The original documents are located in Box 62, folder "Supreme Court - General" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

9·19·74

TO: Phil Buchen

For Your Information: V

For Appropriate Handling: _____

Robert D. Linder

Eva - I think we can file.
JC

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

September 16, 1974

RL

My dear Mr. President:

I have the honor to inform you that this Court will open the October 1974 Term on October 7, 1974, at 10:00 a.m., as provided by law, and will continue, pursuant to our present calendar, until all matters before the Court, ready for argument, have been decided.

Respectfully,

Warren E. Burger

The President
The White House
Washington, D. C. 20500

Supreme Court of the United States
Washington, D. C. 20543

The President
The White House
Washington, D.C. 20500

CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court

John C Bennett

April 26, 1975

To: Dudley Chapman

From: Eva

Attached are copies of previous exchanges of telephone calls from John C. Bennett.

His most recent call suggested this new route by which to accomplish his purpose -- so I suggested he write a letter and we could see to whom we should refer his information.

Supreme Court

TELEPHONE: 377-1086

JOHN C. BENNETT
CERTIFIED PUBLIC ACCOUNTANT

2245 CHAMBWOOD DRIVE
P. O. BOX 9082
CHARLOTTE, NORTH CAROLINA 28205

April 24, 1975

Hon. Phillip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Sir: Referring to our recent exchange of calls and correspondence:

The decision of the Justice Department that they have a conflict in their duties in trying to do justice in this case, confirms my belief that relief lies in the Executive Department exclusively.

I believe it would be in the government's interest and the public interest to make a grant through the National Science Foundation or some other similar agency to finance an independent report on this case. By independent report, I mean a report along the standards required of corporation financial report by the S. E. C. , ~~xxxxxxxxx~~ outlining without prejudice the position of the profession of law practice in this country's operation. In 1933 Congress realized that in order to get the public to support business by mass investment in private enterprise, it would be necessary to rely on the accounting profession to simply tell the truth about the financial positions of big companies, and let the public weigh this information and invest according to their judgment. The result was a sensational success--the economic history of the United States since 1933 has been a portrayal of what can be achieved by mass public support of legitimate business--from ~~xxxxx~~ widows and orphans to amateur speculators to organized big business in making investments. The key to this success has been independent reports by C.P.A.'s laying the cards on the table.

What I propose to do is roughly the same thing in law and justice that was achieved in business and financial ~~xxxxx~~ circles. ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ I will mention one specific example which is typical of the case: The Supreme Court has leaned over backward to guarantee due process of law to a bootlegger (Lipke vs. Lederer 259-US-557), ~~xxx~~ while leaning the other way to rule that the need for public revenue justifies suspension of due process in numerous cases concerning ~~xxx~~ Sect. 7421(a). Actually 7421(a) is unconstitutional prima facie. This country has a tradition for maintaining due process come hell or high water (see Milligan and Merryman during Civil War). A very important point to make in this respect is that suspension of due process to make revenue collection more efficient has exactly the opposite effect, because it gives the legal profession a foothold to obstruct revenue collection which would otherwise be made through simple due process of law. That is the main lesson from my case. On this one point, there are literally billions of dollars in public revenue at stake every year. Courthouses all over the country ~~xx~~ are loaded with tax liens that have never been collected, but which could be collected, if the Internal Revenue would proceed with due process of law.

I propose simply that I be awarded a grant of $50,000 to prepare a full length independent auditor's type report along S.E.C. lines without sentiment or editorial comments about law practice and the effect on government.

TELEPHONE: 377-1086

JOHN C. BENNETT
CERTIFIED PUBLIC ACCOUNTANT

2245 CHAMBWOOD DRIVE
P. O. BOX 9082
CHARLOTTE, NORTH CAROLINA 28205

It would be more or less a continuation of the The Federalist, which as you know was the combined work of John Jay, James Madison, and Alexander Hamilton.

Those gentlemen did a good job of selling the constitution to the public in 1787, but they stopped short when they had gotten what they wanted--ratification of the constitutions. What has long been needed is a report of how it worked after it was put into operation.

This report would be addressed to whatever agency is determined to have jurisdiction, and would be privileged, subjedt to judgment of the executive officer.

The subject is so broad and comprehensive WITHOUT going into details. I will take up some space at this point to say that it would grossly unfair to single out any one prospective attorney for me. The other lawyers would hound him to death so he could not practice law at all. I have to be careful not to be seen visiting any lawyer's office to spare the lawyer this ordeal; no matter what the nature of my visit is, other lawyers conclude that the lawyer I visit or talk to in public is taking my case, and the lawyer is hounded with questions for days afterward.

The key issue now before the Supreme Court, I believe, is that the case generates questions of propriety in bar and court communications, about which lawyers and judges have a mutual interest and should be encouraged to communicate, they should also communicate with the principal--me, and that is what the courts have neglected to do.

The Supreme Court will act on this issue one way or the other on what is now before them, and the result cannot be predicted at this time--they may WAIT until they get a better case.

All I did was to make recommendations to my clients to observe the letter of the law, which clashed with bar principles which lawyers honestly and sincerely believe in, and therein lies the present state of affairs.

I believe it will be in the public interest for the government to support a factual report on the principles involved--there is never any excuse to suspend due process, and it is more profitable for the taxpayers to maintain due process come hell or high water.

It would not be incorrect to say that I am prejudiced. However, I am still a C.P.A. dedicated to reporting the facts. You might say that I am like the Irish in World War II--(and the U.S.Navy in 1940)--I am neutral on the side of due process.

I mention a grant under the National Science Foundation--that is only one possibility. There are undoubtedly other possibilities within your jurisdiction.

I appreciate your consideration.

Sincerely,

John C. Bennett

John C. Bennett

Thursday 3/13/75

4:20 John Bennett called.

I suggested he talk with Dudley Chapman; checked with Chapman and he said it was a matter for the Justice Dept.

Mr. Bennett said he had talked at length with Mark Grunwald in Justice.

He said he could sum up on a page what he felt should be done. I suggested he do that and send it to Leon Ulman at Justice, and send a copy to Mr. Buchen.

He plans to do that.

Bennett, John

THE WHITE HOUSE
WASHINGTON 2/13/75

Refer this to Leon Ulman at Justice - by phone call to him, giving him Ulman's number. D.C.

202-739-2051

2/13

Eva,

I referred Mr Bennett to Justice.

Nancy

Sent to Dudley Chapman at suggestion Ben Bueder

Bennett John

Tuesday 2/11/75

11:20 John Bennett called from Charlotte, N.C. (704) 377-1086

He indicates that on the record of the Supreme Court right now there is a question about Article 3 of the Constitution and the 10th amendment.

He said he expects they will put it on the official hearing docket whether or not regulation of law practice belongs under Article 3 or the 10th amendment. On that subject he has written a January 4 letter probably in Correspondence somewhere outling the details of this.

It is a broad subject and very important. In order to get permission to bring this before the Supreme Court officially, he said he has had to take a lot of punishment.

He said that for the last 200 years all lawyers in practice are regulated at the state level. According to his position, he has arrived at after a long punishment which has been very debilitating--question arises which will be presented to the Supreme Court in the regular course of business whether or not the Supreme Court should take jurisdiction over law practice under article 3. Law practice has been regulated by the American Bar Association, which is a private concern -- not official. W/ Question whether any court in the United States can tell the bar association that you're practicing law illegally. That question has not been brought up -- they assume that the Constitutional Convention intended the law practice to be at the state level. According to the Articles of Confederation was to centralize control over law. Otherwise the union wouldn't have any power. You're getting into position that I can present this position to the Supreme Court. Said he has had to undergo 25 years of a criminal trial , which you might say is the longest on record. Whole generation of lawyers has gone by and the bar association at the national level and state level consider him their mortal enemy because they want to keep it at the state level.

He said the Chief Justice has expressed himself that it ought to be at the national level and should be on the order of the English standard. Mr. Bennett indicates he has the case that will give the Chief Justice what will be needed.
He said in taking the punishment, he's had a "hell of a licking."

Would like to talk with someone about this.

Supreme Ct.

THE WHITE HOUSE

WASHINGTON

November 16, 1976

Nell,

Mr. Buchen would like the attached letter from Justice Burger given to the President.

Thanks.

Shirley Key

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 9, 1976

Dear Mr. President:

The events of November 2 brought back vividly to our minds your call to me in the early morning hours of August 9, 1974, while Vera and I were in Holland, having just arrived there for a rest. On that precipitous return trip we reflected on the state of the nation and the unparalleled circumstances in which you were to assume the responsibilities of the Presidency. I confess that, as we flew back to Washington, it was clear that no American, since Lincoln, had ever been called upon to take such enormous burdens under such melancholy conditions. Mr. Johnson had the advantage of a unity forged out of a common tragedy, as did Mr. Truman. You were confronted with massive problems and a country divided, disillusioned, and confused.

