

JUDICIAL COMPENSATION COMMISSION

STATE OF LOUISIANA

Meeting of the Judicial Compensation  
Commission, held on Tuesday, November 19, 2002,  
commencing at 11:15 a.m., at 1515 Poydras Street, 5th  
Floor Auditorium, New Orleans, Louisiana.

MEMBERS PRESENT:

JAMES J. COLEMAN, SR., ESQ., Vice Chairman  
JUDGE NED E. DOUCET, JR.  
SIBAL HOLT  
DOUG JOHNSON  
JUDGE WILLIAM T. KLEINPETER  
SENATOR ARTHUR J. "ART" LENTINI  
REPRESENTATIVE DANIEL R. MARTINY  
JUDGE ULYSSES G. "GENE" THIBODEAUX  
REPRESENTATIVE JOSEPH F. TOOMY  
MARY LOU WINTERS

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 Let's have the roll call.

5 MS. MERRITT:

6 Mr. Coleman?

7 MR. COLEMAN:

8 Here.

9 MS. MERRITT:

10 Judge Doucet?

11 JUDGE DOUCET:

12 Here.

13 MS. MERRITT:

14 Ms. Holt?

15 MS. HOLT:

16 Here.

17 MS. MERRITT:

18 Judge Marullo? Judge Kleinpeter?

19 JUDGE KLEINPETER:

20 Present.

21 MS. MERRITT:

22 Judge Thibodeaux?

23 JUDGE THIBODEAUX:

24 Here.

25 MS. MERRITT:

1 Senator Jones? Senator Lentini?

2 SENATOR LENTINI:

3 Here.

4 MS. MERRITT:

5 Representative Martiny?

6 REPRESENTATIVE MARTINY:

7 Here.

8 MS. MERRITT:

9 Representative Toomy?

10 REPRESENTATIVE TOOMY:

11 Here.

12 MS. MERRITT:

13 Mr. Johnson?

14 MR. JOHNSON:

15 Here.

16 MS. MERRITT:

17 Dr. Popwell? And Ms. Winters.

18 MS. WINTERS:

19 Here.

20 MS. MERRITT:

21 I have ten members present. We have a

22 quorum.

23 MR. COLEMAN:

24 Fine. Well, we will get started, and

25 I'm just serving temporarily here as vice chairman.

1 I'd like to have the approval of the minutes. You  
2 all have a whole group of papers in front of you  
3 here. If you can find the minutes of the last  
4 meeting, I'd like to have approval of them. You want  
5 to say something about it?

6 MR. PALMATIER:

7 No. There is a verbatim transcript of  
8 the last meeting. And they should be tucked inside  
9 the very beginning of this folder.

10 MR. COLEMAN:

11 Minutes been approved. Seconded?

12 REPRESENTATIVE TOOMY:

13 Second.

14 MR. COLEMAN:

15 All those in favor, signify by saying  
16 Aye. (Chorus of "Ayes.") All opposed? I think this  
17 is our first meeting, and it may be nice to go around  
18 and introduce ourselves, and before we do it though,  
19 there are two new members that are here. Doug  
20 Johnson, would you sort of introduce yourself and  
21 tell us a little bit about you so we get to know you?

22 MR. JOHNSON:

23 Thank you. I'm Doug Johnson. I was  
24 appointed by John Hainkel. I'm a 25-year State Farm  
25 agent from Hammond. Two children. Big supporter of

1 Southeastern.

2 MR. COLEMAN:

3 Judge Thibodeaux?

4 JUDGE THIBODEAUX:

5 I'm Gene Thibodeaux. Ulysses G.

6 Thibodeaux. I'd rather you call me Gene. From Lake

7 Charles on the Third Circuit Court of Appeal for ten

8 years. I live in Lake Charles, from Lake Charles.

9 MR. COLEMAN:

10 Judge Marullo?

11 JUDGE THIBODEAUX:

12 Mr. Doucet is trying to transfer the

13 court to Lafayette.

14 MR. COLEMAN:

15 He hasn't come in. Why don't the old

16 members introduce themselves? We can go around. Why

17 don't you start?

18 MS. HOLT:

19 Sibal Holt. I'm with Louisiana

20 AFL-CIO.

21 MS. WINTERS:

22 My name is Mary Lou Winters. Our home

23 is in Columbia, Louisiana, but we have a house here

24 also in Metairie. I served two four-year terms in

25 the judiciary commission, and I served on --

1 MR. COLEMAN:

2 When was that when you first started?

3 MS. WINTERS:

4 Like '87 to '90 and '94 to '98.

5 Something like that.

6 MR. COLEMAN:

7 Sorry, I didn't --

8 MS. WINTERS:

9 I was on the compensation board of the  
10 judiciary back in the '70's.

11 SENATOR LENTINI:

12 Art Lentini. I represent Senate  
13 District 10, which is Kenner, Harahan, River Ridge,  
14 some precincts in Metairie.

