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THE WHITE HOUSE
WASHINGTON

May 28, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Draft Report of Commission on Executive,
Legislative, and Judicial Salaries

We have now received a draft report from the Commission on Executive, Legislative, and Judicial Salaries, along the lines discussed in my previous memorandum. I have no legal objection to the report, but those reviewing it should recognize that approval would, in effect, commit the President to proposing significant salary increases for covered officials in January 1987. My draft memorandum for Chew also contains some substantive corrections and several more picayune points.

Attachment

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

Orig. signed by FFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Report of Commission on Executive,
Legislative, and Judicial Salaries

I have reviewed the draft report of the Commission on Executive, Legislative, and Judicial Salaries. As I have noted previously, I have no objection to the substance of the Commission's recommendations. You should be aware, however, that approval of the Commission's report by the President would, in effect, commit the President to proposing significant salary increases for Federal judges, Congressmen, and high-level executive branch officials in January of 1987. Under the Commission's plan the President would be most directly responsible and accountable for salary levels, and the Commission's report makes it clear that its members think the salaries should be raised.

Minor comments follow:

Page 2, lines 1-2: "Commission on Executive, Legislative and Judicial Salaries" should be changed to "Commission on Executive, Legislative, and Judicial Salaries." See 2 U.S.C. § 351. (This mistake also appears on the Commission stationery.)

Page 2, lines 1-2: The first Commission was not appointed in 1967. The statute establishing the Commission was enacted on December 16, 1967, but the first members were not appointed until 1968.

Page 4, line 15: I would add "in effect" after "reduced," to avoid appearing to give credence to the claim that failure to grant raises to Federal judges in the face of inflation can constitute a violation of the Compensation Clause. That claim has been made and rejected. See Atkins v. United States, 556 F.2d 1028 (Ct. Cl. 1977), cert. denied, 434 U.S. 1009.

Page 6, line 13: It is inaccurate to state that the Supreme Court in United States v. Will, 449 U.S. 200 (1980), affirmed the rulings of the lower courts. In fact, the lower

court decisions were affirmed in part and reversed in part.
See id., at 230-231.

Page 7, line 7: "signature or veto" should, in the interests of technical accuracy, be changed to "approval or disapproval." A law can become effective without the President's signature, and can be disapproved without an affirmative veto.

Page 12, line 8: Again, "signed or vetoed" should more properly read "approved or disapproved."

Page 12, line 22: Same comment.

Page 14: There is no discussion of how such a Commission should be established or who should appoint the membership.

FFF:JGR:aea 5/28/85

cc: FFFielding ✓
JGRoberts ✓
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Dave Chew☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Report of Commission on Executive
Legislative and Judicial Salaries

ROUTE TO:

ACTION

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/23/85 ACTION/CONCURRENCE/COMMENT DUE BY: COB, June 1SUBJECT: DRAFT REPORT OF COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
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BUCHANAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/> SS	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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REMARKS:

Attached is the draft report of the Commission on Executive, Legislative and Judicial Salaries. It is sensitive, so please keep distribution limited. Please provide your comments by close of business June 1.

RESPONSE:

CLOSE HOLD

David L. Chew
Staff Secretary
Ext. 2702

1985 MAY 24 11 7:25

COMMISSION ON EXECUTIVE,
LEGISLATIVE AND JUDICIAL SALARIES

Received SS

FRI MAY 23 PM 1:08

May 23, 1985

Mr. David L. Chew
Staff Secretary and
Deputy Assistant to the President
The White House
Washington, D.C. 20500

Dear David:

Enclosed is a confidential copy of the first draft of our report. We would appreciate your thoughts and comments.

We plan to submit our report to the President by the end of June. I am anxious to receive any ideas or suggestions you might have and would greatly appreciate hearing from you as soon as possible.

Please let me know your thoughts.

Thank you again for all your help.

Sincerely,



Ede Holiday
Executive Director

Enclosure

REPORT

For almost two hundred years America has tried to find a way to pay appropriate wages to Senators, Representatives, Judges, cabinet officers and its other top level executives.

These 3200 people run our government--535 Members of Congress, 1,744 Federal Judges, and 857 top level executives and legislative branch officials--and the process by which their salaries have been set has been marked, historically, by indecision and ad hoc experimentation.

Raises have been given and rescinded and those granted, inevitably, have been diminished by long periods of inflation.

