11-8-1983

Funding of the Judges' Retirement System

Senate Committee on Public Employment and Retirement

Assembly Committee on Public Employment and Retirement

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JOINT INTERIM HEARING
SENATE AND ASSEMBLY COMMITTEES
ON
PUBLIC EMPLOYMENT AND RETIREMENT
STATE OF CALIFORNIA

FUNDING OF THE JUDGES' RETIREMENT SYSTEM

STATE BUILDING
ASSEMBLY ROOM
1111 JACKSON STREET
OAKLAND, CALIFORNIA

TUESDAY, NOVEMBER 8, 1983
9:30 A.M.

EVELYN MIZAK
Shorthand Reporter
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TUESDAY, NOVEMBER 8, 1983
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EVELYN MIZAK
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MEMBERS PRESENT

Senator Wadie P. Deddeh, Chairman, Senate Committee on Public Employment and Retirement

Senator Dan McCorquodale, Member
Senate Committee on Public Employment and Retirement

Assemblyman Dave Elder, Chairman, Assembly Committee on Public Employees and Retirement

Assemblyman Curtis Tucker, Member, Assembly Committee on Public Employees and Retirement

STAFF PRESENT

David B. Felderstein
Senate Committee Consultant

Patricia A. Wynne
Senate Committee Assistant Consultant

Mary L. Train
Senate Committee Secretary

Dave Cox
Assembly Committee Principal Consultant

David Crippen
Assembly Committee Senior Consultant
WITNESSES

Public Employees' Retirement System
  Charles F. Conrad, Director, Governmental Affairs
  Robyn Miller, Legislative Representative
  Terry Kagiyama, Manager, Judges' Retirement System

California Judges' Association
  Judge Fred Marler, President
  Justice Elwood Lui, Chairman, Retirement and Compensation Committee

California Taxpayers' Association
  Rebecca K. Taylor
  Senior Research Analyst

Department of Finance
  Don Wallace
  Principal Program Budget Analyst

Commission on Judicial Performance
  Jack E. Frankel, Director
  Chief Counsel

Judicial Council of California
  Steve Birdlebough
  Attorney
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Judge Marler
Jack E. Frankel
   Director
   Commission on Judicial Performance
Steve Birdlebough
   Attorney
   Judicial Council of California
Adjournment
Certificate of Reporter
CHAIRMAN DEDDEH: It is 9:30, and I would like to welcome all of you to our Joint Interim Hearing on the Funding of the Judges' Retirement System.

All of us here today know that the Judges' Retirement System is in terrible financial shape. It desperately needs funding if it is to meet its funding goal by the year 2002, as required by law. Several of those testifying today are better qualified than I to talk about the amount of the unfunded liability and how much the state must contribute annually to fund the system.

Many studies have been done and legislation has been introduced each year which tried to alleviate some of the problems caused by the underfunding of the system. Each time legislation is introduced, it is met with strong opposition by judges around the state. While I can understand that they are protecting their pension rights, it is also time to take decisive steps to make the system financially funded and sound.

In order to try to resolve the many problems inherent in searching for solutions for the overall funding for the Judicial Retirement System, a concurrent resolution has been introduced as a preprint for purposes of this hearing. It is coauthored by Senators McCrorquodale and Russell, and Assemblymen Elder and Johnston. The authors believe that the only way to come up with responsible legislation which will get through the Legislature is to have all interested parties study different types of solutions and come up with suggestions which they can support.
Therefore, we will use this Preprint SCR 1 as a basis for discussion today. I invite all of the participants in today's hearing to advise us on the makeup of the panel, as well as commenting on how to fund the panel and what focus it should have.

With that, now, I'd like to introduce members of the Legislature who are here. To my immediate left is a member of the Senate Committee on Public Employment and Retirement, Senator Dan McCorquodale of Santa Clara County.

From Los Angeles, a former Chairman of this Committee in the Assembly and currently Chairman on the Committee on Health and Welfare in the Assembly, the Honorable Curtis Tucker from Los Angeles County.

With that, now, I have the first group to appear as Mr. Conrad, Director, Governmental Affairs; Robyn Miller, who is the Legislative Representative; and Terry Kagiyama, Manager of the Judges' Retirement System.

Would all of you please step forward and address the issue before us.

MR. CONRAD: Senator Deddeh and members of the Committee, thank you. I'm Chuck Conrad with PERS, and my role here today is simply to introduce Robyn Miller, our Legislative Representative, and Terry Kagiyama, the Manager of the Judges' System. They'll present our testimony.

As Senator Deddeh noted, we've been down this track a couple times before. I don't know if we're making progress or not. I am gratified and pleased, however, that different members
of the Legislature from time to time find it worthwhile to continue on this project. Sometimes when you get bloody noses, it's nice to know somebody's bleeding with you.

MS. MILLER: Thank you, Senator, members of the Committee. I'm Robyn Miller.

I have prepared a handout for you, and I'd like you to turn to the very back of it, the third page from the back. This is the white handout, "Public Employees' Retirement System" report. There are extra copies on the table if anyone is interested.

This is a chart we have prepared that shows the financial condition of the Judges' Retirement fund from August, 1973 up until June 30th, 1983.

Has everyone found that chart?

ASSEMBLYMAN TUCKER: Not yet.

CHAIRMAN DEDDEH: All right.

ASSEMBLYMAN TUCKER: What page?

MS. MILLER: I'm sorry, Mr. Tucker, it's the third page from the back.

ASSEMBLYMAN TUCKER: Thank you.

MS. MILLER: Most of my testimony is going to center around the trends that we see on this chart and the information that's on here.

All of us are very familiar with JRS. I'd like to take just a few minutes to briefly review the background of the System.
As you know, the Judges' Retirement System was established by statute in 1937, and we don't have detailed accounts of how the System worked in its early days. We do know that in 1951, the System had a fund balance of one million dollars and had a membership of 312 active judges and 24 retirees.

For the next ten years, the System collected more in receipts than it paid in benefits, and the fund balance continued to grow at a very modest rate.

In 1961, however, as you can see by the chart, that trend reversed itself. The System began cannibalizing its own fund in order to pay benefits. In just six years later, the entire fund, which started in 1937, was totally depleted, and in 1967 we had to go to the General Fund for our first bail out. You can see form the chart that the first bail out was just around $300,000, or only about 10 percent of the allowances paid that year.

Last year, the bail out was $9.5 million and equaled about 34 percent of the allowances paid. In other words, as of last year, one out of three judges' retirement allowances came from the General Fund, not from the Judges' fund.

Okay, there are several reasons for this condition. First is the growth in membership. In 1951, as I stated earlier, we had 312 active members and 24 retirees. Today there are over 1200 active members and over 700 retirees.

In other words, while there's only four times as many active judges as there were in '51, there are 30 times as many annuitants.
Another way of describing this growth is, there were 13 active members for every annuitant in 1951; today there are less than two actives for every annuitant.

Obviously, growth is expected in a retirement system, and it wouldn't be a problem if the System had been funded corrected. Of course, this hasn't been the case.

Senator Deddeh mentioned some earlier legislation. The Legislature in 1980 adopted Senate Resolution 26, calling for a study; in May, '81, PERS presented its findings, and that included an assessment of the System's funding.

At that time, the normal costs of the System were 34 percent of payroll, yet actual contributions, including the bail out, only came to 30 percent of payroll. This does not include the amount required to retire the unfunded liability.

CHAIRMAN DEDDEH: How much of that payroll comes from the judges, eight percent?

MS. MILLER: Eight percent.

CHAIRMAN DEDDEH: And where does the other 22 percent come from? How much does the state contribute to it?

MS. MILLER: As a statutory contribution, the state contributes 8 percent.

CHAIRMAN DEDDEH: Where's the other 16?

MS. MILLER: Okay, we get 4.7 percent in filing fees, and then the bail out was 9.6 percent.

CHAIRMAN DEDDEH: So it comes from the General Fund?

MS. MILLER: Right.

MR. FELDERSTEIN: Is that on a chart somewhere in here?
MS. MILLER: Yes, that's on page 11 of our report from 1981.

CHAIRMAN DEDDEH: All right.

MS. MILLER: So, as you can see, we have normal costs, then we have the unfunded costs. Normal costs were 34 percent. We were only taking in 30 percent, so the System's really going in the hole.

In addition to the under funding, the Judges' Retirement System has also been depleted by a couple of court decisions mandating some fairly healthy retroactive benefit increases. Although the retroactive payments only totalled about $1.7 million, the fund couldn't even make the retroactive payments, and we had to get emergency legislation to get that money appropriated to us from the General Fund.

Unless the Committee has any questions on the System's history, I'd to move on to where we think, very roughly, the System is headed for the next 10 to 25 years.

CHAIRMAN DEDDEH: Before you go to the next part, Robyn, let me ask you this: In the STRS, for instance, we know approximately we have about $14 billion unfunded liability. That we know.

We also know that the portfolio is about $11 billion investment, receiving 8.6, whatever, or 9.6 percent.

To the Judges' Retirement System now, we know that approximately today is about $500 million in unfunded liability, give or take a million or two.
What do they have in portfolio, if they do? And if they do, how is it invested? What are the returns that they collect from it?

MS. MILLER: It’s been the practice of the Department of Finance to run the Judges' Retirement System as a pay-as-you-go system. Now in the --

CHAIRMAN DEDDEH: What does that mean exactly?

MS. MILLER: That it's zero-balanced every year. Okay, we get a bail out from the General Fund; we pay benefits; whatever's left in the reserve at the end of the year is subtracted from the bail out the next year. So we're not allowed to accumulate a reserve which we can put into investments.

There's no investment income feeding, you know, going into the fund to help offset the General Fund balance.

So the policy is to zero-balance the fund every year, not to really keep an investment reserve.

Terry, can you talk some more about that?

MS. KAGIYAMA: We've invested in short term securities, and we do not have any long term investments.

CHAIRMAN DEDDEH: What you're telling me really is that what we are facing here is something that's going to be with us as long as the State of California continues as a state, unless we find some solution today, next week, next year, or something.

Is that a fair statement?

MS. MILLER: Yeah. What we're doing right now is, we're finding money from various sources -- General Fund, filing fees, judges in the state -- and we're paying just the allowances that
are due today, and we're not saving anything for the allowances
that are going to be due tomorrow. So, that's where our unfunded
liability comes in.

CHAIRMAN DEDDEH: In terms of projecting what the
unfunded liability might be, am I correct that about four or five
years down the road, we may be looking at a billion-and-a-half
or a billion dollars of unfunded liability?

This worries me, because now that we are embarked on a
new system of how to run government -- government by initiative
and constitutional amendments, and so on -- some hotshot may come
about and put in a constitutional amendment which supersedes the
Supreme Court and the Constitution of California, and which
becomes part of it, and then says, "We're not going to tolerate
that."

Is this also not a possibility?

MS. MILLER: I would suggest it is, Senator.

What I've done is try to give you some idea of where we
think those liabilities are going to be over the next ten years,
and exactly what kind of problem we're facing.

ASSEMBLYMAN TUCKER: I don't think it's a possibility --

CHAIRMAN DEDDEH: It's going to be.

ASSEMBLYMAN TUCKER: -- for the judicial system to get
sufficient signatures to qualify for ballot. I really believe
that.

But I think that we should carry something to mandate
that the state put their portion in annually to keep it a viable
retirement system.
I think, Robyn, maybe you should help write that for us, and we'll introduce it, try it anyway. We can't allow the same thing to happen to this system that has happened to STRS.

MS. MILLER: Actually, Mr. Tucker, this system's in worse shape than STRS. STRS at least has some portfolio out there. This is --

CHAIRMAN DEDEHE: $11 billion worth.

MS. MILLER: Yeah.

MR. TUCKER: But you're not allowed to have that investment portfolio. Therefore, the state has an obligation, as they have had in the past, to come up with sufficient funds.

Maybe we should introduce a bill.

CHAIRMAN DEDEHE: Well, we'll see what happens today, Mr. Tucker.

MR. CONRAD: You did touch on a crucial point, Senator Deddeh, in that in PERS, for instance, 50 percent of our benefits are currently being paid out of investment earnings. And when you lost that investment income strength, and when you're relegated to simply using short term instruments as a holding account because you're constantly pulling dollars out to meet a monthly benefit roll, then that unfunded liability grows at a much, much greater rate.

CHAIRMAN DEDEHE: And you see, the state has not always been economically on a sound basis. We've had two-and-a-half years of very deep recession, and hence the cuts. We cut from the budget approximately, you know, I'll give you a $2 billion figure, and probably we'll cut it more than that. And retirement
systems become really not a priority item as far as the Legislature is concerned.

I know one item, $211 million of the Teachers' was removed from the budget to balance it. So then, that should serve notice to all interested parties that we've got to do something if really we are going to have a sound, viable, funded basis for retirement. Otherwise, we're going to be holding these hearings and wasting the taxpayers' money for nothing.

MS. MILLER: Okay --

CHAIRMAN DEDDEH: Go ahead, unless Mr. Tucker has some other question or comment. Go ahead.

MS. MILLER: First, I'd like to address what we consider the normal costs of providing benefits at the present level. This is assuming no increase in benefits.

As stated earlier, the normal cost right now is about 34 percent of payroll. Now, according to a study done by the State Controller, assuming just the 6 percent salary inflation, that cost is going to rise to 41 percent of payroll in 1993 and --

CHAIRMAN DEDDEH: Robyn, what is the payroll? We know the Teachers' payroll is $7.2 billion. What is the Judges' Judicial payroll? Do you have it, give or take $10 million either way?

MS. MILLER: No, I've got allowances. I have the annual allowances we pay. I don't have the payroll.

CHAIRMAN DEDDEH: All right.

MS. MILLER: I'm sure I've got it somewhere.
CHAIRMAN DEDDEH: If you find it later on, tell us what it is.

MS. MILLER: Okay.