15 JUDGE KLEINPETER:

16 I'm Will Kleinpeter. I'm the judge of  
17 the City Court of Port Allen. Been on there for 12  
18 years. Been on the commission since it was  
19 established.

20 JUDGE DOUCET:

21 Ned Doucet. I'm the chief judge with  
22 the Third Circuit Court of Appeal. This is trying to  
23 take my place. I have my clerk eat the food and  
24 taste the wine because I'm sure he wants it very  
25 badly. I represent the Governor. I live in

1 Lafayette.

2 REPRESENTATIVE TOOMY:

3 Joe Toomy, state representative in  
4 Gretna. I've been on the commission since its  
5 inception.

6 REPRESENTATIVE MARTINY:

7 Danny Martiny, and I'm the state  
8 representative from the Kenner/Metairie area. I've  
9 been on the committee -- I was vice chairman of the  
10 judiciary committee very briefly and got appointed,  
11 and now I'm chairman of criminal justice.

12 MR. COLEMAN:

13 The first order of business, I think,  
14 the election of the chairman, is open now.

15 JUDGE DOUCET:

16 Mr. Chairman, I nominate Mr. Coleman to  
17 be chairman of this group.

18 MS. HOLT:

19 I second that motion, that nomination.

20 MR. COLEMAN:

21 Are there any other nominations?

22 JUDGE DOUCET:

23 I move we accept it by acclamation.

24 SENATOR LENTINI:

25 Second that.

1 MR. COLEMAN:

2 I have discussed this with the Bar  
3 Association, who I represent, and the president, and  
4 he took it up with the executive committee, because I  
5 wanted to be sure that they would be a hundred  
6 percent behind the commission in the event that I  
7 accepted the chairmanship. They have given full  
8 approval, and with that I'm happy to accept it, and  
9 tell you, when you hear the things that are going on,  
10 we need to all work together if we can accomplish  
11 anything.

12 JUDGE DOUCET:

13 If I may add, I'd like to first thank  
14 Mr. Coleman for the work he's done, because he's done  
15 yeoman work. It is not easy going to the  
16 legislature, seeking compensation, and -- it's never  
17 easy, but it's doubly hard when you have to do it  
18 when we are fiscally tight, but we have to do it.  
19 Judges out there and this is a career to them, so  
20 whatever enhancement we can give to them, we should  
21 do it. Mr. Coleman has been there with us, and I  
22 want to thank him for that.

23 MR. COLEMAN:

24 I think we are now open for a vice  
25 chairman. We need to get a real good vice chairman

1 here.

2 MS. HOLT:

3 I'd like to submit the nomination of  
4 Mr. Gene Thibodeaux as vice-chair.

5 JUDGE DOUCET:

6 I second that motion.

7 MR. COLEMAN:

8 Again, are there any other  
9 recommendations or ideas?

10 JUDGE KLEINPETER:

11 Move that the nominations be closed.

12 MR. COLEMAN:

13 They are closed, and should that be by  
14 acclimation? We have to vote? Are you willing to  
15 accept it?

16 JUDGE THIBODEAUX:

17 I'm afraid to say no. Yes.

18 MR. COLEMAN:

19 We will move on with the business. Let  
20 me just have one opening remark. My whole interest  
21 in the commission has been that it seems to me that  
22 one of the things I saw over the years as a young  
23 lawyer who, when the time came for raises to be for  
24 the judges, you'd see the whole legislature full of  
25 judges with a tin cup in their hand, begging for a

1 donation. As a lawyer, it used to bother me that the  
2 judges were subservient to the legislature, and when  
3 I had to try a case against one of the legislators on  
4 that, I was having a hard time with it, and I think  
5 that this idea of a judicial commission has spread  
6 throughout the United States. I have the same  
7 feeling, but we have had the commission and working  
8 very well.

9           We had a great study made before of all  
10 the other states and just so that the salaries would  
11 be somewhere in line. It was way below. Now it's  
12 beginning to get to it -- I remember one of our early  
13 commission meetings, we had judges there came up  
14 before us, excellent judges, and said we have to  
15 resign and retire because we couldn't support a  
16 family. We couldn't send the kids to school, and,  
17 yes, we loved it but it just wasn't (inaudible). And  
18 it was very exciting to be on the commission, but now  
19 it's changed, and before the commission made a study  
20 of it and came up with what they thought was a proper  
21 deal, it was submitted to the legislature, and they  
22 can either vote it up or vote it down. There was no  
23 amendments, there was no watching the legislators  
24 change it in any way at all, and we would not put it  
25 in without knowing that it was a proper way and it

1 was in line and not too far, even though they were --  
2 the law's been changed now, and I'd like Tim to go  
3 over the whole history of it so all of you all can be  
4 in line and understand it and take it from there.  
5 Tim, you want to take it and go over it? You got  
6 your mike on there so we can all hear you?

7 MR. PALMATIER:

8 I'm not sure the microphone is working,  
9 but if you can't hear me, let me know and I'll just  
10 speak louder. Inside each of these packages there is  
11 an index and pretty much the history of the  
12 commission and its actions from its inception. There  
13 is in there a list of the members, the model statute  
14 of the American Judicature Society, the 1996 report,  
15 the 2000 report, the enabling legislation in between  
16 the granted pay raises, and there are two things I  
17 think I'd like to touch on that are kind of  
18 important.

