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THE WHITE HOUSE
WASHINGTON

Make file:

" Pay Commission
Report "



Copy for P. Buchan

THE WHITE HOUSE

WASHINGTON

December 8, 1976

MEMORANDUM FOR: JIM CONNOR
MIKE DUVAL

FROM: ED SCHMULTS
KEN LAZARUS

SUBJECT: Pay Commission Report

Counsel's Office has reviewed the report of the Commission on Legislative, Judicial and Executive Salaries and offers the following:

(1) Overview. As you may be aware, the Commission's powers under its enabling authority are solely advisory in nature. The responsibility of the President under the statute, on the other hand, requires that he include within the upcoming budget his recommendations with respect to the exact rates of pay which he deems advisable for those offices and positions within the purview of the organic act. Although this recommendation is the only legal requirement imposed upon the President, he is, of course, free to go beyond this limited role and comment on related features of the report, i.e., "uncoupling", a code of conduct, etc.

(2) Constitutional Infirmity. The Commission's enabling statute provides that the pay recommendations of the President shall become law unless disapproved by either House of Congress during a period of 30 days following the transmittal of such recommendations. Counsel's Office and the Department of Justice believe that this legislative scheme is unconstitutional. We might note in this regard, however, that our case in opposition to this legislative scheme is weakened to the extent that this legislation contemplates a subsequent appropriations bill carrying forward the increases in customary legislative fashion.

(3) Technical Point. We have been advised by the staff of the Commission that a "final report" will be forthcoming next week to improve upon the general format of the draft which is currently before us and to correct certain minor technical errors.



(4) Proposed Response. It is our view that the President should go beyond the bare legal requirements of the organic act and issue a message to accompany his budget on the subject of pay reform. In this regard, Counsel's Office recommends that the President generally support the need for certain pay raises in the Legislative, Executive and Judicial Branches and endorse the general architecture of the Pay Commission's report subject to the following considerations:

(a) Although the recommended salary levels proposed in Table II of the report represent reasonable goals, it would be inconsistent with the public sensibilities on this subject to propose immediate increases of this scale. Rather, we would see these figures as goals to be pursued over a three-year period. Therefore, we would suggest that the President this year formally recommend increases of one-third of the levels of increase proposed by the Commission.

(b) Due to the constitutional restraints the President should also request that these increases be made in the form of affirmative legislation.

(c) The President should generally endorse the concept of coupling reform of our conflict laws with the pay increases. This position dovetails with our comments on the constitutional defect presented here.

(d) By staging these increases over a three-year period, the President can also make clear that there is a necessity for fundamental reform of the general pay schedules of government to insure that people do not receive unwarranted increases as they are caught up in the current of this plan. Stated another way, during recent years, many government people have received grade increases in order to achieve a desirable salary and, in many instances, substantial increases in that level would warrant a reevaluation of their GS rating. A three-year stage of pay increases would allow time for a reevaluation of this situation.

(5) Prospects. In the past, Congress has approved pay raises only in instances where (1) the Congressional leadership was personally lobbied by the President and an agreement reached in advance; and (2) in instances where the rate of increase proposed for Congressmen was equal to the increase received by others in the government. Assuming the President does not meet with the Congressional leadership on the question in advance of his budget message, there would appear to be little or no chance for Congressional silence on the proposed increase since (1) we can anticipate that Senator Allen, Helms or some other fiscal Conservative will bring the question to a vote, and (2) given the fact that Congressional increases would be substantially less than others proposed for judges and Executive Branch personnel, a resolution of disapproval would likely carry. In order to allow for reasonable prospects for any success here, the President would have to meet with the Congressional leadership in order to preclude a vote on his recommendation.

(6) Note: We should also indicate here that Phil Buchen has been approached by the Chief Justice who requests the opportunity to speak to the President on this issue should the decision be reached to substantially reduce the judicial salary levels proposed by the Commission. Moreover, we are being rather heavily lobbied by various bar associations in support of the judicial salary increases and would, therefore, appreciate being kept informed as to any future developments in this regard.

cc: Jack Marsh



THE WHITE HOUSE

WASHINGTON

December 11, 1976

MEETING ON THE REPORT OF THE
COMMISSION ON EXECUTIVE, LEGISLATIVE
AND JUDICIAL SALARIES (PETERSON COMMISSION)

Saturday, December 11, 1976

2:00 p.m. (2 hours)

Cabinet Room

From: Mike Duval *MD*

I. PURPOSE

To receive staff advice on the Peterson Commission Report and develop a plan for additional meetings (if required).

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: The attached memorandum summarizes the report and presents the issues raised.

B. Participants: Dick Cheney, Mike Duval, Max Friedersdorf, Alan Greenspan, Jim Lynn, Jack Marsh, Ron Nessen, Paul O'Neill, Art Quern (for Jim Cannon who is out of town), Ed Schmults and Brent Scowcroft.

C. Press Plan: Announced, no press photo

III. AGENDA

You may wish to use the sections on Decisions and Implementation (starting on page 13) in the attached memorandum as an agenda for this meeting.

THE WHITE HOUSE

WASHINGTON

December 11, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: MIKE DUVAL *MD*

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

PURPOSE OF MEMORANDUM

This memorandum summarizes the Commission's Report and presents the issues which require your decisions.

First is a background section which describes the history of the Commission and the substance of its report. This is followed by an analysis of the major policy issues raised by the report along with the implications of the alternatives you face. The next two sections respectively deal with the specific, substantive questions raised by the Code of Conduct and compensation issues. The sixth section presents all the issues along with staff recommendations in decision format. The final section discusses the alternatives available to implement your decision.