It has been a prolonged adventure in futility, and its effects have reached a critical point. Men and women of high quality are leaving public life because they cannot afford to stay. We are drifting toward a government led by the wealthy and those with no family obligations.

In the past 15 years, 43 Judges have resigned from the bench, more for financial reasons than in the previous 180 years. The same tendency is apparent in Congress and the Executive Branch. There will always be people willing to serve in these jobs and the quality of replacements has remained high--but the number of qualified persons willing to serve is dwindling fast. Twenty years ago a dozen or more persons of high capability would seek an appointment to the bench. Today, we are told, there may be two or three. We are close to the time when the essential quality of our government leadership may be seriously impaired. The best still respond to the challenge of a Judgeship, a Congressional seat or a Cabinet post, but many will not accept the responsibility of jobs in which salaries lose value year after year.

A PATTERN OF FRUSTRATION

Since the appointment of the first Commission on Executive, Legislative, and Judicial Salaries in 1967, there has been a new pattern of frustration-- Commissions recommend salary adjustments, Presidents modify them, and Congresses reject them. The basic problem is not the salaries, but the process. ✓

On March 7, President Reagan wrote the Commission. He said in part:

"It is important to recognize that the statutory framework under which the Commission operates has failed in the past to resolve salary determinations in an orderly and effective manner. I would hope that the Commission, in addition to its statutory obligations, could review the entire statutory scheme for setting the salaries of top government officials, and develop recommendations for any necessary changes."

The Commission recognizes that the present salary levels are inadequate, but it will make no specific salary recommendations. Instead, it hopes to take a first step toward resolving the dilemma that began when the framers of the Constitution decided that "Senators and Representatives shall receive a compensation for their services to be ascertained by law."

AN INDECENT THING

Since only Congress can enact a law, this means that its Members must set their own salaries. James Madison thought this "an indecent thing". "Citizens", he said, "would see their chosen officials put their hand into the public coffers to take out money to put in their pockets."

He was, he said, concerned with appearances, not greed, and his concern was well placed. The public coffers have not suffered but the Members of

Congress have, and so have their fellows in the judicial and executive branches whose salaries are linked, by practice, to theirs.

Members of the first Congress (and many a Member since) recognized the delicate nature of the conflict; they must avoid setting compensation so low that men and women of ordinary means could not serve, but it must be low enough to remind Members that they were elected as representatives, not masters.

AT THE BEGINNING

In the year 1789 Congress sat only a few months a year and were paid \$6 a day while sitting. It was a substantial sum and the Members had other occupations and other sources of income.

The pay was raised to \$8 a day some thirty years later, a sum that did not always cover traveling and living expenses. It remained at \$8 until 1856. The value of congressional compensation was allowed to diminish with scarcely a pause for over two-thirds of a century and over the years many Members resigned to take lesser government jobs, as clerks, collectors of revenue or post masters, that paid more.

The basic problem was clear, the Members found it extremely difficult to raise their own pay. Once, when they voted to give themselves annual salaries of \$1,500, the figure was denounced by some Members as too high - one said it would "tempt the cupidity...of the second or third rate county court lawyer" - and the public joined in the criticism. Congress took back the raise two years later.

The pattern had been established.

LINKAGE

In recent years, the pay of the members of the other two branches of government have been tied to the Congressional pay. This is unfortunate and illogical, but it is an inescapable reality. Congress linked its own pay to the pay of Judges and high executives with the hope that if all salaries rose together, there would be a broad political acceptance. It has not worked out that way. Each time Congress has failed to give its own Members raises, Judges and Cabinet Officers and the other top level executives have also suffered the consequences. Members of the House and Senate received 5 raises in the first 100 years, federal Judges 4, Cabinet officers 4, and each raise came only after a long period of salary erosion.

A MEASURE OF PROTECTION

The Constitution did give Judges a measure of protection. They were to be appointed for life, and their compensation, once set, could not be reduced. The intent was to give them permanent independence; free from political pressures and pecuniary concern, but the assumption has been proved faulty--salaries of Judges (like those of their governmental peers) have been reduced, not by deliberative act but by inflation and inaction. A District Judge who made \$40,000 in 1969, today makes the equivalent of about \$28,000 in 1969 dollars.

The pursuit of reasonable salaries for these essential decision makers has had its champions. In 1925 Representative Ben Johnson of Kentucky, said, "If my constituents should say I am not worth \$10,000 a year, then my answer is, send somebody who is." More often than not, however, Congress, has shied away from even the suggestion of a raise.