19 One is that in the folder numbered 10 are  
20 some information about the judges' supplemental  
21 compensation fund, and that's the fund that provides  
22 a supplement to judges from civil filing fees. In  
23 April of 2002, that fund cut judges' pay by \$1200  
24 yearly.

25 MR. COLEMAN:

1 Let's everybody get to No. 10.

2 MR. PALMATIER:

3 In there is a list of the monthly  
4 distributions that judges have received since its  
5 inception back in 1985, and as I noted, in April 2002  
6 a \$100 reduction of \$1200 a month for any year was  
7 cut for judges. So judges made less in the previous  
8 year.

9 The next envelope filed is No. 11, and that  
10 deals with a comparison of compensation commissions.

11 MR. COLEMAN:

12 Let's get on 10. What are you telling  
13 us on that?

14 MR. PALMATIER:

15 What I'm telling you is that the filing  
16 fee doesn't support the level of compensation that it  
17 was supporting previously. Filing fees -- I mean  
18 filings in the state have been pretty consistent,  
19 165-170,000 a year district level, and for a number  
20 of reasons. The state doesn't pay any filing fees on  
21 any of its cases. Paupers don't pay any filing fees  
22 on its cases. The interest rate is almost none, so  
23 when we did have some surplus funds, it generated  
24 very little interest, so that it just doesn't support  
25 the level of monthly supplement that the judges used

1 to receive.

2 MR. COLEMAN:

3 What's the overall effect on the  
4 judges' salaries?

5 MR. PALMATIER:

6 The new law has no effect on the  
7 judges' supplemental compensation fund.

8 MR. COLEMAN:

9 The reduction of the fee?

10 MR. PALMATIER:

11 The reduction is \$1200 a year for every  
12 judge in the state.

13 MR. COLEMAN:

14 Every judge?

15 MR. PALMATIER:

16 The next folder is labeled No. 11.  
17 That is a comparison of the Judicial Compensation  
18 Commission statute previously and as it is now. You  
19 all have that one? Revised statute 13:42A talks  
20 about the creation of the membership, and, as you all  
21 know, it's gone from 10 members to 15 members, four  
22 appointed by the president of the Senate, four by  
23 Speaker of the House, two by the Chief Justice, one  
24 by the Governor, one by Conference of Court of Appeal  
25 judges, one by the district judges, one by the city

1 judges, and one by the Bar Association. And as I  
2 note in the column, that means eight out of 15, or a  
3 majority of the members, are now appointed by the  
4 legislature.

5 Revised statute 13:42B, there was no  
6 subsection B previously. Now it mandates that two  
7 members of the Senate appointments and two members of  
8 the House appointments and one of the Chief Justice's  
9 appointments shall be representatives of the general  
10 public, and shall not be attorneys, nor members of  
11 the legislature.

12 Next page, 2, all of that law is  
13 changed, the dealing with terms, compensation  
14 prohibition, domicile, staff meetings, duties and  
15 functions. The third page, 13:46C is also unchanged  
16 dealing, with mandating cooperation of various  
17 departments and agencies around the state and the  
18 commission's work.

19 13:47 has changed, and this is a  
20 significant change, I think, in terms of how it  
21 affects the commission. Previously in the old law  
22 salaries recommended shall take effect on the first  
23 day of July of the year in which the report was  
24 submitted if approved by concurrent resolution  
25 adopted by a favorable vote of the majority of the

1 elected members of each house, adopted according to  
2 the same procedures and formalities, except for  
3 submission to the Governor, required for the passage  
4 of a bill. And in the new law: Any increase in  
5 salary may be enacted only after submission of the  
6 aforesaid report and must be approved by a favorable  
7 vote of the majority of the elected members of each  
8 house, whether in an odd-numbered or even-numbered  
9 year, or at any extraordinary session if included  
10 within the objects of that session.

11           So, under the new law a report is  
12 required in order to have an increase and the  
13 legislative instrument is an enactment, or an act  
14 that has to go to the Governor for his signature,  
15 whereas previously it did not.

16           You all have any questions? Mr.  
17 Coleman was asking me earlier about how this compares  
18 to other states. There are 21 compensation  
19 commissions in the country now. One of them hasn't  
20 reported since 1995. I believe nine of the  
21 commissions are advisory in nature. The remaining  
22 commissions, which I guess leaves 10 or 11, require  
23 some action by the legislature.

24           The model statute proposed by or  
25 adopted and promulgated by the American Judicature

1 Society calls for -- I'll read the actual words --  
2 "no affirmative vote of the legislature is required.  
3 The commission's biannual recommendations are binding  
4 and have the force and effect of law, provided that  
5 within 90 days of the issuance of the commission's  
6 report, a majority of neither house of the  
7 legislature votes to reject any of the  
8 recommendations."

