

The original documents are located in Box 21, folder “Judicial Salaries (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON
April 29, 1975

MEMO FOR: Phil Buchen
FROM: Ken Lazarus *KL*
SUBJECT: Federal Judicial Salaries

I do not find the attached letter from Judge Spencer Williams "interesting". Rather, it is a disturbing and extremely heavy-handed statement on the need for increases in Federal Judicial salaries. It does not warrant further comment.

Judge Williams' interpretation of Article III which is advanced as a possible foundation for litigation to compel increases in Judicial salaries is extremely tenuous at best. Additionally, he fails to identify the political dilemma which faces the President. The problem is not that the media and public would react adversely to an increase in Judicial compensation. The reality of the situation, however, is that Congress is not likely to support any increase in Judicial salaries without a commensurate increase in the salaries of Senators and Representatives as well as those of top-ranking Administration officials. I personally find a certain logic in this position.

This matter does not require any additional action.



To Ken Lazarus
for comment to me.

P.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Personnel
Pay

APR 25 1975

MEMORANDUM TO PHILIP BUCHEN

FROM: JAMES T. LYNN

Subject: Federal Judicial Salaries

The attached letter from Judge Spencer Williams of San Francisco is interesting. The litigation suggested on page 2 of his letter sounds unlikely to me. Nevertheless, the fact that a Federal judge feels so strongly about the salary issue as to make that argument is rather striking.

Attachment



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA 94102

RECEIVED

FEB 21 10 19 AM '75

OFFICE OF
MANAGEMENT & BUDGET

CHAMBERS OF
SPENCER WILLIAMS
UNITED STATES DISTRICT JUDGE

April 17, 1975

James T. Lynn
Director
Executive Office of the President
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Thank you for your gracious and candid letter of March 24th in response to my earlier inquiry concerning Federal Judicial salaries.

Initially, rest assured I am not trying to become a pen pal, so please do not feel obligated to make any further response to my views. I do, however, believe that several additional comments are in order and would appreciate your passing this along to the others who are also advising the President on the subject.

Your letter says, in essence, that the current economic situation makes it difficult for the President to remedy an admittedly gross inequity primarily because (a) he is currently calling upon Congress and the public to hold the line on expenditures, and (b) the combination of inflation and recession is hurting millions of other citizens who might react unfavorably if our sought-for relief is granted. What this means, of course, is simply that our problem is not high enough on the President's priority list to warrant his serious attention - a logical conclusion in view of the numerous other areas in which the President has both recommended increases in Federal Expenditures and taken what many believe to be difficult stands on deserving, though unpopular issues.



Since the President has never been one to flinch from "biting the bullet" I must conclude that his present negative position on judicial salaries is the product of staff misconception as to the potential constitutional and political consequences of further inaction.

I hope I don't sound like Chicken Little. The sky is not falling in. But the current problem has already caused subtle changes in the Federal Judiciary, and the longer it remains uncorrected the greater the likelihood of the permanent damage mentioned in my previous letter.

Furthermore, the current staff recommendations could easily create a nightmare for the President if continued neglect of the Judicial salary issue precipitates an Executive-Judicial confrontation in the form of litigation. Sentiment among the judges for such an approach increases with every passing day.

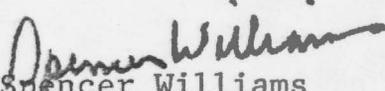
The theory is that Article III was designed to establish an independent Judiciary free of reliance on presidential whims in such critical areas as tenure and compensation, that thus the 'compensation' provisions (like the tenure provision) is self-executing, that compensation means purchasing power not salary in dollars, and that increases in salary to meet diminution of purchasing power due to inflation are automatically mandated by the Constitution without the requirement of either presidential or congressional action. And there are also those who believe that if such litigation is commenced as a class action many judges not formally opting out of the class would feel compelled by Sections 1 and 3C of the Canons of Judicial Ethics to recuse themselves from all cases, civil and criminal, in which the United States is a party.

The prospect of such litigation is sobering, indeed, for regardless of the ultimate outcome, neither side would emerge unscathed.

Finally, if the enclosed summary of editorial support for our position is at all indicative, it would appear that the President's advisors are misreading the probable press reaction to a Presidentially-initiated adjustment. In fact, the quote from the Baltimore Evening Sun of March 6, 1975 seems particularly appropriate:

"Even in hard times, it seems unfair that the insecurity of politicians should impose financial anguish on federal judges."

Sincerely,


Spencer Williams

United States District Judge

Enclosure



The Albany, New York, Knickerbocker News, February 25, 1975.

"The pay no longer is high enough to attract the highest quality candidates. Some of the younger judges are leaving for the greater attraction of private practice."

Alabama Journal, December 24, 1974

"The inevitable corollary to poorly-paid judges is poor judges; in other words, you get what you pay for."

"The Constitution specifically prohibits Congress from lowering the salaries of judges while they are in office; inaction, however, accomplishes precisely that result and in doing so violates the spirit if not the letter of the Constitution."

American Bar Journal, January, 1974

"[A]ppointment to a federal judgeship at the present time would represent a substantial sacrifice of present and future earning capacity for a very many of the lawyers . . . well qualified for the position."

Atlanta Journal, January 5, 1975

"Chief Justice Warren Burger . . . questioned the fairness of the salary of federal judges having been frozen for nearly six years, noting that as many district judges have resigned to return to the practice of law in the last 13 months as during the preceding 34 years."

Atlanta Lawyer, January, 1975

"Low pay is cited as one of the main reasons today making it difficult to keep judges from leaving the bench and influencing lawyers to prefer private practice to judgeships."

The Arizona Republic, January 12, 1975

"Federal courts have increased in importance as federal laws extend to more areas of American life. The laws are often complicated, and their interpretation by the courts far-reaching. To have anything less than the best judges dispensing justice to the American people would prove to be penny-wise and pound-foolish."

Baton Rouge State-Times, January 15, 1975.

"The freeze on judicial salaries, coupled with the escalating inflationary spiral, has reduced judicial purchasing power by 32 percent. This has resulted in a cumulative loss of \$53,000 for district judges and \$56,000 for circuit judges. Even if the 1969 purchasing power of judicial salaries is restored these losses will never be recovered."



Charlotte Observer, January 5, 1975

"If the judiciary system is to resolve the issues put before it, it needs more judges, not fewer. It needs dedicated judges capable of respecting the nation's traditions, yet able to interpret them to meet the demands of contemporary affairs. The prevailing salaries will not attract enough such men to the federal bench."

Chicago Tribune, December 8, 1974

"Five Federal District Court judges resigned this year, the most in a century, and they did it primarily because of money."

Comptroller General of the United States, February 25, 1975

"We believe that early action should be taken to enact legislation to modify the procedure for adjusting . . . judicial salaries to keep these adjustments more nearly in line with the comparability adjustments provided for career employees."

Des Moines Tribune, December 31, 1974

"Congress has an obligation to boost judicial pay at least to keep pace with the cost of living. The price of not doing so will be costly deterioration in the quality of the Federal Judiciary."

El Dorado, Oklahoma, News-Times, July 25, 1974

"The resignation of Judge Anthony T. Angelli, the 72 year-old senior federal judge of New Jersey, is at least the fifth Federal Court Judge to announce his resignation within the year. Another jurist . . . will step down at the end of the year unless Congress increases the pay . . . Usually federal judgeships are a much sought-after prize. Appointees expect to keep it for life."

El Paso Herald-Post, January 7, 1975

"We think opponents of pay hikes for U. S. judges are wrong. . . Federal judges have not had a pay raise in five years, a period when other federal employees have received pay raises averaging 38 percent, and when the cost of living has risen 42 percent."