BACKGROUND

The Organic Statute for the Commission on Executive, Legislative and Judicial Salaries, created a nine member Commission to review the rates of pay of certain high-level government officials from all three branches. (The text of the statute can be found at Appendix A of the attached Commission report which is at Tab A.) The statute requires the following action by the Commission and the President:

"REPORT BY THE COMMISSION TO THE PRESIDENT -- The Commission shall submit to the President a report of the [appropriate pay levels and relationships between and among the respective offices and positions covered by the review] together with its recommendation.

DEC 15 1976

"RECOMMENDATIONS BY THE PRESIDENT WITH RESPECT TO PAY -- The President shall include in the budget next transmitted by him to Congress after the date of the submission of the report and recommendations of the Commission . . . his recommendations with respect to the exact rates of pay which he deems advisable for those offices and positions within the purview of [the Organic Statute]."

It is clear from the statute that you are required to make recommendations with respect to the exact rates of pay which you deem advisable. This could be done with a simple one line statement in your Budget or with as high visibility as a special message to Congress in addition to a recommendation in the Budget.

The statute only refers to Commission work concerning rates of pay. It is clear that the Commission's recommendations concerning a code of conduct are outside the purview of the statute.

The Commission's report makes two key recommendations.

- That there should be substantial pay increases for high ranking governmental officials. (Executive Branch 32%, Legislative Branch 29%, and Judicial Branch 44%.
- These salary increases should be coupled with the imposition of a new code of conduct on all three branches.

The Commission made the following specific recommendations concerning a code of public conduct:

- All individuals (from the three branches) should be required to disclose their financial affairs to an appropriate authority.
- All employees should be prohibited from receiving honoraria, legal fees, gifts, or the proceeds of testimonial dinners, etc. for their personal use, and any other compensation for services rendered which might have, or appear to have an influence in the conduct of the public's business.
- Tight but reasonable provisions should be developed in order to eliminate -- or at the very least minimize -- those conflicts that necessarily arise when the economic investment interest of the individual falls within the scope of the public responsibility.



- There should be more consistency in the availability of legitimate expense allowances in all three branches of the government, including domestic and -- when appropriate -- foreign travel, entertainment granted and received, and gifts. Such allowances must not be used as a substitute for income.
- Restrictions should be imposed so as to ensure the top executives, judges, or legislators do not compromise either their objectivity or total devotion to the job by any arrangements that they may make while in public employment with respect to subsequent employment or other relationships.
- The code of conduct regulations should be broadly applicable across all three branches of government.
- An appropriate body or bodies should be established -- or if an existing one is to be so charged, it should be strengthened -- to ensure that these requirements are fully enforced and that all information disclosed under the Code of Public Conduct is regularly and adequately audited and publicly reported.

The report goes on to suggest a Presidential meeting with the Chief Justice and the leadership of the Senate and House in order to get the following commitments:

- To the principles of the code.
- To prompt action.
- To a new mechanism to implement the recommendations.

The report recommends that we draft legislation to create an intergovernmental commission which would develop a specific Code of Public Conduct and mechanisms to oversee and administer the code. They recommend that the legislation be submitted with the budget message.

The Commission has relied on the following principles concerning compensation:

- Comparability with the private sector is not a suitable basis for setting pay for the Government's top officials. Instead, pay should be set at the lowest rate that will allow the Government to attract and retain the best qualified individuals.



- Pay must be high enough to allow people to serve without other income sources.
- Because of the "psychic income" of higher level jobs (such as the Cabinet) the pay differentials between the Executive Schedule levels should be less as you go up the scale.
- If the pay level is set at the lowest level to attract competent people, it must be adjusted regularly to ensure that it does not fall substantially behind increases in the cost of living.
- Linkages between the three branches should be disregarded because we are dealing with entirely different jobs with different responsibilities and the career anticipation patterns very sharply.

The Commission's report makes the following recommendations concerning compensation:

- In order to alleviate the "cash flow" problem of non career appointees, they should be allowed to defer Civil Service Retirement contributions until after they have served for five years.
- Newly elected Members of Congress and executive appointees should be reimbursed for moving expenses, travel expenses, and subsistence while seeking permanent housing.
- Members of Congress should receive either an allowance or tax deduction of up to \$5000 per year (in addition to the current \$3000 deduction) to reimburse them for the expense of maintaining two residences.
- The following are the recommendations concerning salaries:

The largest pay increases are recommended for the Judiciary because judges tend to make government service a permanent career.

Larger increases are recommended for the lower executive levels than for the higher because of "psychic rewards".

The increases should be all at once, rather than phased because the need is immediate and it is best not to let the problem continue to fester.

A smaller percentage increase is recommended for Congress compared to the other branches, but this is partially off-set by their proposed housing allowance. On a dollar basis, Congress would get \$57,500, plus the \$5000 housing allowance compared to \$60,000 for Level II. Some compression will remain at the top of the GS levels. The Commission believes this is beneficial because it will impose some "cost discipline" on the super-grades. They feel that this is where the cost exposures are greatest and also where they have the least faith in the system's ability to measure need and worth. Also, they question the validity of the supergrade comparability rates primarily because they do not give proper weight to the cost of generous fringe benefits such as the early retirement feature of the pension plan.