Again, this is going to be about 45 percent of payroll year 2005. Now again, that's just to pay the benefits, not to retire the unfunded liability.

We have not performed another study since the one you have in front of you in 1981.

CHAIRMAN DEDDEH: Dave, go ahead.

MR. FELDERSTEIN: Why would that normal cost be growing?

MS. MILLER: We're assuming that the amount of active judges will stay stable, but we have judges that will be retiring. As I mentioned earlier, the ratio of judges has changed. It was 13 actives to one retiree in 1951; now it's only 2 actives to one retired. Eventually, we're going to get to a one-to-one ratio, and then it's going to be going the other way.

So, this is why your normal costs are going to continue to rise without retiring your unfunded liability.

Now, we've put together some very rough estimates, very, very rough, on what these increases could mean to the General Fund. Again, assuming the active number of judges will remain constant and no increase in benefits. We also assumed no increase in salaries. This was to give you a yardstick.

Under this scenario, we have estimated that the annual General Fund bail out will increase from 10 million, which it is this year in 1984, to 22 million in 1994. In other words, for every dollar put in by the judges, and the state, and the filing fees, we're going to have $1.30 put in by the General Fund.
Earlier I mentioned that right now, one out of every three benefits is paid by the General Fund. Assuming no salary increase, in 10 years four out of seven allowances will be paid by the General Fund. It will not be paid from the Judges' fund.

If you assume just a 5 percent annual increase in salary, the annual bail out in 1994 would be about $35 million just to pay benefits.

CHAIRMAN DEDDEH: Annually?

MS. MILLER: Right, going from 10 million right now to about 35 million in 1994.

Again, they're very rough numbers. I wouldn't want you to use them or quote them, but I think, given the similarity between our little study and what the Controller has come up with and the study that we did in 1981, they give us a fairly good idea of where this System's headed.

Again, the amount could be significantly higher if you wanted to retire the unfunded liability. And under our most optimistic scenario, we figure that liability will be about 1.1 billion in ten years.

As our 1981 study pointed out, we've got two solutions: you can reduce the benefits, or you can increase the contributions.

Senator McCorquodale, of course, carried a bill for us to try to reduce benefits. Senator Garcia did also in 1981. There has been no sympathy for that point of view.

We did get it out of policy committee, but we lost these bills, you know, further down the process.
That leaves us with what Mr. Tucker was talking about, let's secure some kind of funding source.

This is going to be a very expensive solution, regardless of whether or not we try to meet that year 2002 target date, or whether we push it back ten years.

Again, the intent of this hearing is not to debate the various solutions, but to establish a study team. Unfortunately, our Board has not had an opportunity to review Preprint SCR 1.

Staff would suggest the Board would be very supportive of this measure; however, we would want a concerted effort to try to do something about this.

However, we would suggest that perhaps a study team would not be best placed under PERS. We have two reasons for that.

First of all, it's just like, I guess, every state agency's coming to you with these problems. We have had our staff cut back; we've had hiring freezes; Terry's operation has not been able to fill our vacancies.

The JRS is a very tiny operation anyway. It's completely stretched to capacity. Putting staff on a long term assignment would be very difficult.

Second, as I stated earlier, PERS has already invested considerable time and effort in studying the Judges' System. The Board has already sponsored two measures. The Controller has studied the System, and all these studies keep pointing to the same thing: The employees and the employers aren't paying enough for the benefits that they're receiving, and we need another source of funding.
The consequences of insufficient contributions fall directly on the General Fund. We feel that, perhaps, the Department of Finance, or somebody with more General Fund authority would be better placed to direct the study team.

PERS, of course, would love to work with it as a technical resource, to give you information or whatever we can do.

Again, these are just staff thoughts only. I haven't taken this bill to the Board. I'll get back to the Committee next week, after our Board's met.

That concludes my testimony. Are there any questions?

CHAIRMAN DEDDEH: My question to you, Robyn, is that in your shop, you have the experts to provide the knowledge and expertise, as in the case of ACR 62 or 64, whatever the number is. We called on STRS to provide the kind of advise and consent and research, because they know a lot about that particular area.

So to say that we don't have the staff, and don't have the money, and so forth, and that somebody else ought to do the study is really begging the question.

Eventually, you've got to provide that, whether you like it or not. We've got to have your advice on this, the Board's advice on that. You've got to participate in this, and we will decide whether the money for the study, if we went through with it, whether it comes from PERS, or the Judicial Retirement System, or somewhere.

Somebody correct me, but I think that for STRS research, the money was to come from the State Teachers' Retirement System.
And I think that, as broke as we are, we should find somewhere $20-30,000 to also help provide, once and for all, a final recommendation, even though we've heard it until we're tired of it, but we've got to have it now that we've got a different administration, a new administration, and see what we can do about it.

MS. MILLER: Two thoughts on that. First, granted, PERS must be involved in this. We do have the actuarial expertise, and we would be involved at that level.

CHAIRMAN DEDDEH: Sure.

MS. MILLER: I think part of the dilemma, though, is going to be where are you going to get that other money? Is it filing fees? Do we go to the arbitration process?

CHAIRMAN DEDDEH: We're going to hear from the Department of Finance and see what they will have to recommend, but --

MS. MILLER: Those are policy decisions that are really outside of the interest of the Board.

The second thing is that the Judges' System is broke. You know, if we need a study, Terry's going to have to go find augmentation, and it's going to come out of the General Fund anyway. So, we can say that the Judges' is going to pay for it, but the fact is it's going to be a General Fund obligation.

CHAIRMAN DEDDEH: I hope that the Department of Finance won't oppose a certain amount of General Fund money for this purpose so that we can, once and for all, like I said, have something on which we can hang our hats and determine whether or
not we can provide a solution for this major problem, major

problem.

Terry, do you have something else to add?

MS. KAGIYAMA: No.

CHAIRMAN DEDDEH: Dave, you have a question.

MR. FELDERSTEIN: This year, you're going for your

actuarial evaluation; is that correct?

MS. KAGIYAMA: End of '83-'84, yes, end of this fiscal

year.

MR. FELDERSTEIN: Could this be dovetailed into having

actuarial assistance for a study panel like this with the person

who's going to be doing the actuarial study for you?

MS. KAGIYAMA: You have to go out to bid for a

consultant. We first have to go out to bid to contract for an

actuarial firm, and I don't know when that takes place, but that

won't be until sometime next year.

MR. FELDERSTEIN: If this bill was passed, or if this

resolution was passed, could something be integrated into the

request or proposal to the actuary's bid?

MR. CONRAD: I think, David, you might want to ask the

Department of Finance, when they testify, what would be required,

since what they've approved is funds for evaluation. And I think

what would be required here is slightly beyond the scope of

evaluation. We want the actuary to, as they did in '81, look at

the cost of alternative benefit structures; the actuarial costs

associated with changes in the benefit structure, and that sort

of thing.
You might ask the Department of Finance if, by letter, we could simply use some of the funds set aside for evaluation purposes for the additional tasks associated with this study.

CHAIRMAN DEDDEH: Thank you very much.

Our next witness, it's with a great deal of pleasure that I introduce the former State Senator, now Judge Fred Marler, President of the California Judges' Association.

I don't see Justice Lui.

JUDGE MARLER: He may have run into the same problem we did. We got caught on the freeway. It's fierce this morning.

CHAIRMAN DEDDEH: All right.

JUDGE MARLER: As far as a formal presentation, Mr. Chairman, the position of the Judges' Association has been stated previously.

We recognize the problem. We recognize the possible options that have come before the legislation before.

We welcome your concurrent resolution to once more evaluate all of the various options. I think that until all the possibilities are examined, it would be difficult to say which way we ought to go.

Of course, being judges, we're very concerned with our retirement plan. As far as giving any more substance, as far as a recommendation today, it was my understanding this was not the purpose of this particular meeting today, but rather to discuss the Preprint SCR No. 1, sponsored by you, and Senator McCorquodale and Senator Russell.
I note in here, of course, that we are to be included, which we welcome, and we will give whatever resources we have in cooperation with the rest of the commission.

When I did talk to the Committee consultants earlier, the only question I had was why the Commission on Judicial Performance were included on here. And apparently, that was put on some time ago. I don't know if it's still anticipated they will be a member of the study group or not.

CHAIRMAN DEDDEH: Judge Marler, I'm not sure, but I think we'd want them because eventually you're going to talk about raising the retirement age, or lowering it, and then they may find themselves later on involved in a solution or proposal that they will not support, or will support, so we would like to have their input, even though I recognize they may not have the expertise in the retirement system or the basic interest that they should have.

But eventually, if somebody puts in a bill and says, "We'll raise the retirement age to age 75, and make it mandatory at age 75," they will probably come in, or they can come in and say, "No, this is acceptable or not acceptable." At some date they've got to be involved.

JUDGE MARLER: I can see where they'd be collaterally involved in picking and choosing some of the peripheral areas.

CHAIRMAN DEDDEH: That's right.

JUDGE MARLER: If you desire some further information or a position of the Association at this time, I'll try to do so. I don't know if you particularly want that right now.
CHAIRMAN DEDDEH: Maybe I will call upon you, Judge, in a few more minutes to comment on some of the testimony that will be provided to us by Cal-Tax, the Department of Finance and others, because I'd like to have your input on the record today.

We're really seeking solutions, serious solutions. We cannot let this problem continue on indefinitely with wishful thinking that somehow, someday, by a major miracle, with lightening striking somewhere, this problem will be solved. It's not going to be solved that way. We've got to come to grips with it and provide some solution.

Therefore, I'd appreciate it if you would stick around for a few minutes.

JUDGE MARLER: I'd be happy to stay as long as you like, sir.

CHAIRMAN DEDDEH: Okay. It's a pleasure having you here, Judge Marler.

Let's call on Cal-Tax, Rebecca Taylor.

MS. TAYLOR: Senator Deddeh and members of the Committee, Cal-Tax appreciates this opportunity to address you once again on this subject.

I appreciate the Judge's willingness to stay and answer some questions. I hope you'll bear with me as I sort of walk us through kind of a policy statement, because I do think that it is very important to understand the Judges' System's problems in terms of a general retirement policy as well.

I would note that it's with a sense of deja vu that we're here today to make this presentation, because in 1980, the
Legislature has already acknowledged a need to do something about the fiscal problems facing the System. That was when Senate Resolution 26 was passed. That was legislation that obligated PERS to submit recommendations to the Legislature regarding funding and benefit levels, and also to take a look at a possible two-tiered system.

Now, that study that was called for in 1980 was actually performed by an actuarial firm, and that firm -- and then PERS made a recommendation for reduced benefits; benefits that would have cost the state less, and would actually have cost the judges less as well, and would have put us in a different position today.

CHAIRMAN DEDEH: Rebecca, let me take this opportunity to introduce my distinguished college from Long Beach, Chairman of the Assembly Committee on Public Employees and Retirement, who's just joined us, and we're very happy to have him, Dave Elder.

ASSEMBLYMAN ELDER: They cancelled the flight on me. I guess that's the two-tier of the airlines.

(Laughter.)

MS. TAYLOR: Thank you.

So, we regret that nothing has ever been done since the 1981 study, and have been guided in what our presentation is here today with a sense of having to deal with the reaction of the Judges' Association to the recommendations made in that study, and also to the bill carried by Senator McCorquodale, SB 941.
To begin with, I think we're going to have to focus on the goals of any retirement system, and then decide whether a retirement system for judges is somehow different from any other system. In doing that, I would point out -- go back to a study that was performed for the Senate Committee on Public Employment and Retirement in 1978, to a definition or a policy statement about retirement systems. And I quote from that study:

"The logical goal of a public retirement program should be to provide a replacement income no greater than the net income earned by the full career employee just prior to retirement."

In other words, the goal of a public retirement system should be to insure that career public employees receive, through their retirement system, a benefit sufficient to allow them to maintain their pre-retirement standard of living once they are retired. Such a goal, we would say, is valid for all public retirement systems, be the members teachers, or safety employees, legislators, or judges. We say that --

CHAIRMAN DEDDEH: And yet, I think it's heartbreakingly to really realize that the Teachers' Retirement System, the average recipient of the benefit of the retirement is now at about 50 percent of their actual salary from which they retired, and some of them even less. And with all the help that this Legislature has given to retired teachers, we're trying to bring it to about 50-51 percent of their purchasing power from the time when they retired. And we're trying our level best next year, the year
after next, it will be the goal of the Legislature to bring their purchasing power to 75 percent.

It's hard for those people who served 25-30 years, 35 years, who barely can get 60-65 percent of purchasing power, to accept the fact that the Judicial Retirement System should be no less than what their earning capacity or purchasing power is; the Legislative Retirement System; the PERS retirement system. The teachers are the only ones, really, that are taking it on the chin, between the eyes, and we haven't really shed enough tears for them in this Legislature.

I would like to see Cal-Tax say what you're saying, that you understand why the judges want that kind of retirement system. I respect that, but I want you to also say, "We ought to do something for the teachers who have retired after 30-35 years of teaching our kids."

MS. TAYLOR: Two things. We actually have supported increases, appropriate increases. But I would point out, sometimes the employees who have very low retirement benefits were not career employees. So that raises a question, you know, of public obligation there.

But secondly, we are on record before your Committee and Assemblyman Elder in supporting a different kind of adjustment factor at the end, after everyone has retired, that would keep them in a better relationship vis-a-vis employment if the original benefit is more reasonable.

In other words, if the money that is spent in the retirement program provides in effect a reduced benefit up front,
which we would say is more reasonable, then we would support a
greater cost of living adjustment. That would be our response in
that area.

ASSEMBLYMAN ELDER: Mr. Chairman.

CHAIRMAN DEDDEH: Mr. Elder.

ASSEMBLYMAN ELDER: A couple of points, Rebecca.

I wonder, there are a couple of factors as it relates
to, perhaps, judges and, maybe, members of the Legislature.