9           That's the model statute. I think  
10 there is only one state that does that. That's the  
11 state of Washington. State of Illinois has something  
12 similar to it but not quite as effective. Yes?

13           MR. JOHNSON:

14           In your research, do most of the states  
15 utilize a supplemental pay concept, and could you  
16 maybe enlighten me a little bit as to why this state  
17 went in that direction rather than fully funding the  
18 judges' salaries?

19           MR. PALMATIER:

20           I can give you the history. Back in  
21 1975, district judges and city court judges, all the  
22 judges, were paid from various sources, and what  
23 happened is you had city court judges making more  
24 than Supreme Court justices or district court judges  
25 making more than Court of Appeal judges, so in 1975

1 we created a compensation commission, and the  
2 legislature enacted law saying that district judges  
3 would only receive compensation from the state and  
4 that, in addition to that, they adopt the statute the  
5 city court judge may not make more than the district  
6 court judge.

7           So they restored the hierarchy to the  
8 judiciary, but there was no -- commission that was  
9 created back then didn't function, and we have had a  
10 number of commissions over the past 20 years that  
11 have done that. As to why the specific filing fee  
12 was enacted, I guess because didn't cost the state  
13 any money.

14           MR. JOHNSON:

15           I'm just curious. Having a background  
16 in economics and finance, I just wondered how they  
17 would institute a pay plan with potentially  
18 nonrecurring revenues or possibly diminished  
19 revenues. I'm just curious.

20           MR. PALMATIER:

21           Well, built into the filing fee is a  
22 cost of living rider for the filing fee. So in 1985  
23 the filing fee was \$10 per filing. Now it is \$17 per  
24 filing, but it has not really kept pace with  
25 inflation.

1 REPRESENTATIVE TOOMY:

2 Not to be confused. That supplement is  
3 over and above the established salary scale?

4 MR. PALMATIER:

5 There is -- the recommendation of the  
6 commission included the judges' supplemental  
7 compensation fund distribution. So, for instance, a  
8 district judge today makes \$100,340, I believe. That  
9 includes the supplement for the compensation fund.

10 REPRESENTATIVE TOOMY:

11 But the way the salary is cited in the  
12 legislation is like \$10,000 less than that.  
13 Supplement is in established law.

14 MR. PALMATIER:

15 Yes.

16 REPRESENTATIVE TOOMY:

17 So I think the answer to his question  
18 is that the actual salary is not based on a  
19 fluctuating amount; it's the supplement.

20 MR. PALMATIER:

21 It's just the supplement.

22 REPRESENTATIVE TOOMY:

23 There is no guarantee of how much that  
24 supplement is going to provide?

25 MR. PALMATIER:

1 No.

2 REPRESENTATIVE TOOMY:

3 The guarantee is base pay. Supplement  
4 is on top based on funds available.

5 MR. PALMATIER:

6 Right. So, for instance, district  
7 judge makes \$100,300 a year, 10,000 of that is  
8 approximately from the judges' supplemental  
9 compensation fund. The balance, or 90,000, 90  
10 percent, is from the general fund.

11 MR. JOHNSON:

12 But if filings fall off dramatically,  
13 they can be impacted.

14 MR. PALMATIER:

15 They can't lose more than 10,000.

16 MR. COLEMAN:

17 I think that we have got a lot of  
18 issues to decide, and I'd like you to move on to the  
19 question of reporting and our reporting problem.

20 MR. PALMATIER:

21 The statute requires a biannual  
22 reporting, even-numbered years. We did a reporting  
23 in 2000. Filed a resolution, never was heard, and by  
24 agreement we came back in 2001 with a supplemental  
25 report, and then the legislature acted on that

1 report, and we have five percent 2001, five percent  
2 2002, and five percent 2003. Since the statute  
3 requires a report in even-numbered years, the  
4 question is, do you want to submit some report now  
5 and try to go for an increase of 2003 that will be  
6 effective in 2004? Or do we want to file an interim  
7 report between now and the end of the year just as we  
8 did in 2001, a kind of simple letter informing the  
9 legislature what's been going on with the commission  
10 and where judges' salaries are, and then in 2004  
11 submit a complete report and recommend salary levels  
12 in that one.

13 MR. COLEMAN:

14 That's the issue we have got to decide.  
15 What's your feeling about that? What do you  
16 recommend on that, Tim?

17 MR. PALMATIER:

18 I'm going to defer to the judges and  
19 the members of the commission. It's their pay that's  
20 being affected. The legislature has approved an  
21 increase in 2003, and I just don't know how the  
22 legislature would feel about judges coming up in the  
23 same year that they are getting the increase to ask  
24 for another one, even though it's affected the  
25 following year.

