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THE WHITE HOUSE

WASHINGTON

November 28, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Commission on Executive, Legislative,
and Judicial Salaries

Susan Borchard has asked if Justice Potter Stewart would be confronted with an apparent or actual conflict of interest were he to serve on the Commission on Executive, Legislative, and Judicial Salaries. As you know, that Commission was established pursuant to 2 U.S.C. § 352 to review and make recommendations concerning the rates of pay for members of Congress, high-ranking Executive branch officials, and justices and judges. Justice Stewart assumed senior status, "retain[ing] his office but retir[ing] from regular active service." 28 U.S.C. § 371(b). Pursuant to 28 U.S.C. § 371(b), "[h]e shall, during the remainder of his lifetime, continue to receive the salary of the office." Throughout his retirement Justice Stewart will be paid the same as a sitting associate justice. Since the Commission is tasked with making recommendations on, inter alia, what an associate justice should be paid, Justice Stewart would be presented with a direct actual conflict of interest were he to serve on the Commission. Simply put, he would be reviewing and making recommendations with respect to his own salary.

There is another, even more basic problem with appointing Justice Stewart to this Commission. Under 2 U.S.C. § 352(1), the members of the Commission "shall be appointed from private life." The legislative history sheds little light on the purpose of this restriction, but it seems intended to prevent those in government from deciding how much those in government should be paid. The question is not entirely free from doubt, but I do not think a senior judge should be considered to have returned to "private life." As noted a senior judge draws a full government salary, typically is assigned to sit by designation on various courts (as Justice Stewart has), and retains full rights (as Justice Stewart has) to chambers, law clerks, secretarial assistance, and so on. The fact that senior judges have not returned to private life is confirmed by the fact that were they to pursue private employment -- by joining a law firm, for example -- they would forfeit their senior judge status. Judges that resign -- like former Judge Mulligan of the Second Circuit -- return to private

life; judges that assume senior status -- like Judges Lumbarđ and Friendly of the same court -- do not.

The attached memorandum for Borchard notes that Justice Stewart would be confronted with a conflict of interest problem, and is probably not eligible for this Commission in any event.

Attachment

THE WHITE HOUSE

WASHINGTON

November 28, 1984

MEMORANDUM FOR SUSAN BORCHARD
ASSOCIATE DIRECTOR
OFFICE OF PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING ^{Orig. signed by FFF}
COUNSEL TO THE PRESIDENT

SUBJECT: Commission on Executive, Legislative,
and Judicial Salaries

By memorandum dated November 21 you inquired if Justice Potter Stewart would be presented with a conflict of interest were he to be appointed to the Commission on Executive, Legislative, and Judicial Salaries. That Commission is charged, inter alia, with reviewing and making recommendations concerning the rate of pay for associate justices. 2 U.S.C. § 356(c). Justice Stewart did not resign his office; he retained his office but retired from regular active service. He is, accordingly, entitled to receive the salary of an associate justice during the remainder of his lifetime. 28 U.S.C. § 371(b). Thus, if Justice Stewart were to serve on the Commission, he would be reviewing and making recommendations concerning his own salary. Although the Commission is only advisory, it would be difficult to imagine a clearer conflict of interest.

Quite apart from any conflict of interest problem, it appears that Justice Stewart is ineligible for service on the Commission. Pursuant to 2 U.S.C. § 352(1), Commission members "shall be appointed from private life." As noted, a senior judge "retain[s] his office," 28 U.S.C. § 371(b), and, unlike a judge who resigns, cannot be considered to have returned to "private life." For the foregoing reasons, I must advise against considering Justice Stewart for appointment to the Commission on Executive, Legislative, and Judicial Salaries.