The Commission recommends the creation of a permanent quadrennial commission made up of private citizens with significant staff support. Such a commission would address the following types of problems: periodic analysis of total federal compensation, cost of living increases, pension benefits, life insurance, and classification of positions.

Finally, to provide further perspective by way of background information, I have spoken to pollsters Daniel Yankelovich and Bob Teeter. Both agree that this is a highly volatile issue because of a very strong feeling in the country that government officials are paid too much as it is and do not deserve further increases. Both agree that, while your support for the Commission's findings could result in a positive public reaction, there is a likelihood that the opposite would occur.

Yankelovich, (whose polling firm did some work for the Commission) believes that your endorsement of the Commission's findings would greatly add to the symbolism of your final days as President by either showing you as (1) assisting old buddies with a pay increase as you leave or (2) as taking a courageous step which will result in giving the American people a better government.



He points out that the public can be made to understand and accept the concept that good government and elimination of the last vestiges of Watergate require an elimination of the mixed motives that result with outside income sources for government officials and the obvious need to attract the very best people in government and give them a sensible code of ethics to follow. Yankelovich says that public reaction will be largely determined by how your decision is presented. If you decide to accept the Commission's approach, this is an inherently believable conclusion if presented in a firm and sensible way that the people can understand.

Bob Teeter thinks that the general public reaction will be very negative (but you should nevertheless adopt the Commission's recommendations because they are right.) He believes that your best course of action is to announce your decision in a clear and forceful way but time it for Christmas week. He recommends against any middle ground such as a lesser increase without the code of conduct because this will be perceived as a compromise which serves the interest of no one.

THRESHOLD ISSUES

The following are general questions which are raised by the Commission's report:

1. What are the implications of the President taking an active and visible role in connection with the report?

It is obvious under the statute that you must take some action. Probably the safest course (from a public perception standpoint) is for you to propose further study of the entire compensation question (including non-executive lower level positions) coupled with a very modest increase to cover cost of living in the FY 77 budget and strong endorsement of the principles established by the Commission concerning the code of conduct. You could then participate in several events (such as meeting with Congressional and Judicial leaders) designed to give high visibility to the need for a code of conduct.

On the other hand, you can of course decide to go forward with the fundamental recommendations of the Commission with the understanding that there will be a risk of severe public criticism but the possibility of a positive response depending on how your decisions are communicated.

The following are some arguments of why you should adopt the Commission's approach (major pay increase) which will mean a highly visible role for you:

- There is a need for Presidential leadership to solve this problem which has existed for many years. Many of your advisers believe a large pay increase can be justified.
- Without your strong leadership, a large pay increase is highly unlikely.
- If the press believe the arguments of the Commission, you may be criticised for not demonstrating leadership.

The following are some reasons for rejecting the Commission's recommendations and avoiding a highly visible role concerning the report:

- This may be a no-win proposition and therefore why take the risk.
 - If you do not take a leadership role, the likelihood is that there will not be any major pay increase. This might have the benefit of keeping down the rate of growth of government, and making it likely that people who have achieved private-sector success continue to serve in government.
2. Should the code of conduct be linked with the compensation issue?

As stated above, the Organic Statute does not give the Quadrennial Commission any charter to recommend a code of conduct or otherwise deal with any issue other than the executive pay question. By linking the two issues there is a possibility that the code of conduct proposal will be "contaminated" and the public will view the pay increases as an unfair "price" for code of conduct reforms which should occur on their own merit.

One argument for linking the two is the obvious political reality that this may be the only way to get the necessary pay increase. A substantive argument is the obvious need to know whether outside income is permitted before setting salary levels.

To some extent, public support or opposition will be shaped by how real they perceive the commitment to the new code of conduct.

One way of assuring, at least in public perception, the commitment of both the House and Senate to follow through on the code of conduct, would be by language in your transmittal of the pay package making it clear that acceptance by the Congress -- by not vetoing the pay increase within the 30 days -- will be taken by you and the American people as a commitment of both the House and Senate on the code.

There is another approach which would likely provide very strong evidence of commitment to the new code of conduct. You could make the pay increase contingent upon Congress passing legislation within 30 days to create the ad hoc commission to propose a new code. A varriant of this approach could include a provision which makes the pay increase contingent on the passage of Resolutions in both Houses of commitment to the code of conduct concept.

3. Would implementation of the report recommendation result in any constitutional and/or serious policy problem?

Phil Buchen's office points out that there is a Constitutional problem with the basic Organic Statute which provides for the pay increase in your budget subject only to disapproval by either House of Congress within 30 days. However, Counsel's office states that this problem can be ameliorated by your requesting an affirmative vote by the Congress on the pay increase and -- in any event -- there will be subsequent appropriation bills.

Also, there are potential Constitutional problems in developing a code of conduct and implementing mechanisms covering all three branches. These probably can be avoided with careful drafting of the legislation creating the ad hoc commission to develop the code.

From a standpoint of policy, there is obviously the great danger in your making any recommendations to the other branches concerning how they control the conduct of their members/employees. I frankly think that the public would be receptive to your taking a firm leadership role in this area given the fact that you have served for a quarter of a century in Congress and are now viewed as a national leader with no personal stake in the decisions you make in your remaining days as President.

CODE OF CONDUCT ISSUES

The following issues are raised because of the Commission's recommendation that a code of conduct be adopted government-wide in connection with the implementation of their recommended pay increases.

1. Should there be a single set of principles governing a code of conduct for all three branches?

The Commission's report is not clear as to why they believe there should be a common Code of Conduct for all three branches. Although logic suggests that common principles should apply to the conduct of officials from all three branches, the Commission specifically recommends that code of conduct regulations should apply to the three branches.