And I agree with you that the objectives of retirement
ought to be, to the extent possible, unified. I think that is a
sound goal, and I think it's achievable.

I would only add that in the case of some elected
officials, for example, in the Legislature, the Assembly or the
Senate, and when you're talking about maybe judges as well, they
are subject to something that comes along every two or four years
depending on their situation, which could terminate their
employment even though they may, in fact, be performing the job.
If they were in civil service, they would not be subject to
dismissal, any number of things like that.

Also, the retirement system tends to select out people
of a certain age group, which I don't think is really a prudent
thing to be doing. And then, of course, the members of the
Legislature have another sort of Sword of Damocles, and that's
called reapportionment, which could impact their districts and
leave them without one, in fact, which is something that, again,
that they as individuals have very little to say about.
Those who are judges, and that's what we're talking about this morning, are, of course, attorneys. And their career situation is perhaps a little easier to start up again once they are no longer on the bench.

That's not true in the Legislature because people come from all walks of life and have generally abandoned their career, whatever it was, five, ten years, whatever the period of time was. And you can't go back and say, "Well, gee, I'm back at Company XYZ." First you're going to have to reintroduce yourself, because the turnover in those companies is very great.

So, I think there has to be some recognition of the fact that legislators and judges do have the ability to have their careers interrupted not at their own choosing. And that is something that other public employees do not face. And they have the burden, actually, of really getting their contracts ratified by the voters over certain periods of time.

I don't know what the answer to that is. I just pointed out that perhaps there needs to be some recognition of that fact in whatever adjustments we come up with.

Having said that, it shouldn't be a reason to radically depart from what the teachers ought to get and other people are now getting.

MS. TAYLOR: Actually, I do try to identify the differences that are inherent in the judges' employment, such as you have pointed out. Greater risk is one of the things which is later in my text. They enter service at a much higher age, older age, than is normally the case in public service.
I think it's fair to recognize, I think it's important to recognize those features. But the other side of it is, perhaps, to deal with some sort of maximum, or a maximum that we would try to argue is based on a policy about retirement systems in general.

But if you'll bear with me, I'll come to that in a moment.

Our position is -- I think it's sort of a bottom line statement -- is that we do not recognize a retirement system is supposed to, quote, "attract and retain the most competent people to serve on the bench," unquote. That's a statement that I took out of an address written up in 1978 before the Joint P.E.& R. Committee by the Judges' Association.

So, there's a basic difference here in understanding about what a retirement system is supposed to do.

Our position, I think, can be justified from a number of points. There's obviously no lack of attorneys in California. And there seems to be no lack of competition for judicial appointments or the judicial posts, be that through the appointments or the election process.

Further, as the Judges' representative said at a recent interim hearing, there are intangibles, such as the honor and prestige and the public service that is involved in being a judge that call many members to the bench.

It was his testimony and our own view that most judges only find out after the fact about the generous level of the benefits through the Judges' System. So again, we would say that
the argument of the benefit level as necessary to attract
competent people to the bench is one that does not strike us as
being particularly persuasive.

SENATOR MCCORQUODALE: Mr. Chairman.

CHAIRMAN DEDDEH: Senator McCorquodale.

SENATOR MCCORQUODALE: You indicate that it's difficult
to argue that, except that you can certainly pick one example,
and perhaps, at least in today's popular theories, argue that
that's the case.

If you take a look at Supreme Court Justice Mosk, he was
attracted to the bench at a time when the pay was better, I mean
in comparable terms, plus he knew that he would go up over a
period of time in pay, and today, as indicated in your report,
makes over $100,000.

Very seldom do I ever hear any complaints about his
decisions. Just very few times that somebody complained about
the decision that Judge Mosk made.

Then you take the Supreme Court Justice Rose Bird, who
came in at a time when her pay is probably 60 percent of what
Judge Mosk's pay is, and you hear a lot of complaints about her
decisions.

Maybe, had the pay been different and the person coming
in when she came in knew that they were going to get $100,000,
maybe the Governor would have found someone else; maybe she
wasn't his first choice. Maybe he passed up three or four people
that would not be, in the popular view anyway, creating all these
decisions that people don't like, quote-unquote.
I don't believe what I'm saying. I'm just asking you if it isn't possible that suddenly you do attract people to the judiciary that don't achieve the standards that you might have thought you wanted when somebody in a quiet calmness set up all the pay and benefits for judges, you know, 100 years ago or something, and said that we do want the very highest quality people who are attorneys to be attracted to this.

It seems to me it's difficult to argue that either way, but I keep hearing it from both sides. People saying, well, it doesn't have any effect; doesn't make any difference. Many of them take the job; they don't even know what the pay is. They know nothing about the benefits or anything else.

Others argue that there is a factor there that -- take an attorney who's used to looking at all sides of an issue for his client, and he'll look at all sides for himself.

There are two people in Santa Clara County who were offered judgeships who turned them down. According to them, they turned them down because they didn't think that their standard of living could be maintained on the salary that was paid.

Additionally, then, there was a concern of what it meant for them in the future, because they were both very young, and they simply looked forward to a time of what happens when they're 60, they're at 75 percent, can they go back into law practice, or do they stay on 37 years as a judge; did they really want to do that. They made the decision not to. I mean, they'll publicly say that type of thing.
So, it seems like it's hard to argue that point, but it's one that I think you probably can't ignore as being somewhat of a factor in the issue of who gets appointed, who wants to be a judge, who works harder to become a judge. There's some factor in that.

I worry about the impact that we have of is it better to approach it, as I did last year in the bill that I put in, or is it better to simply acknowledge, as we do with, say, police officers, and look at the contribution that's made for them. They make a smaller contribution, and then the public agency makes a huge contribution for them. And you can almost compare it with the same thing. We say we don't want judges working beyond 70 because they're not sharp, and maybe their decisions won't be as good; and we say we don't want police officers working beyond 50 or thereabouts, because physically they're not in as good shape.

I wonder if it just seems like we need to look broader than we really have at what's the best effect we can have. We don't make the decision of who gets picked, or their qualifications, those types of things. But assuming someone, anyone out there in the world of attorneys wants to be a judge, are we doing things that make them different?

It's hard for me to answer to the judges, except to say to them that part of their lawsuits have made for the unequal situation between judges that sit next to each other now, so does it really make that much difference?
I keep hearing that, and I guess that I would like for you to have an easy answer that that's clear proof that it really doesn't make any different, but probably acknowledge that neither one of us really have a clear decision on that.

Ms. Taylor: Senator, we don't have any answers on that, quite clearly, but there's a good question that gets posed here about what are you requiring your retirement system to do or to represent?

We raised the question because a retirement system, given its very nature, obligates a public jurisdiction for many years in the future. Look what you have in the State of California right now. The Judges' System is greatly under funded, but it's a small system, so the obligation somehow seems manageable.

But the Teachers' System, where, with many times the numbers of members the Judges' System has, becomes unmanageable.

So, we're raising the question to you, what is your retirement system supposed to do? Is it supposed to attract people, or is the compensation system supposed to attract people?

What we are responding is, there is generally an acceptable understanding that a retirement goal can be expressed in terms of providing a retirement income, you know, upon retirement that was pretty much what the individual had available for his needs or her needs prior to the retirement. And that's what we're offering to you, then, as part of this dialogue.

At any rate, I do have the numbers about the salary and would point out to you that obviously these judgeships carry a
higher compensation, certainly, than any other group of public employees in California.

For example, the rate of pay as of September the 1st for the Municipal Court is $57,700; at the Superior Court, we're looking at $63,300; Appellate level, $72,400 --

CHAIRMAN DEDDEH: That's the entry level for a Municipal Court Judge?

MS. TAYLOR: Right. So the range is from $57,000 up to the Supreme Court, where the salary rounded off is $82,000 a year.

Well, whatever you think about those particular salary rates, I would point out to you that a 60 percent benefit, which is what, you know, ultimately we're going to recommend in this area, we're talking about today, at 60 percent, we're talking about a retirement, beginning retirement benefit, in this range from the Municipal Court to the Supreme Court, of $34,600 up to $46,300, and that would be at the Supreme Court level, and $49,200 for the Chief Justice.

Now, those are not inconsequential amounts of money when you have to realize that the law guarantees the surviving spouse half of that.

So, again, I point out that this retirement benefit, at a 60 percent level, given the existing salary rates, is certainly more than most of us see as income.

Now--

CHAIRMAN DEDDEH: You've given us, Ms. Taylor, the entry level of salaries and so on.
What was the average age of a person coming to the bench?

MS. TAYLOR: You give me my next entry back into what I wanted to say.

CHAIRMAN DEDDEH: All right.

MS. TAYLOR: There are differences about judges. For example, the average age entry level for a judge is 44, according to the information that the actuary produced in 1980. So, they are older than most public employees.

And as Assemblyman Elder pointed out, they have, some of them as elected officials may have limited terms. They may have less job security than the others in public employment.

But the question that raises is, do these differences justify benefits that may actually be greater than upon retirement than that individual ever saw as salary? Because that's exactly what can happen under the Judges' Retirement System.

The benefit levels are, quote, floating. I mean, that's the term that's used. And that is that the benefit level is tied to the salary of the incumbent judge rather than to whatever the individual actually earned. This means that the benefits could be higher upon retirement than that individual ever had as salary. And it's especially true for judges who become vested in the system and then cease to be judges and take a deferred retirement.

We would point out that all of the alternative plans ever suggested for judges since about 1977, that's the earliest
study that I'm familiar with, they all recognize these
differences about the judges; that is to say, their older entry
level and the greater risk involved --

CHAIRMAN DEDDEH: What is the greater risk? You mean
losing their job?

MS. TAYLOR: Yes, certainly compared to other civil
service positions, yes.

CHAIRMAN DEDDEH: Rebecca, I was elected in 1966. There
were 79 other Assemblypersons with me. In 1982, of the 80 people
with whom I served, there are only two left in the Assembly:
Willie Brown and Vasconcellos. That's 78 brand new
Assemblypersons have come to the State Legislature, in case you
people don't know this.

Now, you tell me, speaking of risk, job security and job
risk, how do you compare that with the judicial risk in keeping
their jobs? How many of them are defeated every two years, four
or six years? How many?

MS. TAYLOR: Perhaps the Judges' Association could
respond. I really don't know.

JUDGE MARLER: Very few.

CHAIRMAN DEDDEH: It's not a fair comparison to the
judges themselves to compare them, say that they have risky jobs,
because they don't, as compared to the Legislature.

MS. TAYLOR: I would agree with you, and I guess a lot
of public employees who have been laid off would say perhaps
their risk is even greater.
But, again, I think in trying to set up a retirement plan, one tries to address, theoretically, what the differences would be for this type of employment versus perhaps civil service employment. And the studies that I have seen have all said, okay, because of these differences in their type of employment, let's have a different or more generous benefit formula.

For example, in 1977, the actuary said the formula should be three percent per year of service, with a maximum of 60 percent of salary. Senator McCorquodale's bill also had a richer formula; it was 2.5 percent per year, compared to two percent in most --

CHAIRMAN DEDDEH: Mr. Tucker had a question.

ASSEMBLYMAN TUCKER: Well, I can't see how we can compare the Judicial Retirement System with STRS or PERS or the Legislative Retirement System. I think it's totally ridiculous that we should attempt to do that.

That is a unique retirement system, possibly the smallest in the state.

We've had these hearings -- I've been on this Committee for 10 years, and we've had these hearings for 10 years.

I know there's no simple solution, but there has to be a solution, and we should do it right now. We have had studies and Committee hearings on this system year, after year, after year. We've had resolutions; we've had all sorts of things.

I think that who ever introduced this corrective legislation in the Judicial Retirement System is going to take some flack from the judges, because no one wants their ox to be
gored. They would not want to diminish their benefits from their retirement system. You can't blame them for that. But it has to happen.

And I think we have enough input from people throughout the state right now to go back to Sacramento, with your participation, and Robyn, judicial people, and write something, put something in the law that would correct this situation. I think we could do that.

It might be a two-tiered system; it might be some of the -- take away some of the benefits.

When you talk about a judge, Mr. Elder mentioned that these people are also attorneys. Not like the average public employee, who will find it very difficult to go out and work again. I don't know any judge who has ever retired impoverished. They're always offered something else.

They come into this system voluntarily. They go to the Legislators and they ask for these appointments. It is not very difficult to go out today in Oakland and find 50 percent of your attorneys who would love to be a Municipal Court judge.

We're talking about a small system that we should not allow to get into the condition that STRS is in today. We should do it in January.

We know that the judges are not going to want to up their contribution or have any of their benefits diminished, but it's going to have to happen. We have to be realistic about this thing, and we should do it in January. We should introduce corrective legislation that will make this a viable retirement
system, possibly be diminished benefits, and these hearings over
and over and over again, I personally am getting damned tired of
it.

There's a tremendous lobby out there for the judges.
There's a lobby for the taxpayers; that's you. And at least you
did say we need to do something constructive for STRS, because
the Taxpayers' Association has never taken any position as to
raising anything for anybody since I've been in the Legislature.

Mr. Deddeh talks about his coming here 24 years ago and
only two people. I've only been here ten years, and I'm number
six in seniority. So, there's no security here, but I came here
by choice.

ASSEMBLYMAN ELDER: I've been here less than five years,
and I'm number 19; 75 percent have less than five years.

ASSEMBLYMAN TUCKER: What do we have here, Wadie, a
two-tier retirement system?

CHAIRMAN DEDDEH: Three-tier.

ASSEMBLYMAN TUCKER: Three-tiered retirement system. I
don't get the same thing that Wadie gets when he retires.

CHAIRMAN DEDDEH: You get the same thing, only you pay
more, or you contribute more, and I like it that way.

