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EXECUTIVE AND JUDICIAL COMPENSATION IN THE FEDERAL GOVERNMENT (QUADRENNIAL COMMISSION)

HEARING

BEFORE THE

SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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EXECUTIVE AND JUDICIAL COMPENSATION IN THE FEDERAL GOVERNMENT (QUADRENNIAL COMMISSION)

WEDNESDAY, SEPTEMBER 20, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2203, Rayburn House Office Building, the Honorable Jon C. Porter (chairman of the subcommittee) presiding.

Present: Representatives Porter, Davis of Illinois, Norton, Cummings.

Staff present: Ronald Martinson, staff director; Chad Bungard, deputy staff director/chief counsel; Jessica Johnson, OPM detailee/counsel; Paul Sherry, DOE detailee/senior counsel; Alex Cooper, legislative assistant; Tania Shand, minority professional staff member; and Teresa Coufal, minority assistant clerk.

Mr. PORTER. I would like to call this hearing to order. I would like to certainly welcome you all here today. We appreciate your being with us, and we will appreciate testimony from some of our experts and a few judges that are with us today. We appreciate your expertise.

And in keeping with recent tradition, prior to moving into the business of the hearing this afternoon, I want to take a few moments to recognize an individual. As the chairman of the Subcommittee on the Federal Workforce, I try very hard to recognize some of the superstars that have been either retired from the Federal work force or are currently part of the Federal work force. Today I would like to recognize an individual that is in the State of Nevada. Of course, there are literally millions of dedicated individuals that work for the Federal Government in and around the world. We've recognized folks in Afghanistan and Iraq.

But in Nevada today, I have a gentleman that actually goes by the name of Nevada's Knight in Shining Armor. Can you hear us OK, Reggie?

Mr. KNIGHT [via teleprompter]. Yes, I can hear you, Congressman Porter.

Mr. PORTER. We appreciate your being with us, and I will be formally giving you the certificate of congressional recognition in Nevada in a few weeks. But I want to say thank you and if I can embarrass you for a moment, I'm going to read from the NARF maga-

zine. "Reginald B. Knight, Reggie to his many friends, of the NARF chapter 2276 in Pahrump, Nevada, there are very few if any of the offices in the local chapter or in the Nevada NARF Federation that Reggie has not held." For that reason, he is the subject of this month's Faces of NARF feature. I think it is a centerfold, but that is OK. [Laughter.]

Your story begins in Detroit, graduated in 1954, joined the U.S. Marine Corps, rose through the ranks, retiring in 1974 as a sergeant major. You saw combat in Vietnam as a recon platoon sergeant and was senior enlisted staff assistant to commanding officer of the fighter attack squadron of the Marines. Following his retirement from the Marines, Reggie went to work for the VA, serving as a representative of the Saddleback College of Mission Viejo, California, and took classes and received his associate degree. Has been involved in the southern Nevada community I believe since 1994, is that right, Reggie?

Mr. KNIGHT. That's correct.

Mr. PORTER. We appreciate all that you have done. I am not going to embarrass you with all the other nice things they have said about you here. But again, you truly are a knight in shining armor. Thank you for all that you do for the retired Federal employees, but more importantly, for all those folks in Nevada, and all you have done for the Pahrump community.

So today, I know that you are 2,500 miles away, but on behalf of the committee, we are recognizing you with congressional recognition. What we have done is entered your history in the Congressional Record, it will be part of literally the history of our country and thank you so much for everything that you have done.

So since I can't give it to you in person today, if you can see it——

Mr. KNIGHT. I can see it. Thank you very much. I appreciate that.

Mr. PORTER. We will bring it back with us, and thank you very much for everything you have done and for being with us today.

Mr. KNIGHT. Thank you, sir.

[Applause.]

Mr. PORTER. Also, you will receive a copy of the congressional recognition. There is a Congressional Record that will be a part, again, of the Library of Congress. You will receive a book and additional information from the U.S. Congress. So again, thank you for being with us. Take care.

Mr. KNIGHT. Thank you very much, Congressman Porter.

Mr. PORTER. And you're welcome to sit through the meeting, if you would like.

Mr. KNIGHT. I appreciate that. With the issues that you're dealing with, I want to sit through it. [Laughter.]

Mr. PORTER. Very good. Thank you again very much.

Now, having a quorum present, we will formally begin the meeting. I appreciate the Members being here today.

It is really an unfortunate reality that there has been and always will be a substantial difference in pay between top level Federal Government executives and executive branches in the private sector. Perhaps Babe Ruth summed it up best when asked by a reporter during the Great Depression of the 1930's why his salary as

a baseball player was more than that of the President of the United States, Herbert Hoover. The Babe's response was, "I had a better year."

Well, many years have passed since Babe Ruth's humorous, yet telling, remark. And needless to say, the Babe did not call the shot on the problem of pay erosion and pay compression for certain top executives on the Federal level. Inequities in pay for certain top level executives of the Federal Government have existed for some time and have not gone away.

In fact, for many, as we will hear today from some of our distinguished witnesses, it is getting worse, and it has caused the Federal Government to lose some of its best and brightest leaders. It is getting worse, and we need to change that. Until this problem is properly addressed, the American people will continue to pay a high price for the low salaries that are being paid to certain top level Federal officials.

In June 2006, the GAO completed a study undertaken at my request entitled Human Capital: Trends in Executive and Judicial Pay. The GAO report calls attention to the fact that the basic pay rates of certain top level executives and members of the judiciary, particularly those under executive schedule and judicial pay plans, when adjusted for inflation to 2006 dollars, have suffered dramatic declines since 1970.

For example, when adjusted for inflation using the consumer price index, well recognized as an official Government index and often utilized by Congress, for example, used for Social Security and civil service adjustments, pay for Cabinet Secretaries declined in value by 41 percent and the pay of the Chief Justice by 34 percent since 1970. In terms of actual dollars, applying the CPI, this means that in 1970 Cabinet Secretaries were paid the equivalent of $309,000 in 2006 dollars.

But today, because of pay erosion, Cabinet Secretaries are being paid $183,500, or 41 percent less because of inflation, or what otherwise might be called pay deflation. And again applying the CPI, it means that in 1970 the Chief Justice was being paid the equivalent of $321,000 in 2006 dollars, but today is receiving $212,000, or 31 percent less because of inflation or pay deflation.

Along with the GAO report, past studies have confirmed that certain executives and judicial pay rates are inadequate when measured against inflation and changing economic conditions. For example, in 2003, the National Commission on Public Service, chaired by the distinguished Paul Volcker, found that there was a failure of Federal compensation policies at top levels within all three branches of comparison to the private sector.

Of particulate note, the 2003 National Commission found the state of judicial pay to be so egregious that the Commission noted that the first priority of the Congress should be "an immediate and substantial increase in judicial salaries." Unfortunately, the 2006 GAO report confirms that the problem continues.

It is now time to find a solution that will be successful. GAO has noted in this report has noted that certain principles should be considered to attract and retain the quality of executive and judicial leadership necessary to address the 21st century challenges. In particular, GAO has stated that top level pay plans should be sen-

sitive to hiring and retention trends, reflective of the responsibilities, knowledge and skills, of contributions, transparent, market sensitive, flexible to economic change, sustainable and competitive. In its report, GAO has observed that the reestablishment of a salary commission may be an option to consider in maintaining reasonable salary relationships across executive and judicial positions, something I think that makes a whole lot of sense.

GAO noted that both in 1967 and 1989 Congress authorized the establishment of a commission to study and make recommendations with respect to the salary of top level Federal employees, including positions with the executive schedule, as well as the judiciary. The first of these commissions was abolished and the second commission was never appointed. What we must do now is devise some system to assure adequate compensation for top Federal executives and judges that will have the confidence of the public and the members of the legislative, executive and judicial branches of the Federal Government. At this point, however, we are just sharing preliminary thoughts on the matter.

The purpose of the hearing is to first examine the results of the study conducted by GAO and to hear about and discuss inequities in the existing system. However, we have asked our witnesses and would be most grateful if they would share their views with the subcommittee on whether a salary commission or some other option could best assure that top level members of the executive branch and judges are fairly compensated.

In addition to our distinguished group of witnesses today, testimony has been provided by Fred W. Cook, founding director of the Frederic W. Cook and Co., independent consulting firm specializing in executive compensation issues. Mr. Cook could not be with us today as a witness. He is a well recognized expert on compensation issues and is currently vice chairman of the Defense Department Business Board, a Federal advisory committee that provides DOD senior management advice on the best practices from the private sector.

I ask unanimous consent that Mr. Cook's testimony may be included in this hearing.

[The prepared statement of Mr. Cook follows:]

September 15, 2006

EXECUTIVE AND JUDICIAL COMPENSATION IN THE FEDERAL GOVERNMENT

A Major Rebalancing of Top-Level Salaries Followed by a New Annual Adjustment Factor

Mr. Chairman and Fellow Subcommittee Members:

Thank you for giving me the opportunity to provide testimony on the subject of "Executive and Judicial Compensation in the Federal Government."

I believe the pay of top governmental officials in the Executive and Judicial Branches is too low. It should be raised significantly and put on a new adjustment basis, not tied to inflation (which is a conflict of interest) but to the pay of the average American worker. Higher pay is warranted for the top officials in the Executive and Judicial Branches not because it would attract better people. There are many reasons great people seek our higher office, and money is not high on the list, nor should it be. We need higher pay for the top officials so we can pay more to those who toil just underneath them, and for whom governmental service is now a great financial sacrifice to them and their families in relation to what people of similar education, talent and experience can earn on the outside. These are the political appointees in Executive Levels V-II and who now work for salaries ranging from $133,900 to $165,200, and who are compressed from below by recent increases in SES salaries. Also, there are counterpart-level executives in the Judicial Branch who deserve similar treatment as well.

What types of salaries do I have in mind that would relieve this compression from the top and bottom? Here are some aggressive ideas that could be considered:

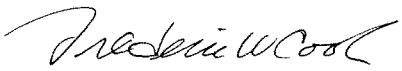
	Proposed	**Current 2006**
President	$750,000	$400,000
Vice President	$500,000	$212,100
Chief Justice	↓	$212,000
Associate Justices	$350,000	$203,000
Cabinet Heads (EX I)	↓	$183,500
Executive Level II	$300,000	$165,200
Executive Level III	250,000	$152,000
Executive Level IV	225,000	$143,000
Executive Level V	200,000	$133,900

All executive pay levels, except the President's, are now indexed to annual inflation (COLA) unless Congress votes not to grant a raise. Please give consideration whether this is a conflict of interest and whether it might not be better to index top governmental salaries to BLS statistics for the pay of the average American full-time worker. This would align everyones' interests.

If the Subcommittee prefers not to act directly on these proposals, please consider the appointment of a Quadrennial Commission to study the matter further and make recommendations. I would be honored to serve on, or as an advisor to, this Commission.

My suggestions are presented as a private citizen with 40 years experience as an executive compensation consultant serving large public corporations and their boards on the structure and levels of their top executives' compensation. In addition, since 2002 I have served on the Defense Business Board under Secretary Rumsfeld in the capacity as head of their human resources task group.

Respectfully submitted,



Frederic W. Cook

Mr. PORTER. Critical to the success of the Federal Government in the 21st century is the need to properly address a wide variety of human capital issues involving the Federal work force. As this subcommittee knows first-hand, as we have just witnessed, recognizing Mr. Reggie B. Knight, of my home State of Nevada, for his outstanding contributions as a member of the work force, Federal employees not only do an outstanding job, they often go above and beyond the call of duty. In doing so, they should and will be recognized. They are truly one of the Nation's greatest resources.

One of the most critical human capital issues facing the Federal Government today concerns the need to make certain that employees in the Federal work force are properly compensated for the responsibilities they undertake in serving the public. In the face of national emergencies, work force shortages and the looming retirement tsunami, and the loss of well-qualified Federal employees to the private sector, it is essential that on the Federal level we explore all options to ensure that compensation for job performance is commensurate with the responsibilities undertaken. Our Federal employees deserve no less.

And this should especially be the case for those in the position of high responsibility in the work force, namely those in the top level executive judicial positions in our Government.

Now, having read the formal statement, let me tell you what I really think. We have a real challenge before us, and we appreciate Mr. Walker being here today to talk about that. But we have to make sure we encourage the best and the brightest to become a part of our work force. We want to make sure that those that are with us are compensated properly and those that enter retirement are compensated properly.

I have always felt, especially from the judiciary side, that although it is very important that we have a legislative branch and executive branch, but knowing at the end of the day that our court system is the best in the world, and we can always, as residents of this great country count upon the courts. We may not always agree with certain levels of the court, but available to us are different steps and at the end of the day, the Supreme Court.

So we have to make sure that we keep the best and brightest, we encourage the best and the brightest. And make sure that those that are in these top level positions remain with us, because I certainly understand why a judge may leave and go back in private practice. It is very difficult to compete with the private practice with the salaries the way they are.

So in very plain language, this is an area I think that is a real challenge for our country. I am pleased that the committee is looking at this. I would now like to recognize our ranking member, Mr. Danny Davis, for his opening statement.

[The prepared statement of Hon. Jon C. Porter follows:]

"EXECUTIVE AND JUDICIAL COMPENSATION IN THE FEDERAL GOVERNMENT (QUADRENNIAL COMMISSION)"

Subcommittee on the Federal Workforce and Agency Organization
Chairman Jon C. Porter

September 20, 2006

OPENING STATEMENT

I would like to thank everyone for being here today.

It is an unfortunate reality that there have been and will always be substantial differences in pay between top level federal government executives and executives in the private sector. Perhaps Babe Ruth summed it up best when asked by a reporter during the great depression of the 1930's why his salary as a baseball player was more than that of the President of the United States, Herbert Hoover. The Babe's response: "I had a better year."

Many years have passed since Babe Ruth's humorous yet telling remark. And, needless to say, the Babe did not "call the shot" on the problem of pay erosion and pay compression for certain top executives on the federal level. Inequities in pay for certain top level executives of the federal government have existed for some time and have not gone away. In fact, for many, as we will hear today from some of our distinguished witnesses, it is getting worse and has caused the federal government to lose some of its best and brightest leaders. And until this problem is properly addressed, the American people will continue to pay a high price for the low salaries that are being paid to certain top level federal officials.

In June, 2006, GAO completed a study undertaken at my request entitled "*HUMAN CAPITAL: Trends in Executive and Judicial Pay.*" The GAO Report calls attention to the fact that the basic pay rates of certain top level executives and members of the judiciary, particularly those under Executive Schedule and judicial pay plans, when adjusted for inflation to 2006 dollars, have suffered dramatic declines since 1970. For example, when adjusted for inflation using the Consumer Price Index (CPI), well recognized as an official government index and often utilized by congress (e.g., used for social security and civil service adjustments), pay for cabinet secretaries declined in value by 41%, and the pay of the Chief Justice by 34% since 1970.