THE FEDERAL SALARY ACT

Advances have always been followed by retreats. A resolute effort was made in 1967. Congress passed the Federal Salary Act, and the first Quadrennial Commission was appointed. Its nine members were to be chosen by the President, the President of the Senate, the Speaker of the House and the Chief Justice. They would review the salaries and recommend adjustments to the President who would accept or modify them and pass them along to Congress. If neither House voted formal disapproval, they would go into effect in thirty days.

The system was designed to put space between Congress and its difficult task. The necessary adjustments of salary would be recommended by the Commission members, who were by definition objective, and tempered to political realities by the President. The public interest would be served; Congressional accountability would be recognized, and the detachment of the Commission would preclude both abuses and emotional responses.

COST-OF-LIVING ADJUSTMENTS

The process worked quite well in 1969 but no further raises were given in the following seven-year period of high inflation. In 1975, a second act was passed that would, for the first time, apply the cost-of-living adjustments given to General Schedule employees to this core group as well.

When Congress accepted the President's recommendations in 1977, a strong and swift public reaction caused it to retreat once more, and Congress promptly amended the process to require that no future recommendations be accepted unless both Houses gave specific, recorded approval.

The cost-of-living adjustment worked after a fashion, but real wages continued to erode. The elaborate machinery was in place, but it would work erratically, and on one occasion it had an unexpected result.

The cost-of-living increases were intended to be automatic but for four consecutive years Congress stopped or reduced them. In two of the four years, however, the legislation blocking the increases was signed by the President after the date on which such increases would go automatically into effect. On both occasions a group of federal district judges in Illinois sued the United States on the grounds that under the Constitution raises once given to members of the judiciary could not be taken back.

THE BAN APPLIED

The lower courts held that the judges' points were valid, their salaries had indeed been diminished in violation of the Constitutional ban, and the Supreme Court affirmed their rulings. As a result, the judiciary was given increases that were not given to the corresponding persons in the other two branches. ✓

To the existing confusion and frustration there had now been added a measure of ill feeling. The basic problem remained as stubborn as ever.

A CONSTITUTIONAL AMENDMENT

Senator Baker of Tennessee, the then Majority Leader, was moved to say that Congress was incapable of raising its own salaries. In 1983 he and Senator Long of Louisiana, both in their last terms, offered as a legacy an Amendment to the Constitution that would transfer the authority for setting Congressional salaries to an outside body. It was opposed by Members who felt it would diminish Congress by diminishing its control over the nation's purse

strings, and by those who are against amendment of the Constitution. It was never brought to the floor.

The battered process designed to permit the practical adjustment of Congressional and other salaries had proved inoperable.

Another blow came in 1983 when the Supreme Court ruled that a Congressional act, to be effective, must be sent to the President for his signature or his veto. B✓

That meant that resolutions by either one or both Houses of Congress not submitted to the President were without effect. According to the Attorney General, the established Quadrennial process, which requires only record vote approval of Presidential recommendations by both Houses of Congress, is unconstitutional.

THE MACHINERY BREAKS DOWN

There is now no legal, practical machinery for setting and adjusting salaries of these essential public servants, the Members of Congress, the federal judges, and the top level members of the executive branch. The matter is at an impasse and unless the process is reconstructed, promptly, to conform to the law and to reality, the consequences are clear.

THE BASIC POINTS

Many informed and concerned people wrote the Commission and 28 appeared as witnesses at a hearing in April.

- ° They agree practically without exception on several basic points:
- ° The process by which the salaries of our 3200 key government employees are set is in critical need of repair.

- ° The long term erosion of salaries has caused many of the best to leave, and it is increasingly difficult to find replacements of equal ability.
- ° The constant problem has been the reluctance of Congress to raise the salary levels, and this reluctance is rooted in political reality.

As Senator John C. Danforth of Missouri advised the Commission "to vote for your own pay increase is an invitation to a 30-second commercial against you in your next campaign."

A VIVID PICTURE

Senator Barry Goldwater of Arizona gave the Commission a particularly vivid picture of the continuing assault on the livelihoods of essential public servants.

He wrote, in part:

The original intent of the Founding Fathers, of course, was that a member of the Congress would be a part-time sort of person, working at home, going to Washington when needed, then returning to his own pursuits. Let's take a look at what happened. When I first came to Congress [in 1952], we were paid \$14,000 a year. I had four children at the time and...believe it or not I made a little money every year off that salary. Now, however, I think my salary is around \$75,000 a year... Now one would think with...the great amount of money I'm being paid I would be making a little. But, oh no. Every year at income tax time, I have to go to the bank and borrow money to pay the taxes on my home in Arizona and the taxes on what property I have in Washington."