This may be a problem of semantics because Pete Peterson advised me by telephone that the Commission's intent is that there should be a common set of principles but that each branch would be responsible for the details of its own code of conduct.

2. What mechanism should be used to develop a draft code of conduct?

Notwithstanding Pete's interpretation of the Commission's intent concerning applicability to the three branches of such a code, their report does recommend that you submit specific legislation which would result in the creation of an inter-governmental commission to develop (after consultation with the branches) a specific Code of Public Conduct and set up mechanisms to oversee and administer the code.

This Commission would be under a legislative mandate to submit regulations or legislative proposals where required within 180 days which would set forth precise rules to put the principles of the code into effect.

There is, of course, a great danger in such an approach. As stated in the Peterson Commission Report, there would have to be some continuing mechanism to review compliance with the code of conduct. The creation of such an entity carries with it an enormous risk for abuse.



An alternative approach would be to create an ad hoc intergovernmental commission to study the code of conduct issue and make specific recommendations to each branch separately after developing a common set of principles. Each branch could be charged with the responsibility of creating its own enforcement mechanism with the ad hoc commission recommending certain guidelines such as strict public disclosure.

The Peterson Commission Report suggests that such a commission be given 180 days to complete its work. This may be unrealistic given our experience in developing a legislative alternative to S-495 the "Watergate Reorganization and Reform Act."

3. What subjects should be covered by the proposed code of conduct envisioned in the legislation submitted by the President?

The Peterson Commission recommends that the following subjects be covered in such a code: disclosure, restrictions on outside income, conflict of interest, allowances, post service employment and auditing. Some of your advisors believe that there may be additional matters which should be covered.

4. To what extent should legislation submitted by you guide the ad hoc commission on such issues as what form should the code(s) of conduct take (e.g., by statute) or what mechanism should be used to implement or enforce the code(s)?

This is a complex subject which needs more staff work.

COMPENSATION ISSUE

The Peterson Commission Report raises the following questions concerning compensation:

1. Should you take action to deal with the problem of executive level compensation only or should you insist on total reform of the federal employment system including lower grade levels?



There are obvious problems in the current Executive Branch Civil Service System, such as so called "grade creep", and a strong argument can be made that it makes no sense to improve the tip of the iceberg while leaving the larger problem untouched.

If, however, you decide to take action in this area you probably are going to have to accept a less than perfect solution in order to have a reasonable chance of making some progress. For example, linking the code of conduct with the pay increase may not be a perfect solution but it may be the only practical alternative. Likewise, I doubt it's possible to come up with a reform package for the entire federal employee system between now and submission of the budget. Since the Peterson Commission was permitted only to look at executive pay levels by statute, it makes some sense to deal only with this problem but identify the fact that there is still a great need for additional reform.

2. Should there be linkage between the various jobs within each branch?

As the Commission noted, there is no historical linkage among the various positions and they could not find a persuasive rationale for its rigid application. Undoubtedly the central reason for its existence is the political reality that Congress finds it easier to raise their own salary if they receive pressure due to the linkage factor from the other two branches. Indeed the political argument appears to be the only case that can be made for maintaining linkage.

3. Assuming you decide to propose some increase, at what level should the salaries be set?

Although there has been criticism of the Peterson Commission report, it is generally a visceral reaction to any pay increases for governmental officials. Many of your advisers accept the Commission's figures as as good as any. Several people have suggested that the pay increases could be phased in order to reduce the adverse political impact of such a decision. The problem with this, of course, is that any phasing-in would take you closer to the 1978 elections and this could aggravate rather than diminish the political impact.

Other advisers strongly object to such large increases.

See Tab B for the specific salary recommendations.

4. Should there be a relocation cost allowance and \$5000 annual allowance for the second residence for Members of Congress?

The Commission recommends in favor of both allowances. There seems to be a good case in terms of the realities of private sector competition for the relocation allowance. The principle argument against the \$5000 annual allowance or tax deduction for the second residences of Members of Congress is that this should be included in their salaries directly rather than treating it as an allowance or tax deduction.

5. Should there be a permanent Quadrennial Commission to periodically recommend increases in salary and for other purposes?

The Peterson Commission Report recommends that such a permanent commission be established. This may have resulted from their inability to deal with the question of annual cost of living adjustments. While recognizing the need for some adjustment on a periodic basis, they rejected recommending cost of living adjustments on the grounds that it would be perceived as a bad example to the rest of the country. Indeed none of your advisers urge adoption of a cost of living adjustment for the obvious policy and public reaction reasons.

The major opposition to the permanent Quadrennial Commission idea comes from the Civil Service Commission. Bob Hampton argues that it would be duplicative of the responsibilities that are currently placed in OMB, the Civil Service Commission and the Advisory Committee on Federal Pay.

One obvious alternative is to charge the ad hoc Commission with the responsibility of making a recommendation to the President and Congress as to whether or not a permanent Quadrennial Commission is required.

TENTATIVE POLICY DECISIONS

The following specific issues are listed in generally the same order as presented in the preceding sections. For purposes of presentation only, there is an implicit assumption that each decision is affirmative thus triggering the need to address successive issues.

Also, these are presented as tentative decisions because you may wish to consult with others before reaching final decisions.

See Tab C for staff recommendations and comments. Your advisors have not commented on all the issues identified below but are expected to do so at today's meeting.