In terms of actual dollars, applying the CPI, this means that in 1970 cabinet secretaries were paid the equivalent of $309,049 (in 2006 dollars) but today, because of pay erosion, cabinet secretaries are being paid $183,500 or 41% less because of inflation, or what otherwise might be called pay deflation. And again applying the CPI, it means that in

1970 the Chief Justice was being paid the equivalent of $321,926 (in 2006 dollars) but today is receiving $212,100, or 34% less because of inflation or pay deflation..

Along with the GAO Report, past studies have also confirmed that certain executive and judicial pay rates are inadequate when measured against inflation and changing economic conditions. For example, in 2003, the National Commission on the Public Service chaired by the distinguished Paul Volcker found that there was a "failure of federal compensation policies" at top levels within all three branches in comparison to the private sector. Of particular note, the 2003 National Commission found the state of judicial pay to be so egregious that the Commission noted that a first priority of Congress should be "an immediate and substantial increase in judicial salaries." Unfortunately, the 2006 GAO Report confirms that the problem continues.

It is now time to find a solution that will be successful.

GAO, in its Report, has noted that certain principles should be considered to attract and retain the quality of executive and judicial leadership necessary to address 21st century challenges. In particular, GAO has stated that top level pay plans should be: sensitive to hiring and retention trends; reflective of responsibilities , knowledge and skills and contributions; transparent; market sensitive; flexible to economic change; sustainable; and competitive.

In its Report, GAO has also observed that re-establishment of a salary commission may be an option to consider in maintaining reasonable salary relationships across executive and judicial positions – something that I think makes a whole lot of sense. GAO noted that in both 1967 and in 1989, Congress authorized establishment of a commission to study and make recommendations with respect to the salary of top level Federal employees, including positions within the Executive Schedule as well as the judiciary. The first of these commissions was abolished and the second commission has never been appointed.

What we must do now is devise some system to assure adequate compensation for top federal executives and judges that will have the confidence of the public and the members of legislative, executive, and judicial branches of the federal government. At this point, however, we are just sharing preliminary thoughts on this matter. The purpose of the hearing is to first examine the results of the study conducted by GAO and to hear about and discuss the inequities in the existing system. However we have asked our witnesses and would be most grateful if they would share their views with this Subcommittee on whether a salary commission (or some other option) could best assure that top level members of the executive branch and judges are fairly compensated.

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committee that provides DOD senior management advice on best practices from the private sector. I ask unanimous consent that Mr. Cook's testimony may be included in the hearing record.

Critical to the success of the federal government in the 21st century is the need to properly address a wide variety of human capital issues involving the federal workforce. As this Subcommittee knows firsthand - and as we have just witnessed in recognizing Mr. Reginald B.Knight of my home State of Nevada for his outstanding contributions as a member of the federal workforce - federal employees not only do an outstanding job, they often go above and beyond the call of duty in doing so. They are truly one of this nation's greatest resources.

One of the most critical human capital issues facing the federal government today concerns the need to make certain that employees in the federal workforce are properly compensated for the responsibilities they undertake in serving the public. In the face of national emergencies, workforce shortages, a looming "retirement tsunami," and the loss of well qualified federal employees to the private sector, it is essential that on the federal level we explore all options to ensure that compensation for job performance is commensurate with responsibilities undertaken. Our federal employees deserve no less.

And this should especially be the case for those in positions of high responsibility in the federal workforce, namely those in top level executive and judicial positions in our government.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. Before I give my opening statement, I too would just like to congratulate Mr. Knight on his recognition. I was just thinking, if the Babe was around today and was asked the same question, he would probably give the same answer. [Laughter.]

But thank you very much, Mr. Chairman.

Reform of the general schedule and implementation of pay for performance plans for rank and file Federal employees has been the subject of many of our subcommittee hearings. This is the first hearing during which we will focus our attention specifically on executive and judicial pay. I am indeed pleased that we are doing so.

I believe that each Federal employee, regardless of position, should be paid a living wage and a wage that is commensurate with skills, experience and knowledge. Based on the report that the GAO issued in June on executive and judicial pay, it is clear that the pay of our most senior officials and judges has declined in value. The GAO report recommends that when restructuring the pay plans for the executive and judicial positions, the plans should be sensitive to hiring and retention trends, reflective of responsibilities and skills, transparent, market sensitive, flexible to economic change, sustainable and competitive. And I reemphasize, competitive.

It would be helpful if the witnesses addressed questions related to the hiring and retention trends among executive and judicial employees. Are we having trouble filling these positions? Are we losing current employees to the private sector? Also, how do we hold the individuals at the highest levels of Government accountable for their actions while ensuring fairness and preventing abuse?

I have always been somewhat amazed, even before running for and being elected to public office, why the perception of the public seems to be that public employees, for some reason, shape, form or purpose, are not as valuable as those in the private sector. That is a question I have never been able to fully understand. I hope that we can shed some light on that philosophical thinking of people in our country, as well as the practical application of different kinds of thinking to the compensation that we provide for these men and women on whom, I think, rest a tremendous value relative to the stability of our Government, the stability of our Nation and the continuous progress of us as a people. So I look forward to the testimony of today's witnesses and thank you very much, Mr. Chairman, for holding this hearing.

[The prepared statement of Hon. Danny K. Davis follows:]

**STATEMENT OF THE HONORABLE DANNY K. DAVIS
AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE
AND AGENCY ORGANIZATION
HEARING ON**

**EXECUTIVE AND JUDICIAL COMPENSATION IN THE
FDERAL GOVERNMENT**

September 20, 2006

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I look forward to the testimony of today's witnesses.

Thank you.

Mr. PORTER. Thank you, Mr. Davis.

Congresswoman Holmes Norton.

Ms. NORTON. Thank you, Mr. Chairman. And I thank the GAO for its report.

I agree with the ranking member, we have been concerned with the rank and file salaries, particularly as health care has gone up. As we speak, we have done very little to make sure that the best and the brightest continue to choose Government. I suppose that is where my focus is and where I think it has to be.

But I do not want to be understood as believing that the problem that the GAO report addresses is not a serious problem and that it shouldn't be considered. I think it certainly must be considered. I simply offer the context in which I think all thought of pay raises in a period like this must be viewed.

These very high level leaders are indeed at the height of their career. We are talking, let's understand who we are talking about. We are talking about political appointees. We are talking about judges and justices. We are talking about people who, at the moment they decide to come into an administration already know that, for example, the students that I continue still to teach, whenever I go back to teach at Georgetown, instantly make more than a Federal judge and instantly—I am talking about the top firms and the first year out of law school. They make more the first year out than their law professors. They make more than Members of Congress. And they make more than Federal judges.

Any Federal judge, there is no, the plethora of them is the only thing we have to worry about, the plethora of lawyers who want to be Federal judges or Cabinet Secretaries boggles the mind. Bear in mind also that our country has been over-lawyered since Thomas Jefferson. There are so many of them that I literally, when I first began to teach, and even before I got tenure, I told my law students, look, sorry, I told students who came to be me because they knew I was a law professor, look, if you have a good, analytical mind, I don't want to train you away from what you are considering. But you really ought to consider that the one profession that is full of folks is us. And you ought to consider across the board. That is just how seriously I feel about the glut of lawyers seeking positions at the highest level with the Government.

Again, I don't want to be understood as being against adjusting the wages of people who have seen no adjustment in real terms in 30 years. I do believe it is only fair to note that first of all, Cabinet Secretaries have to be separated from judges. You want to be a Cabinet Secretary because you want to get out here as quick as you can to use the fact that you have been a Cabinet Secretary in order to go and really cash in. And that is whether you are in Democratic or Republican administrations. I don't know why they would be lumped together except of course, their salaries have not gone up.

The whole notion of trying to "attract" them to political appointments that there are maybe 1,000 people for every single one of them who are overqualified is not what I think we should be about to keep them is a political matter and not a salary matter. And we have seen that they do stay, in this administration, for example, a fairly long period of time. And I have not noticed, even in the last

administration, that there was a lot of turnover. Yes, some turn over, but not any more than one might expect.

Now, to go to judges, a lawyer has to really make a focused decision if he takes a position for life. I disagree with the Chief Justice of the United States who said recently in testimony that the failure to raise judicial pay was a direct threat to judicial independence. Hogwash. This has nothing to do with judicial independence. When it says that a judge is appointed for life, it doesn't mean that if he leaves before his life ends the public loses. For life to him, particularly at a period when people often change what they want to do or get financial pressure they may not have had before means he goes. But he doesn't go because of anything internal to judicial administration or justice.

So the fact that there is some turnover, the ranking member is right, we have to understand what kind of turnover we mean. Because I suggest to you that the figures do not show that there is huge turnover in the Federal judiciary. And particularly since lawyers work off of the premise "know or should have known," and the notion that your salary hasn't been raised in 30 years when you took an appointment last year from the President or from the prior President, don't think they don't know that.

So as much as I think adjustments are due, these are the very people, these are the last people, people who are the most replaceable in our country, a bunch of lawyers. Too much of our talent is out there. That's why all of them want to come in and get some distinguishing feature, like having been a judge. And we have not seen that they hop in and be a judge and then go out. But I can tell you this: that even a judge who is a district judge or court of appeals judge, and he goes someplace, he is going to land big time in a law firm making a lot of money. And yet they are not rapidly leaving.

Democratic Members said this year that they did not think the Members of Congress should take a pay raise until the minimum wage was raised. Now, Members of Congress are not hugely overpaid. But it did seem to me that was the kind of thing to do to set an example for the rest of the country. The lowest trick that I have ever seen was paid by the majority, because what they did was to attach our salary as well as the minimum wage to the estate tax, hoping that there would be enough greedy Members of Congress so that whole package would pass, and it failed, at least in the Senate.

I would be for some adjustment for these highly paid people whose career will land them even better things if they decide to leave when in context we deal with first those who have no place to land but further at the bottom without an increase in minimum wage. Then with the rank and file employee of the Federal Government, especially those who are now have seen no increase in the amount we will pay, percentage we will pay of their health care insurance ever. Same percentage here. And when that balance is brought to bear, and that is the only context in which I think we should consider adjustments. We should look across the board. We will see that the highest ranking people are further behind. To him who is given most, he should be willing to give back most.

When that is done and we are just recognizing that these people have made a very conscious decision to give up salary in order to have these very distinguished positions, and then recognize that we are uncompetitive in seeking employees, for example, who can go to one of the dot come capitals right out here in Northern Virginia, when we see all of that in context, then yes, the Justice of the Supreme Court and his eight colleagues, and yes, the judges of the district courts and the courts of appeals shall and should be adjusted. And they should be adjusted in the context of adjustments that are due millions of others.

Thank you, Mr. Chairman.

Mr. PORTER. Thank you. Mr. Cummings.

Mr. CUMMINGS. Thank you for holding this important hearing today, Mr. Chairman, to examine the pay rates for Federal executive and judicial positions. I was troubled to learn from the Government Accountability Office report that you requested that is entitled Human Capital: Trends in Executive and Judicial Pay that we are not offering competitive salaries to our Government's top officials.

As you know, the report finds that the salaries for the Federal Government's senior leaders, including political appointees and Federal judges and justices, have not been keeping pace with inflation on the growth of wages over the past 30 years. To the contrary, adjusted for inflation, they have actually gone down over time.

Adjusted based on GDP, the salaries for Cabinet Secretaries have gone down 27 percent since 1970. Supreme Court justices have seen a 19 percent cut. Just think of what that means, adjusted for GDP, Chief Justice Warren Burger made more than Chief Justice John Roberts makes. And Secretary of State Henry Kissinger made more than Secretary of State Condoleezza Rice.

I think we can all agree this reality is unreasonable. We send a poor message to our Nation's most important leaders by giving them a pay cut. And the cuts have not only been felt in high profile positions. A January 2003 report of the National Commission on Public Service found that in 2003, about 70 percent of the Senior Executive Service received level pay due to pay compression.

We have an obligation to the American taxpayer to keep overhead costs in all levels of Government low. But there comes a point where we will no longer be able to attract our Nation's best and brightest because we are unwilling to pay them. We must compete on a level playing field with the other industries that are pulling talented individuals in these fields. We can only do so by offering appropriate salaries. That is why I appreciate your dedication to this issue, Mr. Chairman, and I look forward to learning more about how we can implement the recommendations that the GAO has made with regard to addressing this problem.

I look forward to the testimony of our witnesses today and I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

U.S. House of Representatives
109th Congress

Opening Statement

Representative Elijah E. Cummings, D-Maryland

"Executive and Judicial Compensation in the Federal Government"

Subcommittee on Federal Workforce and Agency Organization
Committee on Government Reform

September 20, 2006

Mr. Chairman,

Thank you for holding this important hearing to examine the pay rates for federal executive and judicial positions.

I was troubled to learn from the Government Accountability Office (GAO) report that you requested, "Human Capital: Trends in Executive and Judicial Pay," that we are not offering competitive salaries to our government's top officials.

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We have an obligation to the American taxpayer to keep overhead costs in all levels of government low. But there comes a point where we will no longer be able to attract our nation's best and brightest because we are unwilling to pay them.

We must compete on a level playing field with the other industries that are pooling talented individuals in these fields, and we can only do so by offering appropriate salaries.

That is why I appreciate your dedication to this issue, Mr. Chairman, and I look forward to learning more about how we can implement the recommendations that the GAO has made with regards to addressing this problem.

I look forward to the testimonies of today's witnesses and yield back the balance of my time.

Mr. PORTER. Thank you, Mr. Cummings. I ask at this point for unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, and that any answers to written questions provided by the witnesses also be included in the record. Without objection, so ordered.

I ask unanimous consent that all exhibits, documents and other materials referred to by Members and the witnesses may be included in the hearing record, that all Members be permitted to revise and extend their remarks. Without objection, so ordered.

It is also the practice of this committee to administer the oath to all witnesses. I have always wanted to have the oath done by a judge, so this is a real pleasure for me today. [Laughter.]

So if you would all stand, please. Please raise your right hands.

[Witnesses sworn.]

Mr. PORTER. Let the record reflect that all witnesses have answered in the affirmative. Please be seated.

Our first panel, I would like to invite a witness to the table who has spent a little time with us in this subcommittee, and we appreciate your being here, Mr. Walker. Mr. Walker is the Comptroller General of the Government Accountability Office. Again, I think that your office is a part of this establishment, for years, and we appreciate what you have done. Welcome, and we will appreciate your testimony.

STATEMENT OF DAVID M. WALKER, COMPTROLLER GENERAL OF THE UNITED STATES

Mr. WALKER. Thank you, Mr. Chairman, Ranking Member Davis, other members of the subcommittee. I appreciate the opportunity to be here today to report on our latest report dealing with trends in executive judicial pay. This is a copy of the report, which it is my understanding all of you have had an opportunity to receive and review.