In the two short years since then you accomplished what seemed at the outset almost impossible. Faith and trust in government have been restored due to confidence in your own integrity. You achieved that while extricating us from Vietnam, bringing inflation under manageable control, reducing unemployment, cooling off tensions in this troubled world, and maintaining peace.

Success in less than all of these would have earned you a high place, and in the perspective of history this will be universally acknowledged. As it is, nearly 39 million Americans attested this on November 2.

As we recalled the anxiety we felt flying back to Washington that night in August 1974, we realized the debt we and all Americans owe you for your calm, steadfast, and courageous leadership in one of the dark periods of American history. For this Vera and I, joined by Wade and Margaret, record our thanks to you, to Betty, and to your family, for you have borne the brunt and brought the nation to a condition that paves the way for your successor.

We wish you all the best in the years ahead.

Respectfully and sincerely,

Warren E. Burger

The President

The White House

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

For filing
P.

October 4, 1976

Dear Phil:

Many thanks for the photographs from the President's dinner for Queen Elizabeth.

They will indeed be a valuable addition to the "collection."

Cordially,

Warren

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

Burger, Warren E. (Hon)

THE WHITE HOUSE

WASHINGTON

September 29, 1976

Dear Warren:

The White House Photographer's Office has passed on to me three delightful photographs taken of you. I assume that the occasion was the State dinner in honor of Queen Elizabeth.

I know your collection of memorabilia must be growing exceedingly large, but I hope you will find the enclosures worthy additions to your collection.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
The Supreme Court of the
United States
1 First Street, N. E.
Washington, D. C. 20543

Enclosures

THE WHITE HOUSE

WASHINGTON

September 14, 1976

MEMO FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: Attachment

The Chief Justice's Office advises me that these letters are routinely provided to the President, the Vice President, the President Pro Tempore and Speaker as a courtesy. Normally, responses are not in order.

The letter can be forwarded to Central Files.

Attachment

Shirley
O.K.
P

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

September 7, 1976

RW

Dear Mr. President:

I have the honor to inform you that this Court will open the October 1976 Term on October 4, 1976, at 10:00 a.m., as provided by law, and will continue, pursuant to our present calendar, until all matters before the Court, ready for argument, have been disposed of or decided.

Until recent years, on opening day, i.e., October 4, 1976, the Court formally convened but immediately adjourned for one week, prior to hearing arguments, for a week of conferences to pass on the petitions and jurisdictional statements filed during July, August and September. However, with the increased workload it became necessary to assemble one week prior to the official opening, i.e., September 27, for daily conferences, thereby enabling us to begin hearing arguments on October 4, the official opening of the Term.

Respectfully,

Warren E. Burger

The President
The White House
Washington, D.C. 20500

Supreme Court of the United States
Washington, D. C. 20543

Supreme Ct.

CHAMBERS OF
THE CHIEF JUSTICE

August 16, 1976

Dear Phil:

Thank you for your note of August 6 enclosing the two photographs.

They are going in my photograph library. Each is an outstanding reminder of two memorable evenings.

Cordially,

WEB

The Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Supreme Court

August 18, 1976

Dear Mary:

Enclosed are the tickets for Jackie and Gary Maloney for the White House Tour at 8:45 a.m. on Tuesday, September 14.

I hope you will come over and visit us -- and see your "old haunts" again!

Sincerely,

Eva Daughtrey

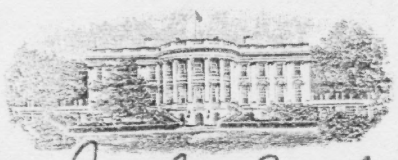
Mrs. Mary Burns
United States Supreme Court
1 First Street, N. E.
Washington, D. C. 20543

NON TRANSFERABLE
(PLEASE DO NOT DETACH)

Jackie Maloney
NAME OF VISITOR

9/14/76
REQUESTED BY: DATE
MICHAEL J. FARRELL

EAST GATE NO. 496



NAME OF VISITOR Jackie Maloney

REQUESTED BY: DATE 9/14/76

MICHAEL J. FARRELL TIME 8:45 am

NO. 496

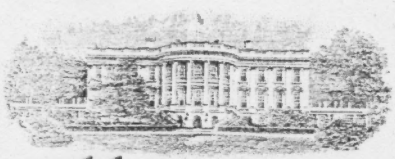
Gerald R. Ford
PRESIDENT OF THE UNITED STATES

NON TRANSFERABLE
(PLEASE DO NOT DETACH)

Gary Maloney
NAME OF VISITOR

9/14/76
REQUESTED BY: DATE
MICHAEL J. FARRELL

EAST GATE NO. 497



NAME OF VISITOR Gary Maloney

REQUESTED BY: DATE 9/14/76

MICHAEL J. FARRELL TIME 8:45 am

NO. 497

Gerald R. Ford
PRESIDENT OF THE UNITED STATES

Supreme Court

THE WHITE HOUSE

WASHINGTON

August 6, 1976

Dear Warren:

Enclosed is a photograph of some exceedingly joyful men taken by the White House photographer. Only the Englishman seems a bit dour.

I hope you'll find it to be a delightful reminder of your evening at the British Embassy.

Also, I enclose another photo taken at the President's dinner in honor of the Judiciary.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
United States Supreme Court
1 First Street, NE.
Washington, D.C. 20543

Enclosures

RICARDO THOMAS

Official Photograph The White House 9JY 76 Bp599-31A

THE WHITE HOUSE

WASHINGTON

June 24, 1976

MEMORANDUM FOR: PHIL BUCHEN
ED SCHMULTS
PAUL O'NEILL
DAVID LISSY

FROM: BOBBIE KILBERG

Attached is a very short summary of the Supreme Court decision today in National League of Cities v. Usery. We will have copies of the decision tomorrow.

Attachment

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR

JUN 24 1976

MEMORANDUM TO THE SECRETARY
UNDER SECRETARY
SOLICITOR OF LABOR
ASSISTANT SECRETARY FOR ESA
ADMINISTRATOR OF THE WAGE-HOUR
DIVISION

Re: National League of Cities vs. Usery

The Supreme Court held today that the Fair Labor Standards Act cannot constitutionally be applied to those State and local government activities which provide integral parts of the government services which the States and their political subdivisions have traditionally afforded. The Court expressly found that the following activities were among those to which the Act cannot validly apply: schools, hospitals, fire prevention, police protection, sanitation, public health, parks and recreation. It indicated, however, that the Act could apply to the State's operation of a railroad.

The Department of Labor is currently studying the Court's decision to determine what additional activities may still be subject to the minimum wage and overtime requirements of the Act. For example, the opinion does not specifically discuss such activities as State liquor stores and utility companies. In addition, the decision makes no express reference to the Age Discrimination in Employment Act (which was extended to State and local government employees by the 1974 Amendments to the Fair Labor Standards Act), the Equal Pay Act (which is part of the Fair Labor Standards Act) and the child labor provisions of the Fair Labor Standards Act. The Department is studying the decision to determine its implications with respect to these fields of federal regulation.

The Court's decision was written by Justice Rehnquist who was joined by Chief Justice Berger, and by Justices Stewart and Powell. Justice Blackmun provided the fifth vote necessary for a majority, His separate concurring opinion was based on his understanding that the Court's opinion "does not outlaw federal power in areas such as environmental protection" where the federal interest is demonstrably greater and where state compliance is essential to the protection of the federal interest.

Justice Brennan wrote a dissenting opinion in which Justices White and Marshall joined. Justice Stevens wrote a separate dissenting opinion.

Carin Ann Clauss

Carin Ann Clauss
Associate Solicitor

Sup. Ct.

THE WHITE HOUSE

WASHINGTON

June 16, 1976

MEMORANDUM FOR: DOUG BENNETT

FROM: PHIL BUCHEN P.

SUBJECT: Executive, Legislative & Judicial Salaries Commission

The Chief Justice advises me that his appointees to this Commission will be Chesterfield Smith of Florida, who is the former President of the ABA, and Charles Duncan, who is Dean of the Howard Law School.

I concur in having the President select for his three appointees the following:

Peter G. Peterson, to be chairman
Lane Kirkland
Marina Whitman

The Chief Justice would like to coordinate the announcement he makes of his appointees with the announcement made of the President's appointees. He would be glad to make his announcement just after that of the President or just before, depending on the President's wishes.

I hope we can conclude this matter quickly.

cc: Jim Lynn

THE WHITE HOUSE

WASHINGTON

June 16, 1976

Dear Warren:

As promised, I am enclosing a copy of the President's schedule covering significant public events from July 1 through July 5. Other events not on the schedule are being considered.

I am sure that the President would welcome coordination between your plans and his so that, between the two of you, additional events could be covered. I have talked to Mr. Milton Mitler, who is in charge of the bicentennial arrangements for the White House, and he would welcome any inquiries or suggestions you may have. His phone number is 456-2800.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
United States Supreme Court
1 First Street, N. E.
Washington, D. C. 20543

Enclosure

July 1, Thursday

11:00 a.m. — Dedicate the National Air & Space Museum. The museum is located on the Mall along Independence Avenue between 4th & 7th Streets.