1 REPRESENTATIVE TOOMY:

2 What's the effective date?

3 MR. PALMATIER:

4 July 1 of 2003, and then the following  
5 year would be July 1, 2004.

6 REPRESENTATIVE TOOMY:

7 So, July 1, 2004 increases are provided  
8 for?

9 MR. PALMATIER:

10 No, July 1, 2003.

11 REPRESENTATIVE TOOMY:

12 July 1, 2003?

13 MR. PALMATIER:

14 Right.

15 JUDGE KLEINPETER:

16 But to get one for 2004, we'd have to  
17 have the report in for in the 2003 session?

18 MR. PALMATIER:

19 No, we could do it in the 2004 session  
20 because it starts in March. The report would have to  
21 be filed by January 2004 and acted on. It has to be  
22 filed 60 days ahead of time.

23 MS. WINTERS:

24 What do the legislators tell us the  
25 probability that it would be successful?

1 SENATOR LENTINI:

2 We were just talking about that. The  
3 problem is if you want to go in this year and, before  
4 you even get the next raise, ask for another one in  
5 an election year --

6 MR. COLEMAN:

7 Has to comply with the law.

8 JUDGE THIBODEAUX:

9 How extensive and comprehensive can the  
10 report now be before the end of the year? If you  
11 want to do something of that nature, I'd rather it be  
12 qualitative or not at all. As an alternative, just  
13 simply submit the letter that's already submitted.

14 MR. PALMATIER:

15 Let me say the need for a qualitative  
16 part of it and quantitative part of it maybe is a  
17 function of when the increase is effective. If it's  
18 not going to be effective until July of 2004, by  
19 submitting a full report in 2004 you've got the most  
20 recent current information, and we can get Dr. Scott  
21 to do an updated report. In the interim, we can  
22 submit, as we did in 2001, a letter just informing  
23 the legislators of what the commission has done and  
24 thanking the legislators for acting on the increase  
25 that's about to take effect in 2003 and notify them

1 that in 2004 we will be filing a report.

2 MR. COLEMAN:

3 Is there any objection to having it put  
4 the legislature that we will be meeting, we have had  
5 our first meeting, we have had a lot of discussion  
6 and we will make a formal report to them next year?  
7 I'm looking to you all for guidance.

8 REPRESENTATIVE MARTINY:

9 I think we should submit an interim  
10 report and submit the full report in January 2004.

11 JUDGE KLEINPETER:

12 We are not required by law to submit a  
13 report in 2003 anyway, and I agree with the  
14 representative here. If we go in 2003 recommending a  
15 raise when there is one already going into effect, I  
16 think it's going to leave a very bad taste in  
17 people's mouths, and we have time to do it for the  
18 2004 when we are required by law to present the  
19 report anyway and, like Mr. Palmatier said, we then  
20 have the most recent data to give the report on and  
21 we are not going in the same year where there's  
22 already a raise approved asking for it. I think the  
23 letter basically just keeping our name out there and  
24 saying that we are meeting and still looking at  
25 things.

1 SENATOR LENTINI:

2 You remove a lot of politics out of the  
3 process by simply doing it that way. Not that it  
4 should come into consideration, but it is a  
5 consideration that this is going to be an election  
6 year and somebody is going to make an issue out of  
7 it, and I think you basically want to submit the  
8 information, thank you very much, we will report to  
9 you as the law requires.

10 MR. COLEMAN:

11 I think that the reason we have done it  
12 before is just what you said. Just let them know the  
13 commission is meeting, that we are alive and thinking  
14 about it and make no recommendation. Is that  
15 acceptable to everyone that Tim will prepare such a  
16 report? We all agree that -- I'd like to go off the  
17 record just a minute.

18 (Off the record discussion)

19 JUDGE DOUCET:

20 Insofar as the changes that were made  
21 to the Act controlling the Judicial Compensation  
22 Commission, I feel very strongly about that. I was  
23 in the Senate. Those of you who are on the  
24 commission and the legislature, I was a legislator.  
25 I saw the procession of judges coming into the

1 legislature begging our help at that time. Not only  
2 were they begging our help, but every other judge had  
3 a different agenda, because they knew different  
4 legislators or they knew the Governor, and it just  
5 did not work. It is impossible to work.

6           What was done to make the change this  
7 past year that we have to go back to the legislature  
8 with hat in hand -- certainly, if we are going to go  
9 back hat in hand, then I'm certainly going to lobby  
10 my legislators, which I do not want to do. I'll have  
11 to go back and lobby my chamber of commerces and  
12 everything else, which I certainly do not want to do,  
13 but I have to. This is not a job for our judges in  
14 Louisiana; this is a career. I think that we should  
15 be compensated according to our work and according to  
16 other judges throughout the nation.

17           I feel so strongly -- the good part of  
18 the bill in my thinking was that we'd added a whole  
19 bunch of lay people to the commission. I think that  
20 strengthens us, and it does it for a myriad of  
21 reasons, but one of the reasons is I have never met a  
22 lay person who didn't independently look at the data  
23 and say: My God, what has been happening throughout  
24 these many years? Why aren't you being compensated  
25 according to your work, to the dignity of the job?

1 I've never met a lay person that did not say that. I  
2 feel so strongly about that that what I'm going to do  
3 after this meeting -- I'm the governor's appointee.  
4 I'm going to ask the Governor to -- I'd like to step  
5 down. I would like for him to appoint a lay person  
6 in my position, because all it does is strengthen  
7 you, the commission, and I feel very strongly about  
8 that.