I assume that my entire statement will be entered into the record, and therefore, if it will be, I will just summarize. Is that all right, Mr. Chairman?

Mr. PORTER. Please.

Mr. WALKER. Thank you.

In our report on executive and judicial pay, we found that generally, the salaries for the Federal Government's senior leaders, including political appointees and Federal justices and justices, have not kept pace with inflation or the growth in wages over the last 30 years. Our work is consistent with the National Commission on Public Service's findings that salaries for top Government officials have not kept pace with inflation or maintained a reasonable relationship to the market.

And I have two exhibits up here that are in my testimony, the far one on the left is Appendix No. 1, which is part of my testimony, which talks about the differences in pay based upon adjusting for CPI as well as the GDP deflator. And the one on the right talks about what has happened over time looking at a variety of indices, whether it is wages, prices or other types, as well as very specific positions, to try to help bring this home.

I would respectfully suggest that while executive and judicial pay overall has declined in value when adjusted for inflation and as

compared to other indices, that any restructuring of executive and judicial pay should consider basic pay received as only one part of a total compensation package. We need to be looking at total compensation, not just cash compensation. Total compensation includes such elements as cash, basic pay, locality pay, cash awards and bonuses, noncash benefits, such as annual and sick leave, health insurance and deferred benefits, such as pension and retiree health and other benefits such as life insurance.

For example, at present, selected executive level positions or executive schedule positions, administrative law judges, inspectors general and Federal justices and judges, do not receive cash awards and bonuses due to the nature of their positions, while career senior executives may receive them. All of the executive level positions may receive noncash benefits, such as health and life insurance and retirement. However, there are significant differences in retirement benefits, such as larger retirement benefits for Federal justices and judges, compared to many executive level positions.

Organizations in the Federal Government may need to be flexible in order to look at not only how much they are paying but in what form they are paying it, whether it should be in cash, current and/or deferred benefits. Thus, the Federal Government may need from time to time to shift the balance in total compensation between pay and benefits in order to do what Ms. Holmes Norton and several of you said, and that is, in order to be able to attract and retain top talent.

I would, however, respectfully suggest that not all executive level positions are equal, and that we need to do a much more thorough analysis of the difference between these types of positions. For example, while there is no question that the Federal Government wants to be in a position to attract and retain not just enough people but top quality people for these critical positions, we need to keep in mind that there are several criteria that executive and judicial pay plans should meet in our opinion.

First, they need to be sensitive to hiring and retention trends. Do we have a problem or not? Are we having difficulty in attracting and retaining an adequate number of people with the right type of quality? It is not just number, it is also quality. And you don't necessarily want to wait until you have a huge problem before you solve the problem. But we need to be aware of that. Look at supply and demand, look at whether or not we are having a problem.

Second, we need to pay more attention, I believe, to something that Ms. Holmes Norton touched on, and that is, we need to look at the responsibilities, the skills and knowledge, the tenure and the contributions of these positions. For example, I would respectfully suggest that a political appointee who is in a policy position who by definition is only going to be in that policy position for 2 to 4 years, in most circumstances, is fundamentally different than a person who is in a professional position that requires a degree of independence that is going to be in a position for a number of years, and therefore is making much more of a sacrifice as compared to the opportunity cost of what they could get in the private sector versus the public sector.

I think we also need to make sure that they are transparent, that they are marked as sensitive, flexible to economic change, that

they are affordable and sustainable and that they are competitive. With that, Mr. Chairman and members of the subcommittee, I think I would reinforce that yes, there is an issue here. There is a very real issue here. But any restructuring of executive and judicial pay should not treat all positions of the same level necessarily the same, that we need to do a more substantive analysis than that, that we need to consider total compensation, not just base pay and cash compensation.

And that moving forward, there may be a need for a commission to look at various options for how best to handle this and to try to de-politicize the issue, including whether and to what extent certain positions ought to be coupled with congressional pay. Right now, as you know, there are a number of positions that are directly coupled with congressional pay. I think that has to be looked at. As you know, the National Commission recommended a decoupling in that regard.

And last, but certainly not least, to reemphasize, if we look in substance at what type of skills and knowledge is necessary, how long a person is likely to be in that job, whether or not that job requires a degree of independence, such as inspectors general and judges, I think those are factors that we need to be considering to a much greater extent than we have in the past. I have been a Presidential appointee of President Ronald Reagan, President George Herbert Walker Bush and President Bill Clinton. The fact is that the first two appointments, I knew by definition I was going to be in for a short period of time. In my current position, I made a 15 year commitment.

Those are fundamentally different things. And I think that we need to understand that and recognize that to a greater extent than we have in the past. Thank you, Mr. Chairman.

[The prepared statement of Mr. Walker follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on the Federal Workforce and Agency Organization, Committee on Government Reform, U.S. House of Representatives

For Release on Delivery
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HUMAN CAPITAL

Trends in Executive and Judicial Pay Suggest a Reexamination of the Total Compensation Package

Statement of David M. Walker
Comptroller General of the United States

GAO-06-1116T

September 20, 2006

GAO
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Highlights

Highlights of GAO-06-1116T, a testimony before the Chairman, Subcommittee on the Federal Workforce and Agency Organization, Committee on Government Reform, U.S. House of Representatives

HUMAN CAPITAL

Trends in Executive and Judicial Pay Suggest a Reexamination of the Total Compensation Package

Why GAO Did This Study

People are critical to the success of the federal government's overall transformation effort. Yet the government has not transformed, in many cases for decades, how it classifies, compensates, develops, and motivates its employees to achieve maximum results with available resources and existing authorities. This is especially the case with the federal government's top leadership and federal justices and judges.

Leading organizations understand that they must often change their culture to successfully transform themselves, and that such a change starts with top leadership. Most importantly, senior leaders who are drivers of continuous improvement are needed to stimulate and support efforts to facilitate change and achieve related transformation efforts for the federal government.

At the Chairman's request, we recently reported on executive and judicial pay—*Human Capital: Trends in Executive and Judicial Pay* (GAO-06-708). This testimony highlights information from that report.

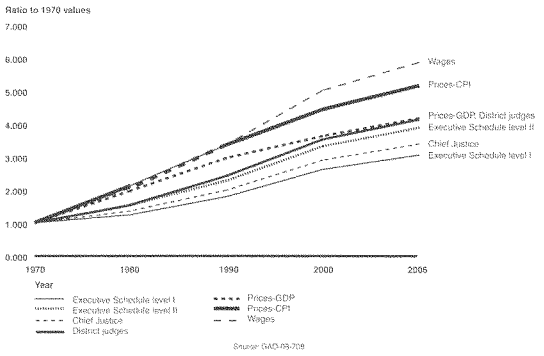
www.gao.gov/cgi-bin/getrpt?GAO-06-1116T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Lisa Shames at (202) 512-6806 or shamesl@gao.gov.

What GAO Found

The pay rates for selected executive-level positions have not kept pace with the growth of wages from 1970 to 2006, as measured by the National Income and Product Accounts wage index for private industries. As shown below, for example, wages grew at nearly double the rate of basic pay for Executive Schedule level I positions, such as cabinet secretaries, and the Chief Justice.

Cumulative Growth of Selected Executive-Level Pay Rates Compared to Prices and Wages



Source: GAO-06-708

To remain competitive in the market, organizations, including the federal government, may need to be flexible in the balance between cash and benefits that comprise the total compensation offered to employees. Total compensation includes elements such as cash—basic pay, locality pay, cash awards/bonuses; noncash benefits—annual and sick leave, health insurance; and deferred benefits—retirement (i.e., pension and health), life insurance. Any restructuring of executive and judicial pay should consider basic pay received as one part of the total compensation package.

While the types of experiences, responsibilities, required knowledge and skills, type of appointment, and length of service vary both within and across executive-level positions, moving forward, a commission may be an option for reexamining executive and judicial pay and compensation to ensure that the federal government's total compensation is both reasonable and competitive in order for the government to obtain and retain the top talent it needs to address current and emerging 21st century challenges in a responsible and sustainable manner.

Chairman Porter, Representative Davis, and Members of the Subcommittee:

I appreciate the opportunity to be here today to discuss our recent report on long-term trends in executive and judicial pay that we prepared at your request, Chairman Porter.[1] As I have stated frequently, people are critical to the success of the federal government's overall transformation effort. While progress has been made in addressing human capital challenges in the last few years, significant opportunities exist to improve strategic human capital management to respond to current and emerging 21st century challenges. For example, the government has not transformed, in many cases for decades, how it classifies, compensates, develops, and motivates its employees to achieve maximum results within available resources and existing authorities.[2] This is especially the case with the federal government's top leadership and federal justices and judges. Leading organizations understand that they must often change their culture to successfully transform themselves, and that such a change starts with top leadership. Most importantly, senior leaders who are drivers of continuous improvement are needed to stimulate and support efforts to facilitate change and achieve related transformation efforts for the federal government.

In our report on executive and judicial pay, we found that generally the salaries for the federal government's senior leaders, including political appointees and federal justices and judges, have not been keeping pace with inflation or the growth of wages over the past 30 years. Our work is consistent with the National Commission on the Public Service's findings that the salaries for top-level government officials have not been keeping pace with inflation or maintaining reasonable relationships to the market. In 2003, the Commission recommended that top-level officials in the executive, legislative, and judicial branches receive significant increases in their salaries to ensure a reasonable relationship to relevant professional positions, such as leaders in not-for-profit and educational organizations or state and local governments.[3] The Commission also recommended that

[1]GAO, *Human Capital: Trends in Executive and Judicial Pay*, GAO-06-708 (Washington, D.C.: June 21, 2006).

[2]GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: February 2005).

[3]The National Commission on the Public Service, *Urgent Business for America: Revitalizing the Federal Government for the 21st Century* (Washington, D.C.: January 2003).

Congress break the statutory link, which has been in place since 1989, between the salaries of Members of Congress and those of federal justices and judges and senior political appointees. The Commission noted that this contributes to the salaries of executive-level positions falling substantially behind cost-of-living increases and trends in the market's compensation.

Today, I will focus on three key points. Specifically, I will discuss (1) how trends in executive and judicial pay have generally not kept pace with inflation or the growth of wages, (2) how basic pay should be considered along with other benefits when examining the value of total compensation in order to remain competitive to the market for executive and judicial positions, and (3) what principles should guide any possible restructuring of executive and judicial pay in order to attract the talent needed to address 21st century challenges. We have also identified illustrative issues that deserve further reconsideration in moving forward with any executive and judicial pay restructuring. My statement is based on published GAO products that were conducted in accordance with generally accepted government auditing standards.

Trends in Executive and Judicial Pay

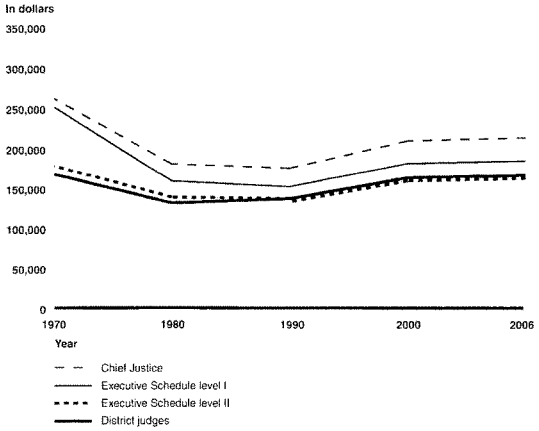
A key trend we reported is that executive-level pay rates generally have not kept pace with inflation since 1970, regardless of the inflation index used. In our recent report, we adjusted the basic pay rates from 1970 for selected executive-level positions to calendar year 2006 dollars using the Bureau of Economic Analysis's Gross Domestic Product (GDP) price deflator and the Bureau of Labor Statistics's Consumer Price Index (CPI). From 1970 to 2006, the CPI has increased at an average annual rate of 4.7 percent, whereas the GDP price deflator has increased at an average annual rate of 4.0 percent. While each index has its strengths and weaknesses in measuring inflation, historically inflation as measured by the CPI has tended to outpace inflation as measured by the GDP price deflator.[4] For detailed information on the executive-level positions within the selected pay plans and the differences in their nominal and inflation-adjusted basic pay rates, see appendix I.

[4]For more information on these inflation indexes, see the full report on trends in executive and judicial pay, GAO-06-708.

Using the GDP price deflator to adjust for inflation, the basic pay for selected Executive Schedule positions and federal justices and judges has declined from 1970 to 2006, as shown in figure 1. For example, in 1970,

- cabinet secretaries (paid at Executive Schedule level I) were paid $250,204 (in 2006 dollars) compared to $183,500 in 2006—a decline of about 27 percent;
- deputy secretaries (paid at Executive Schedule level II) were paid $177,228 (in 2006 dollars) compared to $165,200 in 2006—a decline of about 7 percent;
- the Chief Justice was paid $260,629 (in 2006 dollars) compared to $212,100 in 2006—a decline of about 19 percent; and
- district judges were paid $166,802 (in 2006 dollars) compared to $165,200 in 2006—a decrease of about 1 percent.

Figure 1: Basic Pay Rates for Selected Executive-Level Positions Adjusted for Inflation Using the Gross Domestic Product Price Deflator (in 2006 Dollars)

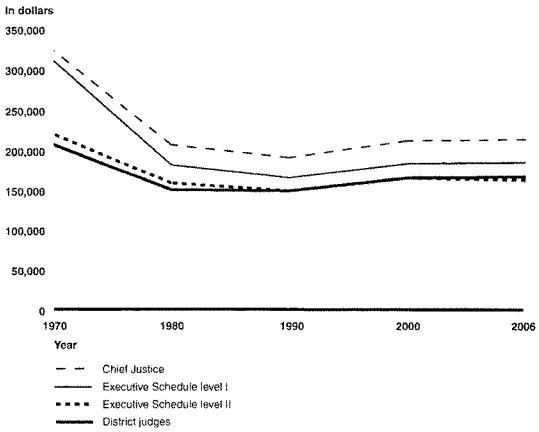


Source: GAO-06-708.

Similarly, the value of the basic pay for selected Executive Schedule positions and federal justices and judges has declined when adjusted for inflation using the CPI. Specifically, as shown in figure 2, in 1970,

- cabinet secretaries (paid at Executive Schedule level I) were paid $309,049 (in 2006 dollars) compared to $183,500 in 2006—a decline of about 41 percent;
- deputy secretaries (paid at Executive Schedule level II) were paid $218,910 (in 2006 dollars) compared to $165,200 in 2006—a decline of about 25 percent;
- the Chief Justice was paid $321,926 (in 2006 dollars) compared to $212,100 in 2006—a decline of about 34 percent; and
- district judges were paid $206,033 (in 2006 dollars) compared to $165,200 in 2006—a decrease of about 20 percent.