July 2, Friday

9:00 p.m. — Deliver address at the National Archives at a ceremony in honor of the Declaration of Independence.

July 3, Saturday

8:30 p.m. — Honor America program at the Kennedy Center.

July 4, Sunday

7:30 a.m. — Attend early church service at either St. John's on Lafayette Square of Christ Church in Alexandria.

8:00 a.m. — Depart for Valley Forge, Pennsylvania.

9:00 a.m. — Greet wagonmasters at Wagon Train Encampment at Valley Forge Park and accept Pledges of Rededication which were signed by hundreds of thousands of Americans and collected by the wagon trains enroute to Valley Forge.

9:40 a.m. — Depart for Philadelphia.

10:00 a.m. — Special bicentennial program at Independence Hall in Philadelphia.

12:15 p.m. — Depart for New York City.

2:00 p.m. — Review Operation Sail 1976 and the International Naval Review.

9:30 p.m. — View Happy Birthday, USA fireworks program from the Truman Balcony of the White House.

July 5, Monday

10:00 a.m. — Depart for Charlottesville, Virginia.

11:00 a.m. — Speak following naturalization ceremonies on the steps of Monticello, the home of President Jefferson.

Sup Ct.

THE WHITE HOUSE

WASHINGTON

June 11, 1976

MEMORANDUM FOR: JIM CANNON

FROM: PHIL BUCHEN P.

You suggested that I examine the recent Supreme Court decision issued June 7, 1976, in the case of Washington v. Davis. This case involved the validity of certain testing procedures used by the District of Columbia in selecting applicants to take the District's training course for positions in the police department. The evidence showed that a disproportionately high number of negro applicants were kept from the training program because of failure to achieve the necessary minimum scores on the tests.

One of the issues before the Supreme Court was whether the Circuit Court of Appeals had properly reversed the trial court in its finding that there had been no violation of the equal protection rights of petitioners under the Fifth Amendment because there had been no evidence that the test was a purposely discriminatory device. The Supreme Court reversed the Court of Appeals, saying in part at pages 8 and 9 as follows:

> "The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. It is also true that the Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups. Bolling v. Sharpe, 347 U.S. 497 (1954). But our cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact."

* * * *

> "The school desegration cases have also adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose. That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause. The essential element of de jure segregation is 'a current condition of segregation resulting from intentional state action ... the differentiating factor between de jure segregation and so-called de facto segregation ... is purpose or intent to segregate.' Keyes v. School District No. 1, 413 U. S. 189, 205, 208 (1973)."

Although this language has no bearing on the extent of the remedy in cases where unconstitutional acts are found, it does suggest that any remedy which goes beyond overcoming the present effects of prior purposeful discrimination is not constitutionally mandated. This would support our view that the legislation which we propose to have enacted would not run into constitutional problems. However, as is made clear from the separate concurring opinion of Justice Stevens, a racially discriminatory purpose may validly be inferred from evidence of a discriminatory impact. In his opinion, he writes on page 2, as follows:

> "My point . . . is to suggest that the line between discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical, as the reader of the Court's opinion might assume. I agree, of course, that a constitutional issue does not arise every time some disproportionate impact is shown. On the other hand, when the disproportion impact is as dramatic as in Gomillion or Yick Wo, it really does not matter whether the standard is phrased in terms of purpose or effect."

cc: Ed Schmults
Dick Parsons
Bobbie Kilberg

2/25/76

Katie brought
this by for
Mr. B to
check ——
it's OK

the originals
are being returned
in Central files

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chief Justice:

Your letter of January 28 with which you forwarded Judge Griffin B. Bell's letter of resignation has been received. I share your concern over the loss of proficient members of the Federal Judiciary. It is with special regret, therefore, that I am accepting Judge Bell's resignation, to be effective at twelve noon, March 1, 1976, as he requested.

Sincerely,

The Honorable Warren E. Burger
The Chief Justice
of the United States
Washington, D. C. 20543

Thursday 1/29/76

10:10 Mary Burns in the Chief Justice's office wanted to get this to you right away.

The announcement is to be made in Georgia this morning.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 28, 1976

Dear Phil:

Shortly after you left, Judge Bell's clerk reached here and delivered his letter of resignation addressed to the President and I hand it to you for delivery.

I appreciate your taking the time to visit on the problem that is so crucial to the judiciary as manifested, among other things, by Judge Bell's resignation.

Cordially,

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

By Hand

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

THE PRESIDENT HAS SEEN....

January 28, 1976

Dear Mr. President:

I regret to be the bearer of bad news in the form of delivering to you the letter of resignation of Judge Griffin B. Bell of the United States Court of Appeals, Fifth Judicial Circuit, effective March 1, 1976. Judge Bell follows an old tradition of asking the Chief Justice to deliver his resignation to the President.

Judge Bell informed me of his plans a few days ago and I wish I had been able to dissuade him. He did not want to articulate obligations to his family as a reason for his resignation but that is essentially the basis of his decision. He was undoubtedly one of the outstanding men appointed by President Kennedy and has fulfilled everything that was expected of him on the basis of his career as a lawyer. I venture to say it will not be easy to find a man of his quality even in a state like Georgia which has a splendid bar.

Sincerely,

Warren E. Burger

The President

The White House

THE WHITE HOUSE

WASHINGTON

Dear Judge Bell:

I have your letter of January 28, and it is with deep regret that I accept your resignation as United States Circuit Judge for the Fifth Circuit, effective, as you requested, at twelve noon on March 1, 1976.

In doing so, I want to express my appreciation for your distinguished contributions to the well-being of our fellow citizens as a member of the Federal Judiciary since 1962. You have served our Nation with skill and dedication, and I hope you will always look back with pride on your achievements.

You have my best wishes for every success and happiness in your return to private life.

Sincerely,

The Honorable Griffin B. Bell
Judge
United States Court of Appeals
for the Fifth Circuit
Post Office Box 845
Atlanta, Georgia 30301

UNITED STATES COURT OF APPEALS

FIFTH JUDICIAL CIRCUIT

January 28, 1976

THE PRESIDENT HAS SEEN.....

GRIFFIN B. BELL
CIRCUIT JUDGE
P. O. BOX 845
ATLANTA, GEORGIA 30301

Dear Mr. President:

I hereby resign as a United States Circuit Judge and as a member of the United States Court of Appeals for the Fifth Circuit, effective at twelve noon on March 1, 1976.

I have served since October 6, 1961. The intervening years were filled with challenges for the federal courts; indeed with challenges to and changes in government on all levels. A revolution over social change was accommodated in law and in no small measure in the federal courts. We have moved now to a period when the law is in a process of necessary adjustment and stabilization.

I have an abiding faith in our federal courts and particular pride in the court on which I have been privileged to serve. I leave with the satisfaction and reward which one gains from being able to render needful public service.

Although returning to the private sector and to full citizenship, you may be assured that I will have a continuing interest in the administration of justice.

Yours sincerely,

Griffin B. Bell

The President
The White House
Washington, D. C.

Supreme Ct.

THE WHITE HOUSE

WASHINGTON

April 16, 1976

Dear Warren:

You were very thoughtful to call be about the death of Judge Hastie. As a result, the enclosed statement was issued by the President.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
United States Supreme Court
1 First Street, N. E.
Washington, D. C. 20543

FOR IMMEDIATE RELEASE

APRIL 15, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am deeply saddened to learn of the untimely death of senior Judge William H. Hastie, former Chief Judge of the U.S. Court of Appeals for the Third Circuit. His death is a great loss to the Nation, the Judiciary, and the Judicial Conference Advisory Committee on Appellate Rules, where he served as Chairman.

Judge Hastie's outstanding abilities have long graced the federal judiciary. His life in public office as a lawyer, as Dean of Howard University Law School and as the first black Federal Judge have left an indelible imprint on the Nation.

# # #

file

6:00 p.m. Tuesday, February 10, 1976

Chief Justice Burger called and left the following message:

> The enrolled bill H.R. 6184 has been sent over to OMB. This is a "sleeper"that has direct bearing on the whole problem of judicial and related salaries. It is,in effect, an "end run" around Congressional and administrative policies. It would in application increase the salary of bankruptcy judges from $31,500 a year to $37,800 a year and totally distort the relationship of these salaries to Federal Magistrates and all Federal judges.
>
> The Judicial Conference of the U. S. passed a resolution strongly urging that this legislation not be passed.
>
> We have now written a letter to the OMB in response to their request advising them of the Conference action.
>
> In practical effect, this means that we are suggesting a veto of the bill, although this is not directly the function of the Judicial Conference.
>
> I will be glad to talk to you tomorrow about this.