FFF:JGR:aea 11/28/84
cc: FFFielding/JGRoberts/Subj/Chron

FG094

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) / /

JR
Blume

Name of Correspondent: *Susan Borchart*

MI Mail Report User Codes: (A) (B) (C)

Subject: *Commission on Executive, Legislative and Judicial Salaries*

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u><i>W Holland</i></u>	<u><i>A</i></u> ORIGINATOR	<u><i>84/11/26</i></u>
<u><i>WAT18</i></u>	<u><i>D</i></u> Referral Note:	<u><i>S 84/12/06</i></u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

- ACTION CODES:**
- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

- DISPOSITION CODES:**
- A - Answered
 - B - Non-Special Referral
 - C - Completed
 - S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments:

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE
WASHINGTON

November 21, 1984

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MEMORANDUM FOR: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

FROM: SUSAN BORCHARD *Susan Borchard*
DIRECTOR, PRESIDENTIAL BOARDS
AND COMMISSIONS

SUBJECT: Commission on Executive, Legislative
and Judicial Salaries

Potter Stewart has been suggested for appointment to the Commission on Executive, Legislative and Judicial Salaries. In your view, would his appointment represent an apparent or actual conflict of interest?

I have attached background regarding the Commission for your information.

Your assistance with this matter is very much appreciated.

VOL. X, P. 480

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Independent

AUTHORITY: 81 Stat. 642,
P.L. 90-206, Sec. 225, December 16, 1967
2 U.S.C. 352

METHOD: See below

MEMBERS: NINE 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, 1969)
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 WHITE HOUSE

WASHINGTON

January 25, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Letter from Chief Judge Frank McGarr
Concerning Commission on Executive,
Legislative and Judicial Salaries

Chief Judge Frank McGarr of the United States District Court for the Northern District of Illinois has written the President, complaining about his low salary and noting that the Commission on Executive, Legislative and Judicial Salaries (the Quadrennial Commission) has not begun its work because the President has not yet appointed his three members. Now that the President has done so, we can respond to Judge McGarr. A draft simply noting that the appointments have been made is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 25, 1985

Dear Judge McGarr:

Thank you for your letter to the President concerning judicial compensation and the reconvening of the Commission on Executive, Legislative and Judicial Salaries. I am happy to advise you that the full membership of the Commission has now been appointed and that the Commission has begun meeting. I am enclosing for your information copies of the White House press releases announcing the President's appointments to the Commission.

Thank you for sharing your informed views on this important issue with us. You may be certain that we will accord them the careful consideration merited by their source.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Frank J. McGarr
Chief Judge
United States District Court
Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604

Enclosures

FFF/JGR/nb
cc: FFFielding/JGRoberts/Subj./Chron.

1dg

ID# 259838

PE008

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: DECEMBER 17, 1984

NAME OF CORRESPONDENT: THE HONORABLE FRANK J. MCGARR

SUBJECT WRITES CONCERNING THE COMMISSION ON EXECUTIVE
LEGISLATIVE AND JUDICIAL SALARIES

JGR
This needs
action
→

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
FRED FIELDING	DD ORG	84/12/17		1/1
<i>WAT 18</i> REFERRAL NOTE: _____	<i>D</i>	<i>84/12/18</i>		<i>S 84/12/28</i>
REFERRAL NOTE: _____		1/1		1/1
REFERRAL NOTE: _____		1/1		1/1
REFERRAL NOTE: _____		1/1		1/1
REFERRAL NOTE: _____		1/1		1/1

COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES _____

MI MAIL USER CODES: (A) _____ (B) _____ (C) _____

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*ACTION CODES:          *DISPOSITION CODES:      *OUTGOING          *
*                       *                       *CORRESPONDENCE:  *
*A-APPROPRIATE ACTION  *A-ANSWERED              *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL    *           OF SIGNER *
*D-DRAFT RESPONSE      *C-COMPLETED           *           CODE = A    *
*F-FURNISH FACT SHEET  *S-SUSPENDED            *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                       *           OUTGOING  *
*R-DIRECT REPLY W/COPY *                       *                       *
*S-FOR-SIGNATURE       *                       *                       *
*X-INTERIM REPLY       *                       *                       *
*****

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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 22, 1985

The President today announced his intention to appoint the following individuals to be Members of the Commission on Executive, Legislative, and Judicial Salaries for the period of the 1985 fiscal year of the Federal Government:

LLOYD NORTON CUTLER will succeed Martha W. Griffiths. He is a Partner in the law firm of Wilmer, Cutler & Pickering in Washington, D.C. He served as Counsel to the President of the United States in 1979-1981. Previously, he was with Wilmer, Cutler & Pickering in 1962-1979. He graduated from Yale University (A.B., 1936; LL.B., 1939). Mr. Cutler is married, has four children and resides in Chevy Chase, Maryland. He was born November 10, 1917 in New York, New York.