9 I think we have no choice. We have to  
10 go back and say: Legislature, you've got to put it  
11 back. We have a commission that is made up mostly of  
12 lay people. We have judges on the commission which  
13 we need for guidance to give you some insight into  
14 the judiciary. I think that's most important, but we  
15 have no choice. We cannot go to the politics of the  
16 past, which we are going to do at this point.

17 I think we have got great people on the  
18 commission. I think other people will be added to  
19 it. I think that when they turn in their report,  
20 your report, I think it will be of worth to them.  
21 But going back to where the legislature can amend it,  
22 the Governor can veto it, serves no purpose,  
23 especially to the judiciary.

24 We are a third branch of the  
25 government. We are not treated as a third branch of

1 government. We are a step-child. The Governor has  
2 great power in Louisiana, the legislature has great  
3 power in Louisiana, and the judiciary has no power in  
4 Louisiana. We are helpless. We are really on bended  
5 knees. I don't think the public wants us there. And  
6 so if you ask me my opinion as to whether we should  
7 go back and correct this error, we have no choice in  
8 my opinion. I think we have to.

9 MR. COLEMAN:

10 Judge Kleinpeter?

11 JUDGE KLEINPETER:

12 Back when the commission was first  
13 established, the way it was set up, that was the  
14 entire purpose of it, being a resolution that could  
15 not be amended to take the politics out of it. The  
16 board was set up, the commission was set up with  
17 judges. If you look, the judges on the commission  
18 are the minority by far. We are certainly not  
19 majority members. There are members from the Bar  
20 Association. There are now lay people. There is the  
21 governor's appointee. There are legislators, both  
22 from the House and the Senate.

23 Our duty was to look at it and make an  
24 independent report. The idea was to take the  
25 legislator, take the politics out of it so that we

1 wouldn't have -- we are wasting our time if we are  
2 going to make a report and then they can change it  
3 anyway. We are back to where we started with just  
4 everybody going in and saying: Legislature, do what  
5 you want.

6           The whole purpose was to take it out.  
7 Let us outside of the legislative process look at it  
8 objectively without the politics involved, and then  
9 let the legislature -- give them the approval of it  
10 or the rejection of it, in their wisdom, but to take  
11 the politics of the -- the data says 15 percent, we  
12 will give you 6 and a half because I'm going to lose  
13 votes if I get -- take that out of it. That was the  
14 whole purpose of the American Judicature Society.  
15 Their model rules say it is recommended that the  
16 report would be adopted unless one of the branches,  
17 one of the legislative branches, rejected it. They  
18 didn't have to take -- under the model rules the  
19 legislature wouldn't have to take any affirmative  
20 action. They would have to take action to stop it,  
21 not approve it under the model rules.

22           We are one step removed from that, or  
23 we were, where the legislature -- both houses have to  
24 approve it. But to allow them to go back in and  
25 amend it at will -- I agree with Judge Doucet. I

1 feel like we have almost wasted our time. What's the  
2 purpose?

3 SENATOR LENTINI:

4 The problem is we should have fought  
5 that fight at the time, but the decision was made by  
6 the judges, if I recall, not to fight that amendment  
7 because they wanted the pay raise to go through, and  
8 it's much more difficult to -- practically speaking,  
9 it's much more difficult once the legislature has the  
10 power to go back in the next session to say now we  
11 are going to take this away where you can't amend it.

12 As good an idea as that might be, I  
13 don't think you're going to be able to accomplish  
14 that, and I don't know how much damage that does to  
15 the compensation part of your duties here.

16 REPRESENTATIVE MARTINY:

17 I think the way that it has to be  
18 approached -- first off, I don't think as long as you  
19 have to go to the legislature to get it approved,  
20 you'll never remove all of the politics out of it, so  
21 I think that argument fails. I think the better  
22 argument is to go to the Governor and say: Why do  
23 you ask all these people to invest their time and  
24 effort into coming up with all this information when  
25 then the politics of the situation is going to

1 dictate that basically we are going to gut whatever  
2 recommendation and give you what we think.

3           Now, I'm not naive enough to suggest  
4 that politics doesn't go into it. We have had  
5 discussions prior to the new members being added. We  
6 had to make those decisions as to what do we think  
7 that the legislature will approve?

8           I think the thing to do, and perhaps  
9 through Mr. Hainkel and whoever Speaker DeWitt  
10 appointed and the Governor, I think the point needs  
11 to be made it was a good idea, but if you're going to  
12 do that, maybe the thing to do -- the whole purpose  
13 of setting up the Judicial Compensation Commission  
14 was to get an independent or an interested body to  
15 come up with a recommendation, and it wasn't going to  
16 be subject to that horse trading. And this way  
17 you're in a situation where, if you don't produce  
18 something that the legislature as a whole can accept,  
19 well, then you lose. But at least you've got a basis  
20 to present that.