El Paso Times, December 23, 1973

"Federal judges are among the top men in the legal profession. Many were making big money when they accepted appointment to the bench. In this position, they must give up many other outside earnings. The government, too, is having difficulty in filling federal judgeships because of present salaries."



El Paso Times, January 15, 1975

"Salaries of state judges have been regularly increased, and in some states are now higher than those of federal judges."

"Federal judges have been 'unjustly treated' in comparison with other federal employees - who have gotten regular raises and cost-of-living hikes."

Flint Journal, December 27, 1974

"Not only has the value of the salaries of these judges seriously decreased, the loads placed on these judges have been greatly increased. To continue to deny them salaries at least within sight of the sort of wages these men could get in private practice would be the worst sort of penny-wise and dollar-foolish thinking."

Fort Lauderdale News-Sun-Sentinel, January 26, 1975

"A lawyer qualified to hold down a federal bench can earn from two to four times as much in private practice Mostly younger judges, men in their prime mentally and physically, are quitting the federal bench."

Ft. Worth Press, January 8, 1975

"[O]pponents of pay hikes for U. S. judges are wrong. . . ."

Jacksonville (Fla.) Journal, December 30, 1974

"There is undoubtedly a connection between the frozen salaries and growing workloads, and the increased rate of resignations."

Jersey Times, January 14, 1975

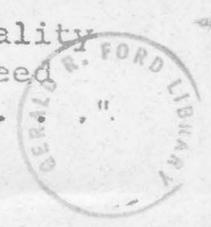
"In the past year, six federal judges have resigned - more than the combined total in the previous 30 years. Further, other judges are talking of quitting to accept lucrative private offers."

Judicature, December, 1973

"All persons interested in the federal courts and the quality of justice they dispense should be aware of the urgent need for public support for federal judicial salary increases."

Judicature, November, 1974

"[T]he bench and the bar, represented by retired Supreme Court Justice Tom C. Clark and former ABA President, Chesterfield Smith, publicly agree that the threat to judicial excellence isn't so much from resignations as in difficulty attracting top flight lawyers to the bench."



Kansas City Star, December 9, 1974

"Letting experienced jurists get away and failing to attract outstanding lawyers to the bench is extremely shortsighted public policy. Eventually it will have a detrimental impact on the quality of justice in this country."

Los Angeles Daily Journal, July 22, 1974

"[A] freeze in the salaries of U. S. District judges may chill hopes of the judiciary to keep the best available talent on the bench."

Los Angeles Times, March 10, 1974

"'Because of the inadequacy of judicial salaries, we're going to have many more resignations from the bench', predicted Rowland F. Kirks, Director of the Administrative Office of the U. S. Courts. 'And we're going to have greater difficulty recruiting new judges'."

Los Angeles Times, June 11, 1974

"[M]ore money for judges is clearly in order. The alternative - a federal bench of gradually declining competence - would be, infinitely more costly."

Miami Herald, February 13, 1974

"The federal judiciary certainly stands in the need of more adequate compensation if competent judges are to be retained."

Milwaukee Journal, January 6, 1975

"[T]he judiciary cannot attract or retain the best legal minds if pay becomes too uncompetitive."

New York Journal, March 5, 1974

"[M]ore adequate compensation for Federal judges is not a handout, but the preservation of a precious national resource."

New York Law Journal, June 13, 1974

"Whitney North Seymour, Jr., president-elect of the New York State Bar Association, said: 'Independence requires financial independence to attract and hold the best talent for the bench, we must be prepared to pay whatever it costs'."

New York Law Journal, June 25, 1974

"To arrest a trend which threatens to undermine the historic independence of the federal Bench as contemplated by the system of lifetime appointments and service, Congress should set in motion the legislative process to give the federal judiciary a one-time catch-up raise for the inflation of past years. In addition, Congress should establish a permanent mechanism for automatic review of judicial pay and increases in salaries without resort to the cumbersome method of Congressional sanction."



New York Times, March 1, 1974

"Congress and the White House have an urgent and essential task to fulfill in combating inflation . . . but denying legislators, judges and executive pay adjustments in line with those of other salaried workers is not the fair way to get on with that job."

New York Times, March 18, 1974

"One court official said that a vacancy on the Federal bench had been rejected by 13 lawyers of those approached, in a number of instances because of the salary."

New York Times, June 9, 1974

"The resignations for financial reasons of several judges have raised the question whether the pay for the Federal judiciary is adequate to keep highly qualified jurists on the bench."

New York Times, June 15, 1974

"All [five of the federal judges resigning this year] have made it clear that inadequate pay is a substantial part of the problem."

New York Times, December 31, 1974

"The federal courts have continued to lose judges by resignation because there has been no increase in pay for almost six years."

"The injustice of Federal judicial pay scales is obvious when measured against the salaries of other Federal employees."

Norfolk (Va.) Ledger-Star, January 13, 1975

"Because the traditional high quality of federal judicial service is an essential ingredient of a working democracy, inadequate salaries ought not be allowed to continue as a threat to it."

Omaha World Herald, March 20, 1974

"The country wants its best lawyers on the bench, not those who would be willing to work for a substandard salary. Congress should realize this and act as soon as possible to raise the judicial pay scale."

Philadelphia Evening Bulletin, March 4, 1974

"A man appointed to the federal bench for life faces potentially huge, long-term losses in earnings as a private attorney. Many of the attorneys who argue cases before him earn more than he does. The disparity is more marked since judges' pay has not increased in five years."



"If it values high caliber judges, Congress should approve the increases.

"Great financial reward should not be sought by judges, whose greatest gratification lies in their position of public trust and honor. This does not rule out compensation levels in keeping with the office."

Philadelphia Inquirer, February 11, 1974

"[Congress] should not . . . veto the entire [pay increase] package and thereby penalize or drive from public life other officials who do need the money."

Philadelphia Inquirer, February 28, 1974

"The tax payers get no bargain when first-rate men and women are driven out of government service because they cannot live on salaries falling farther and farther behind those they could earn in private employment."

Philadelphia Inquirer, April 23, 1974

"When the members of the United States Senate decided recently that it would be risky politics to accept a pay raise in this election year, they penalized a branch of government that should be insulated from politics - the federal judiciary."

Phoenix Gazette, January 15, 1975

"If the federal judicial system is to be saved from severe and lasting damage, Congress must act quickly to raise the pay of federal judges."

Plano Daily Star-Courier, August 7, 1974

"Many of the nation's federal judges . . . cannot manage in this time of rapacious inflation. Some are leaving the bench to get back into lucrative private practice."

Rocky Mountain News, (Denver, Colorado), January 8, 1975

"Federal judges have not had a pay raise in five years, a period when other federal employees have received pay raises averaging 38 percent, and when the cost of living has risen 42 percent."

Sacramento Bee, March 15, 1974

"[M]any lawyers are turning down judgeships because the pay for a federal district judge - \$40,000 - is 'only double the starting salary of law graduates hired by large law offices.'"

Sacramento Bee, January 11, 1975

"It's false economy for a society to save money by underpaying its judges."



San Antonio Express, January 22, 1974

"Federal district judges are paid \$40,000 a year, which is about half what a reasonably active lawyer of the caliber likely to be a judge could make in private practice."

San Antonio Express-News, December 29, 1974

"[Chief Justice Burger], [a]ddressing himself to the problem of judges' salaries . . . said federal district judges now [receive] \$40,000 a year, a figure unchanged since 1969. Over the same period, the Chief Justice noted, other federal employees have received six salary increases totaling 38 percent. A comparable increase for federal judges would amount to \$15,000 a year."