****

The material the Chief Justice gave you about a week ago -- one on a retiring judge and the other on a deceased judge -- was incorrect. He is sending over the corrected material and we should receive it within a couple of days.

Supreme Ct. (see Judicial pay)

THE WHITE HOUSE

WASHINGTON

February 3, 1976

MEMORANDUM FOR: DOUGLAS BENNETT

FROM: PHIL BUCHEN P.

On Monday, February 2, the President met briefly with Chief Justice Burger along with Jim Lynn and me. The Chief Justice brought up the subject of the desirability to have members of the Commission on Executive, Legislative and Judicial Salaries appointed promptly. This Commission was established under Section 225 of the Postal Revenue and Salaries Act of 1967 (2 U.S.C. Sec. 351 et seq.) and is to be appointed at four year intervals to make recommendations to the President on pay rates for Senators, Representatives, federal judges and certain officers in the Executive branch. The Act calls for appointment of a reconstituted Commission this year in time to permit its recommendations to be considered by the President and included with the President's budget to be submitted to the Congress in January 1977. Three members are to be appointed by the President, two by the Chief Justice, two by the President of the Senate and two by the Speaker of the House.

The President expressed his willingness to join with the other appointing officers in making these appointments fairly soon so that the Commission would have ample time for its deliberations.

The Commission must be appointed from persons outside of Government and it is desirable that they be distinguished persons who will command the respect of the public and the confidence of all three branches of Government.

In order to achieve a balanced Board, it appears desirable that there be coordination between the appointing officers before their respective selections are made and announced.

After the meeting, the Chief Justice handed me information from Who's Who in America which is

attached. The names marked are ones that he thought should be among the persons to be considered by one or more of the appointing officers.

Attachment

cc: Richard Cheney
Jim Lynn

Meeting with

the Chief Justice

1/28/76 -- 1:00 p.m.

EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES CMN R SOUTH CAROLINA 4970 5/26

EXEC LEGISL	JUD SALARIES	WAE	PA	01	0	PATTON ARCH	U	DIST OF COL	72/12/11	73/06/30	G	1	01	?
EXEC LEGISL	JUD SALARIES	WAE	PA	01	0	PACKARD DAVID	R	CALIFORNIA	72/12/11	73/06/30	G	1	01	
EXEC LEGISL	JUD SALARIES	WAE	PA	01	0	LYONS JOHN H	U	MISSOURI	72/12/11	73/06/30	T	1	01	

CHAPTER 11.—COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES [NEW]

§ 351. 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").

Pub.L. 90–206, Title II, § 225(a), Dec. 16, 1967, 81 Stat. 642.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

Legislative History: For legislative history and purpose of Pub.L. 90–206, see 1967 U.S.Code Cong. and Adm.News, p. 2258.

Index to Notes

Generally 1

1. Generally

Taxpayer lacked standing to maintain action attacking congressional pay raise effected by this chapter. Richardson v. Kennedy, D.C.Pa.1970, 313 F.Supp. 1282. Affirmed 91 S.Ct. 868, 401 U.S. 901, 27 L. Ed.2d 800.

§ 352. Membership of Commission; appointment; Chairman; term of office; vacancies; compensation; expenses; allowances

(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, when engaged in the performance of services for the Commission.

Pub.L. 90–206, Title II, § 225(b), Dec. 16, 1967, 81 Stat. 642.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 353. Executive Director; additional personnel; detail of personnel of other agencies

(1) Without regard to the provisions of Title 5, 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 section 352(2) and (3) of this title—

(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; 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) 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 section 352(2) and (3) of this title, any of the personnel of such department, agency, or establishment to assist the Commission in carrying out its function.

Pub.L. 90–206, Title II, § 225(c), Dec. 16, 1967, 81 Stat. 643.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 354. 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.

Pub.L. 90–206, Title II, § 225(d), Dec. 16, 1967, 81 Stat. 643.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 355. Administrative support services

The Administrator of General Services shall provide administrative support services for the Commission on a reimbursable basis.

Pub.L. 90–206, Title II, § 225(e), Dec. 16, 1967, 81 Stat. 643.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 356. Functions of Commission

The Commission shall conduct, in each of the respective fiscal years referred to in section 352(2) and (3) of this title, 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 sections 136a and 136a–1 of this title, sections 42a and 51a of Title 31, sections 162a and 162b of Title 40, and section 39a of Title 44;

(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;

(D) offices and positions under the Executive Schedule in subchapter II of chapter 53 of Title 5; and

(E) the Governors of the Board of Governors of the United States Postal Service appointed under section 202 of Title 39.

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, relating to classification and General Schedule pay rates.

Pub.L. 90–206, Title II, § 225(f), Dec. 16, 1967, 81 Stat. 643, amended Pub.L. 91–375, § 6(a), Aug. 12, 1970, 84 Stat. 775.

References in Text. Section 39a of Title 44, referred to in par. (B), was repealed in the revision of Title 44 and is now covered by section 303 of Title 44, Public Printing and Documents.

The Federal Judicial Salary Act of 1964, referred to in par. (C), is Pub.L. 88–426, Aug. 14, 1964, 78 Stat. 400. Sections 402(d) and 403 thereof are classified to section 867 of Title 10, section 68 of Title 11, section 7443 of Title 26, and sections 5, 44, 135, 173, 213, 252, 603, and 792 of Title 28.

1970 Amendment. Par. (E). Pub.L. 91–375 added par. (E).

Effective Date of 1970 Amendment. Amendment by Pub.L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub.L. 91–375, set out as a note preceding section 101 of Title 39, Postal Service.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 91–375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

§ 357. Report 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 section 356 of this title, 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.

Pub.L. 90–206, Title II, § 225(g), Dec. 16, 1967, 81 Stat. 644.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 358. Recommendations of the President to Congress

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 section 357 of this title, 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 section 356 of this title. As used in this section, the term "budget" means the budget referred to in section 11 of Title 31.

Pub.L. 90–206, Title II, § 225(h), Dec. 16, 1967, 81 Stat. 644.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Governmental Organization and Employees.

SALARY RECOMMENDATIONS FOR 1969 INCREASES

Transmitted to Congress Jan. 15, 1969, published in the Federal Register Feb. 15, 1969, 34 F.R. 2241.

Public Law 90–206, approved December 16, 1967 [this chapter], established the Commission on Executive, Legislative, and Judicial Salaries. The Commission is required to make recommendations to the President, at 4-year intervals, on the rates of pay for Senators, Representatives, Federal judges, Cabinet officers and other agency heads, and certain other officials in the executive, legislative, and judicial branches. The law requires that the President, in the budget next submitted by him after receipt of a report of the Commission, set forth his recommendations with respect to the exact rates of pay he deems advisable for those offices and positions covered by the law. The President's recommendations become effective 30 days following transmittal of the budget, unless in the meantime other rates have been enacted by law or at least one House of Congress has enacted legislation which specifically disapproves of all or part of the recommendations.

At the request of the President, the first report of the Commission was submitted to him in December 1968. The report has been considered by the President and, in accordance with section

225(h) of Public Law 90–206, approved December 16, 1967, 81 Stat. 644 [this section], the President recommends the following rates of pay for executive, legislative, and judicial offices and positions within the purview of subsection (f) of that section:

A. Senators, Members of the House of Representatives, and the Resident Commissioner from Puerto Rico	$42,500
B. For other offices and positions in the legislative branch, as follows:	
Comptroller General of the United States	$42,500
Assistant Comptroller General of the United States	$40,000
General Counsel of the United States General Accounting Office, Librarian of Congress, Public Printer, Architect of the Capitol	$38,000
Deputy Librarian of Congress, Deputy Public Printer, Assistant Architect of the Capitol	$36,000
C. For justices, judges, and other personnel in the judicial branch, as follows:	
Chief Justice of the United States	$62,500
Associate Justices of the Supreme Court	$60,000
Judges, Circuit Court of Appeals; judges, Court of Claims; judges, Court of Military Appeals; judges, Court of Customs and Patent Appeals	$42,500
Judges, District Courts; judges, Customs Court; judges, Tax Court of the United States; Director of the Administrative Office of the United States Courts	$40,000
Deputy Director of the Administrative Office of the United States Courts; commissioners, Court of Claims; referees in bankruptcy, full-time (maximum)	$36,000
Referees in bankruptcy, part-time (maximum)	$18,000
D. For offices and positions under the Executive Schedule in subchapter II of Chapter 53 of title 5, United States Code [sections 5311–5317 of Title 5, Government Organization and Employees]:	
Positions at level I	$60,000
Positions at level II	$42,500
Positions at level III	$40,000
Positions at level IV	$38,000
Positions at level V	$36,000

§ 359. Same; effective date

(1) Except as provided in paragraph (2) of this section all or part (as the case may be) of the recommendations of the President transmitted to the Congress in the budget under section 358 of this title 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.