ASSEMBLYMAN TUCKER: I would prefer to get the
compensation that Mr. Deddeh is going to get, but then, I came
into the system with the full knowledge that I wouldn't. So, I
have only myself to blame if there is any person to be blamed.

And I think those judges have to face the reality that
we intend to make their retirement system a viable retirement
system, no matter whose ox we gore.
Thank you, Mr. Chairman.

CHAIRMAN DEDDEH: Very good.

MS. TAYLOR: Obviously, we're on your side on this one. If this were the last interim hearing, be it in lovely downtown Oakland or where ever that we ever have to go to on the Judges' Retirement System, the better.

What we're trying to say to you is that we're trying to give you some rationale. It's already been developed to some extent about what a new system should be.

For example, in 1980, in this report that came out, the actuaries found that a single judge retiring in 1981 would need from 53 to 58 percent of his or her final compensation to have the same pre-retirement disposable income, to have the same amount of money upon retirement that they had while still actively working.

And the amount of money need for married judges to provide the same amount of income or disposable income would be from 56 to 60.8 percent of their salary.

This works out because there is different tax treatment for persons who are retired at age 65, and because there are reduced work-related expenses.

We would point out further that even the 60 percent cap doesn't mean that people will not have more money in effect coming through the public employer upon retirement than they had while working.

CHAIRMAN DEDDEH: Ms. Taylor, Mr. Elder has a question.
ASSEMBLYMAN ELDER: On that point in your analysis, if you would look at the -- and I don't know whether you can do it or not, but what effect income averaging would have for a retired justice, because I'm not sure if the tax treatment -- the contribution that they get in their first couple of years is generally not taxable because it's their money. However, as I understand income averaging, you can do it for five years. That may, in fact, increase their income because they could go back and get some refund based upon an income averaging situation.

I don't know whether they can do that or not, but that's something they can grind into it that may kick it up over the percentages you're already showing of their previous salary, for five years anyway.

MS. TAYLOR: I'm sure you're correct as far as the tax treatment is concerned.

Again, all I'm trying to say is that given the Judges' Retirement benefit, given the fact that many judges will have been eligible for Social Security, not through having been a judge but through other employment, there are many judges who go to the bench from public service, such as from the Legislature, they worked in County Counsel or D.A.'s offices, or in other positions in government, and that means more than likely there will be a retirement benefit that flows out of that service.

So all together, I think you have to see that as having an impact on what the judges' benefit should be. I'm trying to make an argument that says, you know, a system that's valid for the Judges' System to provide a benefit pegged at returning to them what they had prior to being retired.
But the ultimate argument has to be in terms of the cost to the state, that the system in its current design is simply too expensive. It would cost the state today, at least in 1981, when this study was done, the actuarial study, it would cost the state $450 million to erase all past unfunded liabilities if it were paid in a lump sum. If amortized between now and 2002, which is what legislation requires, there would have to be 151 percent increase in existing contribution levels.

Since the Judges' Association is on record as being opposed to paying more for their benefit, that means that the state's going to have to pay the lion's share of what turns out to be 76 cents for every payroll dollar to keep the Judges' System sound, or to make it sound.

So, yes, we obviously believe that the System needs an overhaul. We would suggest that it has to be put on an actuarial funding basis because of the problems that have been identified by Robyn and Chuck in terms of the cash flow situation.

We'd probably suggest to you that the funding date of 2002 is no longer realistic, but by the same token, we would urge that any date that does get considered be no greater than the 40-year standard that is under the ERISA law at the federal level.

So, that's basically our sort of policy statement about what we hope would happen. We would -- I think I would join Assemblyman Tucker in saying the thing's been studied. I mean, we really do know.
If you want to have another Blue Ribbon Committee, let me give you my reaction to the composition, as is in the Preprint bill. I'll give it to you in terms of an analogy. It looks like the fox guarding the hen house the way the thing's been set up. I mean, you've got two-thirds of the membership of that Blue Ribbon Committee expressing the judges' viewpoint.

So, if you want a committee, I think to have credibility, you're going to have to add public members to that committee, and perhaps even an actuary would be appropriate if you don't want to be guided by the study that was done in 1981.

As it relates to how to pay for the study, my first reaction would be to charge it against the Judges' System, just like the ACR 62 study was conceived for the Teachers' System.

ASSEMBLYMAN TUCKER: And they can't afford to pay it, so it comes out of the General Fund anyway.

MS. TAYLOR: That's correct. So, that does raise a question.

CHAIRMAN DEDDEH: But the point of the public member added, I think, is very well taken, and I've jotted it on my copy of the resolution. I will have the staff draft an amendment to add a public member to that, because I think we should have that, and possibly an actuary.

ASSEMBLYMAN TUCKER: Nobody wants to make judges angry with them unless they're my age, you know, through all this business, but that's going to have to happen. There is no question they're going to have a reduced benefit upon retirement; no question. Because the state can't afford any more to pay
those tremendous contributions. It's going to have to be a
two-way street. There's no other way we can do it, your Honor.

And the judicial system, the judges throughout the state
should understand it. They have a responsibility here, too.

Nobody wants to have their compensations cut, nobody. I
guarantee you, if you said it was going to go bankrupt next year,
they still would not like to see the diminishing of any of their
benefits as they are today. They wouldn't want to see it.
They'd say, "I don't believe it." And they won't believe it
until it actually happens.

So, I think it's responsible for us to take the bull by
the horn and come up with something real meaningful and that will
put it on a sound actuarial basis, And we should have a hearing
in January in Monterey on it, three days.

(Laughter.)

CHAIRMAN DEDDEH: I suggest, Mr. Tucker, you ask Senator
McCorquodale, who carried a very courageous bill, not
earthshaking, but a good piece of legislation, a sound piece of
legislation. It got out of the policy committee, and what
happened to it, Senator McCorquodale?

SENATOR MCCORQUODALE: It got one vote in Senate
Finance. Somebody moved the bill, but I don't think they even
voted for it after roll call came. They moved the bill, but it
didn't --

CHAIRMAN DEDDEH: They did not hear it.

ASSEMBLYMAN TUCKER: It did not come to our House, so
we're not aware of that.
But certainly, we have to try and try again, and we should stop holding these meetings on the Judicial Retirement System.

We have enough problems in STRS now to hold a hearing every other day, if necessary, because we have a real problem there. This problem we have in the Judicial Retirement System is something we can solve very easily if you get a senior Senator, like Wadie Deddeh, to carry the bill over there in the Senior Citizen House, which we call the Senate.

(Laughter.)

ASSEMBLYMAN TUCKER: They're not going to allow any freshperson to come up with a bill.

CHAIRMAN DEDDEH: For the record, Sergeant, would you remove this member?

(Laughter.)

ASSEMBLYMAN TUCKER: So, we have to be sort of practical.

You have got, Senator, very well-qualified, very good friends whose bad bill get out of the Health Committee with my help. They're not going to let you carry anything that earthshaking as to revise the Judicial System Retirement to make it viable. You're not going to do that. You've got to get a little more points over there.

SENATOR MCCORQUODALE: I kept wondering why all those folks were letting me carry their great bill.

(Laughter.)
ASSEMBLYMAN TUCKER: They probably came to you and asked you to carry it.

So, let's let Wadie Deddeh carry a bill. Let's let Elder coauthor the bill, and I certainly will be happy to be a coauthor, or I'll carry the damn thing. But let's get something done, and let's have it by January.

Then we can go to Committee and do all the amending we need to get some of the judges off our backs, but I assure you, it's not going to be an easy thing.

We should do that. We should stop having these damn meetings so we can come up with something meaningful.

CHAIRMAN DEDDEH: I'm going to call at this time on the Department of Finance, to be followed by both Judge Marler and Justice Lui.

ASSEMBLYMAN TUCKER: I want to leave before they talk. I'm going to get out of here before the judges speak.

CHAIRMAN DEDDEH: You want to hear them now? They're friendly. Justice Lui and Judge Marler are very friendly people.

ASSEMBLYMAN TUCKER: I notice he wrote my name down.

(Laughter.)

CHAIRMAN DEDDEH: All right, Mr. Wallace.

MR. WALLACE: Yes, I am Don Wallace from the Department of Finance.

I'm here at your disposal to answer whatever questions you may have. I have no prepared statement.

CHAIRMAN DEDDEH: All right. The question that probably will be raised, you've already heard it, if this resolution were
to pass, if it were indeed in the judgment of those who make the decisions needed, how do we fund it?

PERS says that they don't have the money. Can the Department of Finance, or is it fair to ask you the question, can the Department of Finance recommend that we put 30,000-50,000, whatever it is, to augment the budget to provide money for this resolution so that we could, once and for all, do an honest-to-goodness recommendation by this panel and say, "This is what we recommend," and hopefully, we'll take it and go with it.

That's the question.

MR. WALLACE: We would prefer that whatever study be undertaken be undertaken with existing resources, as was indicated in the resolution itself.

I realize that that would probably be a problem for the Public Employees' Retirement System; nevertheless, that's our position.

PERS, we think, would also be the proper organization to have the lead responsibility for the study rather than the Department of Finance, as they have suggested. They are the retirement experts; they are the people in the state that would be able to look at the various areas of consideration that have been outlined in the resolution much better than people in the Department of Finance could. So, we think that is the proper place for the study.

We would hope that they could find the resources within their available staff.
CHAIRMAN DEDDEH: Can you help them find the resources within their department? Can you point out to them the area where they can find the 30-40-50,000, whatever it takes, to respond to this resolution?

MR. WALLACE: In specifics, no. But we can point out the fact that they do have a management analysis unit; they do have an actuarial staff at their disposal; they do have people within the System that do have retirement expertise.

And we think that, utilizing this existing staff, that they could do a credible job of the System, of evaluating the System.

CHAIRMAN DEDDEH: Any question of Mr. Wallace?

ASSEMBLYMAN ELDER: I just might ask Mr. Wallace, would it be possible in terms of slowing the appointment process to generate the salary savings necessary to finance it, or retirement savings?

I mean, there is a cash flow problem in the sense that the contributions made don't keep up with the cash flow requirements of the System. So, if you deferred the appointment process by, say, two days by each justice that's to be appointed over a given period of time, you could save enough money to finance the study.

Does the Department of Finance have any control over the schedule of when someone actually goes on the payroll?

MR. WALLACE: I think the problem you have there, Mr. Elder, is the fact that that would not impact the appropriation authority of the Public Employees' Retirement System. The amount
of money they have appropriated to them to manage the Retirement System is not, in any way, linked to the appropriations made for judges' salaries.

ASSEMBLYMAN ELDER: Or their retirement benefits?

MR. WALLACE: Or the retirement benefits. The retirement benefits themselves are paid out of a continuing appropriation and are unaffected by the budget.

ASSEMBLYMAN ELDER: So, if we got the money from the Retirement System, would it not be possible to get it financed that way, if there was some agreement for a period of time to whatever appointing would normally take place, that they would defer it simply as a matter of days in each case to accrue the salary savings necessary to finance the study?

MR. WALLACE: I think what you're really talking about is within the PERS system, holding positions vacant for a period of time in order to generate the savings, as opposed to the judges' themselves.

I understand what you're trying to do, the mechanism or the technical --

ASSEMBLYMAN ELDER: No, I'm not talking PERS, public employees. I'm talking about judges and the Judges' Retirement System. I don't want to impact PERS at all.

We've got a system there that's about 60 percent funded horizon and in pretty good shape by comparison. I don't want to impact that by, you know, trying to resolve this problem.

But I don't think we're talking about a huge budget, you know, probably not more than $50,000. I'm just guessing. That
should easily handle whatever requirement would be necessary, it seems to me.

Perhaps I'm wrong, and I haven't heard any numbers discussed. So, to achieve that level of savings in the Judicial Retirement System, seems to me, is not impossible if we simply change the effective date of the appointments by a matter of a couple of days. Because I think that whoever the Governor is, they appoint 600 or 700 justices in a year. There's just an incredible amount of turnover in terms of the judicial system. It may be less than that, but you don't have to save very much money on that many appointments in order to make $50,000.

SENATOR MCCORQUODALE: Actually, if you do that, I guess it makes the System in worse shape, because the judges aren't making their contributions, and they're depending on the contributions made this year in order to pay people that will retire 20 years from now, to pay benefits this year. So, that might even be a harder thing.

ASSEMBLYMAN TUCKER: You're also talking about five years to accumulate $50,000. If you're going to delay the appointment date, you're talking about a long period of time. We shouldn't take a long period of time.

ASSEMBLYMAN ELDER: All right, that was the only question I had.

I don't know what Mr. Conrad came up for.

CHAIRMAN DEDDEH: Mr. Conrad, do you have a --

MR. CONRAD: Well, I just had a comment.
I think what the Department of Finance is saying is they don't want to pay for the study.

It's real easy. You just pad the General Fund bail out to go to the Judges. If you want it to go into the Judges' item, you do it that way, or else you run it as a separate item. It's General Fund money.

The PERS actuarial staff doesn't have the data. That's why Coates, Herfurth & England did the study in '81 for us. We don't have the actuarial data. It's not in our actuarial data base at all, and we don't have any actuarial time to spare for that, no way in hell. We took it in the shorts on our budget again, as you well know. We don't have any time or staff left.

I'll tell you right now, my frank personal opinion of what the Board's reaction would be if you tell us to take it out of our budget, you'll get no study.

That's not an arbitrary thing. That's not being offensive to the Legislature in any respect. It's simply there isn't any money or staff around in the PERS budget to reinvent the wheel again on the Judges' System.

If you want a study, we'd love to participate, and we'd love to help. We think it ought to come as an addition to the General Fund bail out for Judges. Put another 40 or 50,000 bucks in there; we'll get a consulting actuary, maybe make him part of their study team.

And we'll be happy to donate our staff resources to the extent we can, but you're not going to find the resources within PERS to do it.
SENATOR MCCORQUODALE: Let me ask on a different question. Since Mr. Tucker qualified my short-termness, I can ask a naive question.