San Antonio Light, "Judge Pay Need", December 3, 1973

"One of the most respected jobs in our nation is that of a federal judge. Yet, by standards of legal competency associated with these men, they are underpaid."

"[Federal judges] must sacrifice not only . . . big money, but also divest themselves of anything which may be considered a conflict of their office, when they become federal judges."

San Antonio Light, "Court Burden", January 16, 1974

". . . [f]ederal judges need a pay raise, especially in light of the need for long work hours."

San Antonio Light, January 5, 1975

"[Chief Justice] Burger again questioned the equity of federal judges' salaries being frozen for nearly six years, despite the sharply rising cost of living index and the fact that many district judges have resigned in recent years to return to private practice. In the past 13 months, as many judges have resigned as did in the previous 34 years."

San Antonio Light, January 6, 1975

"The federal judiciary is far past due for a sizable pay raise, and the 94th Congress should grant the raise as a priority when it goes into session later this month."

San Antonio Light, January 21, 1975

"Congress needs to take a careful look at the salaries of the federal judiciary, and bring them in line with the private practice of law."

San Francisco Chronicle, March 19, 1974

"Since the last salary increase, three federal judges have resigned, citing low income as one of their reasons."



San Francisco Examiner, December 16, 1974

"[There is a] serious situation created in the federal government by the fact that the federal judiciary . . . have not had a salary increase for five years."

Seattle Times, December 30, 1974

"Action is essential if we are to provide justice in such a way as to sustain a well-ordered society", quoting Chief Justice Burger.

St. Louis Globe-Democrat, December 25, 1974

"The nation cannot expect to attract and hold the best qualified men for the federal judiciary if they are not adequately compensated."

Terre Haute Tribune, March 16, 1974

"[I]t [is] hard to recruit able men and women for the federal bench, which now has more than 20 unfilled vacancies."

Time Magazine, February 10, 1975

"Most judges do not really expect their salary to match that of the top-grade private practitioner, but virtually all of them are galled by the knowledge that since 1969 other federal employees have had a 38% increase to cope with a 42% rise in the consumer price index."

The Wall Street Journal, August, 1973

"Pay for the 535 members of Congress is locked in step with the salary levels of nearly 4,400 Cabinet members, under-secretaries of department, federal judges, assistant secretaries and top-rung bureaucrats in the career civil service . . . If Congress is afraid to raise its own pay, the whole pecking order is frozen.

"[O]ver the years pay adjustments for the Executive and Judicial Branches doubtless will be needed."

Washington Evening Journal, February 13, 1974

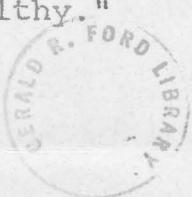
"It is to be hoped that the bench does not become attractive only to the mediocre and those who are independently wealthy."

Washington Post, December 14, 1974

"[T]he decline of top-level talent in the much-maligned federal bureaucracy are too important to be treated frivolously much longer."

Washington Star-News, February 9, 1974

"The Judiciary Branch is feeling the pinch, too - and in ways that could impair its excellence for many years to come."



Washington Post, February 27, 1975

"The quality of justice depends heavily on the quality of judges -- and that quality is on the way to impairment because Congress has been unwilling to pay for it."

Wilkes-Barre, Pennsylvania, Times-Leader News, August 22, 1973

"The Federal Judicial Center and Chief Justice Warren E. Burger of the Supreme Court are both saying that relatively low pay makes it hard to fill federal judgeships."

Wilmington, Delaware, Evening Journal, February 13, 1974

"[A]dditional compensation is necessary to attract top-flight lawyers to the federal bench."

Denver Post, April 4, 1974

"In one section of the country, 15 top-flight attorneys have declined judicial appointments . . . Countless other lawyers, approached informally about openings elsewhere, have begged off."

The Baltimore Evening Sun, March 6, 1975

"Even in hard times, it seems unfair that the insecurity of politicians should impose financial anguish on federal judges . . ."

"Chief Justice Warren Burger has faced the inequities more squarely in urging an immediate 20 percent pay increase for all Federal judges. This is less than half of what they deserve in equity . . ."



[July 1975?]

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Coalition membership
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THE WHITE HOUSE
WASHINGTON

Date 7/9/75

TO: Phil Buchen

FROM: BARRY ROTH

ACTION:

Approval/Signature

Comments/Recommendations

✓

For Your Information

REMARKS:

For your meeting with Arch
Patton:

- (1) Press release that announced
his appointment
- (2) statute setting up the
Salary Commission

Barry

Office of the White House Press Secretary

NOTICE TO THE PRESS

The President today announced the appointment of three persons to be members of the Commission on Executive, Legislative and Judicial Salaries. They are:

Arch A. Patton, of Washington, D. C., Senior Partner, McKinsey and Company.

David Packard, of Palo Alto, California, Executive Vice President, Hewlett-Packard Company; Deputy Secretary of Defense (1969-1971).

John H. Lyons, of St. Louis, Missouri, General President, International Association of Bridge, Structural and Ornamental Iron Workers.

The President also announced the designation of Mr. Patton as Chairman of the Commission.

The Commission, created by P. L. 90-206, is composed of three Presidential appointees and two appointees each by the President of the Senate, Speaker of the House, and the Chief Justice. It will make recommendations to the President on salary adjustments for members of Congress, justices and judges in the Judicial Branch, and the top executives in the Executive Branch, except the President and Vice President. The last such adjustment occurred in early 1969.

The President has requested that the Commission submit its report on June 30, 1973. The President will then make his recommendations to the Congress when he submits the 1975 budget in early 1974. The salary adjustments, if any, will thus go into effect in about March 1974, unless they are disapproved by either House of Congress.

#

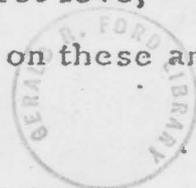
Any businessman with more than a passing interest in executive compensation administration is likely to be aware of Arch Patton's contribution to management thinking in this field. More than a decade ago he laid the groundwork for much of the subsequent progress in executive compensation surveys as consultant to the American Management Association when he directed their first organized efforts to study the compensation of executives in industry.

He has done much since to advance top management's recognition of the need to integrate the various executive compensation devices - including fringe benefits - into a more effective management tool. In addition, he was one of the pioneers in developing better means of appraising executive performance.

Mr. Patton has written widely on incentive plans, stock options, performance appraisal, and executive compensation administration for such magazines as Fortune, the Harvard Business Review, and Dun's Review and Modern Industry. His book, Men, Money, and Motivation (McGraw-Hill, 1961), which explores executive compensation as an instrument of leadership, is widely regarded as a classic in the field, and has since been reissued in paperback.

Mr. Patton's professional interests are by no means confined to executive compensation. He is well known for his work in improving the effectiveness of functional organization, and he maintains an active interest in his first love, marketing. Mr. Patton has spoken before many business audiences on these and other topics of top-management concern.

Mr. Patton is a graduate of Colgate University, and the Harvard Business School, and is a director of McKinsey & Company, Inc., international management consultants.



12/11/72

ATTON, ARCH

ARCH PATTON

Legal U. S. residence is 1700 Pennsylvania Avenue, N. W., Washington, D. C.

Business Experience:

- 1934-38 Associated Press as Chief Statistician and Financial Columnist in the Financial Bureau
- 1938-41 Colgate and Company as an economist
- 1941-43 Vick Chemical Company as an economist
- 1943(5/1) Joined McKinsey and Company as an associate and was promoted to principle and then partner



COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Sec. 225. (a) **Establishment of Commission.**—There is hereby established a commission to be known as the Commission on Executive, Legislative, and Judicial Salaries (hereinafter referred to as the "Commission").