ALEXANDER B. TROWBRIDGE will succeed Joseph Howard McDonnell. He is President of the National Association of Manufacturers in Washington, D.C. Previously, he was Vice Chairman of Allied Chemical Corporation in 1976-1978. He served as Secretary of Commerce in 1967-1968. Mr. Trowbridge graduated from Princeton University (B.A., 1951). He is married, has six children and resides in Washington, D.C. He was born December 12, 1929 in Anglewood, New Jersey.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

December 13, 1984

The President today announced his intention to appoint Nicholas F. Brady to be a Member of the Commission on Executive, Legislative and Judicial Salaries for the period of the 1985 fiscal year of the Federal Government. He would succeed Thomas R. Donahue. The President also intends to designate him as Chairman.

Mr. Brady has been with the investment banking firm of Dillon Read & Company since 1954 and currently serves as Chairman and Chief Executive Officer. He is also currently Chairman of Purolater Inc. In 1982, he was appointed to the United States Senate by New Jersey Governor Thomas Kean to fill out the unexpired term of Senator Harrison Williams.

Mr. Brady graduated from Yale University (B.A., 1952) and Harvard Business College (M.B.A., 1954). He is married, has four children and resides in Far Hills, New Jersey. He was born April 11, 1930 in New York, New York.

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/20/85 ACTION/CONCURRENCE/COMMENT DUE BY: _____

SUBJECT: PROPOSED LETTER TO NICHOLAS BRADY RE COMMISSION ON EXECUTIVE, LEGISLATIVE, AN JUDICIAL SALARIES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE / CRIBB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>ROLLINS</u>	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	<u>FRIEDERSDORF</u>	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

COPY
from
CRM

REMARKS: Ken, last week someone on your staff presented us with the attached draft letter. As is our normal process, we staffed it out to relevant offices. We received several comments, and in particular I call your attention to Fred Fielding's which seem to be the most serious. Since I don't know the background nor the reason for the letter in the first place, I suggest you or someone on your staff get in touch with the Counsel's office to see if you can resolve your differences. Also attached are Connie Horner's comments. If you have any questions or problems, please

RESPONSE: don't hesitate to call.

David L. Chew
Staff Secretary
Ext. 2702

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/85

SUBJECT: PROPOSED LETTER TO NICHOLAS BRADY RE COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN - <i>no comments</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMAI	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

*2/20 comments due today per Andy
all edit.*

*2/20 all of Fielding's comments -
do NOT send*

2/20/85

REMARKS:

DLC:

Ple
let

Please note Fielding's recommendation that this letter not be sent.

(We

Should we just file this, but inform Meese's office?

RESPONSE

se

attached

Chew
retary

13 February 1985

Dear Mr. Brady:

As the Commission on Executive, Legislative and Judicial Salaries begins its work, it has come to my attention that a portion of the statute establishing the Commission may be defective as a result of a recent Supreme Court decision. Additionally, the failure of the present statutory process to resolve salary determinations in an orderly manner suggests that the statutory framework warrants review.

Consequently, I hereby request that the Commission, in addition to its statutory duties, consider as a first priority the effectiveness and validity of its enabling legislation and make legislative recommendations to remedy any constitutional defects and to create a framework for a more orderly resolution of salary determination for top government officials. I would like to have your recommendations on these questions as soon as possible. Please advise my Assistant for Policy Development, John A. Svahn, of a target date by which your Commission will be able to develop these recommendations.

Thank you for your attention to these matters.

Sincerely,

RR

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

cc: EM
JSvahn
JWright

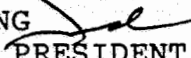
THE WHITE HOUSE

WASHINGTON

1985 FEB 20 10 11: 50

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Letter to Nicholas Brady Regarding
Commission on Executive, Legislative, and
Judicial Salaries

You have asked for my views on a draft letter from the President to the Chairman of the Commission on Executive, Legislative, and Judicial Salaries. In the proposed letter the President notes the legislative veto problem in the statute establishing the Commission, and also notes that the statutory scheme has not worked effectively. He requests that the Commission review these problems and submit recommended legislative changes.