Suppose you just roll the System into PERS, made it a part of PERS. And then, based on the requirements that the Legislature has already passed, that the System has to be sound by some point in the future, what would you do in that case? What would be the process that would be followed to accomplish that?

MR. CONRAD: I'm not sure exactly what you mean by roll it into PERS.

SENATOR MCCORQUODALE: Well, just make it a part of PERS, just the same as if they were county employees, or state employees, or some --

MR. CONRAD: Okay, in that case, we would establish the appropriate contribution rate to actuarially fund it within what we consider to be a prudent time line, and we'd set a contribution rate and the state would be stuck with it. And you'd be looking at something in the neighborhood of 80 percent of payroll.

SENATOR MCCORQUODALE: But that would accomplish it, and it would meet the objectives.

The thing that would be left is people who think that the System is not appropriate in its present format would not be satisfied, but it would satisfy the objectives Mr. Tucker has been saying, simply to make the System sound.
MR. CONRAD: And I think you'd probably have the biggest cat fight with Finance we've seen in a while over a retirement issue when we came in with an 80 percent contribution rate.

SENATOR MCCORQUODALE: Well, they didn't support my 941, so Mr. Tucker's going to get this new bill through, either he has to worry about Finance or --

CHAIRMAN DEDDEH: You mean the Department opposed your bill in Senate Finance?

SENATOR MCCORQUODALE: Yes, they didn't think that it -- I'm not sure what they --

MR. WALLACE: I can't answer that right now. I don't know.

CHAIRMAN DEDDEH: Robyn?

MS. MILLER: Part of the problem, Senator, was they felt that the judges' contribution should be increased.

The other problem was that they didn't agree with the funding horizons. So, we did not get support either from Finance or from the analyst on that.

CHAIRMAN DEDDEH: To raise the judges' contribution --

MS. MILLER: Which we did not do in the bill.

CHAIRMAN DEDDEH: What else did they say?

MS. MILLER: They didn't agree with the funding horizon. They felt that 2002, I believe, was too close and we should push it back and lower the contributions from the state in the meantime.

CHAIRMAN DEDDEH: Then what you're telling me is, if Senator McCorquodale, or Mr. Tucker, or Wadie Deddeh, or any one
of us sitting on this panel were to come back and say "Increase
the judges' contribution by two percent, three percent, whatever
it is they pay, if they pay eight percent make it ten,"
hypothetically, and then push that year 2002 to 2022, is that
what we're talking about?

MS. MILLER: Uh-huh.

CHAIRMAN DEDDEH: Then we would have the analyst's and
the Department of Finance's support?

MS. MILLER: We'd have to ask them again. As I
understood, those were their arguments.

CHAIRMAN DEDDEH: We'll do it one day at a time, right?
We would not be a true bureaucratic system unless we
complicate things a little further.

ASSEMBLYMAN TUCKER: I don't think that's complicating
things. I think that's clarifying things.

CHAIRMAN DEDDEH: Clarifying things, and I asked if they
would support, and they said, "Well, we don't know yet."

Would you support something like that based on your
opposition last year? You opposed it, as I am told now. You
insisted on the judges' contributing more. That's the
Department, not Don Wallace.

MR. WALLACE: I think that we would also have to look at
the other side.

CHAIRMAN DEDDEH: What is the other side?

MR. WALLACE: The other side would be, if you were going
to make this a fully funded system by 2002, there's going to be a
contribution on the part of the employer at some point in time.
CHAIRMAN DEDEH: Make it 2022 to satisfy the analyst.

MR. WALLACE: By 2022 would be a smaller contribution, but I think there would have to be some additional dollars appropriated.

CHAIRMAN DEDEH: We've got to have a system. We've got to hang on to something this next year, in '84-'85, whether it's going to take us 40 years, or 30 years, or 35 years, so that we can send a piece of legislation to the Governor, he'll sign it into law, and we'll know that in the year 2030 or 2020, we've got this problem now licked, solved, hopefully, unless something else happens.

That is why I think it's a proper time now to call on Justice Lui and Judge Marler, if you want to come forward.

Any question of Mr. Wallace?

ASSEMBLYMAN TUCKER: It seems to me that you were receptive to a little bit of increase in the contribution by the judges, and you'd be more receptive to the bill. It seems that you would probably be willing to work with whoever introduced the bill to see that we get something that is meaningful and something that will fly.

Is that not correct?

MR. WALLACE: We'd be perfectly willing to work with whoever would propose such legislation.

ASSEMBLYMAN TUCKER: You would go for something that would make it a viable retirement system, properly funded.

MR. WALLACE: I can't say categorically that we would support such a proposal, but we would certainly be willing to
work and see what the numbers worked out to be, and whether or
not such a proposal could, in fact, be funded.

CHAIRMAN DEDDEH: Mr. Wallace, let me ask you to carry
the following message to the administration.

MR. WALLACE: Yes, sir.

CHAIRMAN DEDDEH: That there is an attempt by the
Legislature, in 1984, to carry a piece of legislation backed,
supported, written by, or whatever, by the administration itself,
that would, once and for all, resolve the problem of the Judicial
Retirement.

Can you carry that message? I would be very happy to
carry the bill on behalf of the administration.

MR. WALLACE: I will carry your message back.

CHAIRMAN DEDDEH: Do that for me specifically. All
right?

MR. WALLACE: Yes.

CHAIRMAN DEDDEH: Fine, thanks.

We could probably do away with the balance of the
hearing, and so on, because if we identify the parameters of what
it is we want to do, we could save ourselves $50,000 to spend on
another hearing to hear another thing that we've heard to death
several times.

Okay, now back to the bench.

JUSTICE LUI: Good morning.

CHAIRMAN DEDDEH: Justice Lui, we are honored to have
you, sir.
JUSTICE LUI: Thank you. I'm here with Judge Marler. We were discussing who should go first in presenting any views to you, and answering your questions, and it was decided between the two of us that I could probably start first, since I have the longest history. I've been with you in San Diego, Monterey and Los Angeles.

CHAIRMAN DEDDEH: Isn't it nice that we hold hearings all over the place so that you can travel?

JUSTICE LUI: My work doesn't stop. Let me apologize. My work is done on planes, and on various occasions it doesn't stop like the trial judges.

ASSEMBLYMAN ELDER: Welcome to the Legislature.

JUSTICE LUI: Well, I want to express a few views before we go off too far on a tangent.

There's a problem with some of the things that you're proposing, and that is a problem that grows out of a decision called the Betts decision in the Supreme Court.

You cannot tamper with vested rights. You cannot increase the judges' contributions under the law without providing offsetting benefits.

If you want to raise it to 10 percent, but if you do so -- can I finish -- we are now at the highest level of contributions of any employees. Maybe the California Highway Patrol, I think, a couple of years ago was up a little bit higher, but 8 percent is the highest level generally. If you propose to put the judges at 10, 12, 14 percent --
ASSEMBLYMAN TUCKER: Mr. Justice, you also get the highest compensation package after you retire.

JUSTICE LUI: That could well be, but we've had some -- there are some constitutional officers and medical people in the various state government positions that could receive higher compensation.

ASSEMBLYMAN TUCKER: That could.

JUSTICE LUI: So, I don't necessarily agree that we are the highest group.

ASSEMBLYMAN TUCKER: You're also the highest paid employees that come aboard in the public sector.

JUSTICE LUI: I dispute that.

If you go to the Municipal Court, Assemblyman Tucker, and you go in the L.A. Municipal Court, you will see some judges who've attained the bench who took cuts in pay from being public defenders and district attorneys.

ASSEMBLYMAN TUCKER: By choice.

JUSTICE LUI: By choice, absolutely.

There are a couple of things that I wish to just address in this problem.

CHAIRMAN DEDDEH: Before you leave the point, Justice Lui, I'd like to share a little dialogue on that point.

You stated, and correct me, that the Betts decision says you cannot do the following, and I know what the Betts decision says.

Then that brings us to the crucial point: Why is it unconstitutional, why is it un-American to say, "We've got to
devise a new system for Judicial Retirement for those judges, justices at all levels of the judicial branch that would come into the system effective 1983, '84, '85? 

JUSTICE LUI: There's nothing wrong with that. If you --

CHAIRMAN DEDDEH: That's what we're trying to devise. 

JUSTICE LUI: I understood the comment to be one that would increase the contribution rate now for sitting judges. 

ASSEMBLYMAN TUCKER: No, absolutely not. That is unconstitutional to do that. You have a vested right in that contractual agreement with your employer that you should get a certain retirement benefit. Yours will not be changed.

We will do it prospectively, those persons who are appointed tomorrow, or elected tomorrow. There definitely has to be a two-tiered system to create any meaningful change in your retirement system.

JUSTICE LUI: I would agree, at least in my view without studying it further, that you have every right to do so prospectively.

CHAIRMAN DEDDEH: Let me ask you a constitutional question, Justice Lui, if I may.

ASSEMBLYMAN TUCKER: Wait a minute. What was the last part of your statement?

JUSTICE LUI: Well, you're asking me to give you an advisory opinion, and I had to say --

CHAIRMAN DEDDEH: I am not.
JUSTICE LUI: I have the same problem I had when the now
Governor Deukmejian was asking me those kinds of questions on an
advisory opinion.

I will state to you that after my analysis of the recent
decision involving ex-Legislators, that case was taken over by
the Supreme Court, I believe it's stated in my position in the
opinion that was drafted by our panel that you can do something
with respect to two-tier systems in the future, because they're
not impairing any contractual rights of existing employees. So,
if we're talking about future employees, I don't think you have
the same kind of problem.

The real question is, and I think I addressed it in
Monterey, is do you want to do that? That's the real question.

Now, if you want to do that, then let's have the
decision --

ASSEMBLYMAN TUCKER: No, it's not a question of do we
want to do it.

The question is do we have to do it to make it a viable
retirement system.

JUSTICE LUI: I would like to speak to that very point,
and I would like to speak to the point being a person who will
not be effect by the system. In other words, I am in the same
position as all of us, and so is Judge Marler. We're vested in
the System. We're stuck with the System, the benefits and --

ASSEMBLYMAN TUCKER: You get them in the System.

JUSTICE LUI: So let's espouse views which are more of
an advocate's position for why we shouldn't do it, because you
obviously have the views of why you should do it.
The biggest starting point from the position of doing something is that you have fiscal problems, right? I understand that.

But I'd like to clarify why I think it shouldn't be done, just to offer an opposing viewpoint so when you make a decision on what you're doing, you understand what you're doing.

CHAIRMAN DEDDEH: I respect that, Justice Lui.

Let me ask you an elementary constitutional question, if I may.

The Constitution of the State of California supersedes, does it not, a decision of the Supreme Court?

Or, let me put it differently, unless there is language in the State Constitution that violates the U.S. Constitution, the Supreme Court of California cannot declare the Constitution of California unconstitutional, can they?

JUSTICE LUI: Well, they can declare -- the job of the Supreme Court is to declare whether or not a particular section is appropriate.

CHAIRMAN DEDDEH: I respect that, but that particular section has to be in violation of the U.S Constitution or the laws of the United States.

JUSTICE LUI: I would agree with you.

CHAIRMAN DEDDEH: Am I not correct?

JUSTICE LUI: Yes.

CHAIRMAN DEDDEH: So far we are on the same wavelength. Therefore, if I were to carry a constitutional amendment, hypothetically, and say that this constitutional
amendment sets aside the **Betts** decision, will that violate the U.S. Constitution?

JUSTICE LUI: Well, the **Betts** decision refers to vested contractual rights.

If you'll let me clarify. You're not involving **Betts** when you're talking about a two-tier prospective system, because **Betts** only deals with vested rights.

No one who is going to be an employee in the future has any vested rights at this point. They come on board. They're going to have to pay 20 percent of their contributions and get a $5,000 pension. You don't impair their rights.

CHAIRMAN DEDDEH: My question in reality was, does a constitutional amendment to the State Constitution, unless it violates the U.S. Constitution, that would be perfectly constitutional, stupid as it may be.

JUSTICE LUI: If I understand your question, I agree with you.

CHAIRMAN DEDDEH: Therefore, if I were to carry a constitutional amendment next year and say, "Thou shalt increase your contribution with no extra benefits to the judiciary," and if that were to qualify and were passed by the people, the sovereign people of the state, that would be perfectly constitutional, wouldn't it?

JUDGE MARLER: There's also a contract clause in the federal constitution that's almost --

CHAIRMAN DEDDEH: I'll qualify that, Judge Marler. I'm saying that unless we violate the U.S. Constitution, or the laws of the United States, then that which we pass --
JUSTICE LUI: Let me be real specific about it.

If you pass a constitutional amendment effective January 1st, 1984, raising the contribution rates of judges who are taking the bench after the effective date of the legislation, you can do so without any change in benefits.

I don't see why you can't just entirely eliminate the Retirement System for any judges coming on after --

CHAIRMAN DEDDEH: But we don't want to do that.

JUSTICE LUI: You only impair contract rights if you're impairing the right of a sitting judge. Any changes you can make in the System without offsetting benefits can only effect new judges; it can't effect existing judges.

CHAIRMAN DEDDEH: Unless we do it by a constitutional amendment.

JUSTICE LUI: You cannot do that by a constitutional amendment, because the federal constitution says that you, I, everyone in this state, everyone in the country has the right to no impairment of his contract.

I have, as a sitting judge, and Judge Marler as well, have a contract with the State of California to receive a retirement benefit based upon my contributions. If you increase my contributions from eight percent to ten percent, you must give me something in return. And something in return would not mean, in my view, making the fund sound.

You have to give me something. You have to increase my benefits in the future; you have to reduce my whatever. You have to do something that offsets the disabilities --
CHAIRMAN DEDDEH: I know that.