Pub.L. 90–206, Title II, § 225(i), Dec. 16, 1967, 81 Stat. 644.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

§ 360. Same; effect on existing law and prior 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 section 352(2) and (3) of this title 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 recom
fect under this chapter.

Pub.L. 90–206, Title II, § 22

Effective Date. Section effec
Dec. 16, 1967, see section 220(a)
Pub.L. 90–206, set out as a note un
tion 3110 of Title 5, Government
zation and Employees.

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§ 361. Publication of rec

The recommendations of t
ed in the Statutes at Large
be printed in the Federal R
Regulations.

Pub.L. 90–206, Title II, § 2

Effective Date. Section effec
Dec. 16, 1967, see section 220(a)
Pub.L. 90–206, set out as a not

CHAPTER 12.—C

Sec.
381. Definitions.
382. Notice of contest.
(a) Filing of notice.
(b) Contents and form of
(c) Service of notice;
service.
383. Response of contestee.
(a) Answer.
(b) Defenses by motion
answer.
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ment.
(d) Time for serving ans
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than notice of cont
(a) Modes of service.
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385. Default of contestee.
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(a) Oral examination.
(b) Scope of examination
(c) Order and time of ta
timony.
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may be taken.
(e) Subpena.
(f) Taking of testimony
or his agent.
(g) Conduct of examina
cordation of testim
tation of objection
rogatories.
(h) Examination of depo
witness; signature
ness or officer; use
sition.
387. Notice of depositions.
(a) Time for service; fo
(b) Testimony by stipul
(c) Testimony by affida
for filing.

§ 381. Definitions

For purposes of this cha
(a) The term "election"
to choose a Representative
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and judicial offices and positions
n the purview of subsection (f) of
section:

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..... $42,500
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itect of the Capitol $38,000
fic Printer, Assistant Architect
..... $36,000
he judicial branch, as follows:
..... $62,500
..... $60,000
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urt of Customs and Patent
..... $42,500
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istrative Office of the United
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e of the United States Courts;
es in bankruptcy, full-time
..... $36,000
m) $18,000
Schedule in subchapter II of
[sections 5311–5317 of Title 5,
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(2) of this section all or part
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of the President may, in accord-
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1967, 81 Stat. 644.

on 3110 of Title 5, Government Or-
zation and Employees.

and prior recommendations

transmitted to the Congress im-
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nd (3) of this title shall be held
render inapplicable, as the case
h—

prior to the effective date or
y be) of such recommendations
enacted in the period specified
of this section with respect to

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

Pub.L. 90–206, Title II, § 225(j), Dec. 16, 1967, 81 Stat. 644.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

Index to Notes

Generally 1

1. Generally

Taxpayer lacked standing to maintain action attacking congressional pay raise effected by this chapter. Richardson v. Kennedy, D.C.Pa.1970, 313 F.Supp. 1282. Affirmed 91 S.Ct. 868, 401 U.S. 901, 27 L. Ed.2d 800.

§ 361. Publication of recommendations

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.

Pub.L. 90–206, Title II, § 225(k), Dec. 16, 1967, 81 Stat. 644.

Effective Date. Section effective on Dec. 16, 1967, see section 220(a) (1) of Pub.L. 90–206, set out as a note under section 3110 of Title 5, Government Organization and Employees.

CHAPTER 12.—CONTESTED ELECTIONS [NEW]

§ 381. Definitions

For purposes of this chapter—

(a) The term "election" means an official general or special election to choose a Representative in or Resident Commissioner to the Congress of the United States, but does not include a primary election, or a caucus or convention of a political party.

COOPERATIVE FUNDS—continued

Section 17(a)(9)(A) of the Alaska Native Claims Settlement Act limits the Federal share of the expenses of the Joint Federal-State Land Use Planning Commission for Alaska to 50%. The State of Alaska provides for the remaining 50% of Commission expenses. In years prior, a portion of the State's support has been provided in-kind through assignment of State employees and lease of office space. All State support in 1977 will be in cash.

Object Classification (in thousands of dollars)

Identification code 33-11-8061-0-7-452		1975 act.	1976 est.	TQ est.	1977 est.
	Personnel compensation:				
11.1	Permanent positions	130	176	37	28
11.3	Positions other than permanent	24	61	10	2
11.5	Other personnel compensation		4		
	Total personnel compensation	154	241	47	30
12.1	Personnel benefits: Civilian	66	75	19	11
21.0	Travel and transportation of persons	11	49	11	2
22.0	Transportation of things			7	5
23.0	Rent, communications, and utilities	49	14	7	8
24.0	Printing and reproduction		43	4	
25.0	Other services	285	280	7	3
26.0	Supplies and materials	3	8	2	1
31.0	Equipment	1	1		
99.0	Total obligations	569	711	104	60

Personnel Summary

Total number of permanent positions	7	9		0
Full-time equivalent of other positions	1	2		0
Average paid employment	8	11		1
Average GS grade	10.86	10.94		
Average GS salary	$20,333	$20,756		

COMMISSION ON AMERICAN SHIPBUILDING

Federal Funds

General and special funds:

SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 33-12-0052-0-1-406		1975 act.	1976 est.	TQ est.	1977 est.
	Program by activities:				
	Study and review American shipbuilding industry (program costs, funded)	4			
	Change in selected resources (undelivered orders)	—4			
10	Total obligations				
	Financing:				
17	Recovery of prior period obligations	—6			
25	Unobligated balance lapsing	6			
	Budget authority				
	Relation of obligations to outlays:				
71	Obligations incurred, net	—6			
72	Obligated balance, start of period	10			
90	Outlays	4			

The Commission submitted its findings to the President and the Congress on October 19, 1973, and 60 days thereafter ceased to exist.

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For necessary expenses of the Commission on Executive, Legislative, and Judicial Salaries, authorized by section 225 of the Postal Revenue and Federal Salary Act of 1967 (81 Stat. 642–645), $100,000, to remain available until expended.

Program and Financing (in thousands of dollars)

Identification code 33-12-2800-0-1-805		1975 act.	1976 est.	TQ est.	1977 est
	Program by activities:				
	Administrative expenses (program costs, funded)	2			100
	Change in selected resources (undelivered orders)	—2			
10	Total obligations				
	Financing:				
40	Budget authority (appropriation)				100
	Relation of obligations to outlays:				
71	Obligations incurred, net				100
74	Obligated balance, end of period				—5
77	Adjustments in expired accounts	2			
90	Outlays	2			95

The Commission was established under section 225 of the Postal Revenue and Federal Salary Act of 1967 to review and recommend to the President at 4-year intervals the appropriate pay levels for upper-level positions in the executive, legislative, and judicial branches of the Federal Government.

Object Classification (in thousands of dollars)

Identification code 33-12-2800-0-1-805		1975 act.	1976 est.	TQ est.	1977 est.
	Personnel compensation:				
11.1	Permanent positions				58
11.3	Positions other than permanent				5
	Total personnel compensation				63
12.1	Personnel benefits: Civilian				4
21.0	Travel and transportation of persons				4
23.0	Rent, communications, and utilities				15
24.0	Printing and reproduction				3
25.0	Other services				9
26.0	Supplies and materials				2
99.0	Total obligations				100

Personnel Summary

Total number of permanent positions				6
Average paid employment				4
Average GS grade				9.00
Average GS salary				$17,923

COMMISSION ON FEDERAL PAPERWORK

Federal Funds

General and special funds:

SALARIES AND EXPENSES

[For expenses necessary to carry out the provisions of the Act of December 27, 1974, Public Law 93–556, $100,000.]

[For an additional amount for "Salaries and expenses", $4,000,000.]

[For "Salaries and expenses" for the period July 1, 1976, through September 30, 1976, $2,000,000, to remain available until expended.] (*Treasury, Postal Service, and General Government Appropriation Act, 1976; Supplemental Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 33-12-1200-0-1-804		1975 act.	1976 est.	TQ est.	1977 est.
	Program by activities:				
10	Investigation and recommendations—Federal paperwork policies and practices		4,100	1,800	200
	Financing:				
21	Unobligated balance available, start of period				—200
24	Unobligated balance, end of period			200	
40	Budget authority (appropriation)		4,100	2,000	
	Relation of obligations to outlays:				
71	Obligations incurred, net		4,100	1,800	200
72	Obligated balance, start of period			200	
74	Obligated balance, end of period		—200		
90	Outlays		3,500	2,000	200

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COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Independent

AUTHORITY: 81 Stat. 642,
P.L. 90-206, Sec. 225, approved December 16, 1967.

METHOD: (See below.)

MEMBERS: NINE members appointed from private life, as follows:

THREE appointed by the President,
TWO appointed by the President of the Senate,
TWO appointed by the Speaker of the House of Representatives,
TWO appointed by the Chief Justice of the United States.

CHAIRMAN: Designated by the President from one of his appointees.

TERM: Initial appointees shall serve for the term of fiscal year 1969. (Term would expire June 30, 1970.) Every fourth fiscal year thereafter, 1973, 1977, 1981...members shall be appointed for a term expiring at the close of that particular fiscal year.