(b) **Membership.**—

(1) The Commission shall be composed of nine members who shall be appointed from private life, as follows:

- (A) three appointed by the President of the United States, one of whom shall be designated as Chairman by the President;
- (B) two appointed by the President of the Senate;
- (C) two appointed by the Speaker of the House of Representatives; and
- (D) two appointed by the Chief Justice of the United States.

(2) The terms of office of persons first appointed as members of the Commission shall be for the period of the 1969 fiscal year of the Federal Government, except that, if any appointment to membership on the Commission is made after the beginning and before the close of such fiscal year, the term of office based on such appointment shall be for the remainder of such fiscal year.

(3) After the close of the 1969 fiscal year of the Federal Government, persons shall be appointed as members of the Commission with respect to every fourth fiscal year following the 1969 fiscal year. The terms of office of persons so appointed shall be for the period of the fiscal year with respect to which the appointment is made, except that, if any appointment is made after the beginning and before the close of any such fiscal year, the term of office based on such appointment shall be for the remainder of such fiscal year.

(4) A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

(5) Each member of the Commission shall be paid at the rate of \$100 for each day such member is engaged upon the work of the Commission and shall be allowed travel expenses, including a per diem allowance, in accordance with section 5703(b) of title 5, United States Code, when engaged in the performance of services for the Commission.

(c) **Personnel of Commission.**—

(1) Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, and on a temporary basis for periods covering all or part of any fiscal year referred to in subsection (b) (2) and (3) of this section—

- (A) the Commission is authorized to appoint an Executive Director and fix his basic pay at the rate provided for level V of the Executive Schedule by section 5316 of title 5, United States Code; and

(B) with the approval of the Commission, the Executive Director is authorized to appoint and fix the basic pay (at respective rates not in excess of the maximum rate of the General Schedule in section 5332 of title 5, United States Code) of such additional personnel as may be necessary to carry out the function of the Commission.

(2) Upon the request of the Commission, the head of any department, agency, or establishment of any branch of the Federal Government is authorized to detail, on a reimbursable basis, for periods covering all or part of any fiscal year referred to in subsection (b) (2) and (3) of this section, any of the personnel of such department, agency, or establishment to assist the Commission in carrying out its function.

(d) **Use of United States Mails by Commission.**—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(e) **Administrative Support Services.**—The Administrator of General Services shall provide administrative support services for the Commission on a reimbursable basis.

(f) **Function.**—The Commission shall conduct, in each of the respective fiscal years referred to in subsection (b) (2) and (3) of this section, a review of the rates of pay of—

(A) Senators, Members of the House of Representatives, and the Resident Commissioner from Puerto Rico;

(B) offices and positions in the legislative branch referred to in subsections (a), (b), (c), and (d) of section 203 of the Federal Legislative Salary Act of 1964 (78 Stat. 415; Public Law 88-426);

(C) justices, judges, and other personnel in the judicial branch referred to in sections 402(d) and 403 of the Federal Judicial Salary Act of 1964 (78 Stat. 434; Public Law 88-426); and

(D) offices and positions under the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

Such review by the Commission shall be made for the purpose of determining and providing—

(i) the appropriate pay levels and relationships between and among the respective offices and positions covered by such review, and

(ii) the appropriate pay relationships between such offices and positions and the offices and positions subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(g) **Report by Commission to the President.**—The Commission shall submit to the President a report of the results of each review conducted by the Commission of the offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of subsection (f) of this section, together with its recommendations. Each such report shall be submitted on such date as the President may designate but not later than January 1 next following the close of the fiscal year in which the review is conducted by the Commission.

(h) **Recommendations of the President with Respect to Pay.**—The President shall include, in the budget next transmitted by him to the Congress after the date of the submission of the report and recommendations of the Commission under subsection (g) of this section, his recommendations with respect to the exact rates of pay which he deems advisable, for those offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of subsection (f) of this section. As used in this subsection, the term "budget" means the budget referred to in section 201 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 11).

(i) **Effective Date of Recommendations of the President.**—

(1) Except as provided in paragraph (2) of this subsection, all or part (as the case may be) of the recommendations of the President transmitted to the Congress in the budget under subsection (h) of this section shall become effective at the beginning of the first pay period which begins after the thirtieth day following the transmittal of such recommendations in the budget; but only to the extent that, between the date of transmittal of such recommendations in the budget and the beginning of such first pay period—

(A) there has not been enacted into law a statute which establishes rates of pay other than those proposed by all or part of such recommendations,

(B) neither House of the Congress has enacted legislation which specifically disapproves all or part of such recommendations, or

(C) both.

(2) Any part of the recommendations of the President may, in accordance with express provisions of such recommendations, be made operative on a date later than the date on which such recommendations otherwise are to take effect.

(j) **Effect of Recommendations of the President on Existing Law and Prior Presidential Recommendations.**—The recommendations of the President transmitted to the Congress immediately following a review conducted by the Commission in one of the fiscal years referred to in subsection (b) (2) and (3) of this section shall be held and considered to modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(A) all provisions of law enacted prior to the effective date or dates of all or part (as the case may be) of such recommendations (other than any provision of law enacted in the period

specified in paragraph (1) of subsection (i) of this section with respect to such recommendations), and

(B) any prior recommendations of the President which take effect under this section.

(k) **Publication of Recommendations of the President.**—The recommendations of the President which take effect shall be printed

in the Statutes at Large in the same volume as public laws and shall be printed in the Federal Register and included in the Code of Federal Regulations.

TITLE III—PROHIBITION OF PANDERING ADVERTISEMENTS

Sec. 301. (a) Chapter 51 of title 39, United States Code,¹⁶ is amended by adding at the end of such chapter the following new section:

“§ 4009. **Prohibition of pandering advertisements in the mails**

“(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

“(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

“(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

“(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being vio-

16. 39 U.S.C.A. § 4001 et seq.



STATEMENT
OF
BERNARD G. SEGAL
NATIONAL COORDINATOR
COALITION ON ADEQUATE JUDICIAL COMPENSATION
REPRESENTING
AMERICAN BAR ASSOCIATION
AND
COALITION ON ADEQUATE JUDICIAL COMPENSATION
CONCERNING H.R. 6150
BEFORE THE
SUBCOMMITTEE ON
COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

July 18, 1975



Mr. Chairman and Members of the Subcommittee:

It has been my privilege to appear before a Subcommittee of the House Judiciary Committee on many occasions, and I welcome the opportunity to do so again. On the subject of Congressional and Judicial salaries, my appearances have spanned 22 years in varying capacities--initially as Chairman of the Commission on Judicial and Congressional Salaries created by the 83rd Congress; then over a period of 12 years, as Chairman successively of the American Bar Association's Standing Committee on Federal Judiciary and of the Standing Committee on Judicial Selection, Tenure and Compensation; and later as President of the American Bar Association. Most recently, I have served as a member of the 1973 Commission on Executive, Legislative and Judicial Salaries.

Today, I appear as the National Coordinator of the Coalition for Adequate Judicial Compensation. I am accompanied by Coalition Co-Chairmen Herbert Brownell, former Attorney General, and John T. Connor, former Secretary of Commerce, and by Associate Co-Chairman Thomas H. Kuchel, former United States Senator. They of course join in this written statement, and they will add their oral endorsement at the hearing. All four of us will be glad to answer any questions that a member of the Subcommittee may wish to ask of us.