Then such a constitutional amendment that would raise your contribution and not give you something in return for the extra two or three percent will be declared unconstitutional, I assume, on the basis that it violates the U.S. Constitution and U.S. Court decisions.

JUSTICE LUI: Yes, U.S. Constitution, State Constitution and the Betts decision.

CHAIRMAN DEDDEH: No, it will not violate the State Constitution because it would be part of the State Constitution.

JUSTICE LUI: Well, the other part of the State Constitution provision that adopts the -- as I recall, has in it the contract clause that is embodied in the federal constitution. I haven't looked at it specifically, but you can't have something that impairs the existing constitution --

ASSEMBLYMAN ELDER: Let me carry this one more point farther.

Would we be constrained from passing something where the judges voluntarily elected to take a lower benefit in the future if their contract contribution, or their contribution, were also lessened? Could they elect to do that, or would that be held unconstitutional?

JUSTICE LUI: You certainly could elect to do it, but you're dealing with a thousand judges who could make the decision individually.

ASSEMBLYMAN TUCKER: It would have to be --
JUSTICE LUI: Judge Marler could not make a decision that effects me and vice-versa.

ASSEMBLYMAN ELDER: My thought is that judges --

JUDGE MARLER: You'd have to have unanimity from every judge in the state before --

ASSEMBLYMAN ELDER: You'd what?

JUDGE MARLER: You'd have to have unanimity from every judge in the state before it would work.

The contract clause operates to the benefit of each individual, and there's no association that can waive it on behalf of the individual.

So, if you said the judges voluntarily did it, the answer is yes, but you'd have to get each and every judge to voluntarily give up his contractual right.

ASSEMBLYMAN ELDER: What I'm saying is that the present system is prejudiced against younger judges because of the period of time that they have to serve in order to qualify.

If we gave them --

JUDGE MARLER: I don't understand that.

ASSEMBLYMAN ELDER: If we gave them an option that said we will give you a specific percentage, which is lower, but during these intervening 35 years your contribution rate is zero, would they be, as individual judges, if they thought that were in their interests, constrained from doing that? Electing for that lower system?

JUDGE MARLER: Are you talking about judges to be appointed from here on?
ASSEMBLYMAN ELDER: No, sitting judges.
JUDGE MARLER: Sitting judges, what? A judge that's been on less than five years?
ASSEMBLYMAN ELDER: Right, who, say, is 30 years old by some miracle of --
JUDGE MARLER: You can go to any one of those judges and say, "We want you to voluntarily agree to amend your retirement program, and if you give up this, we will give you this." And if he says, "Yes, I will," and waives his contractual rights --
ASSEMBLYMAN ELDER: Under the present system.
JUDGE MARLER: -- I see no reason to -- in other words, he has every right to waive his constitutional right.
ASSEMBLYMAN ELDER: All right. So, being very specific, it would be constitutional if we amended the current law prospectively, and for those people who are in there now who voluntarily elected to get out of the current system for some other benefit structure. That would be constitutional without a constitutional amendment?
JUSTICE LUI: I would say so. Anybody can voluntarily amend their contract.
JUDGE MARLER: You know, I learned in law school that judges aren't supposed to give advisory opinions, but here we are.
CHAIRMAN DEDDEH: Why don't we take about a ten-minute recess.
ASSEMBLYMAN TUCKER: If you find a judge who is willing to amend his retirement privileges, I will show you a person who does not deserve to be a judge.
(Laughter.)

(Thereupon a brief recess was taken.)

CHAIRMAN DEDDEH: With your permission, Justice Lui, I have a couple of small, brief paragraphs to read into the record. Let me read it on behalf of Allan Burdick, Legislative Representative, County Board of Supervisors.

The statement states as follows:

"The County Supervisors Association of California wishes to offer its assistance to the Legislature in studying and developing alternative funding recommendations for the Judges' Retirement System. Counties have substantial experience in the design and administration of public employee retirement systems and will be most pleased to make that expertise available to the State.

"Counties have been struggling since Proposition 13 with ways to keep pace with the escalating cost of the County's criminal justice system. That system is woefully underfunded and we hope the Legislature would not expect to use any existing funding sources committed to that system to cure the unfunded liability of the present Judges' Retirement System."
"If CSAC can be of assistance in studying this important issue, please contact Allan Burdick, Legislative Representative, in Sacramento."

Justice Lui, the floor is yours.

JUSTICE LUI: If I may, let's just see if I can address what I think you're really centering on, and that is what are the relevant considerations of having a two-tier system. Let's assume that you have a two-tier system that meets the constitutional test.

Do you want to enact such a system?

First of all, what you're doing, in essence, I believe, is to impose on the judiciary, a separate branch of the government from the executive and the legislature, a notion in essence that the system be made, in essence, a civil service type system.

One of the strengths in our judiciary, and which the federal government has recognized on making lifetime judges, is that the judges should be independent. Now, to make a judge independent, that judge must be independent in his own or her own position as a financially sound or wealthy person, or one where the state has made that person strong enough, financially, to make the decisions that they can make; tough decisions without concerning themselves with the political implications that are in tune with making a decision.

Now, making the system two-tier puts a judge back into a system of civil service, I believe. You're talking about an
existing benefit, when the salaries right now, I believe, are not comparable to bar salaries or bar income. Members of the State Bar who are in the position of becoming Superior Court judges, Municipal Court judges, or Appellate Court judges often are making exceptionally large amounts of money.

Now, you cannot limit your compensation package for a judge by comparing it only to state and public government employment, because although we have a significant amount of criminal practice and criminal law going through the courts, we have a significant amount of civil litigation which involves huge sums of money, involves a lot of people, consumers and so forth.

Now, I have been a former Attorney General. I can tell you that from a government employee's standpoint, a government lawyer's standpoint, you do not have the exposure to civil practice that you have as a government lawyer. A County Counsel does not handle complex matters every day as a civil practitioner.

I believe, as a former civil practitioner, practicing in what I believe to have been the highest level of the practice in Los Angeles, and from what I know in speaking with my former colleagues, you aren't going to attract the type of people to the civil judicial branch that you would have attracted in the past, simply because the comparable income's not there. The judge's salary of a Superior Court judge is a salary that is earned by nonpartner associates in downtown Los Angeles law firms.

So what you're doing is, you're making it even more unattractive for people who would aspire to be members of the
bench in prime years. I'm talking about 35 to perhaps 50. After age 50, most lawyers who have had any planning have planned their life so that they have some retirement and some security. But you're not going to attract, in my mind, the kind of civil practitioners you want unless they're independently wealthy, or they're willing to take the financial sacrifice that they did.

It's important that we maintain a strong civil branch. If you're going to have a study team, I really urge you to include within that study team members of the State Bar, the Bar Board of Governors from the major metropolitan areas of California. They can express to you their concerns about having judges on the bench, handling civil matters, that have not been involved in meaningful civil litigation on a continuing basis.

A lot of the downtown judges in Los Angeles now are seeing changes in the composition of the civil bench than in the past. They are seeing a lot of former district attorneys and public defenders, because of seniority, move into the civil department without the strength of prior civil experience. That is a difficult situation for the litigants, not only the lawyers, the members of the bar, but for the civil litigants to have a civil case be tried by a judge who's never practiced civil law.

It goes the other way around. If you have a criminal trial in which you're on trial for murder, and you're being tried by a judge who had no criminal experience, you'd have the same problem.

But what we're doing now, and I can't emphasize it more strenuously, but what we're doing now is further eroding the compensation package of the judge.
I have to look at what I would have done back when I was 34 years of age, a little while ago, last year -- no, seriously, when I was 34, would I have taken an appointment to the Municipal Court knowing what I know now, without any expectations of moving as rapid as I did. And I will tell you, the answer would be no. And I wasn't one involving criminal practice. I had a partnership in a major firm of 25 lawyers.

ASSEMBLYMAN ELDER: On that point, you basically have indicated that the consideration for the acceptance of the judicial appointment had nothing whatsoever to do with the retirement. You basically said, "In retrospect, I would not have taken it."

JUSTICE LUI: When I came on the bench, I knew what the retirement system was, the retirement package was, because I practiced law and pension and profit sharing plans. I felt that if I could maintain the standard of living I did at that income level, even though I was taking a cut and the expectation that I did not have to invest in retirement annuities as I did at that point, I could stand that for the foreseeable future. I made a conscious economic financial decision knowing those decisions.

But, the salary of judges has not kept up with the Consumer Price Index. The salary of state employees has not either, but the salary of judges in particular has fallen below the rise of CPI and below the state employee raises.

So, if I maintained myself as a Municipal Court judge, at this point in time, I can't guarantee you that I would still be on the bench. And I think that's true of many other judges who are on the bench.
ASSEMBLYMAN ELDER: But the point is, it's the current compensation that is really more relevant to decisions about retention or election to the bench than I think the deferred compensation portion of it.

JUSTICE LUI: I think you're right. In analyzing a decision to seek out a judicial appointment, you first look at the present level of compensation, and secondly, you're more concerned with the retirement in your more -- if you're at an advanced age, between 50 and 60. You're very concerned about retirement packages.

There are some inequities in this System now that require judges who are going on the bench in their 30s and continuing to make contributions past 20 years of service, and we are suggesting legislation to cure that.

But it does operate, as you suggest, Assemblyman Elder, to the disadvantage of the younger person assuming the bench.

But I'm more concerned with if a decision is made to adopt two-tier, that you would understand, I think, and hear my concerns and the concerns of the bar, if you check, of changing a system where the compensation package becomes one in which you are cutting out significant members of the bar.

Now, the experience in other states of the country where there has been a movement, in effect, towards shifting the compensation packages for judges to be one of civil service type positions has resulted in, I think, a lessening of the caliber of people on the bench. I don't want to cite any examples on the record, but I'll be more than pleased to try to give you examples of that off the record.
I state that, that I don't want that to be the California experience. It's expensive to keep an independent judiciary. If you don't want to pay the cost, you won't get it. It's just simply a matter of economics.

ASSEMBLYMAN ELDER: The point, I guess, is that we are not independent members of the Legislature. We answer to our constituents, and they do not see any particular value in an independent judiciary when they see what they perceive to be an overgenerous pension system, which can continue to create problems for those of us who have to answer every two years.

I just want to say one thing. I don't think, in terms of where I'm coming from, that increasing the contribution rate of the judges is the right direction. I would suggest that we lower the contribution of the judges in the future and more than correspondingly reduce the future benefits to pay for that. And that way, it puts cash in the pockets of those people who will be coming to the bench who will be concerned more about current compensation rather than future retirement benefits, which I think is proper.

I don't think people should take a job based upon the expectations that they're going to get a retirement of so many dollars. It should be that they're going to be compensated to do what they're going to do as a career, not future compensation for not doing what they used to do as a career.

JUSTICE LUI: Well, I have some reluctance, or have some -- to be very blunt with you, I don't know if there would be too many judges that would accept your alternative plan.
ASSEMBLYMAN ELDER: It doesn't matter if it's prospective and it's voluntary.

JUSTICE LUI: That's right, but I don't see many judges rushing to adopt your voluntary changes, because they can't tell you what they're going to do in 30 years; they can't tell you if they're going to be on the bench.

I know in Southern California, even though there's been very little problems with election, the politicalization of the court and the courts being targets of a lot of problems, inappropriately, has created much concern about the individual judges. And people who seek out a judicial appointment say, "Well, I don't want to go through election hassle. I want to know when I take a job that I got the job."

I really would urge this Committee to independently examine from this prospect of the civil bar what your changes, dollars and cents, very concretely, what it would do to a person, somewhat akin to an opinion survey, and I think the State Bar of California would be more than happy to assist you, get those questions. If I'm wrong, I'll admit it. But I would tell you based upon my experience, I have a lot of friends in civil practice who say, "How can we make this choice? Tell me dollars and cents wise what it means to become a Superior or Municipal Court judge. What can I get as far as my W-2, my paycheck every twice a month? What can I expect?" And they look at it, and I'm talking about people between 35 and 40 that want to make that decision. They'll say, "There's no way I can do that."
You're right, they don't talk about retirement in the future if they're 35 or 40. They're talking about, you know, eating and maintaining their mortgages and sending their kids to school. This isn't as directly related to compensation, but it's indirectly related, because you're talking about a compensation package that effects the judge and prospective judges.

CHAIRMAN DEDDEH: Justice Lui, casually I raised a point with you there during the recess, and I asked if we could increase your contribution, sitting judges' contribution, and you said that that would be a violation of a contract.

I respect that, and I think, based on the little knowledge that I have of constitutional law, and I'm not an attorney, I believe what you said, and I still do.

But correct me, I have a concluding opinion in front of me, an opinion by our Legislative Counsel, May 3rd, 1976, addressed to A. Alan Post, then the Legislative Analyst. I don't know whether Judge Marler was still in the Legislature in '76, but --

JUDGE MARLER: I left in '74.

CHAIRMAN DEDDEH: A copy of this went to Senator Grunsky, who at that time was, I think, Chairman of the Judiciary -- I can't remember.

But let me read very briefly to you the question, and the answer's kind of interesting.

"QUESTION: May the Legislature increase contributions of judges under the Judges' Retirement Law without enacting or setting new advantages?"
And the answer is, quote:

"The Legislature may increase contributions without enacting or setting new advantages with respect to judges joining the system, since 1959, and judges in the system in 1959 who were granted comparable no advantages at that time as long as such increases are reasonable and related to the theory of a sound pension system."

Then, he backed his opinion by saying that apparently in 1959, and I was not in the Legislature then, the Legislature passed a Section 75103.1. And this is what the Section reads, quote:

"The Legislature reserves the right to increase the rates of contribution prescribed by Sections 75101-75103, inclusive, in such amounts as it may find appropriate."

I am confused now, since I am not an attorney, and I do ask respectfully if there is a confusion somewhere? What does that mean?