Figure 2: Basic Pay Rates for Selected Executive-Level Positions Adjusted for Inflation Using the Consumer Price Index (in 2006 Dollars)



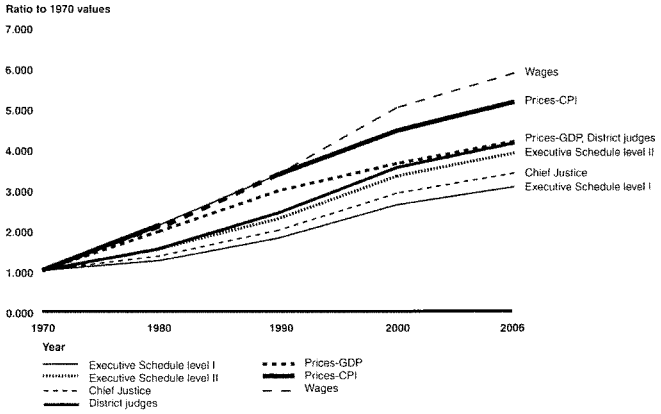
Source: GAO-06-708.

As I previously mentioned, the CPI has tended to outpace inflation as measured by the GDP price deflator. Thus, the differences in inflation-adjusted basic pay rates from 1970 to 2006 are greater when using the CPI than the GDP price deflator.

Another trend we reported is that selected executive-level pay rates have not kept pace with the growth of wages from 1970 to 2006. To measure the growth of wages, we used the Bureau of Economic Analysis's National Income and Product Accounts wage index for private industries.[5] As shown in figure 3, wages have grown at a greater rate from 1970 to 2006 compared to the basic pay for selected executive-level positions. Specifically, wages grew at nearly double the rate of basic pay for Executive Schedule level I positions, such as cabinet secretaries, and the Chief Justice.

[5]This wage index provided a continuous series of wage data from 1970 to 2006. Wage and salary data pertaining to a more narrowly defined sector of the nonfederal workforce (e.g., white collar workers) was not available during this time period.

Figure 3: Cumulative Growth of Selected Executive-Level Pay Rates Compared to Prices and Wages



Source: GAO-06-708

Notes: Cumulative growth when normalized to 1970 values (1970=1). Price growth is based on the GDP price deflator and the CPI. Wage growth is based on the Bureau of Economic Analysis's National Income and Product Accounts wage index for private industries.

The Value of Total Compensation for Executive and Judicial Positions

While executive and judicial pay overall has declined in value when adjusted for inflation, any restructuring of executive and judicial pay should consider basic pay received as one part of the total compensation package. We have reported that a competitive compensation system that provides individuals a mix of base pay plus other incentives can help organizations attract, motivate, and retain a quality workforce.[6] Total compensation includes elements such as cash—basic pay, locality pay, cash awards/bonuses; noncash benefits—annual and sick leave, health insurance; and deferred benefits—retirement (i.e., pension and health), life insurance.

[6]GAO, *Human Capital: Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-832SP (Washington, D.C.: July 27, 2005).

It is important to note that the value of the total compensation will differ given an individual's choice (e.g., to use child care facilities or purchase life insurance), each agency's program decision (e.g., to participate in the student loan repayment program), and the types of compensation elements that are offered to different positions. In particular, we found that the cash, noncash, and deferred benefits vary within and across the different executive-level positions. For example, at present, selected Executive Schedule positions, administrative law judges (ALJs), inspectors general (IGs), and federal justices and judges do not receive cash awards/bonuses due to the nature of their positions, while career senior executives may receive them. All of the executive-level positions may receive noncash benefits, such as health and life insurance and retirement. However, there are differences in retirement, such as larger benefits, for federal justices and judges compared to other executive-level positions.

Organizations, including the federal government, may need to be flexible in the balance between cash and benefits that comprise the total compensation offered to employee groups in order to remain competitive in the market. For example, we recently reported for military personnel that the current mix of compensation is highly inefficient for meeting near-term recruiting and retention needs.[7] We reported that pay received today is generally accepted as a far more efficient tool than future cash or benefits for recruitment and retention of military personnel, especially given the fact that the active duty workforce is mainly comprised of people in their twenties. The vast majority of that workforce preferred a lump-sum cash payment versus deferred compensation in the form of an annuity when given the choice. More generally, in discussing what incentives attract individuals to public service, the Merit Systems Protection Board has reported that people come to work for and stay with the federal government for a variety of reasons besides base pay. Among these reasons, obviously, is the desire to make a contribution and the personal pride or satisfaction in their work as well as the variety of benefits provided to employees.[8]

[7]GAO, *Military Personnel: DOD Needs to Improve the Transparency and Reassess the Reasonableness, Appropriateness, Affordability, and Sustainability of Its Military Compensation System*, GAO-05-798 (Washington, D.C.: July 19, 2005).

[8]U.S. Merit Systems Protection Board, *The Federal Workforce for the 21st Century: Results of the Merit Principles Survey 2000* (Washington, D.C.: September 2003).

Thus, the federal government may need to shift the balance of total compensation between pay and benefits in its pay plans in order to recruit and retain the needed talent. While we did not determine in our recent report the balance of total compensation between pay and benefits within and across executive-level positions, overall federal civilian employees receive, in broad terms, most of their compensation—about 67 percent—in salary and wages and about 33 percent in the form of benefits or deferred compensation.[9] For workers in private industries, we recently reported that their salary and wages made up 71 percent of total compensation, while benefits accounted for 29 percent.[10] However, additional analysis would be needed to determine if these ratios correspond to executive and judicial positions. For example, unlike other federal employees, federal justices and judges are permitted to retire with full pay and benefits when the sum of the judge's age and number of years on the bench is 80.

Principles for Restructuring Executive and Judicial Pay

The federal government needs to attract and retain the quality and quantity of executive leadership necessary to address 21st century challenges. To help the government remain competitive with the relevant markets, any restructuring of executive and judicial pay should be guided by a set of principles. Executive and judicial pay plans should be

- **sensitive to hiring and retention trends**—actual trends, such as demographic, workforce, and economic trends and their effects on the federal government's ability to hire and retain high-quality persons for these positions are considered;
- **reflective of responsibilities, knowledge and skills, tenure, and contributions**—the positions are appropriately compensated to reflect these differences both within and across executive-level pay plans;
- **transparent**—Congress, leadership, and the public can easily understand the value of the compensation and contributions;

[9]GAO-05-798.

[10]GAO, *Employee Compensation: Employer Spending on Benefits Has Grown Faster Than Wages Due Largely to Rising Costs for Health Insurance and Retirement Benefits*, GAO-06-285 (Washington, D.C.: Feb. 24, 2006).

- **market-sensitive**—the compensation of the relevant markets (e.g., private or nonprofit sectors) is appropriately considered;
- **flexible to economic change**—changes in the nation's economy, such as extraordinary economic circumstances or severe budgetary constraints, can be accommodated;
- **sustainable**—over the longer term, given known cost trends and risks and future fiscal imbalances, executive-level pay plans are financially sustainable; and
- **competitive**—reasonable total compensation and other elements necessary to attract and retain leadership can help ensure the optimum use of taxpayers' dollars and make the most efficient allocation between cash and noncash benefits.

Issues for Reconsideration in Executive and Judicial Pay

While the types of experiences, responsibilities, and required knowledge and skills vary both within and across executive-level positions, as well as the type of appointment and length of service, there are several illustrative issues that deserve further reconsideration in possibly restructuring executive and judicial pay.

- **Maintaining a reasonable relationship across executive-level positions**. In 1970, there was no overlap in the pay for the Executive Schedule and the other executive-level positions, such as career senior executives. Specifically, the lowest pay level of the Executive Schedule (level V) covering positions such as commissioners or general counsels of smaller agencies was greater than the maximum basic pay for career senior executives. By 1990, these pay plans began to overlap so that the lowest paid political appointees under the Executive Schedule were making less than the highest paid career senior executives. By 2006, the pay for Executive Schedule level II covering positions such as deputy secretaries of cabinet departments equaled the maximum basic pay for career senior executives not including cash awards/bonuses.

  A commission may be an option for reexamining executive and judicial pay and compensation and exploring ways to maintain a reasonable relationship across these executive-level positions and to the relevant markets, such as nonprofit and educational organizations or state and local governments. This would help ensure that the federal government's total compensation is reasonable and competitive in order for the government to obtain and retain the top talent it needs. In

1967, Congress established the Commission on Executive, Legislative, and Judicial Salaries (known as the Quadrennial Commission) to study salaries of political appointees, Members of Congress, federal justices and judges, and other top-level government officials every 4 years and report to the President on its recommendations for salary increases. The Commission—composed of nine individuals appointed from the private sector—was to recommend salary increases for these positions in order to maintain a reasonable relationship between these positions and with private sector salaries. The President accepted the recommended salary increases for these positions, which went into effect in 1969. For example, the salary for cabinet secretaries increased from $35,000 in 1968 to $60,000 in 1969. In 1989, Congress abolished the Quadrennial Commission, transferring its authority and responsibilities to the Citizens' Commission on Public Service and Compensation. However, this Commission, which was to be appointed during fiscal year 1993 and then every fourth fiscal year, has never been appointed. Commission members were to be appointed from private life by the President, Congressional leadership, and the Chief Justice, among others.

- **Recognizing equity issues.** At our recent panel on the authorities and responsibilities of IGs, the majority of panel participants stated that the pay structure for IGs needed to be addressed given the importance of providing reasonable and competitive compensation.[11] Currently, there are differences in the basic pay rates for IGs based on the level of appointment, even though the powers and duties extended to IGs in either appointment are essentially the same. Most IGs for cabinet departments and major agencies are appointed by the President subject to Senate confirmation (paid at Executive Schedule level IV). However, IGs for some agencies, such as the National Science Foundation and the Securities and Exchange Commission, are appointed by the agency head and paid at varying amounts including General Schedule grade 15 or Senior Executive Service (SES) pay rates. Such equity issues should be examined in any restructuring of executive-level pay.

- **Considering performance-based bonuses**. There are executive-level positions that are not eligible to receive bonuses (or awards) due to the nature of the positions. For example, selected Executive Schedule positions that are appointed by the President subject to Senate

[11]GAO, *Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General*, GAO-06-931SP (Washington, D.C.: Sept. 11, 2006).

confirmation (including selected IGs), ALJs, and federal justices and judges do not. Bonuses awarded within a system that incorporates appropriate safeguards may be an option for rewarding individuals in these positions for their contributions. Appropriate safeguards, including reasonable transparency and appropriate accountability mechanisms, can help ensure fairness and prevent abuse. Any bonuses must be performance-based with a mechanism for assessing individuals' performance from multiple sources of input. In addition, checks and balances to help ensure that the positions' independence is not compromised are especially important for IGs, federal justices and judges, and selected other positions.

- **Recognizing anomalies between comparable pay plans**. There are anomalies between comparable pay plans, such as for the career SES and senior level/scientific or professional (SL/ST) positions. For example, as of January 2004, the aggregate pay cap (basic pay plus awards/bonuses) for SES and SL/ST positions is higher for individuals whose agencies have performance management systems certified by the Office of Personnel Management with concurrence from the Office of Management and Budget. However, the higher basic pay cap only applies to SES members under certified performance management systems, not SL/ST positions.

Conclusions

As I have discussed, leading organizations understand that they must often change their culture to successfully transform themselves, and that such a change starts with top leadership. To help attract this talent, restructuring of executive and judicial pay—guided by a set of principles—may be necessary to help the government remain competitive with the relevant markets. However, any restructuring of executive and judicial pay should consider basic pay received by executive-level positions as one part of the total compensation package. Further, the federal government may need to shift the mix of total compensation between pay and benefits in order to recruit and retain the needed executive-level talent. Moving forward, a commission may be an option for reexamining executive and judicial pay and compensation to ensure that the federal government's total compensation is both reasonable and competitive in order for the government to obtain and retain the top talent it needs to address current and emerging 21st century challenges in a responsible and sustainable manner.

Chairman Porter, Representative Davis, and Members of the Subcommittee, this concludes my statement. I would be pleased to respond to any questions that you may have.

Contact and Acknowledgments

For further information regarding this statement, please contact Lisa Shames, Acting Director, at (202) 512-6806 or shamesl@gao.gov. Janice Latimer made key contributions to this statement.

Appendix I: Percentage Differences in Nominal and Inflation-Adjusted Basic Pay Rates for Executive-Level Positions from 1970 to 2006

Executive-level positions within the selected pay plans	1970—Pay rates (in dollars)			2006—Pay rates (in dollars)	Percentage differences from 1970 to 2006		
	Nominal	Inflation-adjusted (GDP)	Inflation-adjusted (CPI)	Nominal/ Inflation-adjusted (GDP and CPI)	Nominal	Inflation-adjusted (GDP)	Inflation-adjusted (CPI)
Executive Schedule—level I (e.g., cabinet secretaries)	$60,000	$250,204	$309,049	$183,500	206	(27)	(41)
Executive Schedule—level II (e.g., deputy secretaries, Senators, and Members of the House of Representatives)	42,500	177,228	218,910	165,200	289	(7)	(25)
Executive Schedule—level III (e.g., undersecretaries and deputies of most agencies)	40,000	166,802	206,033	152,000	280	(9)	(26)
Executive Schedule—level IV (e.g., selected inspectors general, chief financial and information officers)	38,000	158,462	195,731	143,000	276	(10)	(27)
Executive Schedule—level V (e.g., commissioners, associate directors)	36,000	150,122	185,429	133,900	272	(11)	(28)
Senior Executive Service—for agencies with performance management systems that are not certified	35,505	148,058	182,880	152,000	328	3	(17)
Senior Executive Service—for agencies with certified performance management systems	35,505	148,058	182,880	165,200	365	12	(10)
Senior-level/scientific or professional	35,505	148,058	182,880	152,000	328	3	(17)
Administrative law judges	35,505	148,058	182,880	152,000	328	3	(17)
Members of Boards of Contract Appeals	29,752	124,068	153,247	152,000	411	23	(1)
General Schedule grade 15, step 10	29,752	124,068	153,247	139,774	370	13	(9)
Chief Justice	62,500	260,629	321,926	212,100	239	(19)	(34)
Associate justices	60,000	250,204	309,049	203,000	238	(19)	(34)
Circuit judges	42,500	177,228	218,910	175,100	312	(1)	(20)
District judges	40,000	166,802	206,033	165,200	313	(1)	(20)
Judges of the U.S. Court of International Trade	40,000	166,802	206,033	165,200	313	(1)	(20)

Source: GAO.

Notes: We provided the maximum basic pay rates for the Senior Executive Service, senior-level/scientific or professional, administrative law judge, and Board of Contract Appeals positions and included locality pay for the Washington, D.C./Baltimore area in the basic pay rates for the senior-level/scientific or professional, administrative law judge, Board of Contract Appeals, and General Schedule grade 15, step 10, positions in 2006.

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Mr. PORTER. Thank you, Mr. Walker. I think maybe you need combat pay. I see that your arm is in a sling. We are glad you are OK.