Former Congressman Emanuel Celler, for more than a quarter of a century Chairman of the House Judiciary Committee, had intended to be here in his capacity as an Honorary Chairman of the Coalition. Unfortunately, an intervening engagement has prevented his doing so. However, Congressman Celler requested me to extend his greeting to the members of the Subcommittee and to say that he strongly endorses the position of the American Bar Association and of the Coalition on the subject of increases in federal judicial salaries.

The Coalition was formed at the suggestion of the Board of Governors of the American Bar Association, which is financing the activities of, and supplying staff assistance to, the Coalition. At its recent meeting in June, the Board formally approved the creation and objectives of the Coalition.

The membership of the Coalition presently includes former Members of the United States Senate and of the House of Representatives in the respective capacities of Honorary and Associate Co-Chairpersons, and approximately 110 lawyers representing a broad cross-section of the Bar, both geographically and in types of clientele including a variety of important national organizations. Attached to this statement is a list of the members to date.

At the outset, Mr. Chairman, I should make clear the charter under which we appear. The American Bar Association



has played a very active role over the years in the matter of judicial salaries. At least since it urged Congress to enact the legislation which created the 1953 Commission on Judicial and Congressional Salaries, it has participated actively and has appeared consistently on the subject of judicial, and on occasion Congressional, salaries before Senate and House Subcommittees of the Judiciary Committees and of the Post Office and Civil Service Committees, respectively. As recently as December, 1974, the Board of Governors adopted another strong Resolution urging that increases in compensation for federal judges be promptly made. Accordingly, in addressing the judicial compensation provisions of H.R. 6150, we will be speaking for both the American Bar Association and the Coalition on Adequate Judicial Compensation.

We are not authorized to speak for the Coalition on any provisions of H.R. 6150 other than those relating to judicial salaries. However, besides the authority of the American Bar Association to speak to the subject of judicial salaries, I am authorized by the President of the Association to convey to this Subcommittee the position of the Association, as approved by its House of Delegates in February, 1973, with respect to the elimination of three-judge district courts. The Association has not acted on the provisions contained in H.R. 6150 relating to the jurisdiction of federal magistrates and the protection of jurors' employment, and therefore we shall not comment on those provisions.

I have referred to the resolutions of the American Bar Association. Strong resolutions calling for prompt affirmative action on the subject of judicial salaries have been adopted by most of the other important professional legal organizations in the country as well, including the American College of Trial Lawyers, the American Judicature Society, the National Conference of Bar Presidents, the Federal Bar Association, and numerous state and local bar associations.

As I think everyone in this room knows, the crisis facing the federal judiciary, as in the case of certain other federal officials, has reached alarming proportions, and the catch-up that would be necessary merely to bring judicial salaries into the same relationship as they bore in 1969 to any significant group in the private sector, or to the classified services in the public sector, or indeed to state court judges or state court officials generally, would involve a very large catch-up. I have heard this situation described as being without precedent and therefore without possible cure. Neither is the fact.

The necessity of substantial salary catch-ups for the federal judiciary has existed throughout our history. From 1789 to 1955, when Congress acted on the recommendations of the Commission on Judicial and Congressional Salaries, adjustments in compensation of federal judges were made on the average, once in every twenty years. When members of that Commission



called upon the President, the Chief Justice, the President of the Senate, and the Speaker of the House of Representatives, the officials to whom under the Act they were required to submit their Report, I expressed the hope that the recommendation in our Report that there be quadrennial Commissions and quadrennial action by the Congress would be promptly adopted. That did not happen. The next salary increase did not come until 1964. Indeed, from 1891 (when district judges' salaries became uniform throughout the country) to the present time, a period of 84 years, there have been only seven judicial salary increases, one every twelve years.

Therefore, when Congress passed the Postal Revenue and Federal Salary Act of 1967, this was hailed as the most enlightened action ever taken on the subject of judicial salaries, and on executive and legislative salaries as well. For at long last, the Act provided for quadrennial Commissions and contained other provisions which seemed to hold bright promise for the quadrennial reviews which the Congress clearly intended. However, this hope was shattered in 1973 when the President, one of the four appointing powers provided by the Act, refused to name his appointees until it was too late for the Commission's findings to be included in his 1973 budget, the quadrennial year. This had the further effect of projecting the entire question into 1974, an election year, a situation which Congress believed it had avoided by the terms of the 1967



Act. And so, the four-year period that had been contemplated by the Congress, which by then it was realized was too long during a time of skyrocketing inflation, stretched to five years and now to over six and one-third years. During each of those six years, judges have seen unprecedented increases in the income of their peers, the lawyers of the nation, and of the others in their profession, state court judge and law professor alike. The Report to the Congress by the Comptroller General, dated February 25, 1975, which was offered as an Exhibit in these hearings by General Rowland F. Kirks, states that since March, 1969 federal employees in the classified services have had increases of approximately 50%. A dramatic fact, I think, is that if it were not for the operation of compression, a GS 18 career employee would now be earning \$46,300, \$6,300 more than a federal judge. I shall not burden the Subcommittee with the comparable statistics on salaries in both the private and the public sectors since they are contained in the Comptroller General's Report and other Exhibits in the Record of these hearings. I emphasize only the fact that the earnings of lawyers in private practice, the primary reservoir for new district judges, have kept pace with cost of living statistics. I also want to add some significant data on salaries of state court judges which have not been brought to the attention of the Subcommittee. While salaries of all federal judges have remained stationary since 1969, not a single

state in the nation has failed to increase its judges' salaries in that time. Periodic increases have been the general diet. Indeed, only three states in the entire country have had no increases in even the last two years. Nineteen states have already provided judicial salary increases during the first six months of this year. Yet, the public pressures and political considerations are at least as great at state levels as they are at national levels.

During this period of more than six years of steady and substantial erosion in the actual income of the members of the federal judiciary, the quality of our judges' service on the Bench, and their dedication and zeal, have never been higher, while their workload has reached the most strenuous levels of all time. It is critical that the excellence of the federal judiciary be maintained.

Further, it is always essential that among the appointees to the federal judiciary, there be a substantial number of able and talented young men and women. Yet, these are the very persons who are least able to make the unprecedented financial sacrifice which leaving the Bar and ascending to the Bench involve today.

I am sure that we need not emphasize that compensation is not the primary attraction for those who aspire to judicial service. There is the prestige of the position, the opportunity for enriching and rewarding service in pursuit of

the highest aspiration of a people - justice under law. But judges have family obligations, too; children who go to college, all the financial pressures of our inflation-ridden economy. A differential, indeed a substantial differential, between earnings of the lawyer of ability and the judge of ability is to be expected, and judges do not complain of this. But the differential should not be allowed to become so great that it becomes intolerable; and that is the grave situation confronting us today.

The hope always is that no one will accept a federal judicial appointment without planning to remain in the office for life; and so he must give up virtually all hope of any future outside earnings. Nevertheless, he must maintain a standard of living consistent with his position. What happens, then, if during a period when the cost of living has mounted by more than 48%, he not only loses each year's increment which every group in our society has received, except his fellow sufferers in the Congress and in certain posts in the Executive Branch? How is he to meet 1975 costs for his family and himself with a salary fixed on the basis of 1969 costs?

It is neither good government nor good conscience for a great country like ours to call upon our judges to do so. Yet, that is precisely the course we have been following. I am full of admiration for the judges of the country, who despite the difficult personal and family situation which this action,

or inaction, has created, and despite the disillusionment they must feel, are nevertheless remaining in their posts and continually improving their performance and procedures. But such sacrifices could not be expected to go on interminably, and in recent months we have begun to reap the whirlwind.