Senator Goldwater added that during his years in Washington his once considerable reserve funds have been cut to a fraction."

WITNESSES

The witnesses at the hearing included some, such as two former Cabinet officers who have had direct experience with the problem, and others, such as the President of the American Bar Association and corporate executives representing a group of some thirty corporations, who have a sympathetic if more distant interest.

Many of the witnesses spoke on the difficulties encountered by the members of the judiciary, an appropriate emphasis since more than half of the persons with whom we are concerned are sitting judges.

Judge Kaufman of the Maryland Federal Courts spoke from personal knowledge of the facts of present day judicial life, and what he said also can be applied to the experiences of the affected members of the legislature and the Executive branches.

In each branch, persons of high qualifications are resigning and in each case their replacements--as Judge Kaufman put it are "being drawn--more and more from the ranks of persons possessing independent wealth or from persons who for one reason or another have limited earning power."

"We are in danger," he said, of "getting into..an elitist bench--some of the very best can not afford to serve."

THE SHRINKING POOL

Witness after witness sounded this same warning, if the pool--in all the branches-- continues to shrink it will have a most unfortunate impact on the quality of the persons who make, administer and interpret our laws.

Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare, noted that the loss of potential public leaders is most severe among the "people we'd love to have"--those from 40 to 60 years of age.

Young men and women of great potential can easily serve, and do, but many, perhaps most, are reluctant to stay on for many years.

One insurmountable problem is often the high cost of sending children to college.

One witness, Thomas A. Masterson of the Philadelphia Bar, was appointed to the federal bench in 1967. When his children reached college age, he found tuitions and other basic family expenses had climbed rapidly and his income had not. He resigned, from necessity he said, in 1973.

AN OBSERVATION

He made a striking observation:

"What happened or is in the process of happening is the perversion of the Constitutional notion that a judge is going to be appointed for life."

Judges, --as well as executives and congressional officials-- do not seek appointment for personal gain. Judges of high quality--and the federal bench has been traditionally composed of men and women of the highest quality--are committed to the implementation of justice above all other considerations. But they live in the same world we all do.

As another witness, Charles Renfrew, put it: "Judges do not go on the bench...for financial success. They expect to make a sacrifice. What they do not expect is that their already low salaries will be eroded by the impact of inflation."

THE CHIEF JUSTICE'S LETTER

Chief Justice Burger spelled it out in a letter to the Commission:

"Since I took my present office in 1969, the compensation of federal judges has declined a full one-third. During that period I have received the resignations of 43 judges. More...judges have resigned from the federal court for financial reasons [during my term] than during the entire preceding 180 years."

As a number of witnesses pointed out that there are still capable people who are committed to public service but this is made up increasingly of younger and relatively inexperienced lawyers or older successful men and women who are only able to serve for a short time. What is in short supply are men and women in their middle years who have already made their professional mark are recognized leaders of the bar, and will be able, as the Constitution intended, to serve a long and active tour.

As Vernon Jordan, a law firm partner and former President and Chief Executive Officer of the National Urban League, Inc. said, "we are at risk of losing...the talented and experienced - liberal, moderate and conservative." "...we must recognize that the sanctity, quality and excellence of our government is at stake."

The Commission members asked each of the witnesses to address the central problem of restructuring the mechanism by which salary levels are set.

THE PRESIDENT'S ROLE

Judge Bell and others suggested that the President's role in the process should be given even greater emphasis than it has had in the past. As he put it: "The President--and of course the Vice President--are the only officials

elected by all the people. Let his recommendations become law unless Congress, by a joint resolution..(should)...disapprove."

The actions and conclusions of the Commission have been shaped by the witness testimony, the President's request and the Supreme Court's ruling.

In INS v. Chadha, as noted, the Supreme Court decided that Congress could not enact law simply by passing resolutions. It must, it held, follow the full legislative process--both acts and resolutions must be passed by both Houses and signed or vetoed by the President. ✓

The Attorney General, has informed the Commission that in his opinion this ruling invalidates part of the statute under which the Commission has operated--specifically, the section that permits the enactment by Congress of the President's salary recommendations into law without presentment to the President. It does, however, leave the authority of the Commission and the President to make such recommendations intact.