SALARY: $100.00 per day.

PURPOSE: Review the rates of pay of Members of Congress, the Judiciary and persons in the Executive Pay Schedule to determine their appropriate salary levels. The Commission would submit its report and recommendations to the President no later than January 1 following the fiscal year in which its review was conducted.

THE ATTORNEY GENERAL

March 21.

Philip Buchen

Mr. B. Lee
copy

3/24/75
Jeremy Jones
for staffing

Office of the Attorney General
Washington, D. C. 20530

March 21, 1975

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

At the meeting on proposed increases in judicial (and possibly executive and legislative) salaries, the question arose as to what effect such action might have on the eligibility of members of Congress for appointment to judgeships or executive branch positions. There was an implicit question about the application of the Ineligibility Clause of the Constitution to such salary increases if such increases were tied to a cost of living formula.

The Ineligibility Clause of the Constitution, Art. I, §6, cl. 2, provides that "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States . . . the Emoluments whereof shall have been increased during such time." One can imagine a variety of hypothetical situations involving application of the Clause, but in general, a member of Congress would be disqualified from appointment only for the remainder of the electoral term that he was presently serving when the legislation authorizing the salary increase was enacted. When the legislative authorization takes place in one electoral term but provides that the actual increase is to occur in a succeeding term, a member would be disqualified from appointment only for the remainder of the prior electoral term.

Thus, under a legislative plan authorizing automatic salary increases based on the cost of living index, the constitutional disqualification would apply only during the electoral term in which the legislation was enacted and not in any succeeding term when additional automatic increases may occur. If, however, the legislative plan requires an important further step of Congress in a succeeding term to make the increase effective, such as congressional acquiescence in the increase by failure to exercise a veto power, it seems likely the constitutional disqualification would apply during the remainder of this later electoral term, and not during the prior term when the underlying legislation was enacted.

There was some suggestion that a legal analysis of the application of the constitutional provision might be helpful. This note summarizes the main conclusions; I attach a supporting memorandum. As the memorandum notes, with one possible exception, the Senate probably would be the final arbiter of the interpretation of the clause. An exception would be, if by some device or order, an objection from the executive or legislative branch were interposed to prevent the payment of the salary.

Respectfully,

Edward H. Levi
Attorney General

Enclosure

MEMORANDUM

Legislation Increasing Judicial Salaries

This memorandum addresses two issues: (a) the authority under existing legislation to increase the salaries of federal judges, and (b) the relationship between various forms of legislation increasing such salaries and the prohibition imposed by the Ineligibility Clause of the United States Constitution.

A. Existing Legislation

The only existing authority for increasing the salaries of federal judges is conferred by the Federal Salary Act of 1967, 81 Stat. 642, 2 U.S.C. § 351 et seq. The Act establishes the Commission on Executive, Legislative and Judicial Salaries, which is empowered to make recommendations to the President, at four-year intervals, 1/ on pay rates for Senators, Representatives, federal judges, and certain officers in the executive branch. The Act further authorizes the President, in the next federal budget submitted after the receipt of the Commission's report, to set

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1/ Under the Act, the first Commission was to be appointed in fiscal 1969 (ending June 31, 1969) and then in every fourth fiscal year thereafter. The Commission expires at the end of the fiscal year for which it was appointed.

forth his recommendations with respect to the pay rates he deems advisable for the positions covered by the Act. The President's recommendations are to become effective thirty days following transmittal of the budget to Congress, unless during the interim Congress has enacted other pay rates or unless at least one House of Congress has enacted legislation which specifically disapproves all or part of the recommendations.

The first Commission was appointed in 1968 and made its recommendations to the President in December 1968. The President forwarded these recommendations to Congress in January 1969, and they became effective in March of that year. Under the Act, the next Commission was to be appointed during fiscal 1973 (ending June 31, 1973), and was required to submit its recommendations to the President no later than January 1, 1974. The Commission apparently made its recommendations to the President, who later forwarded them with minor revisions to Congress. The Senate, however, rejected the proposed pay increases in March 1974 and thereby rendered them ineffective.

The next Commission is to be appointed during fiscal 1977 (ending June 31, 1977) and must make its recommenda-

tions to the Congress shortly thereafter with the budget for fiscal 1978. 2/ Thus, if the procedures established by the Federal Salary Act are followed, the earliest possible date by which judicial salaries could be increased is March 1977.

The Commission appointed for fiscal 1973 expired in July 1973. The Act makes no provision for further recommendations by either the Commission or the President until fiscal 1977. Thus, only by special legislation could judicial salaries be increased prior to that date.

2/ Section 357 provides that the Commission's 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." 2 U.S.C. § 357. Section 358 provides that 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. . . ., his recommendations with respect to the exact rates of pay which he deems advisable. . . ." 2 U.S.C. § 358.

Thus, if so directed by the President, the Commission appointed for fiscal 1977 (beginning July 1, 1976 and ending June 31, 1977) could make its report prior to January 1977, but in no event later than January 1978. Under Section 358, the President could then submit his recommendations with the fiscal 1978 budget later in January 1977, and these recommendations would become effective in March 1977 unless disapproved by either House of Congress. Alternatively, the Commission would not report until later in 1977, and the President would not forward his recommendations to Congress until January 1978.

B. The Ineligibility Clause

Legislation increasing judicial salaries could pose a variety of problems with respect to the eligibility of members of Congress for appointment to the federal bench. The possible applications of the Ineligibility Clause are almost endless and depend on both the form of the legislation and the date of the appointment. For present purposes, it may prove useful to review at least the central features of the clause and its application to the forms of legislation most likely to be enacted by Congress.

The Ineligibility Clause of the United States Constitution, art. I, § 6, cl. 2, provides:

> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time, and no Person holding any Office under the United States, shall be a Member of either House during his continuance in Office.

The Ineligibility Clause was apparently intended to prevent considerations of personal interest from affecting a representative's vote on legislation creating federal civil offices or increasing the financial benefits of such offices. Despite its broad purpose, the clause is drafted narrowly and includes within its ambit only a limited range of

situations. As presently relevant, the clause applies where three prerequisites are satisfied: (a) an increase in the emoluments or salary of a judicial office, (b) the appointment of a Senator or Representative to that office, and (c) both (a) and (b) occur during the same electoral term which the Senator or Representative was then serving.[3/]

The clearest application of the clause would occur where Congress authorizes an increase in the salary of a judicial office, and that increase actually takes effect, during the same electoral term of the Representative nominated for the judicial office.[4/] Such would be the case, for example, if Congress had approved an immediate increase in judicial salaries in 1974. Two possible factual

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3/ It should be noted that, as a practical matter, the Senate will usually be the sole and final arbiter of the meaning of the clause. In Ex parte Levitt, 302 U.S. 633 (1937), the Court held that a citizen lacks standing to challenge a judicial appointment allegedly in violation of the Ineligibility Clause. Levitt was recently discussed with approval and expressly reaffirmed in Schlesinger v. Reservists Committee to Stop the War, ___ U.S. ___, 94 S.Ct. 3295 (1974) and United States v. Richardson, ___ U.S. ___, 94 S.Ct. 2940 (1974). It is thus difficult to perceive how a private individual, suing as a citizen or a taxpayer, could show the direct injury required under the standing doctrine to invoke the jurisdiction of the federal courts. A problem could arise, however, if the General Accounting Office or another federal department were to refuse to deliver the appointee's commission or to pay his salary. Such action might precipate a suit by the appointee which could well bring the constitutional question before the courts. See Marbury v. Madison, 1 Cranch. 137 (1803).

4/ The Ineligibility Clause plainly refers to the electoral term of the representative, rather than to Congresses or sessions of Congress. Thus, electoral term covered by the clause would be two years for a member of the House and six years for a Senator. For purposes of clarity, all factual situations posited above will refer to members of the House.

situations might ensue. In the first, the Representative is later sought to be appointed to judicial office in the same electoral term (i.e., before the commencement of the next Congress in January 1975.) Here, the Ineligibility Clause clearly stands as a bar to appointment since the posited case falls squarely within the clause's literal provisions. In the second, the Representative is sought to be appointed in a subsequent electoral term (e.g., after January 1975). In this situation, however, it is apparent that the clause does not apply, since the increase was authorized in the prior electoral term and the clause prevents appointment only during that prior term. 5/

More substantial problems arise where the congressional authorization and the actual increase occur in different electoral terms. Thus, for example, suppose Congress in 1974 authorized an increase in judicial salaries to take effect in 1975, and a Representative is thereafter

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5/ Accord: 33 Op. Att'y Gen. 88 (1922). As Justice Story noted:

> "The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness. The actual provision, however, does not go to the extent of the principle, for his appointment is restricted only 'during the time for which he was elected,' thus leaving in full force every influence upon his mind, if the period of his election is short or the duration of it is approaching its natural termination."