JUSTICE LUI: Well, I have seen that opinion. I can only tell you what is my impression, which is that it has been superseded by the Betts decision and expressions in the Olson v. Cory. And I do not believe that the Legislative Counsel will be that broad-brushed today if you asked them for an update.
CHAIRMAN DEDDEH: We may ask and see if they still hold
firm to that opinion.

I understand that their opinion is not binding, and it's
not final legal opinion, because the opinion of the court,
obviously, is the one that we have to honor. But at least this
gives us guidance.

JUSTICE LUI: I believe what, in essence, is the
difference today would be the expression they would add on,
"without offsetting benefits". I think that phrase would be
added to their opinion, but I don't want to speak for them. It
seems to me, if I were to write the opinion, that's what I would
do.

CHAIRMAN DEDDEH: I was also informed about ten minutes
ago of the Pasadena case.

Dave, why don't you take the mike, please, and state
what that case was.

MR. CRIPPEN: I think my voice is loud enough.

I understand in the Pasadena case -- again, I'm not an
attorney, but as I read it, the Appellate Court ruled that the
employer could increase the employee's contribution for purposes
related to -- actuarial purposes related to the pension system.

CHAIRMAN DEDDEH: Without offsetting --

MR. CRIPPEN: That, in fact, improving the pension
system was the offsetting benefit of it.

JUSTICE LUI: That was a Court of Appeals decision?

MR. CRIPPEN: Yes, just recent, in the last --
JUSTICE LUI: Well, I haven't read that case. I think I may have seen a blurb on it.

I do not feel that a Court of Appeals decision that is in conflict with a Supreme Court decision would hold much water. My references to you would be a Supreme Court decision that says you cannot offer -- you cannot take away benefits without offsetting benefits being given.

So, the question is whether or not they feel, I guess, in that particular case that making a system sound financially is an offsetting benefit. It's possible.

CHAIRMAN DEDDEH: Go ahead.

JUSTICE LUI: Well, the whole problem when I think about these hearings that we've conducted over the eight years really comes back to something that is a constant theme. I don't think we would be here, being especially critical of judges and the Judges' Retirement System, had there been adequate funding in the past by the Legislature and approved by the executive branch of the state.

I think at this point we have offered a detailed study, which was prepared a couple of years ago, which Judge Marler is going to speak to in a minute, that offered concrete solutions to shoring up this system.

Our basic theme on that line was that while we're protecting our own pocketbook, so to speak, we're trying to make the System fair with respect to future judges, and also fair, in essence, to the citizenry of the state by providing the same type of judiciary we've had in the past.
My own concern as a member of the State Bar and active as I am is that we have a branch of the judiciary that is constantly maintaining itself in the high caliber of person that we have.

CHAIRMAN DEDDEH: Judge Marler.

JUDGE MARLER: I'm not going to go through this. There was a statement that was made to the Legislature in June of 1982, and I'm sure that that is on file with the Committee. I don't see any great benefit in reading that into the record at this particular time for you.

CHAIRMAN DEDDEH: What suggestions do you have now, just casually, Judge Marler, and speaking on behalf of the bench at all levels, I'm sure. Listening to our dilemma and our painful position, so on and so forth, what suggestion does the bench have to us to help alleviate this problem?

JUDGE MARLER: Our position really hasn't changed. I can tell you the things that we are opposed to.

CHAIRMAN DEDDEH: All right.

JUDGE MARLER: The first thing that we are opposed to is the increase of contributions. Right now, the contributions we make are eight percent, which is about the highest, I think, that's paid by anybody in this state.

CHAIRMAN DEDDEH: Teachers pay the same thing.

JUDGE MARLER: I think that the -- well, some of the Legislature does, too. Mine went from four to eight percent.

CHAIRMAN DEDDEH: Yes.
JUDGE MARLER: There's one other state, I believe, that
does have a higher contribution, but they also have a retirement
of 100 percent salary. So, there's a great offset there.

The problem is, if you raise contributions, this is
directly right out of the pocket of take-home money, because the
contributions are paid after taxes.

We've made suggestions in the past that if, somehow or
other, they could call the contributions deferred income so as to
get a deduction on it, I'm sure you remember these discussions,
and they decided they wouldn't do that until we looked at it for
all state employees. That would cost a little tax revenue, but
really make it a saving for judges.

If you raise it by two percent, for example, for a
Superior Court judge, that's $100 a month out of his take-home
pay. Two percent of $60,000, roughly, or $1200, a little over
$100 a month. So, that would be a fairly substantial impact to
suddenly have $100 a month less than what you're getting.

As far as the two-tier system, and we understand that
there's no one in our Association that the two-tier system would
effect, since that can only be prospective in operation. We
feel, first of all, it would be unfair, really, to have two types
of judges sitting on the bench doing the same kind of work, one
getting a different retirement than the other.

CHAIRMAN DEDDEH: The State Supreme Court, in their
deliberation and their decision on Proposition 13, if there was a
real violation of the equal protection of the law, having two
houses on the same street, built by the same builder; one pays
more taxes than the other, and the State Supreme Court said
"Yes". The only dissenting opinion was that of the Chief
Justice.

JUDGE MARLER: I'm not talking about the law, whether
you can or not.

I'm just talking about whether it would be wise to do so
as a matter of policy.

I'd like to make one little statement as to the nature
of the people that you get as judges.

CHAIRMAN DEDDEH: Sure.

JUDGE MARLER: There are a few of us who are
ex-Legislators. Out of the 1400 or 1500 judges, there may be --
I don't know -- 12-14, something like that. That's a very small
number.

CHAIRMAN DEDDEH: You're all exceptionally competent,
and I think the system is proud of having you on the bench, Judge
Marler. I want to say that for the record, and I say it publicly
without equivocation. I'm proud to be associated with all of you
who have served in the Legislature.

JUDGE MARLER: Thank you.

Of course, when we went on the bench, we got a raise.
We know what we were making. I was making $19,000 a year as a
Legislator; when I went on the bench I went up to $38,000 a year.

By the way, at that time as a Superior Court Judge, it
was 38,000, and I had more to spend every month, and more
spending power than I do now at $63,000 a year because we haven't
quite kept up with the cost of living.
We also get people on the bench who come from the
Attorney General's Office, from district attorneys offices, the
public defenders. In other words, from government itself. They,
of course, can't tack on their time, but they still can retain
whatever vested benefits they have. And there are quite a few of
those.

But by far the largest group, I believe, are people who
come out of private practice. Now, when somebody does come out
of private practice and goes on the bench, at an average age of
44 years when he enters on to the bench according to Ms. Taylor,
he has a decision to make. He is right then in the middle of his
most productive years of law practice. And every statistic in
the state will show you that he's making substantially more money
than a Supreme Court Justice makes when he decides to go on the
bench.

So he says, "Why should I go on the bench?" Well, as
lawyers, we all think that the bench is great, prestigious, we
respect judges, and so we kind of want to.

Then the question is, "Can we afford to?"

You've got to look at the whole package. I feel, Mr.
Elder, that when somebody goes on the bench, especially a lawyer,
he looks hard at it, and he looks at initial compensation, but he
also looks at the whole package. He looks and sees what's going
to happen to his wife and his kids if he gets hit by a truck.
Will they be equally taken care of --

ASSEMBLYMAN ELDER: Depends whether they're in the car
with him.
JUDGE MARLER: Well, okay, then we have a very good plan for the survivors. That's one thing you look at.

CHAIRMAN DEDDEH: Judge Marler --

JUDGE MARLER: You look at part of it also as the retirement part of it, saying, "If I'm going to stay in practice for the next 20 years, from 44 to 64, the most productive time of my professional career, I can look forward to making X number of dollars by salting it away, and I'm going to be in a firm. They'll have to buy my interest out in the firm when I retire. I will have an income, and a very substantial income at that."

CHAIRMAN DEDDEH: In my folders in the office -- and I'm just guessing; I could miss it by ten or more or less -- I write an average of about 100 letters annually to governors, and this is the third one with whom I've had the privilege of serving, Republicans and Democrats, competent attorneys, prominent attorneys, seeking the bench.

JUDGE MARLER: Absolutely.

CHAIRMAN DEDDEH: About a hundred letters a year.

JUDGE MARLER: Some of them, by 44 or 49, have it already made, and they can afford to do it; some of them are willing to take the pay cut to do it. There's an awful lot of lawyers out there that this would be a tremendous raise in salary.

CHAIRMAN DEDDEH: I'm talking about attorneys who are already making it, making big money, in the 60s, 70s, $80,000 who want to go on the bench because of the honor and prestige that you've suggested.
And you know when you served in the Legislature, Judge Marler, there are enough of us there -- I am not one of them -- but enough members of the Legislature who could, outside, make two, three, four times what they were making as members of the Legislature, but the honor and the prestige. Every one of us sitting here is challenged, because there are hundreds out there who would love to sit where I am sitting, or any one of my colleagues, or when you both are sitting right now.

JUDGE MARLER: Well, I think most people going into the Legislature never start in thinking it's going to be a career for them. They decide to go in for all kinds of different reasons, but looking for a career in the Legislature -- it may work out that way. You could look at the statistics, however, in your own House when you were --

CHAIRMAN DEDDEH: Well, I just said there were 78 brand new faces in 16 years.

JUDGE MARLER: There's now one member of the Senate who was there when I went in. Walter Stiern is the only one left.

CHAIRMAN DEDDEH: That's true.

JUDGE MARLER: When I went in in '65. So, there's a turnover, and I think you do look differently there.

But I do believe that an awful lot of judges, maybe not all of them, maybe you could find enough willing to take the sacrifice or have made enough money that would go on.

I can tell you that usually, when there is a judge opening someplace in the area around Sacramento, where I sit, the State Bar, when they start sending out the questionnaires to what
people think of the people who applied for the job, a lot of them
go across my desk. And I can tell you, we see some very fine
lawyers -- I'll leave Sacramento out of it; some of the other
counties around it so they'll be unidentified.

I have seen Superior Courts open where they'll get two
applications; maybe one from a fairly new district attorney and
somebody who's having a difficult time in private practice, and
no one else will apply.

I can't tell you the number of discussions I've had with
judges saying, "Why don't you apply for the bench?" "I can't
afford it. If I had the money now, I'd go."

So, there's a big pool out there right now that we're
not attracting because of the salary. I think it's amazing that
we have as high a caliber bench as we do, and I happen to think
it's a very high caliber bench. I'm very proud to be a member of
the California Judiciary.

But if you further erode the benefits so that when some
fellow, age 44, has to make his decision, "Do I want to now try
for the Municipal Court, or the Superior Court", you're going to
erode the pool that's available if there is not, somehow or
other, something he could look forward to at the end of his
career that would be somewhat comparable to what he could look
for at the end of his legal career.

SENATOR MCCORQUODALE: Mr. Deddeh.

CHAIRMAN DEDEDEH: Senator McCorquodale.

SENATOR MCCORQUODALE: I've had occasion in the past
couple of months to talk to a great number of judges. I can tell
you, though, that there are some out there that are very worried that something like -- I think it's Senator Seymour has a proposal in which would limit judges to 75 percent of their final salary. And all the different types of manipulations that are available under a system like this.

Was it last year, or the year before, retired judges missed a paycheck? And that creates a lot of panic among people who have completed their time and feel like the system isn't very safe, and that, frankly, I'm not sure -- I think someone pointed out earlier that if somebody goes on the bench because of that retirement system, and puts any dependence into a system that's as bad off as this one is, which isn't a system; it's simply an allocation of money out to do it, as we've heard. They take the money back or subtract it from next year's allocation if there's any left over. You don't want those types of people making decisions on the hundreds of thousands of dollars that you were talking about earlier, because that's not a very good basis for making a decision to go on the bench.

JUDGE MARLER: I think that they have faith the Legislature will, as they always have for many retirement funds, make a sufficient appropriation every year for the amount of the cost obligation.

SENATOR MCCORQUODALE: Let me take you 50 miles south of here and show you a school district that filed for bankruptcy that is now taking up a major part of one court's time because they depended on the Legislature to do what they said they were going to do just for a three-year period of time. The
Legislature failed to appropriate adequate money, and so they got themselves in a bind because of contracts.

It just is not a good system, and something has to be -- somehow or another, we have to reach some type of a consensus and agreement on what should be done.

JUDGE MARLER: The only suggestion that we have now, since I told you we oppose raising the contributions, oppose the two-tier system, which we think would not be sound, would be to fund it. I think it's unrealistic, the existing date to make it actuarially sound by 2002. That's a 20-year period now.

We all know the Legislature tends to solve existing problems. It's very difficult to get the Legislature to look too far in the future. Let another Legislature take care of that, and I'm pleased that you're looking at it here.

CHAIRMAN DEDDEH: Judge Marler --

JUDGE MARLER: I think that date should be expanded out.

CHAIRMAN DEDDEH: Before I recognize Mr. Elder, who has a question or a comment, let me ask you this, and you are more knowledgeable than probably a lot of us, because you've served in the Legislature, and you're serving on the bench.

You mentioned the Legislature. The Legislature is made up of 120 men and women of two political persuasions. Neither House has the votes to deliver bills or legislation that requires a two-thirds majority vote. It has to be worked as a consensus.

Let me ask you, what has the bench done with the new administration, who's been there now ten months? Is there any contact with the administration to resolve this issue? Because
your involvement, and the Legislative involvement, and the Governor's involvement, I think, could settle it.

Has any approach been made to the administration?

JUDGE MARLER: Not to my knowledge. I've been President of the Association since October.

CHAIRMAN DEDEH: Do you think it's possible for me to ask, then, the bench, through you, through Justice Lui, to ask you to do something, that maybe it is time that you officially or unofficially explored where all the possibilities of the executive branch being involved, or involving themselves in resolving a major issue. Because eventually the final answer is, whatever we do we need his signature.

JUSTICE LUI: Well, if I may interrupt you.

This proposal we made in 1982 was made as a piggyback to then Governor Brown's Finance Department's input and report.