RECOMMENDATION

We, therefore, make a recommendation which, we believe, offers workable solutions to past and present problems.

We propose first that:

1) Future Commissions, as past Commissions, make salary recommendations to the President who will accept or modify them and send them to Congress. 2) Unless Congress should pass a joint resolution of disapproval rejecting them within thirty days, they would become law. 3) If Congress should pass a joint resolution it would go to the President who would sign or veto it. 4) If he vetoed it, Congress could if it wished, override the veto by the prescribed two-thirds vote. ✓

Our proposal would restore part of the original formula adopted in 1967: that the Presidential salary level recommendations would become law automatically, unless specifically rejected by Congress.

We believe this restoration is essential -- the 1977 amendment which requires voted approval of the recommendations exacerbated the very problem the process was intended to solve.

PRESIDENTIAL RESPONSIBILITY

Our proposed restructuring would give the President the central responsibility for setting these salary levels and we are persuaded that this is where the responsibility belongs.

The President is elected by all the voters of the nation and is concerned with both the needs and costs of government. He should be directly involved in setting the salaries of this small group of essential public servants from beginning to end.

The restructuring would open up the process, as much as the Constitution allows, to relieve the country of an unseemly spectacle. No person paid by tax money should be placed in the position of having to set his own wages, alone and unaided, a position rightly described by President Monroe as "obscene."

Finally, as the Constitution envisions, Congress would remain ultimately accountable to the public for the determination of their own pay. Whenever it wished it could override a Presidential veto with its own resolve.

The Commission finds that these top government officials are critically underpaid. We feel, however, it is pointless for it to make specific salary recommendations at this time of unresolved budget deficits and under the old

and faulty process. We also feel strongly that such recommendations should be made to the President by a qualified body as soon as the process can be revised.

A ONE-TIME COMMITTEE ON COMPENSATION

The second part of our proposal, therefore, is that a one-time Committee on Compensation composed of persons of the highest prestige and authority be appointed to sit next year and recommend a full schedule of adjusted salaries to the President no later than January 1, 1987. ✓

The solution must be one that will serve not only the present office holders but future ones as well.


We believe that a continuing process that provides a fair and appropriate income to these essential public servants will benefit not only those who receive it, but all citizens of the Republic and their descendants.

THE WHITE HOUSE

WASHINGTON

May 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Commission on Executive, Legislative,
and Judicial Salaries

The Executive Director of the Commission on Executive, Legislative, and Judicial Salaries has sent David Chew a draft of the Commission's tentative recommendations. Chew has asked for your views by May 22.

^aThe Commission will recommend new legislation, providing that the President's recommendations on salary levels would become law unless Congress disapproved them by joint resolution within 30 days. The Commission will make no salary recommendations this year, but will urge that a one-time, blue ribbon panel be appointed by July 1, 1986 to submit salary recommendations to the President by January 1, 1987. (It is not clear who would appoint the members of this panel.) The President would then submit his recommendations under the new scheme. In 1988, the Quadrennial process would begin anew.

The current scheme requires Congress to vote to approve the President's recommendations. 2 U.S.C. § 359. The proposed scheme simply gives Congress the chance to block them by passing a joint resolution. The responsibility for fixing salaries is thus effectively shifted from Congress to the Executive.

The Commission's scheme has a chance of working. Congress would normally be reluctant to pass legislation giving the President the right to do anything on his own (unless blocked by a joint resolution), but in this case doing so would enable Congress to pass the buck on setting the salary of its own members. Throwing judges and high-level executive officers into the mix would make it look less apparent that this is what Congress was doing. In short, there is a chance that the new legislation recommended by the Commission could pass. Once in place, the new scheme would put the onus of setting salaries on the President, but the President could take some refuge from potential criticism by hiding behind the recommendations of the advisory panel.

The proposed scheme would pass muster under INS v. Chadha. The proposal does not specify who would appoint the members of the one-time blue ribbon panel, but this is irrelevant as a constitutional matter since the responsibilities of the panel would be purely advisory. (Indeed, since the President may want to hide behind the panel's recommendations, he may not want to appoint all of the members.) I have some constitutional queasiness about the President assuming the legislative function of enacting spending levels, but this would seem acceptable under the theory that Congress legislated when it authorized the President to set the levels.