Story, Constitution of the United States, 4th ed., § 867.

sought to be appointed in 1974. Although the increase has not actually occurred, it appears consistent with both the language and purpose of the clause to conclude that the appointment would be barred. On the other hand, if the appointment were made later in 1975, the clause would be inapplicable since the increase was authorized in the prior electoral term.

The above conclusion turns on an interpretation of the word "increase" in the clause to mean authorization for the increase, rather than the increase itself. The reasonableness of this view is amply demonstrated by the case of a Representative who was first elected in 1975 when the increase took effect. It would obviously serve no purpose to bar his appointment to a judicial office since Congress never even considered the issue of a salary increase during any period when he was a Representative. There is thus no temptation against which the Representative's impartiality must be guarded, and hence no reason for invocation of the prohibition imposed by the clause. On the other hand, ineligibility for appointment does appear warranted with respect to those members serving in Congress when the authorization was approved, even though the in-

crease will not occur until after the expiration of their electoral term. 6/ Here the clause does presumably serve its intended purpose of preventing the prospect of judicial appointment from influencing a member's vote on legislation authorizing increases in judicial salaries. 7/ Moreover, to conclude otherwise would create the anomaly of an increase in judicial salaries having occurred without any member of Congress being rendered ineligible -- a construction which would substantially strip the clause of effective meaning.

Closely related is the situation where salary increases are authorized for future electoral terms, but additional appropriations will be later required to fund

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6/ Such members, of course, would be ineligible for appointment only for the remainder of the electoral term in which the legislation authorizing the increase was enacted.

7/ An exception is possible where the financial benefit will not actually be conferred until some point so distant in the future that the benefit may be regarded as speculative. Senator Hugo Black, for example, had voted to increase the retirement benefits of Supreme Court Justices during the same electoral term in which he was nominated for appointment to the Court. The Senate confirmed the nomination, perhaps agreeing with the Attorney General that Senator Black was nevertheless eligible "inasmuch as Mr. Black was only fifty-one years old at the time and so would be ineligible for the increased emolument for nineteen years, it was not as to him an increased emolument." See Corwin, Annotated Constitution at 133; N.Y. Times, Aug. 14, 1-37, p. 1, col. 3.

those increases. For example, suppose Congress in 1974 provided that judicial salaries would be increased automatically on a biennial basis beginning in 1975 in accordance with an independent standard such as the cost of living index. Under the construction outlined above, a Representative then serving in 1974 would be barred from a subsequent judicial appointment in 1974, but a Representative serving thereafter would not be barred even though the actual increases had occurred, and the appropriations to fund those increases had been made, during his electoral term. This is so because the subsequent appropriation measures were in essence ministerial acts required only to fund increases previously authorized by Congress. The "increases", within the meaning of the Ineligibility Clause, actually occurred in 1974 when the controlling congressional authorization was enacted. 8/ It is the undertaking of the obligation

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8/ Nothing turns on the fact that Congress did not specify exact dollar amounts for the future increases, and indeed, the result would be the same had Congress in fact specified exact dollar amounts.

An additional possibility is worth mentioning. Suppose Congress in 1974 authorized future salary increases commencing in 1975 based on the cost of living index, but made such increases subject to prior approval by the President, at some future date (e.g., when the cost of living statistics are reported in 1975 and thereafter). In this situation, since Congress made its determination in 1974 to increase salaries, a Representative then serving would be barred from appointment for the remainder of that electoral term. The contingency of

(Cont'd. next page)

to increase salaries that controls, and the "emoluments" of the judicial office may be deemed to have been increased at that time. 9/

Two final permutations concern the situation in which Congress authorizes the establishment of a commission to propose increases in judicial salaries at certain future periods and specifies that the increases are to become effective unless vetoed by either house of Congress. 10/ Again, suppose such a commission is authorized by Congress in 1974 and then in 1975 recommends certain increases which then become effective when Congress fails to disapprove them through exercise of its veto power. In the case of a Representative appointed in 1974, it appears reasonable to conclude that the Ineligibility Clause would not prove a bar since at that time any salary increase was still contingent on further congressional approval, albeit in the

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8/ (Cont'd. from previous page)
future Presidential approval cannot obscure the fact that Congress authorized the salary increases and the clause should apply. Representatives serving in future terms when the increases actually occur would not, of course, be barred from appointment.

9/ The possible speculative nature of any future increase in the cost of living index is not controlling in this situation. Such an escalator clause is clearly an "emolument" or benefit within the meaning of the clause.

10/ This was, of course, essentially the scheme imposed by the Federal Salary Act of 1967, 81 Stat. 642, 2 U.S.C. § 351 et seq.

passive form of a failure to exercise a veto power at some future date. By contrast, the appointment of a Representative serving in 1975 would present an exceedingly close case. Although persuasive arguments can be mustered on either side, it is most probable that the clause would indeed come into play to prevent the appointment, since congressional inaction can be deemed to be an implicit authorization of the salary increase. A contrary interpretation would pose a significant problem, since again an increase in judicial salaries would have occurred yet no Representative would be regarded as barred from appointment.[11/]

11/ The obvious alternative would be to regard the increase as having been approved in 1974. For the reasons previously stated, the contingent nature of the prior congressional action makes it a comparatively inappropriate point at which to deem the clause applicable.

The problem created by the appointment of Congressman Laird as Secretary of Defense is also instructive. See 42 Op. Att'y Gen. 36 (1969). There, the President submitted to Congress a proposed salary increase for Cabinet members which under the Federal Salary Act of 1967 would become effective unless disapproved by either House of Congress within a specified period. The Opinion of the Attorney General concluded that the Ineligibility Clause would not bar Congressman Laird's appointment if the appointment were made before the expiration of the date by which Congress was required to act: "[T]he salaries in question will not 'have been increased' within the meaning of the constitutional prohibition so long as Congress may still exercise its power of disapproval." The opinion clearly contemplates, however, that Congressman Laird's appointment would have been barred had he still been serving when the absence of a congressional veto allowed the increase to become effective.

In sum, the clause may most reasonably be construed as applicable only to the electoral term during which the salary increase is authorized by Congress. Where the salary increase is not contingent on further congressional approval, as in the case of automatic future increases based on the cost of living index, the controlling factor is the electoral term during which the underlying congressional authorization was enacted. Where the increase is contingent on further congressional approval, as in the case of the hypothetical commission or the Federal Salary Act, the controlling factor is the electoral term during which the congressional acquiescence by failure to exercise its veto power allowed the increase to become effective. 12/

Turning to the instant problem concerning the nature of the proposed legislation on judicial salaries, it appears that the hypothetical commission or the present Federal Salary

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12/ If, of course, the Representative or Senator were to resign before the period for congressional action expired, the clause would not bar his appointment. See n. 10, id. As previously stated, the prospective appointee must actually have been serving in Congress at the time the salary increase was authorized.

The problem might also be avoided by deferring the appointment until after the expiration of the Representative's or Senator's electoral term.

Act are the least appealing alternatives since they pose the problem of continuing application of the Ineligibility Clause to members of Congress and would probably result in the greatest number of disqualifications. By contrast, a predetermined method of increasing judicial salaries, which was not contingent on further congressional approval, would result in the least number of disqualifications. Thus, if future increases in judicial salaries were authorized in accordance with increases in the cost of living index, only those members of Congress serving when the legislation was adopted would be disqualified from appointment, and even then their disqualification would be only for the remainder of the electoral terms they were presently serving.

Supreme Ct.

THE WHITE HOUSE

WASHINGTON

January 23, 1976

Dear Warren:

Many thanks for sending me a copy of your beautiful YEARBOOK 1976 published by the Supreme Court Historical Society which you have so graciously inscribed.

This is a remarkable achievement for a group that has so recently begun to concern itself with the wonderful history of our highest Court. It offers a promise of many more fascinating publications to come.

You are indeed to be commended for encouraging the formation and work of this Society and for its extraordinary success.

I know the President will be most pleased with the copy you have asked me to deliver to him.

I send my warmest regards.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
Supreme Court of the United States
Washington, D. C. 20543

hand delivered 10/8/75

THE WHITE HOUSE

WASHINGTON

October 4, 1975

Dear Senator Roth:

We have reviewed with the Justice Department your request that it file an amicus curiae brief in the Supreme Court in support of the appellants' Jurisdictional Statement docketing an appeal in the Wilmington, Delaware case of Evans v. Buchanan.

The appellants are seeking review of a Three-Judge District Court ruling announced on March 27, 1975, in which the Court ordered that alternative desegregation plans be submitted to it, one plan to limit itself to the present boundaries of the Wilmington school district and the other plan to incorporate other areas of New Castle County. This Order was issued pursuant to the Court's finding: (a) that an historical arrangement for inter-district segregation existed within New Castle County; (b) that there was significant governmental involvement in inter-district discrimination; and (c) that Wilmington was unconstitutionally excluded from consideration for consolidation by the State Board of Education. The Court held unconstitutional the Educational Advancement Act of 1968, which excluded the Wilmington school district from eligibility for consolidation, and ordered the submission of the alternative desegregation plans.