21           So I think the better posture would be  
22 to go to the Governor and say: I understand we may  
23 have a couple of special sessions. You really need  
24 to revisit this issue because, although on the  
25 surface it sounds good, you basically gutted the

1 Judicial Compensation Commission if you allow  
2 somebody to just come in, because he's got the  
3 requisite number of votes in committee or on the  
4 floor, to amend out all of the work that the  
5 commission has done.

6 MR. COLEMAN:

7 You still feel the same? You feel we  
8 ought to take at least a feeling approach and see if  
9 there is any way?

10 SENATOR LENTINI:

11 I'm not opposed to do that. I think it  
12 should be very difficult to do though, because we  
13 didn't fight it at the time. That's when we should  
14 have fought it. And once it's on there, it's very  
15 difficult to take it off again. I'm not saying it's  
16 impossible, but someone would have to sit down with  
17 Darden and Hainkel and make sure that there was a  
18 chance, because once you -- I hate to go there and  
19 lose that fight.

20 MR. COLEMAN:

21 Any recommendation then? Would you  
22 recommend that we just explore it, is that what we  
23 are saying, with the Governor and with Hainkel and a  
24 few others and see?

25 REPRESENTATIVE TOOMY:

1 I think that's a good route. You got  
2 plenty of time between now and the regular session.  
3 I do think what Danny mentioned -- if by chance there  
4 was a special session, I think the Governor's support  
5 of any change would be more visible and more  
6 influential, I think, as part of the special session,  
7 if that comes to be.

8 MR. JOHNSON:

9 I'm sorry, Mr. Coleman, but a thought  
10 that comes to mind. Forgive me. I'm a lay person,  
11 but I live in the private sector and from what I  
12 heard in some earlier comments, the compensation  
13 commission got judges a two percent or less,  
14 somewhere around two percent raise last year?

15 SENATOR LENTINI:

16 Five.

17 MR. COLEMAN:

18 This was after a study was made from an  
19 expert.

20 REPRESENTATIVE MARTINY:

21 It was a total of 15 percent. It was  
22 five, five and five.

23 MR. JOHNSON:

24 I misunderstood.

25 MR. COLEMAN:

1           That was back with a study that was  
2 made that we paid for. Had experts on it, we had  
3 hearings on it. It was cut down and then added. We  
4 really studied it. What we are going to do this  
5 time, I don't know, but we have the funds available  
6 to have a study made.

7           JUDGE DOUCET:

8           My comments lent itself to the future.  
9 I'm talking about the future of this commission, not  
10 immediately, not next year, but I think the future of  
11 the commission -- without it I think we have no  
12 commission. I think what we do is by telephone say:  
13 Want to send a report? Yeah, let's send a report. We  
14 send a report; we have no report. I think it's going  
15 to end up being just that.

16           In the Senate we didn't fight the good  
17 fight because we were going for a pay raise, and when  
18 the chairman of the Senate committee comes up -- and  
19 it was a spur of the moment thing with him. He did  
20 not talk. All of a sudden even Chris said something  
21 about broadening the commission with lay people, then  
22 that's when Senator Darden after that added it. It  
23 was just an instant thing. It just went by. I think  
24 at that point we thought perhaps we should do nothing  
25 at that point not jeopardize that chance, because

1 it's a hard fight (inaudible). You know that better  
2 than anybody else. We thank you for your help.

3 MR. COLEMAN:

4 I wonder if we had a committee, if you  
5 would chair a subcommittee?

6 JUDGE DOUCET:

7 I'm not going to be here.

8 MR. COLEMAN:

9 No, you're still here. Just to speak  
10 to the Governor.

11 JUDGE DOUCET:

12 I'd be willing to do that.

13 MR. COLEMAN:

14 Would you serve on it? And then feel  
15 it out and tell me. We will call another meeting at  
16 some later date to decide what's the best procedure  
17 to follow.

18 REPRESENTATIVE MARTINY:

19 I think the position that you have to  
20 take is, under the present system, you got your  
21 resolution, and you either pass it or you don't pass  
22 it. What I was just discussing with Joe is you don't  
23 want to run into a situation, as happens in a lot of  
24 issues in the legislature, is you come up here  
25 fighting an issue, you pass your bill, everybody is

1 excited, you go home, and at the 11th hour somebody  
2 puts an amendment on a conference committee report  
3 that nobody is actually paying attention to that  
4 repeals that act. Then you end up -- I think the  
5 argument you have to make is: We have set up this  
6 special commission to deal with this special issue in  
7 this special way, and let's deal with it, as opposed  
8 to let's not make it -- if not then let's just say  
9 not have it and we will deal with it just like we  
10 deal with every other issue.

11 JUDGE THIBODEAUX:

12 I think it would be persuasive if you  
13 gave the Governor and Senator Darden the benefit of  
14 the experiences from the other states.