Since January, 1974, seven federal judges have resigned to return to private practice or to accept other positions in the private sector, more than in the preceding thirty-four years. It is no longer a secret that twenty additional federal judges are feeling the pressure so extremely that they are seriously considering returning to private life for solely economic considerations. Should these twenty resignations eventuate, as it appears they will if some significant relief is not forthcoming promptly, we will have lost six percent of our federal bench through resignation. Those who have left have received important partnerships in prestigious law firms, in one instance an important quasi-judicial post with one of the nation's largest corporations, and in another case the presidency of one of his state's largest banks.

The loss which the public and the Bench suffer when a good judge resigns is very large. The transition from advocate to judge is not an easy one, and peak performance in effectiveness and productivity is not achieved overnight; this takes years. It is difficult to replace judges who, like the seven who have left the Bench had, in years of service,

respectively -- six, seven, nine, four, two, thirteen, and six years; and all the more when the six-year judge is only 45 years of age, the four-year judge 48, the seven-year judge 53, and the nine-year judge 50. These are early stages of judicial careers at which to lose excellent judges, when according to the Administrative Office of the United States Courts, the average tenure from oath to retirement or to assuming Senior status is nineteen years, with practically all judges on Senior status continuing to render significant service until illness or extreme old age prevents their doing so.

We are seeing another serious consequence of the more than six-year lag in adjusting judicial salaries. Deputy Attorney General Tyler, in his testimony before this Subcommittee, last month, warned: "We are today threatened with a decline in the quality of the federal judiciary." And he stated simply: "It is becoming increasingly difficult to attract qualified individuals to the federal bench, because most can earn three or four times as much in their current positions."

For the past twenty years I have been attending the meetings of the American Bar Association Standing Committee on Federal Judiciary, six of them as Chairman, and I have read its Reports on all persons under consideration for federal judicial appointment. My own observations strongly confirm Judge Tyler's statements; and without the restraints of his

important and sensitive office, I would label his observations as extremely conservative.

The nagging fact is that it would take so little to change the situation. Our Commission found when we interviewed judges in 1953 who had resigned because of similar, although less acute, conditions that comparatively little additional compensation would have kept on the Bench those who were forced to resign, and would have attracted to the Bench those who could not sacrifice their families by accepting the judicial appointment at current salaries. Precisely the same situation prevails today as my own discussions with some of the judges who recently resigned amply confirms. That is why we support H.R. 6150, despite the fact that even if it became effective today, it would cover only 40% of the cost of living increase since March, 1969.

I have heard a number of Members of Congress express concern over whether the public would accept or understand an increase of as much as 20% at one time to any government officials, however greatly justified more than double that amount would be on the basis of cost of living considerations alone. My answer is that it is a mistake to believe that the public cannot be educated to understand and appreciate the difference between (1) those who have received annual increases of 40% to 50% and even more in the past seventy-eight months, and (2) federal judges who have received no increases at all during

that entire time. A dramatic demonstration of this fact came when, as a result of the recommendation of the 1953-54 Commission on Judicial and Congressional Salaries, Congress, cutting the Commission's more substantial recommendations, nevertheless voted increases of 50% in the salaries of district judges, and of Members of Congress as well, with slightly lower percentages for the other members of the federal judiciary. Despite these substantial increases, the response of the country was largely favorable, as were almost all of the many editorials throughout the country. And, I would add, there were no adverse consequences at the following Congressional elections for those who had voted for these 50% increases.

More recent examples are present in the increases granted to state court judges during the period with which we are concerned. Pennsylvania, with its rural areas, its mining regions, and its cities large and small, is in many ways a microcosm of the country. There, after no action for five years, the legislature raised judicial salaries by 33-1/3% to 44% in one year. The media applauded this action, and the public readily accepted it.

I would concede that before the 1955 raises in federal judicial and Congressional salaries, a good deal of public relations work had been done -- communication was established with the more than 10,000 editors of daily and weekly newspapers, and of publications in the fields of agriculture, business, labor,

the professions, and civic, veteran and women's groups; extensive public hearings were conducted by the Salary Commission in the Senate Caucus Room, nationally broadcast and televised, with Members of Congress and of the President's Cabinet, as well as representatives of groups having a total membership of more than 30 million people, appearing as witnesses or making written submissions; in short, the public was given the facts and with frequency and emphasis.

That process has already been started currently. The Chief Justice's sacrificial efforts, inspired by his deep concern over the effect on the quality of the federal courts of the resignations which have already occurred and those which are imminent, inevitably have had large impact upon the media. So have the efforts of some of the professional organizations to which I have referred, and individual lawyers too. The Administrative Office of the United States Courts has sent to every Member of the Congress copies of editorials supporting the pay increase from an impressive number and variety of newspapers, with differing political outlooks, some from the large cities of the country and others from sparsely populated rural areas. Seventy-six newspapers, in thirty-four states and the District of Columbia comprising 90% of the population of the country, have published highly favorable editorials. These newspapers represent a circulation of more than 20 million with an estimated readership of over

60 million. To the same effect have been nationally syndicated articles, as well as hundreds of informative and penetrating news items. Television, radio, and the national news magazines, too, have given meaningful attention to the subject. The eloquent appeals of ABA immediate past President Chesterfield Smith and its current President, James Fellers, have received more than ordinary notice from the media.

I need not emphasize that these editors and commentators and columnists have their fingers on the pulse of the public. I have talked to several of them in recent weeks. They feel strongly on the subject. They believe that the interests of the nation are deeply involved and that the public will understand this if the matter is properly and fully presented. They are calling for action by Congress now.

The American Bar Association and the Coalition on Adequate Judicial Compensation highly commend this Subcommittee for the hearings it is now conducting, and Congressman Railsback for embodying in his Bill the recommendation of the Chief Justice and others interested in providing some relief, and some encouragement as well, to the members of the federal judiciary. We are encouraged by Judge Tyler's statement to this Subcommittee that the Department of Justice "very strongly supports" the salary increases provided by H.R. 6150; and, of course, we are heartened by President Ford's statement on the subject in the prepared text for his remarks at the

Annual Judicial Conference of the Sixth Circuit just last week as follows: "I think we also have to recognize there is a need for an increase in judicial salaries. I can assure you personally, that I will do all I can to convince the Congress that action is required." But we must not lose sight of the fact that the 20% salary raise provided by H.R. 6150 is not much more than two-fifths of the increase in the cost of living since the last judicial salary adjustment, and therefore it will restore only two-fifths of the lost purchasing power of the federal judge's 1969 dollar, the only dollar he receives. It will provide only \$500 more than the salary proposed on December 2, 1968 by the first Commission on Executive, Legislative and Judicial Salaries, and will be one-third less than even the salary proposed in June, 1973 by the second Commission on Executive, Legislative and Judicial Salaries, which, as it made clear in its Report, was operating under the constraints of the Phase II Salary Guideline of the Economic Stabilization Act and was therefore greatly restricted in the range of recommendations available to it.

Therefore, while as I have stated the American Bar Association and the Coalition applaud and support the salary provisions in the Railsback Bill, we urge that the Bill be amended to assure that immediately upon its passage, steps will be taken looking toward a catch-up in the not too distant future which, at the very least, will equal the cost of living increases

since 1969. This would still deprive federal judges of the comparability increases which the 1968 Commission emphasized and endeavored to have recognized, and the 1973 Commission felt it was under a mandate to avoid.