GENERAL ISSUES

1) Should you take a highly visible role in connection with the Report?

- Very risky in terms of public reaction, but if you do act, do so boldly and with a very good press plan. (Teeter, Yankelovich)
- May compromise your reputation for fiscal conservatism. (Marsh)

DECISION:

2) Should you adopt the Commission's basic approach, i.e., a substantial pay increase tied to a new code of conduct?

- Most of your advisers that have commented, do not flatly support the Commission's recommendations.
- Jim Cannon supports the Commission while Phil Buchen and General Scowcroft concur in general but question the timing of the salary increases. Secretary Kissinger and Chairman Bob Hampton support the salary increases. Jack Marsh, Max Friedersdorf and Bob Hampton question linking the code of conduct and pay increases.

DECISION:



3) By what mechanism should the pay increase be linked to the code of conduct?

- The Commission recommends direct linkage.

DECISION:

4) Would implementation of the report result in Constitutional problems?

- Bob Hartmann believes that there is a serious constitutional problem in having any single agency monitor the conduct of the three branches.
- Phil Buchen's office says that the basic 30-day Congressional veto procedure is unconstitutional.

DECISION:

CODE OF CONDUCT ISSUES

5) Should there be a single set of principles for all these branches?

DECISION:

6) How should the code of conduct be drafted?

- The Peterson Commission recommends that a new commission be created by statute and draft the code in 180 days.
- Some of your advisers believe each branch should develop its own code, perhaps adhering to a common set of principles.

DECISION:

7) What subjects should be covered by the proposed code of conduct?

- The Peterson Commission recommends that the following be covered: disclosure, restrictions on outside income, conflict of interest, allowances, post-service employment and auditing.

DECISION:

8) Should you propose that the code be statutory or rules adopted by the respective branches and how should the code be implemented?

- There seems to be general agreement among your staff that a detailed code should not be imposed on all branches by a single commission and that implementing power should be controlled by each branch separately. Some intergovernmental entity may be appropriate for limited purposes.

DECISION:



COMPENSATION ISSUES

9) Should you take action to deal with executive pay only or should you insist on total reform of all pay levels?

- Jack Marsh argues that these matters should be addressed together -- not executive pay alone.

DECISION:

10) Should there be linkage between the various jobs within each branch?

- The Peterson Commission recommends against linkage.
- Bob Hampton believes Congress may object to this, thus defeating the pay increase.

DECISION:

11) Assuming an increase, at what level should the salaries be set?

- NOTE: Phil Buchen notes that the Chief Justice wants an opportunity to speak to you if you are considering a substantial reduction in the judicial salary levels proposed by the Commission.
- Jack Marsh, Alan Greenspan do not support the recommended pay increase.
- Buchen's office and Greenspan suggest that an increase be phased in.

- An alternative favored by some on your staff is to raise judicial salaries in accordance with the Commission's recommendation and give the Legislative and Executive Branches a modest cost of living increase.

DECISION:

12) Should there be a relocation cost allowance for government officials?

- The Commission proposes this and there have been no specific objections raised.

DECISION:

13) Should Members of Congress receive an additional \$5000 allowance for second residences? Should it be in the form of a tax deduction?

- The Commission recommends this but Greenspan opposes.

DECISION:

14) Should there be a permanent Quadrennial Commission to periodically recommend salary increases and for other purposes?

DECISION:

IMPLEMENTATION ISSUES AND DECISIONS

You probably will have to make a decision concerning the Commission's recommendations for a pay increase prior to departure to Vail in order that it will be reflected in the Budget. If you decide to sever the code of conduct and compensation issues, there is no need to deal with the former until January. However, as a political reality you probably cannot announce your decisions on the Budget in January without making some public statement concerning the Peterson Commission recommendations concerning a code of conduct.

On the other hand, you may wish to consult with Congressional and Judicial leaders both on the question of whether or not the two proposals should be linked as well as the specific merits of each. In this case you will probably will want to have such meetings next week which will allow your decisions to be reflected in the Budget.

The following issues will need to be resolved concerning pre-decision consultation (to occur next week):

- Do you want Jack Marsh, Max Friedersdorf and others to take informal soundings on the Hill?
- Should you consult with Congressional and Judiciary leaders as a group?
- If you decide to separate the Congress and the Judiciary, should you meet separately with House and Senate leaders?
- Should you meet with any outside groups such as the Peterson Commission?
- Should you meet with additional Administration officials such as Bob Hampton?
- Should you seek any commitment from Governor Carter before announcing your decisions?

If you decide to go forward with a major pay increase linked to some action on the code of conduct, we will have to develop a very effective press plan in order to avoid the risk described by Yankelovich and Teeter.



THE WHITE HOUSE

WASHINGTON

December 14, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Recommendation on Salary Levels for
Positions Covered by Peterson
Commission Report

The attached recommendations by dollar amount are arrived at as follows:

1. The Peterson Commission recommendation of \$57,500 for Senators and Representatives is adjusted to \$65,000 so as to be in line with the Court of Appeals Judges.
2. Then, after this adjustment is made, all recommendations of the Commission are adjusted to achieve 60% approximately of Commission-recommended increases.

This method has the virtue of not materially disturbing the relations between the Commission-recommended increases for the different positions, while at the same time reducing the total dollar amount of each increase. Alternatively, the figure in item 2 of the calculation method could be 50% instead of 60%.

Attachment



EXHIBIT II

PETERSON COMMISSION
RECOMMENDATION

RECOMMENDATION

BY: P.W.B.