15 MR. COLEMAN:

16 Will you follow that through?

17 JUDGE DOUCET:

18 Sure.

19 MR. COLEMAN:

20 Tim, would you put on the record the  
21 recommendation of the Judicature Society?

22 MR. PALMATIER:

23 Want me to read it in the record? This  
24 is the model statute recommended by the American  
25 Judicature Society:

1 "Effect of the report - The  
2 commission's biannual recommendations are binding and  
3 have the force and effect of law provided that,  
4 within 90 days of the issuance of the commission's  
5 report, a majority of neither house of the  
6 legislature votes to reject any of the  
7 recommendations. No affirmative vote of the  
8 legislature is required.

9 "On the other hand, if the legislature  
10 rejects any or all of the recommendations, the house  
11 or houses taking such action are required to issue a  
12 report detailing the reasons for each rejection.  
13 Moreover, the model statute provides that in the  
14 event that some, but not all, of the recommendations  
15 are rejected by the state legislature, the remaining  
16 recommendations nonetheless become binding on the  
17 90th day."

18 MR. COLEMAN:

19 Is there any other business, Tim, that  
20 you want to submit to us? Is there any other  
21 business that anybody would like to bring it up for  
22 any discussion?

23 For our next meeting, where is the  
24 place that you all would like to have it? I think it  
25 seems to me when I read this, we are supposed to be

1 meeting in Baton Rouge under the Act.

2 MR. PALMATIER:

3 Then we will meet in Baton Rouge.

4 MR. COLEMAN:

5 Am I right or wrong about that?

6 MR. PALMATIER:

7 I think it's domiciled there, but I  
8 don't know that we have to have the meeting there.

9 MR. COLEMAN:

10 That's just domiciliary? It can be  
11 wherever we want? What's most convenient for  
12 everybody.

13 REPRESENTATIVE MARTINY:

14 When do you anticipate having the  
15 meeting? When do you anticipate the next meeting?

16 MR. COLEMAN:

17 When the committee makes a report, if  
18 they feel it's necessary to meet and discuss further  
19 what we are going to do with the legislature. I'd  
20 like very much if you would stay on.

21 JUDGE DOUCET:

22 Okay, I'll do that. You know we are  
23 all invited to lunch up at the City Club?

24 (Off the record discussion)

25 REPRESENTATIVE TOOMY:

1           This is a report that we are going to  
2 give them, but not essentially a recommendation?

3           MR. PALMATIER:

4           You mean before the end of the year?

5           REPRESENTATIVE TOOMY:

6           Right.

7           MR. PALMATIER:

8           Yes.

9           REPRESENTATIVE TOOMY:

10           When you say before the end of the  
11 year, do you mean to submit it just prior to the 60  
12 days, prior to the regular session? I'm not sure.  
13 When you refer to the end of the year, are you  
14 referring to the calendar year for some reason?

15           MR. PALMATIER:

16           Calendar year.

17           REPRESENTATIVE TOOMY:

18           What's the significance of the calendar  
19 year?

20           MR. PALMATIER:

21           Because it has to be done in an  
22 even-numbered year, because we had a full report in  
23 2000, a supplemental report in 2001.

24           REPRESENTATIVE TOOMY:

25           Well, it says even-numbered year, but

1 it also says 60 days prior to the session. You  
2 missed that window. I don't understand the  
3 significance of submitting the report at the end of  
4 the calendar year if you already missed the window.

5 MR. PALMATIER:

6 It's more a matter of keeping the  
7 legislature aware of what the commission was doing.

8 REPRESENTATIVE TOOMY:

9 So then you would submit that progress  
10 report in the year 2002, and then not submit another  
11 recommendation until the year 2004?

12 MR. PALMATIER:

13 Right.

14 MR. COLEMAN:

15 Is that accepted?

16 REPRESENTATIVE TOOMY:

17 That kind of has a bearing on what your  
18 question was, when would we be meeting. Would we  
19 necessarily be meeting before the end of the calendar  
20 year?

21 MR. COLEMAN:

22 I don't think there is any prohibition  
23 for us to meet whenever we need to. This is an issue  
24 on whether or not we want to do it. Submit it to the  
25 legislature. That takes time to consider and think

1 about and discuss in advance, or are we just going to  
2 accept it like it is?

3 REPRESENTATIVE TOOMY:

4 You're essentially talking about  
5 issuing an interim 2002 report based on what we know  
6 as of this date?

7 MR. PALMATIER:

8 Yes.

9 REPRESENTATIVE TOOMY:

10 And any other discussions with the  
11 Governor or others is going to be --

12 MR. PALMATIER:

13 Later on. Satisfied?

14 REPRESENTATIVE TOOMY:

15 Yes.

16 MR. COLEMAN:

17 I will listen to a motion to adjourn.

18 REPRESENTATIVE MARTINY:

19 Moved and seconded.

20 MR. COLEMAN:

21 Seconded? Those in favor? Thank you  
22 all so much.

23 \* \* \* \* \*

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1 CERTIFICATE

2

3 This certificate is valid only for a  
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5 and original stamp on this page.

6 I, ASTRA THIBODEAUX, Certified Court  
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Dated: \_\_\_\_\_

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