Mr. WALKER. You should see the other guy. [Laughter.]

Mr. PORTER. We are glad you are OK. Thank you for your testimony, and to your staff. I know they put a lot of time into putting this report together. So we appreciate it.

I would like to elaborate a little bit on the reestablishment of the salary type commission. What do you see are some of the critical factors that should be discussed, who should be on the committee, and your different ideas?

Mr. WALKER. Well, as you know, there have been committees in the past, some of which were staffed, some of which exist in law but have never been staffed. I think we have to recognize the reality that this is an important, complex, controversial issue that also has potential political implications. And given that fact, I think we have to professionalize the process.

I think serious consideration needs to be given to having a credible and capable commission, comprised of both professionals and other noted individuals with credibility on both sides of the aisle, who would end up doing the type of analyses that I talked about, a more thorough analysis than has been done in the past, and could make recommendations that would require, for example, a response by the President, would require congressional hearings, mandatory, and possibly require congressional action within a certain period of time, possibly with amendments or limited amendments.

We need to figure out how we can professionalize the process, make it more routine and yet recognize the reality that there are problems with the American people. The American people don't necessarily understand or appreciate some of the issues that we are talking about here to the extent that they could and should.

Mr. PORTER. Thank you.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Mr. Walker, I was trying to think, do you think it would have any real bearing if we were to ask the American public in a way what they thought about the issue? And I don't know if we would necessarily make use of a poll, or find some way to glean as much thinking from the public as we could glean, relative to their thoughts on the issue?

Mr. WALKER. Mr. Davis, I would respectfully suggest that there are a number of issues, and this may well be one of them, that there needs to be more public education, more outreach, and more citizen engagement than there has been in the past. Frankly, most members of the public aren't experts in competitive compensation practices. They are not experts in the nature of compensation in the Federal Government, much less the nature of compensation in the private sector. They don't know how many of these executive level positions are political appointee positions versus career. They don't know, for example, how many of these positions are people that come in for 2 years, end up going out and making a lot more money in the private sector, which, as I say, that should be treated fundamentally differently than people who are making a longer term commitment.

So I think education and citizen engagement is an important part to addressing this issue, as well as other issues.

Mr. DAVIS OF ILLINOIS. I was trying to think of, how did we get to where we are in terms of how did we actually begin to determine value? It seems to me that compensation has a great deal to do with one's interpretation or acknowledgement of value in terms of saying, this is worth so and so, this is worth so and so. It seems to me that whatever the public is willing to buy, that is what they are sold. I think of athletes who earn $40 million to play baseball, or $100 million to play football. The public says, we are willing to buy this, because we are prepared to buy the tickets for the games to generate the revenue that it takes to be able to pay these individuals.

Would it be rational to try and look at what takes place in the public sector versus what takes place in the private sector? Delegate Norton talked about what beginning attorneys might expect to earn in certain kinds of practices, and in some ways, this will supersede what a senior judge might earn in the public environment. Maybe back into compensation by looking at the private sector, and then trying to attach public value as a possible way of arriving at a decision.

Mr. WALKER. Several thoughts about that. No. 1, I do think it is relevant to consider private sector compensation practices as an input mechanism to try to help inform the public and to try to help inform any decisionmaking that is made here. However, I would also respectfully suggest that there are fundamental differences between the public sector and the private sector. All of us in this room recognize that those that go into the public sector are doing it to maximize their self-worth, not their net worth, and to make a difference for the country and their fellow man, not to be able to maximize their bank account.

So we just need to understand that. So I don't think that we have to, nor should we expect to pay the same amount of compensation for the same level of responsibility in the public level as the private sector, because people are looking for, they have different motivations and certain kinds of people are going to work in the public sector versus the private sector.

At the same point in time, we need to pay enough to be able to attract and retain top quality people, to be able to compete for the best and brightest. And in that circumstance, I think we have to do a little bit more through analysis than we have done in the past. If you look at our compensation practices, they are very hierarchial based. They are kind of like the 1950's, here is the hierarchy, where are you in the hierarchy.

One of the things I would respectfully suggest we need to do is we need to do something that several of you talked about. We need to do a more thorough analysis. What are the skills and knowledge and education that is required for this? Is this a position that we are asking for a long term commitment for? Is this something that we need a degree of independence for? Or is it something that somebody is coming in at a high level position to serve their country for 2 years and then they are going to be going back out to the private sector and they will probably, frankly, make money, more money because they did that?

I think we need to have a more professional and thorough analysis than has been done in the past, rather than a mere hierarchical approach.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Thank you, Mr. Chairman.

Mr. PORTER. Congresswoman Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

Could I begin, Mr. Walker, by just noting that Federal employees, of course, I believe you would agree, work within a market system. Federal Government has tried, not always successfully, to take that into account. Would you agree that there are many Federal employees who, if they chose to leave today, could earn more in the private sector?

Mr. WALKER. No question. I think that is something we have to consider when constructing Federal compensation practices.

Ms. NORTON. Indeed, what we are finding, of course, is that early retirements, it is really heartbreaking to see it, early retirements and even before retirement, people go out and work for a contractor, because they can instantly make more money. So I think I want to just establish for the record that Federal employees on whom we depend for homeland security, for vital occupations, work non-competitively with the private sector. That said, let me move on.

Considering that we are speaking in the context of supply and demand, I have to chuckle, because women are always told, that well, you earn less because after all, there are too many of you applying for the same job, the same kinds of jobs. The Federal Government has made adjustments for a few rarified occupations that are indispensable. For example, scientific occupations or other highly skilled occupations.

Is it your view that we have not been able, excuse me, that is not my question, I just want to note that for the record.

Would you agree that being a lawyer in a market system based on supply and demand is not a skill that is scarce in this society? One of the things I teach in my seminars is that if this generation of lawyers does not learn how to cut through all the harm lawyers have done the whole economy will suffer tremendously.

So I am trying to get to why we would want to rush in, even though I want to stipulate again for the record, I don't think anybody should be 30 years without having at least some more adjustment in real terms than these very senior people have. But I assume that in making this case, GAO has looked at whether or not there has in fact been turnover of the kind we would want to discourage. What has the turnover been for Cabinet Secretaries? What has the turnover been for district court judges? What has the turnover been for justices of the Supreme Court? What has the turnover been for judges of the courts of appeals of the United States?

Mr. WALKER. I believe that it is essential that more analysis needs to be done on that. That is one of the reasons why I think considering some type of a commission approach is appropriate, and for that commission to be informed, not just by this type of information, but also the type of information you are talking about.

I think one of the things we have to keep in mind is that while this is factually accurate, it also starts with 1970 and by starting

with 1970, it assumes that everything was properly aligned in 1970. We haven't done the baseline analysis that I recommended. We have never done the baseline analysis that I have recommended, which needs to be done. So this starts with that assumption, which may or may not be a valid assumption.

Ms. NORTON. Did the GAO consider, and I appreciate very much tat you have separated out the kinds of employees, high level employees we are dealing with, and we are not lumping people who go out and make a mint with people who have appointments for longer periods of time, including life. Did you consider the value of having served for the person who has not gotten the increase you would like to see him have? Have you considered the value of having served for the Cabinet Secretary?

For that matter, did you consider the value of having served for a lawyer who has wanted to be a judge all his life, even though he may consider now he has children in college and has to get out, the great honor that many believe they have when they become a district court judge? The value of that, or is the value of having served as Cabinet Secretary a part of this analysis that says they are underpaid?

Mr. WALKER. It is not part of this analysis. But as I tried to touch on, I do think it is relevant to distinguish between what is the nature of the position, are we having a problem, how long is that person likely to stay there, and to what extent it is a true economic sacrifice versus not. Now, one would expect that most Federal judges, subject to doing an initial analysis, would intend to stay for the long term. So if they are making a long-term commitment, then they are going to be more affected by not keeping up over time due to power of compounding than somebody who you pointed out who comes in to be a Cabinet Secretary, comes in to be a deputy Secretary for 2 years and then goes back out to the private sector. Because by definition, their job is temporary.

Ms. NORTON. Mr. Walker, I appreciate something you said in your testimony about looking at non-economic compensation. And just let me suggest for people who have finally become a judge of the Supreme Court, that is only nine people. Sometimes I think that being a Justice on the Supreme Court is a guarantee of longevity. Because if you want to find a group of people who never leave, you just look at how long Justices serve. The only question I think Congress may 1 day feel, because the Justices and judges themselves have, we have been investigating a judge up here, because judges haven't looked closely enough at themselves. Somebody gets senile and nobody does anything about it, because they are there so long.

But consider, Mr. Walker, that a Justice who works very, very hard, they must be very robust, because they work into old age and do a lot of work. But they are off all summer. If they get sick, they can be gone for as long as they see fit. If you are a senior judge, sitting on as few cases or as many as you would like, that means you are retired. You still get your full compensation.

I am trying to find ways in which particularly judges, and to separate them out, I should feel sorry for at a time when we can't get any increase in the minimum wage and the rank and file Federal employees are fleeing the Federal Government as if it is a training

ground, take what we have invested in them and go invest it in the private sector.

So I am trying to find a way to find somebody to feel sorry for in here. And I am not having a lot of luck.

Mr. WALKER. You are making a case for one of the points that I made. And that is, you can't just look at base compensation. You have to also look at other elements of compensation, including pensions and including other provisions that go with the job. You just can't look at base pay. You have to look at all those issues, too.

Ms. NORTON. Well, I just want to submit for the record, Mr. Chairman, I think the Congress has done a good job at doing that. Because of the salaries, because of senior judges, because of Justices, there may be something we need to look for. Again, every time I find somebody to feel sorry for, a district judge who may work really hard because trials are hard, I keep thinking of the reams of lawyers who want to be district court judges. And I can't reconcile that with supply and demand that is always thrown in our face and somehow being afraid about the quality.

Therefore I really have to ask you this question. Do you believe that the quality of the judiciary has been in any way affected by the salaries that you have described?

Mr. WALKER. I cannot say that has been the case. But I think the potential exists for it to be the case if something is not done eventually.

Ms. NORTON. Again, I want to stipulate again that I think something should be done. But I am asking these questions in order to stress my point about context. And I am not sure there is a Member of this Congress, frankly, in this context, who would go now, and the chairman is certainly not suggesting that, to the highest level people in the Government.

One final question, Mr. Chairman. This is a thoughtful report. You look for ways that might in fact accomplish what you want to accomplish. And you look for options. There is one part of your report that I have to take issue with. But maybe I don't, maybe you can explain it to me. And that is the notion of performance based bonuses. Apparently, for political appointees who are subject to Senate appointment, for the life of me, I know everybody is into we have to give those who work hardest special compensation. But for the life of me, for people who, as you say, never intend to work for terribly long, are rewarded handsomely, simply by having held the position, even if they did a putrid job in the position.

The notion of putting us to work trying to find whoever would do it, and there you come to a real problem, but trying to find the difference between the Secretary at HHS and the Secretary of Labor, seems to me to be a useless exercise. These people are supposed to work their little behinds off for the time they are here. I have ever reason to believe they do. They are very high pressure jobs. And it is, it seems to me, a stretch to take the performance based notion and try to apply it to political appointees who should need, and I stress this, should need no incentive given all they have to gain. No incentive to do the best job they can.

If the point of the performance based is to say, we want you to work harder, if you get this, you will work harder, we want to distinguish you, we want to distinguish you between those who don't

work hard and those who do, then it seems to me that it is out of place to say to somebody that high in the Government, we are going to distinguish between those of you who work hard and those of you who work a little harder.

Mr. WALKER. I do not think it is an across the board issue. Let me give you an example where there is a problem right now, and which could become more acute. As you know, senior executive service members that are career officials who are part of a performance based, who have an adequate performance oriented appraisal system, can be approved by OPM for that agency to have base pay up to level 2, which is what I make.

In addition to that, they can receive bonuses that will allow them to make up to the amount that the Vice President of the United States makes. That is a fact. And there are people that are in that situation.

You have certain positions, for example, let's take the inspector general position. There are Presidential-appointee inspector generals who are supposed to be professional, who are supposed to be independent, who by statute are level 4 positions. So by definition, they are making significantly less——

Ms. NORTON. Let me ask you then, the reason I asked this question is, you give us examples on page 10 of your testimony, and you do give some that one might understand, because they are more like SESers. Selected executive schedule positions that are appointed by the President, subject to Senate appointment, including selected IGs, ALJs and Federal justices and judges do not, do not, that is, referring back to receive bonuses. Now, would you amend that? How are you going to give a bonus to a Federal judge, sir?

Mr. WALKER. And I think there are certain positions where you don't want to. All the more reason why you have to look at what is an appropriate level of base compensation.

Ms. NORTON. So you are not arguing that judges——

Mr. WALKER. I am not necessarily arguing that you do it across the board. There may be circumstances. But if you don't give a bonus, then you need to think about what does that mean from the standpoint of base compensation.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. PORTER. Thank you.

Mr. Walker, thank you for being here today. We appreciate your testimony, and get well soon.

Mr. WALKER. Thank you.

Mr. PORTER. What I would like to do is combine panel two and three. We will be voting here shortly, so I will apologize in advance, I am not sure how many votes we are going to have, but I will let you know when that comes through.

Gentlemen, we appreciate your being here. We have with us D. Brock Hornby, judge, U.S. District Court for the District of Maine, chairman of the Judicial Branch, Committee of the Judicial Conference of the United States; Judge Philip M. Pro, chief judge and a good friend of mine, U.S. District Court for the district of Nevada. And Judge Pro, my partner, Mr. Davis, was just in Las Vegas. And he has speeding tickets he would like your help with. [Laughter.]

Not really, just kidding.

Also the Honorable Sean O'Keefe, chancellor of Louisiana State University, former Administrator, National Aeronautics and Space Administration. And our third panel is Dr. Gary Burtless, John C. and Nancy D. Whitehead Chair in Economic Studies, the Brookings Institution.

I would like to begin with Judge Hornby. Welcome. We appreciate your being here today.

STATEMENTS OF D. BROCK HORNBY, JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF MAINE, CHAIRMAN, JUDICIAL BRANCH, COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES; PHILIP M. PRO, CHIEF JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF NEVADA; SEAN O'KEEFE, CHANCELLOR, LOUISIANA STATE UNIVERSITY, FORMER ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; AND GARY BURTLESS, JOHN C. AND NANCY D. WHITEHEAD CHAIR IN ECONOMIC STUDIES, THE BROOKINGS INSTITUTION

STATEMENT OF D. BROCK HORNBY

Judge HORNBY. Thank you, Mr. Chairman. Thank you for holding this important hearing, and thank you for inviting members of the judiciary to attend and participate. As I told you in the hall, the only other time I have testified in Congress, I was with Judge Pro. So I am pleased to be here again testifying with him.

Mr. PORTER. Well, Judge, any good stories on the judge, I would like to have them. You can give them to me later. [Laughter.]