Attachment

THE WHITE HOUSE

WASHINGTON

May 21, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Commission on Executive, Legislative,
and Judicial Salaries

I have reviewed the proposal of the Commission on Executive, Legislative, and Judicial Salaries and think it holds considerable promise. Under the current scheme both Houses of Congress must vote to approve salary recommendations of the President. 2 U.S.C. §§ 351-361. The proposal would provide that the President's recommendations become law unless disapproved by a joint resolution. In practical terms this shifts responsibility for setting salary levels from the Congress to the President. Since this would permit Congress to pass the buck on setting the salary of its members, there is some chance that the proposal could pass. The President would, of course, have heightened responsibility in this sensitive area, but he would have the recommendations of the advisory panel for support in the face of any public criticism. (I note that the Commission proposal does not specify who would appoint the members of the one-time, blue ribbon Committee on Salaries.)

I cannot, of course, give any definitive legal clearance until I have an opportunity to review the draft legislation recommended by the Commission. The proposal would not, however, present any problems under INS v. Chadha. In this regard I would note that we should be careful not to appear to concur in any Commission views on the constitutional or other legal flaws of the current scheme. You may recall that we took pains in corresponding with the Commission to note that the current statutory scheme was ineffective but not to opine gratuitously that it was unconstitutional. The current statute does in fact present a minor technical problem under INS v. Chadha, but it is far from clear how that infirmity affects the statutory scheme, and the resolution of that question is pending before the courts.

In sum, I see no reason at this point to object to the general approach of the Commission.

FFF:JGR:aea 5/21/85

cc: FFFielding/JGRoberts/Subj/Chron

ID #

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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Executive, Legislative, and Judicial
Salaries

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)

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Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

CLOSE HOLD

THE WHITE HOUSE
WASHINGTON

May 20, 1985

FRED FIELDING:

The Commission has provided the attached proposal on an informal basis to get our off-the-record reaction. If you have any questions, please call. I'd like your reaction by Wednesday.

David Chew

CLOSE HOLD

COMMISSION ON EXECUTIVE,
LEGISLATIVE AND JUDICIAL SALARIES

April 26, 1985

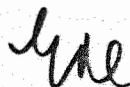
Mr. David L. Chew
Staff Secretary and
Deputy Assistant to the President
The White House
Washington, D.C. 20500

Dear  ~~Mr.~~ Chew:

As we discussed, I am enclosing a draft proposal of the Commission's recommendations for your review.

Many thanks.

Sincerely,



Ede Holiday
Executive Director

Enclosure

**COMMISSION ON EXECUTIVE,
LEGISLATIVE AND JUDICIAL SALARIES**

April 26, 1985

COMMISSION PROPOSAL

A great many of our top level public officials are leaving their jobs because they can't afford to stay.

There has never been a sustained mechanism by which realistic adjustments can be made in the salaries of the Members of Congress, the Judiciary and Cabinet Officers, and other essential persons in the executive branch.

The mechanism most recently in use is disorderly, it hasn't worked and in the opinion of the Attorney General it is unconstitutional.

In compliance with the President's request, the present Quadrennial Commission on Executive, Legislative and Judicial Salaries is primarily concerned with recommending a process that is logical and legal and will work.

The Commission has had a number of meetings and has concluded that a new law should be passed whereby the President's recommendations to Congress on salary levels would become law unless Congress passed a disapproving joint resolution within 30 days. Currently, the President's recommendations must be approved by both Houses of Congress.

The present Quadrennial Commission would make no salary recommendations at this time in recognition of the current efforts to reduce the deficit and because under the present faulty law any such recommendations would be futile.

In addition, the Commission would recommend that a one-time, blue ribbon Committee on Salaries, composed of persons of the highest caliber, would be appointed in 1986 to recommend new, appropriate salary levels for the positions in the three branches that are now under the purview of the Quadrennial Commission. This Committee would be appointed no later than July 1, 1986, and its recommendations would be submitted to the President no later than January 1, 1987. The President would make his recommendations to Congress in his first Budget message in 1987. The recommendations would become effective in 30 days unless disapproved under the amended process described above.

In 1988, the Quadrennial process would continue under the new enactment procedures suggested above.

THE WHITE HOUSE

WASHINGTON

March 5, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Letter to the
Commission on Executive, Legislative,
and Judicial Salaries

By staffing memorandum dated February 15, you requested comments on a proposed draft letter from the President to Nicholas Brady, Chairman of the Commission on Executive, Legislative, and Judicial Salaries. The letter asked for recommendations from the Commission on how to resolve a perceived constitutional problem in the Commission's enabling legislation, and how to make the statutory scheme more effective. I responded on February 19 with a recommendation that the letter not be sent, noting that the President should seek neither legal nor policy guidance from a Commission to which he appoints only three of nine members.