VICE PRESIDENT	\$ 80,000	\$74,200
CHIEF JUSTICE	80,000	74,200
SPEAKER	80,000	74,200
ASSOCIATE JUSTICE	77,500	71,700
EXECUTIVE LEVEL I	67,500	65,700
PRESIDENT PRO-TEM, MAJORITY AND MINORITY LEADER	65,000	59,800
COURT OF APPEALS JUDGE	65,000	56,800
DISTRICT COURT JUDGE	62,000	54,000
EXECUTIVE LEVEL II	60,000	53,800
SENATORS AND REPRESENTATIVES	57,500	56,800
EXECUTIVE LEVEL III	57,000	51,000
EXECUTIVE LEVEL IV	53,000	47,700
EXECUTIVE LEVEL V	49,000	

THE WHITE HOUSE
WASHINGTON

December 14, 1976

MEMORANDUM FOR:

PHIL BUCHEN
JIM CANNON
DICK CHENEY
MAX FRIEDERSDORF
ALAN GREENSPAN
BOB HARTMANN
JIM LYNN
JACK MARSH
PAUL O'NEILL
ED SCHMULTS
BRENT SCOWCROFT
BILL SEIDMAN

FROM:

MIKE DUVAL

Mike

The President specifically has asked for your recommendation on the salary levels he should approve for those positions covered by the Peterson Commission Report (see Exhibit I attached).

The President has asked to receive your recommendations by dollar amount per position by tomorrow morning. It would be very helpful if you will send your recommendations to my office by close of business today. (You may find it convenient to indicate your recommendation on the summary chart attached as Exhibit II.)

Attachments



TABLE 2
 COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES
 RECOMMENDED SALARY LEVELS

	PRESENT	RECOMMENDED	PERCENT INCREASE
Vice President	\$65,600	\$80,000 75	22.0%
Chief Justice	65,600	80,000 75	22.0%
Speaker of the House	65,600	80,000 75	22.0%
Associate Justice	63,000	77,500 72.5	23.0%
Executive Level I	63,000	67,500 65	7.1%
President Pro-Tem, Majority and Minority Leaders	52,000	65,000 60	25.0%
Judges - Circuit Courts of Appeals	44,600	65,000 60	45.7%
Judges - Court of Claims	44,600	65,000 60	45.7%
Judges - Court of Military Appeals	44,600	65,000 60	45.7%
Judges - Court of Customs and Patent Appeals	44,600	65,000 60	45.7%
Judges - U.S. District Courts	42,000	62,000 52.5	47.6%
Judges - Customs Court	42,000	62,000 52.5	47.6%
Judges - Tax Court	42,000	62,000 52.5	47.6%
Executive Level II	44,600	60,000 55	34.5%
Comptroller General	44,600	60,000 55	34.5%
Senators, Representatives, Resident Commissioner of Puerto Rico	44,600	57,500 56	28.9%
Executive Level III	42,000	57,000 56	35.7%
Assistant Comptroller General	42,000	57,000 56	35.7%
Director - Administrative Office - U.S. Courts	42,000	57,000 56	35.7%
Executive Level IV	39,900	53,000 48	32.8%
General Counsel - GAO	39,900	53,000 48	32.8%
Librarian of Congress	39,900	53,000 48	32.8%
Public Printer	39,900	53,000 48	32.8%
Architect of the Capitol	39,900	53,000 48	32.8%
Commissioners - Court of Claims	37,800	53,000 48	40.2%
Deputy Director - Administrative Office - U.S. Courts	37,800	53,000 48	40.2%
Bankruptcy Judges (full time)	37,800	53,000 48	40.2%
Executive Level V	37,800	49,000 44	29.6%
Deputy Librarian of Congress	37,800	49,000 44	29.6%
Deputy Public Printer	37,800	49,000 44	29.6%
Assistant Architect of the Capitol	37,800	49,000 44	29.6%
Bankruptcy Judges (part time)	18,900	26,500 24	40.2%
Board of Governors, U.S. Postal Service	10,000	10,000 10	0 %

THE WHITE HOUSE

WASHINGTON

MEETING WITH CHIEF JUSTICE BERGER

Wednesday, December 15, 1976

5:30 p.m. (30 minutes)

The Oval Office

From: Mike Duval

Mike

I. PURPOSE

The Chief Justice has requested this opportunity to discuss with you the recommendations of the Commission on Executive, Legislative and Judicial Salaries to the extent the report relates to salary levels of members of the Judicial Branch. This meeting was set up at your invitation for you to solicit the Chief Justice's views concerning the Peterson Report.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background: The Chief Justice supports the increases in judicial salaries recommended by the Peterson Commission. He has also provided a substantial compilation of materials relating to the Standards of Conduct already applicable to the Judiciary [see attached summary provided by Phil Buchen's office at TAB A].

B. Participants:

The President
The Chief Justice
Phil Buchen
Dick Cheney
Mike Duval
Jim Lynn

C. Press Plan: Announced, no press photo.

III. AGENDA

1. Appropriate salary levels for Members of the Judiciary and their relationship to appropriate salary levels for Members of Congress.
2. The need, if any, for a new Code of Conduct binding upon the Judicial Branch and any potential Separation of Powers problems posed by such a Code.