Judge HORNBY. And can I assume that our written remarks are incorporated into the record?

Mr. PORTER. Yes, they will be. Thank you.

Judge HORNBY. We believe that the Federal judiciary is at a crossroads. If the current situation is not checked, we believe that pay compression is going to threaten our ability to recruit and retain experienced, professional judiciary employees as well as talented judges. We have 5 years of missed COLAs for the Federal judiciary, and for Congress, I point out. And they have had a substantial impact, there is a chart up here to my left, that shows the salary that you would be paid and we would be paid if the COLAs had gone into effect as intended by Congress when the system was set up versus what it actually is. Those are simply in real dollars and reflect the decision of Congress to forego COLAs five times.

Second, the COLA that Federal judges and members receive is automatically lower than what the general schedule employees receive. And since 1993, the result of that has been that the compensation of Federal judges and members has increased by 23.7 percent, whereas the compensation of general schedule employees has increased by 57.5 percent. The reason for that is the locality pay adjustment. Because when the ECI, the COLA percentage is fixed, then there is a subtraction of the average locality pay. And members and judges do not get the locality pay portion.

The result of that for the judiciary has been severe pay compression and indeed, inversion. If you look at the second chart, you will see that there was a reasonable hierarchy in 1994 from the judges on down through the circuit executives, the bankruptcy and mag-

istrate judges, down to senior judiciary employees. And if you look at 2006, you will see now, it is flat, and indeed that senior judiciary employees and circuit executives now exceed substantially what magistrate judges and bankruptcy judges can be paid, which are capped by statute.

So we have not simply severe compression, we have actual inversion in what has taken place. And because salaries have not kept pace with inflation, as you heard the Comptroller General say, the purchasing power of Federal judges and judiciary staff has declined since 1993, senior judiciary staff, whereas compensation in the not-for-profit area and the private sector has been spiraling upwards.

I am sure you have read the stories that we all read about what 1st-year associates now make at major law firms. Not only does it well exceed what bankruptcy judges and magistrate judges are earning, it is exceeding what district judge and circuit judges are earning, once you add in the bonuses that they are paid. The compensation for judiciary executives is lower than that of the executive branch executives. Legislation enacted in 2003 raised pay caps for career senior executives to as high as $212,000. Similar to what you folks have done for your employees, we have capped compensation of non-judge employees at $165,200, the pay of a Federal district judge. So it is no longer competitive in that respect with the executive branch. All these disparities have left the judiciary at a serious disadvantage in competing for talent against all other sectors, private, not-for-profit, even other government entities.

We think there are three things that need to be done to correct the situation. First of all, COLAs for the judiciary and for Congress should equal COLAs for the general schedule employees, so that those adjustments better reflect annual inflation and help the compression problem. Second, we think that the missed COLAs for both the judiciary and Congress should be restored, alleviating in part the substantial losses that have taken place in real dollars over the past years as reflected on those graphs. And third, we believe that top level salaries have to be raised to alleviate pay compression and inversion in the judiciary.

And I wanted to make a couple of comments about the amount of judges' pay. We are concerned about what is going to happen in the future to judges. Yes, judges do not expect and should not expect to be paid what partners make in major law firms. No one makes that argument. They expect to take a financial cut because there are wonderful rewards to the job in terms of the public service we can perform in terms of what the job holds.

But more and more judges now are coming out of the public service ranks. They are coming from the ranks of bankruptcy judges, magistrate judges, U.S. attorneys, people who made the decision long ago to spend their career in public service. Do we want a judiciary where we cannot find people from the patent bar to go on the Federal bench, cannot find people who are skilled and experienced in corporate law in dealing with some of these very difficult questions that Federal judges have to deal with? Do we want only people who are committed to public service on the one hand and only people who are independently wealthy on the other? Or do we want to maintain our tradition of having a diverse judiciary of people from across the board?

There was reference to Babe Ruth. And I am from New England, and so I know more than most of you do that the Red Sox lost Babe Ruth to the Yankees. [Laughter.]

And people in Maine understand that baseball players get paid a lot of money, even though they can't. People understand how the market works. They understand that Jay Leno gets paid more. They understand that their doctors get paid more. They understand even that their lawyers get paid more.

So even though judges should not be paid at the same level as their private sector equivalents, there needs to be a recognition that it is important to the well-being of this country that we have good judges on the bench. And yes, when judges take the job, they know there is going to be the sacrifice. But they expect to be kept equal. They don't expect that they are going to fall behind as life moves on and as their kids go to college.

I see my time is up. And I will summarize simply by saying, we are the third branch of the American Government. I believe that all Americans want strong, talented people running their court system. And I am fearful that the current structure is going to have a negative impact on judiciary employees and on Federal judges as well.

Thank you, Mr. Chairman.

Mr. PORTER. Thank you, Judge. We appreciate it very much.

Next is my friend, Judge Pro, Chief Judge of the U.S. District Court for the District of Nevada.

STATEMENT OF PHILIP M. PRO

Judge PRO. Thank you very much, Mr. Chairman and Mr. Davis. Thank you so much for allowing me to participate today. I am delighted to do this, and want to thank you, Mr. Chairman, for convening this hearing and for calling for the study that has been conducted.

I was going to begin by talking from the perspective of a Federal judge, but something Mr. Davis said provoked in my mind I think a broader and a very important question. If I could pick up on that, the value of our employees in government service and public service. You both have touched upon the importance of this.

As one who has worked in government in one capacity or another and as a judge for 26 years, I can tell you that the folks in public service, at least that I work with in the courts, and I know this to be true of others, are valuable people. They perform wonderful service for this Government. And it is important to the citizens of this country, I think, that people who seek jobs in public service continue to find some incentive to do so, not disincentives, not carry a burden beyond that which we might expect them to bear.

People are drawn to public service for a wide variety of reasons. But I think that all of us, for example, who become judges cherish the fact that we are honored to hold an office such as that of Federal judge. I know that Members of Congress surely feel the same way. But so do our probation officers, so do our pre-trial services officers, so do our clerks of court and deputy clerks of court who feel that they are making a very important contribution to the operation of our Government, because they are making an important contribution in so many different ways.

Our system depends, our democracy depends upon an informed public, certainly, exercising its franchise, but it depends as well upon citizens willing to undertake the many responsibilities of public service. And it is easy to talk about the folks that we characterize as in leadership positions, whether they are Members of Congress or judges or senior Government officials, and keep the focus on them. But the value runs through the entire system, in all of the individuals who commit to public service deserve to be compensated fairly.

An independent judiciary is essential to the rule of law. It is essential to the democracy that we live in. And I fear that as we progress, there has been study after study after study which has demonstrated the inequity in the compensation that is available currently to Federal judges. As my colleague Judge Hornby said, no judge expects to be compensated at the same level as a partner in a law firm, anything of that type. We have made a choice. And it is a choice, as Congresswoman Norton said, with our eyes open.

And there are other lawyers that would love to be Federal judges, I don't doubt that. But if we are to continue to attract and retain the best and the brightest available lawyers to become Federal judges, if we are to attract and retain the best and the brightest people to other sectors of Government, we have to compensate them fairly and at least competitively with the private sector, so that they are not forced to take vows, what a colleague of mine calls vows of dignified poverty.

A judge who accepts a lifetime appointment does so with his or her eyes open, there is no question about it. It is a lifetime commitment to public service. And we should not, I suggest, after years in office, be forced to consider whether we continue to do something that we love doing, that we think is important, and choose between that and educating members of our family or supporting our family.

I can speak anecdotally just from the District of Nevada, Mr. Chairman, with which you are very familiar. In the past 18 months, one of my colleagues left the Federal bench to enter the private sector, alternative dispute resolution. He did not want to leave, it is Judge David Hagen. He did not want to leave the bench at all. He had three children in college, he simply could not afford to remain as a U.S. district judge.

We recently selected a new bankruptcy judge, which took office last month, in our court, Judge Nakagawa, Mike Nakagawa. When the net was cast for applicants, I talked to a great many lawyers, members of the bankruptcy bar, excellent lawyers, who told me that they would not seek the position, even though they would love to do it, because they couldn't afford that economic downturn that they would face.

We have had difficulty in some cases filling positions, finding the best people, thankfully we found some good ones, in our technology departments, IT departments. That is always a difficult for us. And Mr. Davis, I think that poll that you talked about would be an interesting poll. But I think if the question were posed with where you began, what members of the public do you think, not so much as what is the dollar figure that these people in various positions

should be paid, but what is their value, I think you would perhaps get a different response, I hope you would.

And I hope that the American public recognizes, and I know it is a difficult matter for the Members of Congress to address and to face the scrutiny that you do face and the responses that you face when you talk about subjects like pay. It is a delicate, delicate subject. It is a difficult subject. Your responsibilities are heavy in making those kinds of decisions, just as those of a judge are sometimes heavy in making the decisions we have to make. And I respect that.

But we have judges who are leaving the bench. There are, it is my understanding in response to one of the questions posed earlier, since 1990 there have been 100 article 3 judges who have left the bench. I don't have that number in front of me, I don't have the numbers, but I believe we can provide that for you, it is approximately that number, some eight or nine this year alone.

I don't want to belabor my testimony on this part, other than one baseball metaphor that you all mentioned about Babe Ruth. I went on the internet last night and I saw that umpires are paid between $87,000 and $357,000 a year, depending upon their experience, for calling balls and strikes. Well, we spend a lot of time calling balls and strikes in a form, too, in our courts every day. And I don't know of any judges that are paid close to what a baseball umpire is. More power to them, I am sure they have a difficult job. But so those who sit as Members of Congress, so do those who sit on the Federal bench, so do those that work within Government in senior capacities and otherwise.

So I would urge your committee and Congress to move forward with relief in this area. Thank you very much.

[The prepared statement of Judge Hornby and Judge Pro follows:]

STATEMENT ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman and Distinguished Members of the Subcommittee,

Thank you for the opportunity to testify at this important hearing. We are pleased to appear on behalf of the federal judiciary.

Introduction

Recruiting and retaining talented judges and judiciary employees with broad experience is essential to maintaining a credible, respected judiciary. In order to maintain the rule of law fundamental to our democracy, Americans need to know that their issues will be resolved by skilled, impartial arbiters. These officials are the face of the judicial branch, visible to Americans, and are the judiciary's most important assets.

To continue to recruit and retain the best talent both on the bench and in the top management of the judiciary, we believe that the following needs to be done: (1) COLAs for the judiciary should equal COLAs for General Schedule employees, so that these adjustments better reflect annual inflation; (2) four years of missed COLAs for both the judiciary and the Congress should be restored, alleviating, in part, their substantial losses in real dollars; and (3) top-level salaries must be raised to alleviate pay compression and inversion in the judiciary.

The Judicial Conference believes that equitable compensation for all public servants, including high-ranking government officials such as judges, is important for the long-term good of our nation. In the view of the Conference, the compensation of these

officials should be raised and maintained in proportion to their peers and to increases in the cost of living.

The following factors support the need for immediate improvements in the salaries of federal judges and judiciary executives: (1) the purchasing power of their salaries has declined since 1993; (2) the compensation of their peers in the not-for-profit and private sectors has spiraled upward; (3) the quadrennial salary review mechanism provided under the Ethics Reform Act of 1989 has not been allowed to operate as intended, so the appropriateness of their salary levels has not been reviewed in nearly two decades; and (4) the combination of pay fragmentation and statutory salary limits has resulted in egregious pay compression and pay inversion.

The ability of the federal judiciary to provide the highest-quality service to all litigants is a matter of great importance, not only to the legal community, but also to the public at large. Every day, the federal bench faces the enormous challenge of promptly and fairly resolving complex disputes that affect not only individual rights and liberties, but also corporate governance, stockholders' rights, and the marketplace.

The judiciary competes in the marketplace with other federal, state, and local government employers as well as private and non-profit sector employers in the so-called "war for talent." As discussed below, the current federal salary structure hampers the judiciary's ability to successfully compete in this "war". In addition, the federal courts

require an increasingly high level of technological expertise in their workforce in order to function efficiently, raising the stakes in this "war".

2006 Government Accountability Office (GAO) Report on Executive and Judicial Pay

The judiciary believes that the GAO's recent report, *Human Capital: Trends in Executive and Judicial Pay,* is a step in the right direction. The report underscores the urgent need for an immediate increase in the salaries of judges and other high-level federal officials. Not only does this report show that the real pay of these officers has declined sharply relative to inflation; it also shows that this pay decrease was permitted during a time period when the pay of average Americans increased.

While the judiciary believes this report understates the impact of inflation on judges' purchasing power (due to the GAO's decision to use the Gross Domestic Product (GDP) price deflator to correct for inflation), the GAO report focuses much-needed attention on the broken quadrennial salary review process and the government's fragmented pay system for high-level officials, which have led to the twin problems of salary compression and inversion. Although GAO has stated its rationale for including the GDP index in its analysis, we believe the Consumer Price Index is the more accurate reflection of what individual citizens actually experience in their daily economic lives.

Compensation of Article III and Fixed-Term Judges

We would direct the Committee's attention to the landmark report, *Urgent Business for America: Revitalizing the Federal Government for the 21st Century*, in which the Second National Commission on the Public Service (hereinafter referred to as the Volcker Commission) concluded that "[j]udicial salaries are the most egregious example of the failure of federal compensation policies," and recommended that "Congress . . . grant an immediate and significant increase in judicial, executive and legislative salaries to ensure a reasonable relationship with other professional opportunities." *See* http://www.brookings.edu/gs/cps/volcker/reportfinal.pdf. In response to this recommendation, President Bush, in May 2003, publicly endorsed Senate legislation (S. 1023, 108th Cong.) that would have authorized a 16.5 percent increase in judicial salaries.

It is not necessary to restate the findings that led the Volcker Commission to conclude that the problem of federal judicial compensation required the immediate attention of Congress and the President. Those findings are discussed in detail in *Urgent Business for America*,[1] as well as in a May 2003 report published jointly by the American Bar

[1] We have also appended, for the information of the Committee, a letter from Leonidas Ralph Mecham, then Director of the Administrative Office of the U.S. Courts, to the Volcker Commission that includes the statements of individual judges concerning the problem of judicial compensation. See Attachment 1.

Association and the Federal Bar Association entitled, *Federal Judicial Pay: An Update on the Urgent Need for Action. See* http://www.uscourts.gov/newsroom/judgespayaction.pdf.

The lot of federal judges has not improved since 2003. Indeed, all evidence indicates that it has worsened. Judges' salaries continue to lag well behind the salaries of their peers in law schools, the not-for-profit sector, and the private sector. As most judges know from their conversations with current and former law clerks, federal judicial salaries are commonly eclipsed by the compensation of relatively inexperienced associates in large law firms. In February 2006, Senator Dianne Feinstein observed that "[t]oday, partners at major law firms routinely make three, four or five times what federal judges make. Furthermore, first year law school graduates at these law firms make more than experienced Federal judges." 152 Cong. Rec. S1073 (daily ed. Feb. 10, 2006).