I recommend that the letter not be sent. The legislative veto problem referred to in no way affects the legitimacy of the Commission or the nature of its work. Under the statutory scheme the Commission submits recommendations to the President and the President thereafter submits independent recommendations to Congress. The so-called legislative veto problem -- in 2 U.S.C. §§ 359-360 -- concerns the legal effect of the President's independent recommendations, not those of the Commission. The Commission exists only to make non-binding recommendations to the President, and that function can be discharged regardless of the effectiveness of any recommendations the President may make. (Incidentally, the legislative veto problem with this statute is purely technical and non-substantive. Under the statute the President's recommendations become law only if approved by both Houses. The problem is that the recommendations should, under INS v. Chadha, be presented to the President after passage by both Houses for approval or disapproval -- a foregone conclusion, since the recommendations were submitted by the President in the first place.)

Aside from the legislative veto problem, the letter also solicits recommendations on a more effective statutory scheme. I see no reason for the President to request such formal guidance from an entity to which he appoints only three of the nine members. The recommendations of the

Commission will carry considerable weight and legitimacy, yet we do not know if they will be palatable to this Administration. We should not increase the potential for future embarrassment by requesting recommendations we may have to oppose.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503
February 20, 1985

MEMORANDUM FOR: DAVID CHEW
FROM: CONSTANCE HORNER *CH*
SUBJECT: Proposed Letter to Nicolas Brady on
the Commission on Executive Salaries

We have reviewed the draft response for the President's signature dealing with the work of the Commission on Executive, Legislative, and Judicial Salaries (Quadcom). The draft raises two issues:

1. Because the statute setting out the Quadcom's functions is rather narrowly confined to a review of the rates of pay for top Federal officials, this letter from the President to Mr. Brady would ask that the Quadcom also provide advice on other matters. The additional areas would be to have the Quadcom review its own statutory base and to make legislative recommendations to remedy defects or make improvements.
2. It is critical, however, that the letter to Brady not suggest Presidential recognition of a constitutional problem with the statutory pay mechanism. In the analogous annual pay comparability process, the Justice Department currently is defending litigation involving Federal worker claims that the legislative veto device in the comparability statute invalidated the entire statutory pay mechanism, and thus Federal workers are entitled to upwards of \$100 million in back pay. The principal point of Justice's argument is that the legislative veto device is severable, and that the statutory scheme works without it. Any comment by the President on the constitutional issue in this context could adversely affect our defenses in the pending lawsuits. Accordingly, the references to this problem in the first and second paragraphs should be deleted.

With the two deletions indicated on the attached page, we have no objections to the proposed letter.

Attachment

13 February 1985

Dear Mr. Brady:

As the Commission on Executive, Legislative and Judicial Salaries begins its work, it has come to my attention that a portion of the statute establishing the Commission may be defective as a result of a recent Supreme Court decision. Additionally, the failure of the present statutory process to resolve salary determinations in an orderly manner suggests that the statutory framework warrants review.

Consequently, I hereby request that the Commission, *in the course of* ~~in addition to~~ its statutory duties, consider as a first priority the effectiveness and validity of its enabling legislation and make legislative recommendations to remedy any constitutional defects and to create a framework for a more orderly resolution of salary determination for top government officials. I would like to have your recommendations on these questions as soon as possible. Please advise my Assistant for Policy Development, John A. Svahn, of a target date by which your Commission will be able to develop these recommendations.

Thank you for your attention to these matters.

Sincerely,

RR

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

cc: EM
JSvahn
JWright

1335 FEB 15 11:01

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/85

SUBJECT: PROPOSED LETTER TO NICHOLAS BRADY RE COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations on the attached letter by Tuesday, February 19.

(We received this draft from Mr. Meese.)

RESPONSE:

no comments - first five seen of this

JAS

David L. Chew
Staff Secretary
Ext. 2702

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/85

SUBJECT: PROPOSED LETTER TO NICHOLAS BRADY RE COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations on the attached letter by Tuesday, February 19.