STANDARDS OF CONDUCT
APPLICABLE TO JUDICIARY

Almost 50 years ago, the American Bar Association formulated the original Canons of Judicial Ethics. Those Canons, occasionally amended, have been adopted in most states. In 1969, the Association determined that current needs and problems required revision of the Canons. The revision process resulted in the Code of Judicial Conduct which was approved by the ABA House of Delegates in 1972 and thereafter adopted for federal judges by the Judicial Conference of the United States in 1973. Additionally, P.L. 93-512, which was signed into law on December 5, 1974, provides a statutory footing for many of the constraints imposed by the Code.

The Code of Judicial Conduct may be outlined as follows:

- Canon 1. A judge should uphold the integrity and independence of the judiciary.
- Canon 2. A judge should avoid impropriety or the appearance of impropriety in all his activities.
- Canon 3. A judge should perform the duties of his office impartially and diligently. The Standards which have been drafted pursuant to Canon 3 provide for the disqualification of any justice, judge, magistrate or referee in bankruptcy of the United States in those cases which present, in fact or in appearance, a question of judicial bias, prejudice, or conflict of interest. The standards governing potential financial conflicts are much more stringent than comparable provisions governing the Executive and Legislative Branches. For example, a "financial interest" is defined to reach any legal or equitable interest, however small, with no de minimis exclusion.
- Canon 4. A judge may engage in activities to improve the law, the legal system and the administration of justice. The standards carrying forward Canon 4 generally prohibit any outside employment by a judge apart from writing assignments.



- Canon 5. A judge should regulate his extra-judicial activities to minimize the risks of conflict with his judicial duties. The standards here substantially restrict the investment options of a judge.
- Canon 6. A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities. Although a judge does not have to file any statement of assets and liabilities, he is required to report outside compensation allowed under the Canons.
- Canon 7. A judge should refrain from political activity inappropriate to his judicial office. Generally, a judge is prohibited from engaging in political conduct.

The Advisory Committee on Judicial Conduct performs the duty of issuing advisory opinions on matters of judicial ethics and judicial conduct requested by judges.

In addition to the foregoing there are, of course, many other statutory restrictions on judicial activities. Under Section 454 of Title 28, for example, it is made unlawful for any justice or judge to engage in the practice of law. There are various laws relating to nepotism. For example, the son, daughter, nephew or niece of a judge cannot be employed as a law clerk. (This was enacted at the request of judges.)

Finally, new controls have been placed on the acceptance of fees and honoraria by judges through the Federal Elections Campaign Act as recently amended, 2 U.S.C [1976 supp.] §441i. This new legislation applies in terms to justices and judges. (The power of Congress to legislate on these matters as to the Judicial Branch has not been judicially determined but the Judicial Conference has accepted the binding effect of these statutes, since they are largely declaratory of earlier action taken by the Judicial Conference.) These judicial officers are limited to honoraria in an individual amount no greater than \$2,000, excluding expenses, for any one lecture or speech. Judges are also subject to the annual limit of \$25,000, in common with Members of Congress.



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THE WHITE HOUSE
WASHINGTON

December 21, 1976

Dear Judge MacBride:

Thank you very much for your eloquent statement of the case for the recommendations made by the Quadrennial Commission concerning judicial salaries.

I will share your letter with others in the White House who are working on this matter.

As to your concern that the President may defer decision concerning the Commission's recommendations, I do not believe this is a likelihood.

Very best regards.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Thomas J. MacBride
Chief Judge
United States District Court
Eastern District of California
Sacramento, California 95814

cc: Mike DuVal

Judicial Salaries



United States District Court
Eastern District of California
Sacramento, California 95814

December 16, 1976

Chambers of
Thomas J. MacBride
Chief Judge

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buchen:

I am imposing on our friendship by asking you to strike a blow for Federal Judges in the salary matter presently pending before President Ford.

The Associated Press carried a story in yesterday's morning paper reporting on the meeting of the President with Congressional leaders concerning the recommendations of the Quadrennial Commission. The report was most encouraging except in one respect. The reporter speculated that the President might defer making his own salary recommendation in his January budget message, and thus leave the salary decision to President-elect Carter. I hope that President Ford will not do this.

If the President leaves the decision to President-elect Carter, then the latter might have difficulty reconciling some of his campaign statements with an immediate pay raise for the higher echelons of the three branches of government. I say this notwithstanding the fact that he committed himself to an increase in pay for Federal Judges in an interview reported in the American Bar Association Journal. If President-elect Carter should then defer making a pay raise recommendation in 1977, the matter would most likely be required to go over to 1978 and we would again be confronted with "election year reluctance" on the part of Congress.

I take the liberty of writing this letter for the reason that in my own District, and I am sure that a similar situation exists in other Districts throughout the Federal Judicial System, we are faced with a desperate



shortage of Judges. The caseload for each of the three Judges in this District is now up to 664 cases per Judge. As Chief Justice Burger pointed out in his January 4, 1976 "Year End Report of the Judiciary," the average caseload per Judge in the Federal Judiciary is 402 cases, which he labeled "an unrealistic number for one judge." Because practically every District in the Ninth Circuit is overloaded, it has become almost impossible to borrow judicial help from other Districts in the Circuit. Accordingly, we must have additional judge help in this District within the coming year -- otherwise the fair and prompt administration of justice in the District will become impossible.