In the executive branch, the basic pay of members of the career Senior Executive Service (SES) is now equivalent to the salaries of district judges, members of Congress, and Executive Schedule level II officials, which are fixed at $165,200. Just three years ago, the locality-adjusted pay of these officials was capped at Executive Schedule level III, which is currently $152,000. The aggregate compensation of members of the SES is capped at the salary of the Chief Justice of the United States,[2] which is currently $212,100. The problem is not that members of the career SES are paid too much. We do

[2] The Chief Justice's salary is the same as that of the Vice President and the Speaker of the House of Representatives.

not advocate that they be paid less, or are any less important than federal judges. Members of the SES, like federal judges, are career federal employees, and they should be paid reasonable compensation. Instead, the problem is that the ad hoc fragmentation of the federal salary structure creates perceptibly unfair federal pay scales.

There is another problem. Judges' real pay, like members' pay, erodes over time for two reasons: (1) the combination of congressional and Presidential denial of five COLA-based adjustments during the 1990's; and (2) inadequate COLA levels that do not keep pace with inflation. This salary erosion threatens the very strength of the federal bench and impacts on all judiciary employees. Since 1993, the compensation of federal judges (as well as members of Congress and Executive Schedule officials) has increased by 23.7 percent. The cost of living rose by 31.8 percent during this same period of time. Had these officers received the COLA-based pay adjustments they were entitled to by statute, their salaries would now be fixed at $184,900. See Attachment 2. In contrast, the compensation of General Schedule employees rose by 57.5 percent, due to annual base pay and locality pay adjustments and exclusive of any within-grade increases and awards and bonuses, during this same time period.

In view of these developments, it is not surprising that some notable judges have elected to resign or retire from the federal bench to pursue more lucrative careers in other sectors of the economy. If the problem of judicial compensation is not addressed soon,

we believe the inadequate judicial salaries will negatively affect the ability of the judiciary to continue to attract the most qualified attorneys from all segments of the legal profession.

Compensation of Judicial Staff

The compensation of judicial executives is grim as well. The judiciary is confronted by a pay gap with the executive branch, the twin problems of salary compression and salary inversion, and an impending wave of retirements at the court unit executive level.

It is therefore not surprising that the judiciary is experiencing egregious salary compression and salary inversion. See Attachment 3. In many geographic locations within the continental U.S., the locality-adjusted pay of nearly two hundred court unit executives (e.g., clerks of court) and their deputies now exceeds the salaries of bankruptcy and magistrate judges (currently $151,984, as set by statutory formula). Non-foreign cost-of-living adjustments (COLAs) for court unit executives (and comparable executive branch officials) who are located outside the continental U.S. have pushed their adjusted salaries above the district judge salary.[3]

[3] At present, federal employees in Alaska, Hawaii, and the territories (Guam, the Northern Mariana Islands, the Virgin Islands, and Puerto Rico) receive non-foreign cost-of-living allowances up to a maximum of 25 percent of their basic pay. Section 461 of title 28, United States Code, does not presently authorize the payment to judges of nonforeign COLAs. In the absence of specific statutory authorization, judges may not receive this additional form of compensation.

Currently, compensation levels for judiciary executives are lower than those for executive branch executives, affecting the judiciary's ability to recruit and retain high-level, experienced senior professionals. Under legislation enacted by Congress in 2002 and 2003, the basic and aggregate pay caps for career senior executives were raised. The judiciary was omitted from the 2003 legislation. As a result of this legislation, the aggregate compensation of career senior executives in the executive branch may be set at either $212,100 or $183,500, depending on whether the agency has a certified performance management system. (The basic compensation of these officials may be set at $165,200 or $152,000, depending on whether the agency has a certified performance management system.) In contrast, through a combination of statutory and Judicial Conference policy limits, judiciary executives[4] generally receive no more than $165,200[5] in aggregate compensation (i.e., basic pay plus locality adjusted pay and performance awards).

This disparity in the total compensation of judicial and executive branch officials now places the judiciary at a serious disadvantage when competing for talent with

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[4] This term includes certain Administrative Office executives, circuit executives, district court executives, clerks of court, chief probation and pretrial services officers, chief preargument attorneys, circuit librarians, and senior staff attorneys.

[5] This policy is a long-standing one, and the Judicial Conference believes it is consistent with sound principles of compensation and the unique nature of the judicial branch (where constitutional officers serve for life and not for a fixed term of years).

executive branch agencies. (Of course, the judiciary must also compete with the private and not-for-profit sectors for seasoned executives and professionals as well.) While the Judicial Conference, as a matter of policy, has determined to lift the locality-adjusted cap from Executive Schedule level III to level II on the basic pay of judiciary executives, this is only a temporary solution to the problem. A permanent solution could be achieved by raising federal judicial salaries (as well as the salaries of comparable officials in the political branches of government), which would have the additional beneficial effect of lifting the cap on the compensation of judiciary executives.

Currently, the salaries of approximately 40 percent of senior court unit executives are capped at the Executive Schedule level III salary of $152,000. (As discussed earlier, Judicial Conference policy permits a chief judge or circuit judicial council to fix the locality-adjusted pay of a circuit or court unit executive at a level equivalent to the district judge salary, in order to relieve salary compression in the court.) In addition, 10 percent of deputy court unit executives are capped at that same salary level.

This narrowing of the differentials between top executives is unfair and should be fixed. The current salaries do not adequately compensate court unit executives and other senior judicial officials for their higher levels of leadership and scope of responsibility. Also, the difference in salary levels is so small that the financial incentive for talented deputies and supervisors to aspire to positions of greater responsibility is disappearing.

We believe that this situation is counterproductive. There should be greater comparative rewards as one moves to the top rung of the career ladder. Congress and the President must do something to correct this compression dilemma.

Like many executive branch agencies, the judiciary is concerned about its aging work force, as well as about developing its next generation of top executives. Of 375 court executives, 163 or 43.5% are currently eligible to retire. Within the next two years, 211 or 56.3% of all current court executives will be eligible to retire.

The drain of knowledge resulting from the departure of our current generation of highly capable, experienced, and accomplished executives may adversely affect the judiciary's ability to provide the outstanding service that judges, the bar, and the public deserve and have come to expect. In order to develop and effectively recruit the necessary talent to replace those who retire, the judiciary needs the necessary tools to attract experienced and accomplished executives. As the judiciary prepares to meet this challenge, it is hamstrung by a widening pay gap with the executive branch, as well as with private sector and not-for-profit organizations, an antiquated federal benefits package which lags well behind the private sector and state courts (since it omits cafeteria-style benefits, including leave conversion), and severe pay compression.

The judiciary is also experiencing similar problems to executive branch agencies in recruiting and retaining rank-and-file employees, especially in high-cost metropolitan

areas such as Los Angeles, San Francisco, New York, and Washington. For example, in May 2005 former Administrative Office Director Mecham reported that "the number and quality of applicants for a chief probation officer position in a large court were poor and sparse...the same is true for recent clerks' vacancies in a large district court and a large bankruptcy court." Federal courts are finding it increasingly difficult to recruit and retain highly qualified court reporters and information technology staff. There is a growing demand for individuals who possess the necessary skills to provide realtime broadcast captioning. Consequently, the courts must now compete with the media and information technology firms for experienced court reporters.

The Administrative Office of the U.S. Courts has encountered similar problems. It is increasingly difficult to recruit and retain accountants and senior budget staff in the Washington metropolitan region. More than 20 percent of the accounting positions in the Administrative Office's Accounting Division are currently vacant on account of the applicable federal caps.

The judiciary believes these problems are fixable. If Congress were to fix the compensation system in the ways outlined above, it would enable the third branch to continue to attract and retain a highly capable, experienced cadre of executives, and conduct appropriate succession planning for executive positions.

Broken Quadrennial Review Mechanism

The judiciary knows that the problem of federal compensation is a complex one. The problem may be traced in substantial part to the Ethics Reform Act of 1989. When that legislation was enacted by Congress, the former Quadrennial Salary Commission was replaced in the process for fixing the salaries of top federal officials by a so-called Citizens Commission on Public Service. The Commission process was intended to bring a degree of fairness and regularity to the politically charged issue of the compensation of members of Congress, judges, and other high-level officials. It has demonstrably failed to serve this purpose. Congress effectively canceled the 1993 Commission by rescinding its appropriation, and none of the later Commissions has been impaneled. While the Citizens Commission was arguably doomed from the start, the reality is that there is no practical machinery today for reviewing the adequacy of the salaries of top federal officials.

While the judiciary would urge you to recommend that the President and the Congress establish a new quadrennial salary review process to avoid repeating the problems we face today, we do not believe that pay relief for judges, members of Congress, and Executive Schedule officials should be put off until such a commission is impaneled. On behalf of the Judicial Conference, we would urge Congress to enact legislation to remedy promptly the problem of judges' and judicial executives' compensation.

Conclusion

In closing, I would direct your attention to a statement made by Irving Shapiro, retired Chairman of DuPont, who told the 1981 Quadrennial Salary Commission:

> In industry, we know that good employees get better with years of experience, and we have to do what we can to make it worth their while to stay with us. Industry recognizes its own self interest and finds ways to keep these people. I ask that a way be found for the government to do the same.

Mr. Chairman, thank you for the opportunity to appear before your Committee today. We would be happy to expand on any of these points now or in the future. Again, we are grateful to the Committee for demonstrating leadership in examining the problem of the compensation of judges and other high-level federal officials.

Mr. PORTER. Thank you very much.

There are those that would suggest that we cap attorneys' fees. That would equalize this problem. [Laughter.]

But that is not why we are here today. We have the Honorable Sean O'Keefe, Chancellor of Louisiana State University, former Administrator, National Aeronautics and Space Administration. Welcome.

STATEMENT OF SEAN O'KEEFE

Mr. O'KEEFE. Thank you, Mr. Chairman and Congressman Davis. I appreciate the opportunity to spend time with you. Of the better than 150-odd hearings I have had the opportunity and privilege to testify at, this is the first one I have appeared at voluntarily. All others were—[laughter.]

Mr. PORTER. We can arrange for you to come back, if you would like. [Laughter.]

Mr. O'KEEFE. This is more fun than I can stand, Mr. Chairman. I appreciate this. Precedents are to be set just once, that is for sure.

But I appreciate the opportunity. This is an important question, and it is one that again I think the fact that you are delving into this issue is a sensitive matter, one that certainly is not the most publicly popular one to do, but I commend you for taking on the question.

I will say up front that I am not here at all to advocate for a specific compensation rate for executive pay. That is not a matter I think that will have any bearing, particularly given the important analysis you have received from the Comptroller General, who can provide far more insightful and helpful ways of looking and determining what competitiveness means, and comparability. So as a consequence, I will not offer a view one way or the other in terms of what rates are more or less competitive or comparable. Again, I think the members of the judiciary here are far more qualified in that regard, too.

I would offer, though, just a couple of points. The first is that we adhere as a general principle to a very Jeffersonian model of how we promote public service opportunities. There are varying ways to describe that, but I think the preference that I would adhere to is that model, for whatever set of circumstances in combination really promotes and motivates a fair amount of mobility and it motivates and encourages a level of public service across the public spectrum, which is a desirable aspect.

That said, we ought to have eyes wide open in terms of what the consequences of that would call for. I think there are three very important factors that bear on the executive leadership that we are bringing in that have bearing on what I would call a subjective competitiveness for compensation rates.

The first one is that it all depends on where you are in your station in life and age and professional experience in terms of the willingness and ability to be able to follow through. I think the very eloquent statement that Justice Pro offered as to what motivates all of us in public service, or who have been engaged in it, to involve ourselves in this. If you can afford it, you will stay is the bot-

tom line, I think is what I heard very eloquently said. And I think fried to its lowest denominator, that is it.

Earlier in a career or later in a career, it becomes a much more conducive and easier opportunity, particularly if it tracks as closely as possible from a longevity standpoint, with the age of each kid that you may have. That has an important bearing, or did in my circumstances. I have been appointed to Presidential appointments, confirmed by the Senate on four separate occasions. On the first two occasions, first as the Controller and CFO at the Defense Department, second as the Secretary of the Navy, I was at an earlier stage in my career in which the kids were an awful lot younger. As a consequence, they didn't have a habit of eating quite as much.

As I came back to public service in the latter two capacities, as the Deputy Director at OMB and later as the NASA Administrator, they had unfortunately become teenagers and were also aspiring to colleges. The combination of all that made it extremely difficult, when you compound it with mobility and the Jeffersonian model of leaving town, coming back, finding an opportunity to live in this town, which is the least affordable place probably to look to for housing opportunities. That compounds to make this a very short-term kind of opportunity. Notwithstanding other interpretations, that was the one that certainly influenced mine.

I would also add to that, though, the second matter, which makes it equally difficult in dealing with the matter of what is a base level of compensation, which is the compounding effect of the ethics rules. They are there for good and present reason. They are there to avoid conflict of interest. They are there to avoid circumstances in which folks would seek to display the kind of professional behavior that I think the Congresswoman's comments earlier were right on point, of the kind of efforts we seek to avoid in public servants, of coming through the revolving door and seeking to establish some kind of opportunity that then can be translated to some more remunerative case. That is what we seek to discourage by our approach. And that is commendable. In my view, I think it works.

But it works to a detriment in some circumstances, because as you enter public service as a Presidential appointee or as an executive level appointee after having done something else, what it usually requires is liquidity of just about everything you own. I found upon my return to public service as Deputy Director at OMB, the Office of Government Ethics had perfected the conflict of interest rules, and determined that if you have no interests, you will have no conflicts. And they set about the business of assuring that I had no interests, and they were all liquidated, every one of which were required to be absolved, any investment in anything had to be liquidated. And at the time I entered, it was a market condition that was less than desirable for that action.

So it made it virtually impossible for that liquidity to make of any value to fall back on to the extent that it was a combination of tuition demands as well as mortgage demands of moving back to a high-priced town that made it a finite period of time which I could serve. That is what determined ultimately the reason I had to leave. It finally got down to the stage that several colleagues who were in similar station, we all compared our Visa bills and determined exactly how much longer we could stand to pay the inter-

est on it and then decided to withdraw. So it became a very difficult set of circumstances in that case.

The third factor I would say, very quickly, is the confirmation process itself. This is one that requires an extended period of time for consideration and I offer this not as someone who is complaining about it. In all four of the capacities in which I was confirmed, not one took longer than 6 weeks. Matter of fact, the shortest took three. I probably am one of the few people who will sit here talking about this circumstance that is probably a world record, to have had four appointments, all of which took that short a span of time.

I unfortunately am the anomaly in that case. Most of them take 6 to 8 months. As a consequence, most folks who are considering executive positions and looking at the requirements to liquidate, to do all the things necessary in order to meet the requirements there, and then oh, by the way, come to a position which is not competitive by any means from the executive compensation standpoint, ultimately make the decision to withdraw. The volume of that I think is much larger than the number who are actually confirmed, just by virtue of the consequences that apply in these cases.