Appellants filed their Jurisdictional Statement on May 12, 1975, and the appellees filed their Motion to Affirm or Dismiss on July 11, 1975. While the Justice Department does, on occasion, participate as amicus in the jurisdictional stage of a case in the Supreme Court, that is not a usual practice. In those cases where it does so participate, however, it is Justice's policy to adhere to Supreme Court procedure which provides that an amicus brief be filed no later than the response by the second party. The purpose of this rule is to give both appellant and appellee an adequate chance to respond to the arguments made in the amicus brief.

In the case of Evans v. Buchanan, the Supreme Court is scheduled to consider its Jurisdictional Statement on or about

October 10th, and it is our opinion that Justice Department participation at this juncture would be inappropriate. Neither side would have an adequate opportunity to answer Justice's arguments unless the Court was requested to delay its consideration of the case. We feel that a request for such a delay would not be warranted.

If the Supreme Court notes probable jurisdiction and accepts Evans v. Buchanan for a hearing on its merits, the Justice Department will consider the filing of an amicus curiae brief on the merits of the case.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Honorable William V. Roth, Jr.
United States Senate
Washington, D. C. 20510

THE WHITE HOUSE

WASHINGTON

Hold file

October 3, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: PHILIP BUCHEN

Attached is the letter prepared to Chief Justice Burger for the President's signature as you requested.

Attachment

THE WHITE HOUSE

WASHINGTON

Dear Warren:

Your thoughtful letter of September 5 has been received and, under the circumstances, I most willingly concur in your conclusion that it would be inappropriate for you to serve as Co-Chairman of the Combined Federal Campaign for 1976.

I regret that the upcoming campaign cannot have the benefit of your leadership in emphasizing the importance of wide support among Federal employees for the non-profit agencies which deliver many needed services in the Washington area. However, I do appreciate that your undertaking this function could lead to criticism, however unjustified it would be.

Sincerely,

The Honorable Warren E. Burger
Chief Justice of the United States
Washington, D. C. 20543

THE WHITE HOUSE

WASHINGTON

September 29, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: JIM CONNOR

Thank you for your memorandum of September 27 concerning the Chief Justice's inability to serve as Co-Chairman of the 1976 Combined Federal Campaign.

Please prepare an appropriate Presidential response to the Chief Justice. As requested a copy of the President's letter of September 17 is attached.

Attachment

Burger, Warren (Chief Justice)

THE WHITE HOUSE

WASHINGTON

September 27, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: PHILIP BUCHEN P.W.B.

Attached is the original of a letter from the Chief Justice to the President written in response to the President's letter of September 17.

I have not seen the September 17 letter and it was not cleared with our office before it was sent. As you can see from the letter, the request to have the Chief Justice serve as a Co-Chairman of the 1976 Combined Federal Campaign was ill-advised. I suggest that an appropriate response now be prepared for the President's signature. If you would like for me to draft the letter, I would like first to receive a copy of the September 17 letter.

Attachment

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

September 25, 1975

Dear Mr. President:

I acknowledge your letter of September 17 which arrived while I was in Paris as a guest of the Constitutional Council of France on a series of exchanges which we hope to develop.

The Code of Judicial Conduct drafted by the American Bar Association largely at my request in 1969, and thereafter to a substantial extent enacted into law by Congress, contains some very stringent prohibitions limiting the activities of judges in relation to fund-raising of all kinds.

Canon 5 of the Code of Judicial Conduct provides in part:

> "(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events." (Emphasis added.)

The advisory opinions given by the American Bar Association and some advisory opinions given by a special committee of the Judicial Conference which I appointed tend to construe this provision as prohibiting a judge from acting as chairman or in a related capacity. The only exceptions I am aware of concerning this stricture relate to activities to improve the law, the legal system, and the administration of justice. Even though Justices of the Supreme Court were not made

explicitly subject to this Code when it was adopted by the Judicial Conference, this circumstance was due to the fact that the Judicial Conference has no jurisdiction over the Supreme Court. The spirit of the Code, however, plainly applies to all judges without reference to any technical jurisdiction question.

In these circumstances and given the present atmosphere in which so many people are eager to seize upon the slightest pretext to criticise those in public office, I reluctantly conclude that I should ask you to excuse me from this assignment to serve as one of the Co-Chairmen for the 1976 Combined Federal Campaign for the National Capital Area.

Cordially and respectfully,

Warren E. Burger

The President

The White House

"Copy"

September 17, 1975

Dear Warren:

I am writing to ask you to serve as one of the Co-Chairmen for the 1976 Combined Federal Campaign for the National Capital Area.

As you know, the Combined Federal Campaign is conducted annually to solicit funds to help meet the needs of over 120 agencies of the United Way of the National Capital Area, the National Health Agencies, and the International Service Agencies.

Because funds raised in this campaign will be used during our Country's Bicentennial, I feel it is very important that we encourage every Federal civilian and military employee to support the Combined Federal Campaign by voluntarily contributing to help our neighbors locally, as well as nationally and internationally.

To spearhead this most important task, I have asked Frank Zarb, Administrator of the Federal Energy Administration, to serve as Chairman. Your active support as a Co-Chairman will be of great value in making this Bicentennial Campaign an outstanding success.

Sincerely,

JERRY FORD

The Honorable Warren E. Burger
Chief Justice of the United States
Washington, D.C. 20543

GRF:JAskew:frw

Orig. delivered by receipted WH messenger 9/18/75

Supreme Court

Thursday 9/25/75

10:10 Mark Cannon called on behalf of the Chief Justice. 393-1640

He will be going into a Judicial Conference session between 11 and 1 o'clock -- and would like to be called out to talk -- when you're free.

But he definitely needs to talk with you before 1 o'clock. (We can call through the former Chief Justice Warren's office)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

September 8, 1975

My dear Mr. President:

I have the honor to inform you that this Court will open the October 1975 Term on October 6, 1975, at 10:00 a.m., as provided by law, and will continue, pursuant to our present calendar, until all matters before the Court, ready for argument, have been decided.

Respectfully,

Warren E. Burger

The President
The White House
Washington, D.C. 20500

Pres. schedule
For filing 5/27/75
Chief Justice Warren Burger request for Memorial Services for Chief Justice Warren

May 20, 1975

Dear Mr. Chief Justice:

On behalf of the President, I wish to acknowledge and thank you for your kind letter to him about the traditional Supreme Court Bar Memorial Service for Chief Justice Warren, to be held in the Courtroom on Tuesday afternoon, May 27.

Most regrettably, because of the final preparations for the European trip which begins on May 28, the President and Mrs. Ford will be unable to attend this tribute for Chief Justice Warren.

With the President's kind regard and very best wishes to you.

Sincerely,

/s/

Warren S. Rustand
Appointments Secretary to the President

The Honorable Warren E. Burger
The Chief Justice
of the United States
Washington, D. C. 20543

Information copy to:
Mr. Buchen
Pat Likins, Jerry Jones' Office

Scheduling

May 7, 1975

MEMORANDUM FOR: WARREN RUSTAND

FROM: PHILIP BUCHEN

SUBJECT: Supreme Court Bar Memorial Service

Because neither the President nor any of his representatives attended the services at the time of Chief Justice Warren's death, it would be very appropriate for the President to appear at this memorial service in Washington. If time simply will not permit, I would think it would be fitting for the President to request the Vice President to attend in his behalf.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

Future Scheduling

Memorial Services

5/27/75

Chief Justice Warren

May 5, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM: WARREN RUSTAND WRR

SUB JECT: Supreme Court Bar Memorial Service for Chief Justice Warren on May 27

Unless you feel strongly about this, we will regret.

This is the day before the President's departure for Europe.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 28, 1975

Dear Mr. President:

The traditional Supreme Court Bar Memorial Service for Chief Justice Warren will be conducted in the Courtroom at 3:30 p.m. on Tuesday, May 27. Having in mind your service with Chief Justice Warren on the Commission of Inquiry relating to President Kennedy's assassination, I thought you might like to know of this planned tribute.

The proceedings are being arranged, as usual, under the Chairmanship of the Solicitor General of the United States as Leader of the Supreme Court Bar. Invitations are now being issued by him. It occurred to me, however, to draw this to your attention informally before any formal invitation is issued.

If your busy schedule permits you and Mrs. Ford to attend, special seating will be reserved in the Distinguished Visitors' Box with the wives of Justices.

Cordially,

Warren E. Burger

The President

The White House

P.S. The formal invitation describes the time as 2:00 p.m., but that is a meeting of the Supreme Court Bar Committee to approve the Resolutions which will be presented to the Court at 3:30 p.m.

[ca. Dec. 1976]

For Philip Buchen
with appreciation for
a valued friendship
Warren E. Burger