In the 94th Congress the Senate sent to the House a so-called "bobtailed" omnibus bill which provided for 46 additional district judgeships. This bill died in the House in the waning days of the 94th Congress. The United States Judicial Conference has now recommended to the Congress that 106 additional district judgeships be created. I believe this bill has a very reasonable opportunity of passage, to the end that we can expect a substantial number of new Judges to be "on the line" by September 1977. The big problem I believe will be to obtain qualified persons to fill these new positions in California. It will be almost impossible to attract good lawyers or any Judges from the State system at the present salaries being paid United States District Judges. I submit that the only applicants for the jobs will be either independently wealthy lawyers, old lawyers who are looking for an easy retirement, or younger lawyers who have not been successful in private practice. There is practically no incentive for any State Judge to seek a Federal judgeship. Municipal Court Judges, who preside over courts of limited jurisdiction (\$5,000 maximum -- "small claims" matters -- no felonies -- no probate or domestic relations) now receive an annual salary of \$45,235. Judges of courts of general

Mr. Philip W. Buchen

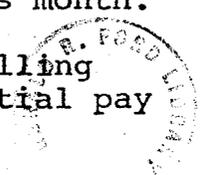
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December 16, 1976

jurisdiction, such as this court, receive an annual salary of \$49,166. Although these Judges pay into a retirement system where we District Judges are not required to, the survivors' benefits for State Judges are far superior to that afforded District Judge survivors. During the last two or three years I have talked with two local Superior Court Judges and a number of well qualified Sacramento attorneys concerning the prospects of having them apply for a judgeship with this court if new judgeship positions are created. During these conversations all of these persons have expressed to me a definite interest in a Federal judgeship appointment. Now, because of the completely unrealistic salary presently paid Federal Judges, and also because of the apparent difficulty Federal Judges encounter in having their salaries adjusted to meet increases in the cost of living, they have advised me that they are no longer interested in the job. I am satisfied that unless the pay for Federal Judges is fixed at a rate approximately equal to that recommended by the Quadrennial Commission, then President Carter and Senators Cranston and Hayakawa will find it difficult, if not impossible, to fill the new judgeships with qualified men and women.

Parenthetically, and to emphasize the complete injustice of the present pay scale for Federal Judges (which is common knowledge throughout the bench and bar of this state), may I point out that my senior law clerk, who has been admitted to practice for 12 months, now receives a salary of \$20,442 -- slightly less than one-half the amount I receive notwithstanding the fact that I have been an attorney for 35 years and a Federal Judge for slightly in excess of 15 years. Moreover, the large law firms in San Francisco and Los Angeles are offering a starting salary of \$20,000 per year to young lawyers who will be admitted to practice in California in this month.

All of the above is a lengthy way of telling you that unless President Ford includes a substantial pay



Mr. Philip W. Buchen

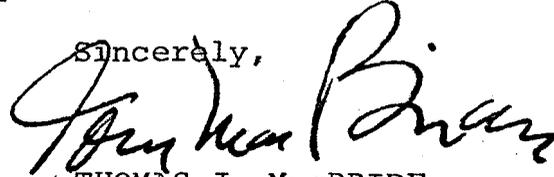
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December 16, 1976

raise for Federal Judges in his January 1977 budget message, then there is a good chance that the administration of justice by the Federal Judiciary will suffer damage from which it will take years to recover with resulting mental and financial injury and inconvenience to litigants who are coming in ever increasing numbers to our Federal courts.

Thank you for any help that you can give us, and my kindest regards to you and the President.

Sincerely,



THOMAS J. MacBRIDE

TJM:m

P.S. If President Ford makes a reasonable recommendation, I have a "visceral" feeling that President-elect Carter will not disturb it.

TJM



January 17, 1977

Dear Mr. McCann:

Thank you very much for your letter concerning the matter of Federal Judiciary salaries.

As you will note by this time, the President has taken action. Although his recommendations for the Federal Judiciary were not at the levels recommended by the Quadrennial Commission, they appear to be as high as feasible under the circumstances, given the need to obtain broad bipartisan support.

With best wishes.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. W. R. McCann
South Dakota Delegate
to the American Bar
Association
1155 East 60th Street
Chicago, Illinois 60637





AMERICAN BAR ASSOCIATION

HOUSE OF
DELEGATES
COMMITTEE ON
MEMBERSHIP

1155 EAST 60TH ST., CHICAGO, ILLINOIS 60637 TELEPHONE (312) 947-4000

WRITER'S DIRECT TELEPHONE NUMBER

January 7, 1977

CHAIRMAN
Allen E. Brennecke
302 Masonic Temple Bldg.
Marshalltown, IA 50158

VICE-CHAIRMAN
William R. McCann
317 Sixth Ave.
Brookings, SD 57006

Austin B. Noble
P.O. Box 159
Montpelier, VT 05602

Preston L. Prevatt
1010 First Natl. Bank Bldg.
Miami, FL 33131

Sharp Whitmore
9601 Wilshire Blvd.
Beverly Hills, CA 90210

Mr. Philip W. Buchen
Special Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Buchen:

It is my understanding that President Ford is contemplating submitting to the Congress for its approval a recommendation or administrative order for the increase in the Federal Judiciary salaries. Such action has been long overdue and has the support of the American Bar Association, Chief Justice Berger and President Justin Stanley, the current President of the A.B.A.

It has been most difficult under existing circumstances to get eligible and desirable men or women to leave their private practice and to accept appointment to the Judiciary because it means a substantial loss in income to most potential appointees. We certainly should have the most competent and capable persons to fill these appointments.

Such action on the part of the President would continue to maintain the high esteem which we have for President Ford and I feel would have the support of the great majority of those of use who supported him in this past presidential campaign.

Sincerely yours,

W. R. McCANN
South Dakota Delegate
to the American Bar Association

WRM:ssr