We recognize the reasoning behind suggestions currently being made that the Act providing annual comparability pay adjustments for career employees under the General Schedule be extended to judges, but, we must realize that this will not even result in keeping pace with current cost of living increments since percentage increases for judges would be computed on a 1969 salary base whereas for the present employees covered by the Act, the percentages would be on a base which includes salary increases made every year from 1969 through 1974; and in any event the increases would provide no catch-up for judges.

There is a way that the catch-up can be attained. This is by adding a provision to H.R. 6150, or any other "partial cure" legislation, providing for annual Commissions to supplement the quadrennial ones created by the Postal Rate and Federal Salary Bill of 1967, such annual Commissions to continue until the catch-up has been effected. After that, provision should be made for biennial Commissions as recommended by the 1973 Commission. It is apparent that no such annual Commission would recommend raises less than necessary to reflect cost of living increases since 1969. If upon receipt of a Commission's

recommendations, the President or the Congress believes that the total cost of living catch-up should not be made, the Commission's recommendation can be cut accordingly; but at least a portion of the catch-up will have been achieved. Knowing that the following year, there will be another Commission, and a similar procedure, the judges will not lose heart. Hopefully, in two or three years, the catch-up will have been effected, and in the meanwhile, annual comparability (really cost of living) changes will have been taken care of. Therefore, we strongly urge inclusion in H.R. 6150 of a provision for annual Commissions.

There is one thing we should like to assure the Subcommittee. We recognize that to the uninitiated, even the 20% increase provided by H.R. 6150, meager as it is by any proper standard, will appear high. We consider it an obligation of the American Bar Association and of the Coalition on Adequate Judicial Compensation, and through them the organized Bar of the nation, to endeavor to marshal nationwide support for the salary provisions of H.R. 6150. We already have the head start which the large number of newspaper editorials and columns, and radio and television publicity, have provided. We plan to secure many more. We hope to inspire the support of the leaders of the important non-partisan civic groups in America -- the League of Women Voters, labor unions, farm organizations, Chambers of Commerce, there are many others. We shall leave

no stone unturned to educate the public to the wisdom of what we hope will be the action of the Congress under the inspiration of this Subcommittee's action on the salary provisions of H.R. 6150.

THREE-JUDGE DISTRICT COURTS

In addressing the provisions of H.R. 6150 pertaining to the elimination of three-judge district courts, I speak for the American Bar Association and not for the Coalition on Adequate Judicial Compensation.

This Subcommittee has had prior hearings on this subject. At this Subcommittee's hearing on October 10, 1973, respecting S. 271, Edmund D. Campbell, a member of the Board of Governors of the American Bar Association, appeared in support of that Bill.

In recent days, the Senate passed and sent to the House of Representatives S. 537, which eliminates three-judge courts except in cases involving Congressional reapportionment or the reapportionment of any statewide legislative body. Senate Report No. 94-204 on S. 537 presents an excellent statement of the history of three-judge courts, operations under them, and the reasons for their abolition.

Under these circumstances, I shall speak very briefly on the subject. Three-judge district courts are an anachronism,

and they no longer have anything affirmative to offer if they ever did. Remedial legislation, improved court procedures, and a change in public attitudes have eliminated any usefulness such courts may once have had. Today, three-judge district courts are a very real burden to the judges who sit on them -- district judges, circuit judges and Supreme Court Justices. I have not heard a knowledgeable group or individual, without some special interest to be served, argue in their favor in recent years, and every professional group which I know to have considered the question is calling for Congress to dispense with these courts. For at least five years, Chief Justice Burger has strongly urged their elimination. It is clear that this action is long overdue.

Insofar as the American Bar Association is concerned, its Resolution, adopted by the House of Delegates in February, 1973 and calling for abolition of these courts, did not consider the desirability of retaining jurisdiction over federal and state apportionment cases or over cases involving the constitutionality of a statute, order or regulation allegedly discriminating against a plaintiff because of race.

In its Report, filed in December, 1972, the Study Group on the Caseload of the Supreme Court (the so-called Freund Committee), of which as Judge Tyler testified I was a member, after urging abolition of three-judge district courts generally, included the following statement which may have relevance to the provision in H.R. 6150 continuing such courts in cases

involving discrimination because of race:

"...In connection with such a reexamination of the historical grounds for [three-judge court jurisdiction and its consequences and practices], Congress would have an opportunity to consider whether more recent special provisions for three-judge courts, in the Civil Rights Act of 1964 (42 U.S.C. §§1971g, 2000a-5(b), 2000e-6(b) and the Voting Rights Act of 1965 (42 U.S.C. §§1973b (a), 1973c, 1973h(c)), should or should not be retained."

I would add only that the American Bar Association urges prompt action in eliminating three-judge courts.

* * * * *

In behalf of the American Bar Association and of the Coalition on Adequate Judicial Compensation, Mr. Brownell, Mr. Connor, Mr. Kuchel, and I thank the Subcommittee for affording us this opportunity to appear in connection with the salary provisions of H.R. 6150.



THE WHITE HOUSE
WASHINGTON

October 17, 1975

MEMO FOR: PHIL BUCHEN
FROM: KEN LAZARUS *KL*
SUBJECT: Increased Judicial Salaries

Attached are copies of the Senate and House bills incorporating substantial pay increases for Federal judges. I believe these are the two measures which Bernie Segal raised with you the other day.

No action has been taken on either measure and none is anticipated.



94TH CONGRESS
1ST SESSION

H. R. 7779

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1975

Mr. WHALEN introduced the following bill; which was referred to the Committees on Post Office and Civil Service and the Judiciary

A BILL

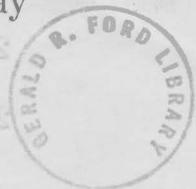
To raise the maximum pay ceiling for General Schedule employees, and to increase the rates of basic pay for certain Federal executive and judicial offices and positions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 INCREASE IN PAY RATE CONSTITUTING GENERAL SCHED-
4 ULE PAY CEILING; DIFFERENTIAL ADJUSTMENT

5 SECTION 1. (a) So much of section 5316 of title 5,
6 United States Code, as follows the section heading and pre-
7 cedes clause (2) is amended to read as follows:

8 "Level V of the Executive Schedule applies to the
9 following positions, for which the annual rate of basic pay
10 is \$38,000:"



1 (b) (1) So much of section 5315 of such title as follows
2 the section heading and precedes clause (1) is amended to
3 read as follows:

4 "Level IV of the Executive Schedule applies to the
5 following positions, for which the annual rate of basic pay
6 is \$39,500:".

7 (2) So much of section 5314 of such title as follows
8 the section heading and precedes clause (1) is amended to
9 read as follows:

10 "Level III of the Executive Schedule applies to the
11 following positions, for which the annual rate of basic pay
12 is \$41,000:".

13 INCREASE IN CERTAIN JUDICIAL SALARIES

14 SEC. 2. (a) Section 135 of title 28, United States Code,
15 is amended to read as follows:

16 "§ 135. Salaries of district judges

17 "Each judge of a district court of the United States shall
18 receive a salary of \$41,000 a year."

19 (b) The second sentence of section 252 of title 28,
20 United States Code, relating to judges of the Customs Court,
21 is amended to read as follows: "each shall receive a salary
22 of \$41,000 a year."

23 (c) So much of the first sentence of section 792 (b) of
24 title 28, United States Code, relating to salaries of Court
25 of Claims commissioners, as precedes "all necessary traveling

1 expenses" is amended to read as follows: "Each commis-
2 sioner shall receive basic compensation at the rate of \$38,000
3 a year, and also".