It has since come to my attention that the Presidential appointees to the Commission were given assurances prior to their appointments that the President would request them to go beyond their narrow statutory mandate and examine the need for reform of the statutory pay scheme. In light of these assurances a letter of some sort should be sent. I continue to object to any specific reference to or request for guidance on any perceived legislative veto problem, but a general request to consider the need for reform of the statutory scheme would be tolerable. I have attached a revision of the February 15 draft along the foregoing lines for appropriate staffing.

Attachment

FFF:JGR:aea 3/5/85
cc: FFFielding/JGRoberts/Subj/Chron

DRAFT

March 5, 1985

Dear Mr. Brady:

It is important as the Commission on Executive, Legislative, and Judicial Salaries begins its work to recognize that the statutory framework under which the Commission operates has failed in the past to resolve salary determinations in an orderly and effective manner. I would hope that the Commission, in addition to its statutory obligations, could review the entire statutory scheme for setting the salaries of top government officials, and develop recommendations for any necessary changes.

I would like the recommendations of the Commission on this broader question as soon as possible, so they may be reviewed and evaluated within the Administration. Thank you for your efforts in this regard.

Sincerely,

RR

Mr. Nicholas Brady
Chairman, Commission on Executive,
Legislative, and Judicial Salaries
734 Jackson Place
Washington, D.C. 20503

RR:JGR:aea 3/5/85
cc: FFFielding/JGRoberts/Subj/Chron

DRAFT

THE WHITE HOUSE

WASHINGTON

March 5, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Cutler Call

As we discussed, attached is a proposed letter from the President to Nicholas Brady, asking that the Commission on Executive, Legislative, and Judicial Salaries review the effectiveness of the statutory scheme for setting the salaries of top officials. The draft makes no reference to any legislative veto problem, and also makes clear that any Commission recommendations will be reviewed within the Administration. A cover memorandum for Chew explains why the revised letter is being submitted, and requests appropriate staffing.

Attachment

THE WHITE HOUSE

WASHINGTON

March 5, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
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SUBJECT: Proposed Presidential Letter to the
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It has since come to my attention that the Presidential appointees to the Commission were given assurances prior to their appointments that the President would request them to go beyond their narrow statutory mandate and examine the need for reform of the statutory pay scheme. In light of these assurances a letter of some sort should be sent. I continue to object to any specific reference to or request for guidance on any perceived legislative veto problem, but a general request to consider the need for reform of the statutory scheme would be tolerable. I have attached a revision of the February 15 draft along the foregoing lines for appropriate staffing.

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Legislative, and Judicial Salaries
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cc: FFFielding/JGRoberts/Subj/Chron

DRAFT

THE WHITE HOUSE
WASHINGTON

March 1, 1985

John G. Roberts see me ASAP

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Cutler Call

You may recall that our office objected on February 19 to a proposed letter from the President to the Commission on Executive, Legislative, and Judicial Salaries. The letter requested that the Commission review the legislative veto problem in its enabling legislation and the general effectiveness of the statutory scheme, in addition to its narrower statutory duties. We objected because (1) the President should not seek legal guidance from an independent commission, (2) the legislative veto problem in the statute did not in any way affect the responsibilities of the Commission, and (3) the President should not seek policy guidance from a commission to which he appoints only three of the nine members. Your memorandum of February 19 to Chew noting these objections apparently sufficed to kill the letter.

I received a call earlier this week from the Executive Director of the Commission, who had been told (unclear by whom) that the letter was stalled in our office. She advised me that the proposed letter had been prepared by the Commission in the first place, after approval by Mr. Meese. I told her that the letter might not be sent.

Today (2:00 p.m.) I received a call from Lloyd Cutler, who as you know serves on the Commission. He wanted to know why the letter was not going to be sent, stating that both he and Mr. Brady agreed to serve on the Commission with the understanding that it would address the broader questions. He also stated that the letter had been approved by Mr. Meese. I did not want to get into specifics with Mr. Cutler, but indicated the general nature of our concerns. He noted that he would explore the matter further with you.