(We received this draft from Mr. Meese.)

RESPONSE:

Out to Meese to resolve Fielding objections

David L. Chew
Staff Secretary
Ext. 2702

13 February 1985

Dear Mr. Brady:

As the Commission on Executive, Legislative and Judicial Salaries begins its work, it has come to my attention that a portion of the statute establishing the Commission may be defective as a result of a recent Supreme Court decision. Additionally, the failure of the present statutory process to resolve salary determinations in an orderly manner suggests that the statutory framework warrants review.

Consequently, I hereby request that the Commission, in addition to its statutory duties, consider as a first priority the effectiveness and validity of its enabling legislation and make legislative recommendations to remedy any constitutional defects and to create a framework for a more orderly resolution of salary determination for top government officials. I would like to have your recommendations on these questions as soon as possible. Please advise my Assistant for Policy Development, John A. Svahn, of a target date by which your Commission will be able to develop these recommendations.

Thank you for your attention to these matters.

Sincerely,

RR

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

cc: EM
JSvahn
JWright

THE WHITE HOUSE

WASHINGTON

March 1, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Cutler Call

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

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

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


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

THE WHITE HOUSE
WASHINGTON

February 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Proposed Letter to Nicholas Brady Regarding
Commission on Executive, Legislative, and
Judicial Salaries

David Chew has asked for comments on a proposed letter from the President to the Chairman of the Commission on Executive, Legislative, and Judicial Salaries. The draft letter notes the legislative veto problem in the statute that established the Commission, and the fact that the process mandated by the statute has not worked effectively. The President thereby requests the Commission to consider the effectiveness and validity of its enabling legislation and submit recommendations on necessary legislative changes.

I do not think the letter is a good idea. There is, as we have discussed before, a legislative veto problem with this statute. That problem, however, does not affect the Commission in any way. Briefly, the statute establishes the Commission, which is to submit a report to the President. 2 U.S.C. §§ 351-352, 356, 357. The President is then directed to submit salary recommendations to Congress, after having the benefit of the report prepared by the Commission. Id. § 358. There is, however, no necessary connection between the Commission recommendations and those of the President. The President's independent recommendations -- not those of the Commission -- become effective if approved by majority vote of each House. Id. § 359. This last provision presumably violates the teaching of INS v. Chadha, in that the constitutionally mandated presentment procedure is not followed. The violation is of the most technical sort, however, since the salary recommendations originate with the President in the first place (so he has no real complaint about not having an opportunity to veto them) and must be approved by a majority vote of both Houses (so the bicameral requirement is met).

What is important to note, however, is that the legislative veto problem does not affect the work of the Commission. That work is at an end when the Commission's report -- of no independent legal significance -- is presented to the President. Presidents receiving the report not only can but historically have ignored it. The legislative veto problem goes to the effectiveness of the President's recommendations, not those of the Commission.

Nor is there any reason to suppose that a court would rule the Commission should not exist simply because of uncertainty over the fate of the President's recommendations. Congress established the Commission to advise the President; it does nothing else. That function is not affected by the legislative veto provision. It seems clear to me that a court considering the question would rule that the process remains intact, but that the President's recommendations are just that and must be passed into law consistent with Chadha. As noted, this will result in a technical but not substantive change, since a majority of both Houses must approve the President's recommendations under the statute in any event.

In light of the foregoing, I see no reason for the President to ask the Commission for legal guidance on the legislative veto problem. That's what we're here for. There remains the issue of the effectiveness of the statutory scheme, a policy question. On that score, I do not see why the President would want to solicit formal recommendations from an entity to which he appoints only three of the nine members. If we want to recommend changes in the scheme, our policy operations should be able to generate recommendations themselves, without abdicating to an independent agency.

The attached memorandum for Chew embodies the foregoing.

Attachment

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

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

SUBJECT: Proposed Letter to Nicholas Brady Regarding
Commission on Executive, Legislative, and
Judicial Salaries

You have asked for my views on a draft letter from the President to the Chairman of the Commission on Executive, Legislative, and Judicial Salaries. In the proposed letter the President notes the legislative veto problem in the statute establishing the Commission, and also notes that the statutory scheme has not worked effectively. He requests that the Commission review these problems and submit recommended legislative changes.