What we suggested in the study, and what we continue to suggest today, is that the Legislature has created this retirement date of 2002 to make the plan sound, when in the last ten years we haven't done anything. So that that date now has become unrealistic; it creates extraordinary burdens of accumulating sufficient funds to make annual appropriations of funds, with the added service costs, that that date should be pushed up, maybe, another 20 or 30 years or 40 years. Make it to not penalize what is the next generation of 20-year taxpayers, and bring it up 60 years.

You've created a problem that's taken us a while to get here. Why penalize the taxpayers in the next 20 years? Extend
it out into the future, and then get the thing all wrapped up in
the future.

In other words, the year 2002 is simply unrealistic in
view of what has happened due to the enormous financial
constraints.

The second thing is, and I am a member of the Judicial
Council, and I am making suggestions that are contained in the
report which give the Judicial Council some concern. That is the
increased filing fees.

One of the best bargains in the world is to file an
appeal in the Court of Appeals and pay $200, and have what is, in
essence, thousands and thousands of dollars of lawyers, and
judges, and clerical time being imposed.

We would like to see increased user's fees with liberal
forms for paupers and liberal waivers of fees.

The other thing that we considered that we've been
working on in the past is to change this problem with respect to
exodus out of the courts. You have many judges who are leaving
after 20 years. When you've seen 20 years, it's a magic thing.
You can check with PERS, and you can see the people leaving when
they hit 20 years. They run out the doors, because they are
paying eight percent retirement contribution.

If you were to eliminate the contribution after 20
years, I think it would have an impact on who stays. Because the
contributions of the Superior Court judge amounts to in the
neighborhood of $5,000, which is $10,000 of pre-taxed income.
If you were to eliminate the age 70 penalty, you may have some competent people who would stay on past age 70, but I think there is a significant debate that says you should not have judges past age 70 because you cannot analyze correctly whether or not they are competent or incompetent from various standpoints. You can get doctors who testify to anything under the sun.

But, with respect to the 20 years of service and elimination of contributions, that will reduce the amount of exodus off the bench.

These are things that we have suggested off our program which we continue to suggest. And quite frankly, they haven't been acted upon because of various reasons, which are not known to the Judges' Association.

ASSEMBLYMAN ELDER: Well, I think those are all very positive alternatives to consider. And the thing that must be recognized is that the public's attention is really focused on pension abuse. And whether they think it's Legislators, or some member of the State Board of Equalization, or an isolated case of a judge, or whatever, they don't differentiate. They call them public pensions, and that's what you have.

Since they are public, there's a Board of Directors out there aside from us 120 that are very impatient. I want to use an accounting analogy which is used with respect to tax issues.

That is that accountants admonish their clients that it's the big pigs that get slaughtered first. And that's a relative term based upon who else is in the yard with you.
What I want to say is that it could be argued that you're not maybe the largest in terms of the perception, but you're getting up there. And I think it's time we all started looking at some kind of weight reduction program, because the burden on the public and their tolerance has been exceeded.

I agree with you that the salaries are not where they need to be, and I think it's in some measure the fault of the fact that the pensions are perceived to be this nebulous give-away, that if it were not there, or more understandable, or less generous, they might be more supportive of salary increases.

I wouldn't say they would support it, but they would be less opposed, perhaps.

JUSTICE LUI: Well, that's been the problem, and I think you've hit the problem. That is, the public perception has not been the judges' fault. It's been that the judges' pension are the only problems.

You know, all these cases have resulted from pensions that were nonjudicial pensions. They've been ex-Legislators' pensions; they've been ex-constitutional officers' pensions.

Now, it's no fault of a judge that if a very successful lawyer, like Evelle Younger, was once the District Attorney of L.A. County, the Attorney General of the State of California, a member of the Judicial Branch of government. Those were all things that he was entitled to have those separate plans.

But he didn't get those plans because he was a judge per say, and there's been too much focus on the judicial plans unfairly. And it's all come down from the fact that if the plan,
if the fund had been actuarially sound from the beginning, had there been annual contributions to the fund, if the Legislature and the executive branch had cooperated to fund the plan, we wouldn't have these hearings. If the money had been put in as you had gone, there would never be a need to have these interim hearings. We would be here talking about other things.

So, we really should address that. I mean, there's been an over abundant attack on the judiciary, but the judiciary is not responsible for making the funding of the plan.

CHAIRMAN DEDEH: Justice Lui, the last three years, the state has been suffering from financial burdens, or shortage, if you will. And we cannot, at a time when you have 12 percent unemployment, or 11 percent as we had at one time in the state, with the high interest rates as high as 21 percent, now they're down to about 11, 12, 13. With the recession, we couldn't in good conscience, Democrats or Republicans, if I may use a bipartisan term, go to the people and say, "We are going to increase your taxes to pay for the Judicial Retirement, for the STRS to meet our obligations." We just couldn't in good conscience. I hope you understand.

JUSTICE LUI: I understand that, but let me just say, if today, you imposed a two-tier system which was pay-as-you-go, if you did that today, every judge sitting on the bench has still got this growing 450-odd million dollar deficit that you've got to take care of.

So, what we're really focusing on is stopping this plan, and what we're saying to you is, okay, you can stop and put a
two-tier plan in, but there's an offsetting cost, like anything in life. If you want something, you have to give something else up.

I think what Judge Marler and I were trying to articulate today is that we have concerns that the caliber of the judiciary is not going to be the same. That's what we want to just lay on the table.

We think we can demonstrate to you by your own investigation with members of the bar that that would be true.

SENATOR MCCORQUODALE: What you're saying is right.

Some of us think that it would have been great if Judge Marler had solved this problem while he was in the Legislature, but he didn't do it.

(Laughter.)

JUDGE MARLER: As a matter of fact, I'll let you know I tried. And I'll tell you what happened.

In about 1972, it became apparent that the Judges' fund was not actuarially sound. At that time, I happened to be the Chairman of the Subcommittee on Judges, that old Senate G.E. Committee.

Do you remember that, Senator?

CHAIRMAN DEEDBEH: How could I forget?

JUDGE MARLER: And the Committee consultant, who was Chuck Baldwin -- I don't know if you remember him or not; he's been around for a long time -- and I embarked upon a plan to see what we could do to make it actuarially sound. And at that time, because of the much lower pay schedules and all kinds of things
that were happening, we thought it could be done then by increasing filing fees by two dollars. And as the workload increased, the judges increased, everything would be fine.

What we didn't really anticipate was what was going to happen with the built-in increases to retired judges who were no longer paying into the system.

So, I got a bill all ready, and the Chairman of the Committee decides that that looks like a pretty good bill, so he put it in himself, Senator Dolwig. And he put it in himself, and the bill passed. And for a couple of years, as I recall thereafter, after that went into effect things looked good. We thought it was going to work. Then the drain became too great, and it fell off again.

So, you're right, I didn't solve it, but I thought I had for a while.

CHAIRMAN DEDDEH: Any questions?

ASSEMBLYMAN ELDER: You're making a good case for two-tier.

JUDGE MARLER: There's no question that that is an option, but that does not completely solve the circumstances. We think there are other better ways to do it.

CHAIRMAN DEDDEH: Justice Lui mentioned that the filing fees up to the Appellate Court is only $200.

I wonder, and I'm going to ask this question loudly so that somebody can give me some information, not today but probably later on, by what percentage, if we were to raise the filing fee, provided, now, that the poor will not be denied entry
to the judicial level for relief? If that is the case, at what
level, at what percentage, should we increase all the filing fees
if that is what I think is the solution, over a period of 40
years?

JUSTICE LUI: I think it would be inappropriate to
suggest a filing fee increase. Let's assume it's a very simple
calculation.

If you take the number of filings that are civil filings
in the Court of Appeals in the various districts, and you just
eliminate -- reduce it by a percentage that would increase the
number of paupers and waivers. Increase it by $100, you'd get a
big number.

CHAIRMAN DEDDEH: What would you get by $100 a year?

While you're looking for the number, this is not related
to the hearing, but for a long time we used to charge -- what was
it, $3 for a driver's license, when in fact the driver's license
was costing the state about $13. Now we've raised it 10 bucks.
I don't see in my folders any complaints by the people.

We've raised that because we were able to explain it.

JUDGE MARLER: You don't see any fewer cars on the road
either.

JUSTICE LUI: I don't remember us having a specific --
your staff can get that from the Judicial Council's report and
make an extrapolation.

CHAIRMAN DEDDEH: Sure.

Any further testimony?

Well, I thank you both very much.
JUSTICE LUI: Thank you.

CHAIRMAN DEDDEH: I've got two more witness, then we'll close it.

Mr. Frankel, the Director, Chief Counsel, Commission on Judicial Performance.

MR. FRANKEL: Thank you.

Ladies and gentlemen, as has been alluded to earlier, the Commission on Judicial Performance does not have any particular expertise towards helping solve the funding problem.

I realize that we could be connected with a possible solution, but question whether it's desirable to actually have the Commission on Judicial Performance as a participant on the study team, because I just don't think that we've got that much to offer.

CHAIRMAN DEDDEH: Mr. Elder has a question.

ASSEMBLYMAN ELDER: Have you noted any factors which correlate with judicial performance that perhaps ought to be emphasized in our thinking to be mindful of the admonitions of the judges that were here, that we want to be careful about what we do to the quality of members of the bench in the future?

Have you ever looked at what in the compensation package, if anything, kind of helps secure better recruitment to the bench?

MR. FRANKEL: We've never looked at trends or figures to provide any useful information along those lines. Of course, there are so many variables, because there are so many motivations that differ at what age lawyers may choose to be a candidate for the judiciary.
On the other end, I think there are a number of variables as judges reach 60, 65, 70, 75. So, I don't even think that there's a trend on that end as far as performance is concerned.

ASSEMBLYMAN ELDER: So you've never seen any evidence that the pension is any more important than any other consideration?

MR. FRANKEL: No, and in the nature of the kind of investigations that we make, we wouldn't be particularly cognizant of overall trends in that way, because by definition we deal with the five or ten percent of problem cases more than any other.

With that area, I just -- I'm unaware of any trends.

SENATOR MCCORQUODALE: What would be your position on the issue of changing the retirement, that they retire at 70, not to reduce their retirement at that point?

MR. FRANKEL: I think that that's 99 percent a policy matter. I think that if the policy of the people and of the state were to allow judges to remain on past 70, that the same way that we do investigations and have an effect upon judges at a lower age, that would apply to over 70.

But I think it's so much a policy factor that is not directly tied to whether 71 or 72 becomes the appropriate year, there, too, I just question our competence to give any view other than what a citizen would have as an opinion.

CHAIRMAN DEDDEH: Okay, thank you very much.
Our final witness is from the Judicial Council, Mr. Birdlebough.

MR. BIRDLEBOUGH: Thank you, Mr. Chairman and members. My name is Steve Birdlebough for the Judicial Council.

I should point out at the outset that the Judicial Council has rather carefully tried to remain out of the question of the specific salary or benefits which judges ought to receive. That is to say that the Judicial Council does not want to become involved in whether judges ought to get a two or three percent increase, or whether their salaries should go up $100 in any particular year.

However, the Judicial Council is quite concerned that the salaries and benefits of judges in the long term remain independent of political considerations, and that judges are adequately compensated and that the independence of the judiciary is maintained.

We feel that that's simply good government, and I think you probably agree with that general principal.

There are two issues on which the question of Judges' Retirement does impinge on positions which the Judicial Council has taken over the years. In about 1950, the Legislature adopted the age 70 retirement incentive. That is, that after age 70, a judge who remains on the bench gets less retirement benefit. His maximum retirement benefit drops from 75 percent to 50 percent of the salary of then sitting judges.

That was adopted in order to encourage judges who reach the age of 70 to leave the bench. And it was done after a long
experience with the problem of judges remaining on the bench beyond the time when they could really be effective.

We think that the Judicial Council has, on several occasions, looked at that issue and has wanted to retain the age 70 incentive to retirement. We feel that there is less to be gained than there is to be lost by encouraging judges to remain beyond the age of 70.

The other area where the Judicial Council has taken a position, of which you must be aware of, is that in recent years, pressures on filing fees have caused those fees to rise at a rate beyond the increase in cost of living. In fact, since Proposition 13 was passed, filing fees in the Superior and Municipal Courts have gone up more than 100 percent. Filing fees in the Courts of Appeal have risen 400 percent, and --

CHAIRMAN DEDDEH: How do these filing fees in the State of California compare with comparable states, and also with comparable parts of the judiciary, say, from Michigan or Illinois?

MR. BIRDLEBOUGH: As a general rule, they're quite a bit higher in California than they are elsewhere. I ran some very brief comparisons some years back, and I haven't done any recently. But it was grossly higher. A number of states had $8 filing fees; we had $40 filing fees. So, California was way ahead in terms of charging filing fees of other states at the time I looked at it. I have not looked in the last year or so to see what's happened.
CHAIRMAN DEDDEH: At the same time, have the salaries of our judges, again, on a comparative basis, compared to equal judges sitting on the same bench elsewhere, are we higher, average, lower? How do we stack against New York, Illinois, Michigan?

MR. BIRDLEBOUGH: My understanding, and I think the Judges' Association may know much more about this than I, is that we are somewhere near the 80th percentile in terms of --

CHAIRMAN DEDDEH: We're not the highest?

MR. BIRDLEBOUGH: We're not the highest, I don't believe.

CHAIRMAN DEDDEH: Is that all?

MR. BIRDLEBOUGH: That's all I have.

CHAIRMAN DEDDEH: Is there anybody in the audience that wishes to testify, feels compelled to?

Hearing none, these proceedings come to a close. We adjourn.

(Thereupon this Interim Hearing on the Judges' Retirement System held by the Senate Committee on Public Employment and Retirement was adjourned at approximately 1:00 P.M.)