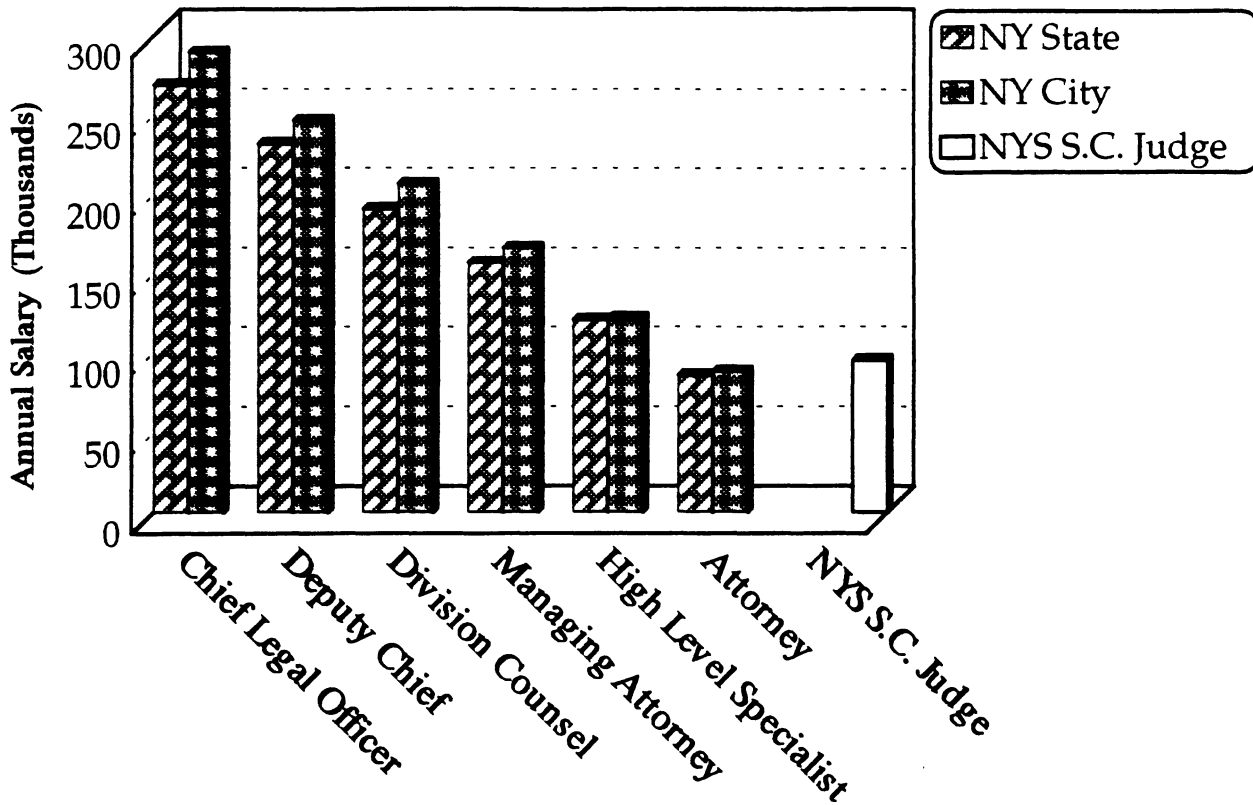


Associate Class	1992
Ist Year	83600
2nd Year	94400
3rd Year	108400
4th Year	124700
5th Year	141700
6th Year	157700
7th Year	170800
<b>NYS S.C. Judge</b>	<b>95000</b>

Source: NY Law Journal (1992)

# Salaries in the Private Sector

## Legal Depts. of Major Companies within NY State



Title	NY State	NY City	NYS S.C. Judge
Chief Legal Officer	268744	289396	
Deputy Chief	231517	246181	
Division Counsel	190925	206527	
Managing Attorney	157132	166298	
High Level Specialist	120867	122170	
Attorney	85689	88176	
<b>NYS S.C. Judge</b>			<b>95000</b>

SOURCE: Altman Weil Pensa. (1991)



## NEW YORK STATE JUDICIARY

<u>COURT</u>	<u>CURRENT SALARY RANGE</u>	<u># JUDGES</u>
<u>Local Trial Courts:</u> City Court, District Courts, NYC Civil & Housing Courts, NYC Criminal Courts	\$74,500- \$86,000	523
<u>County-Level Trial Courts:</u> County, Multi-Bench, Family, Surrogate	\$82,000- \$95,000	225
<u>Statewide Courts:</u> Supreme Court, Court of Claims, Appellate Term, Deputy Chief Adminis- trative Judges	\$95,000- \$102,500	398
<u>Appellate Courts:</u> Court of Appeals, Appellate Divisions	\$102,500- \$120,000	56
<u>TOTAL JUDGES</u>		<u>1,202</u>