I recommend that the letter not be sent. The legislative veto problem referred to in no way affects the legitimacy of the Commission or the nature of its work. Under the statutory scheme the Commission submits recommendations to the President and the President thereafter submits independent recommendations to Congress. The so-called legislative veto problem -- in 2 U.S.C. §§ 359-360 -- concerns the legal effect of the President's independent recommendations, not those of the Commission. The Commission exists only to make non-binding recommendations to the President, and that function can be discharged regardless of the effectiveness of any recommendations the President may make. (Incidentally, the legislative veto problem with this statute is purely technical and non-substantive. Under the statute the President's recommendations become law only if approved by both Houses. The problem is that the recommendations should, under INS v. Chadha, be presented to the President after passage by both Houses for approval or disapproval -- a foregone conclusion, since the recommendations were submitted by the President in the first place.)

Aside from the legislative veto problem, the letter also solicits recommendations on a more effective statutory scheme. I see no reason for the President to request such formal guidance from an entity to which he appoints only three of the nine members. The recommendations of the

Commission will carry considerable weight and legitimacy, yet we do not know if they will be palatable to this Administration. We should not increase the potential for future embarrassment by requesting recommendations we may have to oppose.

FFF:JGR:aea 2/19/85
cc: FFFielding
JGRoberts
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
 H - INTERNAL
 I - INCOMING
 Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: David R. Chew

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Proposed letter to Nicholas Brady re: Commission on Executive, Legislative, and Judicial Salaries

ROUTE TO:	ACTION	DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CU/HOLL</u>	ORIGINATOR	<u>85,02,15</u>		<u>1 1</u>
	Referral Note:			
<u>CU/AT 18</u>	<u>R</u>	<u>85,02,15</u>	<u>S</u>	<u>85,02,19</u> <u>COB</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
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	Referral Note:			

ACTION CODES:

- | | |
|--|--|
| A - Appropriate Action | I - Info Copy Only/No Action Necessary |
| C - Comment/Recommendation | R - Direct Reply w/Copy |
| D - Draft Response | S - For Signature |
| F - Furnish Fact Sheet to be used as Enclosure | X - Interim Reply |

DISPOSITION CODES:

- | | |
|--------------------------|---------------|
| A - Answered | C - Completed |
| B - Non-Special Referral | S - Suspended |

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/85

SUBJECT: PROPOSED LETTER TO NICHOLAS BRADY RE COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations on the attached letter by Tuesday, February 19.

(We received this draft from Mr. Meese.)

RESPONSE:

1985 FEB 15 AM 10:50

David L. Chew
Staff Secretary
Ext. 2702

13 February 1985

Dear Mr. Brady:

As the Commission on Executive,
✓ Legislative and Judicial Salaries begins
its work, it has come to my attention that
a portion of the statute establishing the
Commission may be defective as a result of
a recent Supreme Court decision.
Additionally, the failure of the present
statutory process to resolve salary
determinations in an orderly manner
suggests that the statutory framework
warrants review.

Consequently, I hereby request that the
Commission, in addition to its statutory
duties, consider as a first priority the
effectiveness and validity of its enabling
legislation and make legislative
recommendations to remedy any
constitutional defects and to create a
framework for a more orderly resolution of
salary determination for top government
officials. I would like to have your
recommendations on these questions as soon
as possible. Please advise my Assistant
for Policy Development, John A. Svahn, of
a target date by which your Commission
will be able to develop these
recommendations.

Thank you for your attention to these
matters.

Sincerely,

RR

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

cc: EM
JSvahn
JWright


THE WHITE HOUSE

WASHINGTON

May 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Commission on Executive, Legislative,
and Judicial Salaries

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

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

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

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

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

Attachment

THE WHITE HOUSE

WASHINGTON

May 21, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Commission on Executive, Legislative,
and Judicial Salaries

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

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

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

FFF:JGR:aea 5/21/85

cc: FFFielding/JGRoberts/Subj/Chron