4 (d) The first sentence of section 40a of the Bankruptcy
5 Act (11 U.S.C. 68 (a)), relating to compensation of ref-
6 erees in bankruptcy, is amended to read as follows: "Referees
7 shall receive as full compensation for their services salaries
8 to be fixed by the conference, in the light of the recommenda-
9 tions of the councils, made after advising with the district
10 judges of their respective circuits, and of the Director, at
11 rates not more than \$38,000 per annum for full-time referees,
12 and not more than \$19,000 per annum for part-time
13 referees."

14 EFFECTIVE DATE

15 SEC. 3. The amendments made by sections 1 and 2 of
16 this Act shall apply with respect to pay periods beginning
17 after the date of the enactment of this Act.

H. R. 2279



A BILL

To raise the maximum pay ceiling for General Schedule employees, and to increase the rates of basic pay for certain Federal executive and judicial offices and positions.

By Mr. WHALEN

JUNE 10, 1975

Referred to the Committees on Post Office and Civil Service and the Judiciary

94TH CONGRESS
1ST SESSION

S. 2040

IN THE SENATE OF THE UNITED STATES

JUNE 26 (legislative day, JUNE 6), 1975

Mr. ABOUREZK introduced the following bill; which was read twice and referred to the Committee on Post Office and Civil Service

A BILL

To provide for an increase in judicial salaries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Judicial Salary Act of
4 1975".

5 SEC. 2. (a) Section 225 (f) of the Federal Salary Act
6 of 1967 (81 Stat. 642) is amended—

7 (1) by striking out subparagraph (C);

8 (2) by inserting at the end of subparagraph (B)

9 "and"; and

10 (3) by redesignating subparagraph (D) as sub-
11 paragraph (C).



1 (b) Sections 225 (g) and (h) of such Act are each
 2 amended by striking out "subparagraphs (A), (B), (C),
 3 and (D) of subsection (f)" and inserting in lieu thereof
 4 "subparagraphs (A), (B), and (C) of subsection (f)".

5 SEC. 3. Subsections (a) and (c) (1) of section 5305 of
 6 title 5, United States Code, are each amended by adding at
 7 the end thereof the following: "The report transmitted to the
 8 Congress under this subsection shall specify the overall per-
 9 centage of the adjustment in the rates of pay under the Gen-
 10 eral Schedule."

11 SEC. 4. (a) Chapter 21 of title 28, United States Code,
 12 relating to general provisions applicable to courts and judges,
 13 is amended by adding at the end thereof the following new
 14 section:

15 "§ 461. Adjustments in certain salaries

16 "(a) Effective at the beginning of the first applicable
 17 pay period commencing on or after the first day of the
 18 month in which an adjustment takes effect under section
 19 5305 of title 5 in the rates of pay under the General Sched-
 20 ule (except as provided in subsection (b)), each salary
 21 rate which is subject to adjustment under this section shall
 22 be adjusted, without regard to the limitation imposed by
 23 section 5308 of such title 5, by an amount, rounded to the
 24 nearest multiple of \$100 (or if midway between multiples
 25 of \$100, to the next higher multiple of \$100) equal to the

1 percentage of such salary rate which corresponds to the over-
 2 all average percentage (as set forth in the report trans-
 3 mitted to the Congress under such section 5305) of the ad-
 4 justments in the rates of pay under such Schedule.

5 "(b) Subsection (a) shall not apply to the extent it
 6 would reduce the salary of any individual whose compensa-
 7 tion may not, under section 1 of article III of the Constitution
 8 of the United States, be diminished during such individual's
 9 continuance in office."

10 (b) The analysis of chapter 21 of such title is amended
 11 by adding immediately below the item relating to section
 12 460 the following new item:

"461. Adjustments in certain salaries."

13 SEC. 5. (a) Section 5 of title 28, United States Code,
 14 relating to the salaries of the Chief Justice of the United
 15 States and of the associate justices of the Supreme Court of
 16 the United States, is amended to read as follows:

17 "The Chief Justice shall receive a salary of \$74,500 a
 18 year, and each associate justice shall receive a salary of
 19 \$72,000. Such salaries shall be adjusted in accordance with
 20 the provisions of section 461 of this title."

21 (b) Section 44 (d) of title 28, United States Code, re-
 22 lating to circuit judges, is amended to read as follows:

23 "(d) Each circuit judge shall receive a salary of \$51,000

1 a year. Such salary shall be adjusted in accordance with the
2 provisions of section 461 of this title.”

3 (c) Section 135 of title 28, United States Code, relating
4 to district judges, is amended to read as follows:

5 “Each judge of a district court of the United States shall
6 receive a salary of \$48,000 a year.

7 “The chief judge of the District Court for the District
8 of Columbia shall receive a salary of \$48,000 a year.

9 “Such salaries shall be adjusted in accordance with the
10 provisions of section 461 of this title.”

11 (d) The last sentence of section 173 of title 28, United
12 States Code, relating to judges of the Court of Claims, is
13 amended to read as follows: “Each shall receive a salary of
14 \$51,000 a year. Such salaries shall be adjusted in accordance
15 with the provisions of section 461 of this title.”

16 (e) The last sentence of section 213 of title 28, United
17 States Code, relating to judges of the Court of Customs and
18 Patent Appeals, is amended to read as follows: “Each shall
19 receive a salary of \$51,000 a year. Such salaries shall be
20 adjusted in accordance with the provisions of section 461 of
21 this title.”

22 (f) The last sentence of section 252 of title 28, United
23 States Code, relating to judges of the Customs Court, is
24 amended to read as follows: “Each shall receive a salary of

1 \$48,000 a year. Such salaries shall be adjusted in accordance
2 with the provisions of section 461 of this title.”

3 (g) Section 792 (b) of title 28, United States Code,
4 relating to the compensation of Commissioners of the Court
5 of Claims, is amended to read as follows:

6 “(b) Each Commissioner shall receive basic compensa-
7 tion at the rate of \$39,600 a year, and also all necessary
8 traveling expenses and a per diem allowance as provided in
9 chapter 57 of title 5 while traveling on official business and
10 away from Washington, District of Columbia. Such com-
11 pensation shall be adjusted in accordance with the provisions
12 of section 461 of this title.”

13 (h) Section 7443 (c) of the Internal Revenue Code of
14 1954, as amended, relating to judges of the Tax Court of the
15 United States, is amended to read as follows:

16 “(c) SALARY.—Each judge shall receive a salary at
17 the rate of \$48,000 per annum, to be paid in monthly in-
18 stallments. Such salary shall be adjusted in accordance with
19 the provisions of section 461 of title 28, United States
20 Code.”

21 (i) The first sentence of section 40a of the Bankruptcy
22 Act (11 U.S.C. 68 (a)), relating to compensation of ref-
23 erees in bankruptcy, is amended to read as follows: “Ref-
24 erees shall receive as full compensation for their services

1 salaries to be fixed by the conference, in the light of the
2 recommendations of the councils, made after advising with
3 the district judges of their respective circuits, and of the Di-
4 rector, at rates, in the case of full-time referees, not more
5 than \$43,200, as adjusted under section 461 of title 28,
6 United States Code, and in the case of part-time referees,
7 not more than one-half of such rate, as so adjusted.”.

8 SEC. 6. The increases in compensation made by this Act
9 shall become effective on the first day of the first pay period
10 which begins on or after the date of enactment of this Act.

94TH CONGRESS
1ST SESSION

S. 2040

A BILL

To provide for an increase in judicial salaries,
and for other purposes.

By Mr. ABOUREZK

JUNE 26 (legislative day, JUNE 6), 1975

Read twice and referred to the Committee on Post
Office and Civil Service