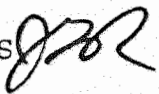
I did not and do not know of any implicit or explicit understandings Cutler or Brady may have had when they were appointed to the Commission, nor am I aware of any representations made by Mr. Meese. I adhere to the view that the President should not ask an independent commission to which he appoints only one-third of the members for legal advice on a perceived legislative veto problem. The President can turn to our office or the Justice Department for all the legal advice he needs.

THE WHITE HOUSE

WASHINGTON

June 12, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Meeting With Judges Interested in
Work of the Commission on Executive,
Legislative, and Judicial Salaries

Dianna has advised me that Len Garment will be bringing into your office a group of judges interested in the judicial salary issue and the work of the Commission on Executive, Legislative, and Judicial Salaries, also known as the Quadrennial Commission. You are familiar with the Commission: it consists of three members appointed by the President, two by the President of the Senate, two by the Speaker, and two by the Chief Justice. Every four years the Commission is to review the salaries of Federal judges, Congressmen, and high-ranking Executive branch officials, and report to the President on appropriate salary levels. The President then recommends salary levels to Congress, and his recommendations, under the statute, become law if approved by affirmative vote of both Houses. 2 U.S.C. §§ 351-361. This last proviso is technically invalid under INS. v. Chadha, since no bill is presented to the President after the votes of both Houses.

You will recall that the President wrote a letter to the Chairman of the Commission, Nicholas Brady, requesting that the Commission not simply look at salary levels but in addition evaluate the entire statutory scheme for setting salaries of high-level officials. The letter accurately noted that the process has not worked effectively. Since the Chadha problem is probably severable from the Commission's functions, the letter did not refer to any constitutional infirmity in the statute.

We have seen a draft Commission report. The Commission will recommend that the Pay Act be revised to provide that the President's recommendations become law unless blocked by a joint resolution of disapproval. As I have noted in prior memoranda, this shifts effective responsibility for salary levels from Congress to the President. You have voiced general support for this approach. The Commission has advised that it will make no salary adjustment recommendations this year.

I do not think you should tip the Commission's hand to this group of judges, but you can note that the President has asked the Commission to review the entire statutory scheme. You can also express awareness of the problem of relatively low judicial compensation, and perhaps offer personal views on how it has affected the judicial selection process. Suggested talking points follow.

Attachment

SUGGESTED TALKING POINTS FOR MEETING WITH
JUDGES INTERESTED IN WORK OF
QUADRENNIAL COMMISSION

- There is an increasing amount of attention being devoted to the question of the adequacy of judicial compensation in the Administration. As salaries for talented lawyers in the private sector sky-rocket, the sacrifice demanded to give up a successful practice for the bench, or to remain on the bench, increases. I am acutely aware of this problem, because I chair the President's Judicial Selection Committee and am often in the position of asking if prospective candidates for the bench are willing to make that sacrifice.
- I am aware that an unprecedented number of judges have left the bench for financial reasons, often brought on by the burdens of putting children through college. I agree that this trend threatens to undermine the constitutional intent that Federal judges would generally serve for life. With all the care and effort we put into selecting judges, we certainly do not want them forced off the bench for financial reasons.
- I think there is general agreement that the current system of fixing judicial compensation has proven ineffective. Judicial salaries are, as a practical matter, linked to Congressional salaries under the Pay Act, as well as to the salaries of high-level executive

officials. Congress must affirmatively vote any pay raise under the existing scheme, and for obvious political reasons has been unable to vote raises for itself. Judicial salaries, accordingly, stagnate.

- The President is aware of the problem of judicial compensation, and is also concerned more generally with the compensation of Congressmen and high-level executive officials. Neither the Federal bench nor the Government as a whole should become the province only of the very young, the semi-retired, or the independently wealthy. Accordingly, he appointed very high-quality and experienced individuals to fill his slots on the Commission on Executive, Legislative, and Judicial Salaries, which issues recommendations every four years under the Pay Act -- Chairman Nicholas Brady, Lloyd Cutler, and Alexander Trowbridge.
- In addition, the President took the very significant step of formally requesting the Commission to reexamine the entire Pay Act. In his letter the President wrote that "the statutory formula under which the Commission operates has failed in the past to resolve salary determinations in an orderly and effective manner."
- It is our hope that the Commission will develop recommendations for revising the current, ineffective scheme. This is far more important than trying to work

a one-shot raise through the existing system. It is the system for setting judicial salaries that has failed, and it is the system that must be corrected.

THE WHITE HOUSE

WASHINGTON

June 12, 1985

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