So in sum, I would say that those three factors, what is not a competitive rate, but nonetheless a living rate, and I think in this regard the Congresswoman's points are just right on. But when you compound that with a set of standards that are there for good and present reason, they are there in order to assure ethical behavior. It has the effect of limiting the amount of time that you can spend.

And the third one is, some folks make the decision to avoid it entirely because of the onerous process of even getting there in the first place for what in the end will be a sacrifice that requires this. The Comptroller General's, I think a very important recommendation on a commission would be very, very well pursued, with all three of these factors weighing in. Because any one of them individually will force a motivation of the original intentions, by any one of those three.

And all three have very valid reasons. We seek to avoid profiting or coming to public service in order to benefit by the remuneration. We certainly seek to avoid folks coming as a matter of ethics to public service for the purpose of a revolving door. And we seek to go through the confirmation process in order to assure those who come have a true objective for public service.

But the combination of all three has the effect, I think, of the consequences we see and unfortunately, decisions that must be made, certainly in my own case, of withdrawing from that service regardless of my personal commitment, objective and intention thereof.

I thank you, Mr. Chairman.

Mr. PORTER. Thank you very much.

I believe we are being called to vote. So we have about 15 minutes. I just wanted you to know that the bells indicate we are voting in about 15 minutes. What we would like to do is ask Mr. Burtless if you would give your testimony, please.

STATEMENT OF GARY BURTLESS

Mr. BURTLESS. I am a labor economist, and so I look at these salaries differently from someone who actually has gone through the

ordeals that people who have been asked to perhaps make big sacrifices to serve in public service have. The basic conclusion of GAO's report is that inflation adjusted salaries have not risen, in fact have shrunk since 1970. It is very hard to argue with this conclusion.

Figure 1 in my testimony, which uses a somewhat different deflator, shows exactly the same trend. We can also consider other benchmarks, and as a labor economist, I think looking at other benchmarks is also interesting. One benchmark is, what is the median income received by four-person families in the United States. In Figure 2 in my testimony, I show what has happened between 1960 and the present. Between 1960 and 1969, the pay of executive schedule 1 job was 4.2 times that of a median income four-person family in the United States. But between 2000 and 2004, it had slipped to just 2.6 times that ratio.

For office holders in executive 2 schedule, the same ratio fell from 3.4 to 2.3. So it is not only the case that inflation adjusted salaries at the top end of the Government pay scale have declined, they have also fallen in relationship to middle class incomes in the United States.

Another benchmark you might think of is the wage that is earned by an average worker. Well, we can go back to 1909, the Bureau of Labor Statistics has measured what an average manufacturing worker receives in the United States. And in chart 3 in my testimony, I track the pay ratio of Cabinet officers and Members of Congress, because they represent ceilings on wages received by many other people in the executive branch and in the judicial branch.

You can see the top officer holders' pay in the 1960's was not an aberration. In fact, it was lower in relationship to workers' pay in the 1960's than top executive sector salaries were earlier on in the 20th century. So relative to the earnings of manufacturing workers, both Cabinet and congressional pay was considerably higher before 1969.

But it is not very likely that the Government is going to be recruiting new executives, scientists, lawyers, technicians and so forth from the ranks of production workers and manufacturing. What we need to do is recruit job candidates from the same pool of candidates which supplies executives, scientists, lawyers in the private sector and in academia. Chart 4 in my written testimony shows how Federal executive schedule pay stacks up against the average pay of American workers with post-college degrees. As you can see, top Federal salaries have slipped in comparison to this benchmark since the 1970's and also since the early 1990's.

The reason for this is quite straightforward. Private sector salary disparities have increased in the years after 1970. Workers with the widest management responsibility, the highest technical qualifications, have enjoyed much faster pay gains than average production workers. But top Federal salaries have not kept up. They have declined in inflation adjusted dollars.

When we examine the salaries paid to top Federal executives and compare them with the compensation earned by people in the private sector who serve in equally demanding or frequently much less demanding jobs, the gap in salaries is huge. I am not really

worried that the Government is going to be unable to attract talented candidates for the very top jobs in Government. We can always find very good candidates who are wiling to serve as Secretary of Defense, as Governor of the Federal Reserve or as Assistant Secretary of the Treasury, for reasons that David Walker mentioned.

What the Government might not be able to do is to find strong, ambitious candidates to serve lengthy spells in Government service to attain GS–14, GS–15 and SES positions that have demanding managerial, technical, scientific or legal responsibilities. For better or worse, the executive branch requires the experience and talents of very good people, as does the judiciary. And those talents largely determine the Government's success in carrying out policy and administering justice.

When an able 25 or 30 year old is thinking about the risks and rewards of different kinds of careers, how many will be attracted by a career where the top salary is not far above the starting salary in a law firm, where the top salary is below the average professor's income in top ranked universities, where the top salary is far below the typical partner's income in an accounting firm? I am not talking about law firms, I am talking about accounting firms. No rational observer would claim that the best public servants are motivated solely by monetary rewards.

But no sensible person should think that the decision to serve in a demanding position is totally divorced from financial considerations. Top executives, top doctors, top lawyers, top scientists in business and academia have seen their compensation climb much faster than that of ordinary workers over the last 25 years. But the people who hold top Federal jobs in the judiciary and the executive branch and the Congress have seen their pay shrink in purchasing power and in relation to the pay of people who do similar and frequently much less demanding jobs.

I think pay levels affect candidates' decisions to begin or to continue a career in Federal service. The long-term decline in top Federal pay has reduced the attractiveness of Government employment and it has deprived the senior Federal service of many able candidates.

Thank you.

[The prepared statement of Mr. Burtless follows:]

The Erosion of Compensation for Federal Executives and Judges

Testimony for the

Subcommittee on the Federal Workforce and Agency Organization
Committee on Government Reform

U.S. House of Representatives

Room 2203
Rayburn House Office Building
2:00 p.m.
September 20, 2006

by
GARY BURTLESS*

* John C. and Nancy D. Whitehead Chair in Economic Studies, The Brookings Institution, 1775 Massachusetts Avenue, N.W., Washington, D.C., 20036. I gratefully acknowledge the splendid research assistance of Sarah Anders in preparing this testimony. The views expressed are solely my own and should not be ascribed to the staff or trustees of the Brookings Institution.

The Erosion of Compensation for Federal Executives and Judges

GARY BURTLESS
The Brookings Institution

Summary

A crucial responsibility of the government is to recruit, hire, and retain strong candidates to serve in executive and judicial positions. For better or worse, the experience and talents of key federal officials will determine the government's success in executing policy and administering justice. The government's ability to recruit talented executives, scientists, lawyers, and judges depends on the attractions of top government jobs, including the salaries and non-wage benefits offered to the people who serve in these positions. Good candidates rarely accept senior government positions solely, or even mainly, out of a desire for personal wealth. However, many people may be deterred from public service if they are asked to make a large financial sacrifice in order to serve.

Congress is ultimately responsible for establishing pay levels in senior government positions. This obligation makes Congress vulnerable to the charge of self-interest. The problem stems from the practice of linking salaries of top executive and judicial branch officials to those of Members of Congress. This means legislators who vote in favor of good salaries for federal executives and judges are often seen as voting to give themselves a pay raise. Constituent pressure sometimes forces Congress to hold a "yes" or "no" vote on scheduled pay hikes, even when a law has been carefully crafted to allow salary increases to take place without any explicit action by Congress.

Congressional reluctance to vote in favor of pay raises has meant that the salaries of senior federal officials have followed an erratic course over the past century. Measured either in terms of purchasing power or as a ratio of the average wage of private-sector workers, the annual pay of Cabinet officers, sub-Cabinet officials, judges, and senior federal executives has fluctuated widely and trended downward over the past few decades. Federal compensation of top officials is determined by political logic rather than a clear-eyed assessment of the personnel needs of the government. The federal pay structure is not calibrated to achieve rational economic objectives. It nonetheless can have real effects on recruitment and retention.

A variety of benchmarks can be used to assess the adequacy of federal pay. One standard is the purchasing power of salaries. What standard of living can be achieved by an office-holder, assuming the official's household income while in government employment consists solely of a federal pay check? Of greater relevance are the wages of other workers, especially those who hold private-sector jobs with similar skill requirements and responsibilities. How does federal executive pay stack up against the salaries paid in similar positions outside the federal government?

The simple fact is that real wages in top federal jobs have not kept pace with inflation. In an era of increasing pay for people in key legal, scientific, and management positions, the salaries of top federal jobholders have fallen far behind the pay received by people in the private sector who hold jobs with comparable or lesser responsibility. In the short run, capable scientists, lawyers, and executives may leave public service in order to obtain more comfortable and better paid positions in the private sector. The long-term risk to the federal government is even greater. Many of the most talented and ambitious young university graduates may not consider a career in the public service because of the financial sacrifices associated with such careers.

The GAO report

The GAO has just issued an update on trends in the pay and fringe benefits of top federal positions (*Human Capital: Trends in Executive and Judicial Pay*, GAO-06-708, June 2006). The report documents the long-term erosion in the real value of pay for top federal executives and senior judges. The pay of administrative law judges, senior scientists, and managers in the Senior Executive Service has fared slightly better, but the relative pay gain obtained by these federal employees has meant there has been serious compression in pay among senior managers. Federal managers in the Senior Executive Service can now receive pay that exceeds the salaries earned by political appointees in Executive Schedule levels III and IV, presidential appointees who typically have greater management responsibility than managers in the Senior Executive Service.

Critics of the GAO report might quibble about the price deflators GAO analysts used to measure price inflation between 1970 and 2006. Even if an alternative deflator is used, however, the basic conclusion of the report cannot be challenged. Measured in dollars with constant purchasing power, the salaries of many top government positions are lower in 2006 than they were in 1970. Top federal salaries fell fastest in the 1970s and early 1980s, when price inflation was high. Real wages have recovered somewhat since the early 1980s, although for Cabinet officers, Members of Congress, and some other top officials the purchasing power of current salaries are lower than they were in 1993.

In January 1969 members of Congress were paid an annual salary of $42,500. Cabinet-level officers received a salary of $60,000. By January 2006 salaries had risen to $162,100 for members of Congress and sub-Cabinet officials in Level II of the Executive Schedule. Salaries had climbed to $180,100 for members of the president's Cabinet. While the salary increases may seem large, most indexes of the cost of living rose much faster over the period. Whereas congressional salaries increased 281 percent and Cabinet officer pay rose 200 percent between 1969 and 2006, the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U) increased 457 percent. Two superior measures of consumer price inflation are the Bureau of Labor Statistics' CPI-U-Research Series (CPI-U-RS) and the Bureau of Economic Analysis' Personal Consumption Expenditure (PCE) deflator. The CPI-U-RS price index rose 380 percent between January 1969 and January 2006, and the PCE deflator increased 358 percent in the same period. Every measure of inflation shows that consumer prices rose substantially faster than salaries for the top rank of federal officials

The implications of consumer price changes for the purchasing power of top federal salaries are displayed in Figure 1. The top panel shows the trend in annual congressional salaries at the beginning of each presidential term from 1969 through 2005. The bottom panel shows the trend in Cabinet officers' pay. The light-colored bars show salaries measured in contemporaneous prices, while the dark bars indicate salary levels when prices are converted into constant 2005 dollars using the CPI-U-RS price index. The chart shows that, when salaries are consistently measured using 2005 dollars, congressional pay fell almost 17 percent (from $196,100 to $162,100) after 1969 while Cabinet officer pay shrank 35 percent (from $276,800 to $168,100). Because the level of congressional and Cabinet-officer salaries in turn places limits on the ceiling for salaries received by presidential appointees below Cabinet rank, it follows that most presidential appointees and many senior executives who are not presidential appointees now receive salaries that are worth substantially less than the incomes earned by their counterparts in the early Nixon administration.

Top federal officials are not the only Americans who face rising living costs, of course. Middle-class families must also struggle to pay higher prices for basic necessities, decent housing, and health care. One way to compare the situation of top officials with that of middle-class Americans is to compare the annual salaries of a senior office-holder with the annual income of a middle-class family. In 2004, the median income of a four-person American family was $66,111. In comparison, a Cabinet officer's annual salary was $175,500 – or 2.65 times the median income – and a member of Congress' pay was $158,100 – or 2.4 times the median income. Both multiples are significantly smaller than was the case in 1969, when Cabinet-level pay was 5.6 times the median income and a member of Congress pay was 4.0 times the median income.

Figure 2 shows the relationship between top office-holders' salaries and median income over the period from 1960 to 2004. It is clear in the figure that the salary increase given to top federal office-holders in 1969 pushed their incomes to a four-decade high compared with the median U.S. income. Even before the 1969 pay hike took effect, however, top federal officials received a salary that represented a large multiple of the income earned by middle-income families. From 1960 through 1968 a Cabinet officer's pay was 4.0 times the median family's income. Between 2000 and 2004 a Cabinet member's pay had fallen to just 2.6 times the median family income. Thus, top office-holders' pay has not only failed to keep pace with changes in the cost of living, it has also climbed more slowly than the incomes of middle-class families.

Top federal salaries in comparison with wages outside the government

The financial attractiveness of senior-level government jobs depends not only on the purchasing power of federal salaries but also on the wages available to federal employees if they worked in other jobs. When most voters evaluate federal executive and judicial pay, they probably consider salaries in jobs with which they are familiar, including their own. One benchmark for thinking about top federal salaries, therefore, is the pay of a typical person employed outside the federal government. .

At the time William Howard Taft became President in 1909, an average production worker in manufacturing earned slightly more than $500 a year. In that same year, President Taft received an annual salary of $75,000, members of his Cabinet earned $12,000, and members of Congress earned $7,500. Federal Cabinet secretaries thus earned an annual salary equal to 24 times the average earnings of a manufacturing worker, while members of Congress were paid a salary equal to 15 times the average manufacturing wage. Between 1909 and 2005, the average manufacturing wage increased at a compound annual rate of 4.5 percent, reflecting the effects of both productivity improvement and economy-wide price inflation. During those same decades, a Cabinet officer's pay increased 2.9 percent a year, and Congressional salaries grew 3.3 percent a year, significantly slower than average wage gains in manufacturing. By 2005, Cabinet members' pay and congressional salaries were approximately 5 times the average earnings of a production worker in manufacturing (Figure 3). If earnings trends among manufacturing workers were typical of wage gains among workers in the wider economy, the long term trend in top federal salaries has brought federal office holders much closer to the position of an average U.S. worker.

Whether the gap between top government salaries and average pay remains big enough to attract the best candidates to high-level federal positions depends on the motivations of people who are asked to serve and on the salaries offered by employers that would hire them if they were not employed by the government. It is safe to say that few people asked to serve in top federal jobs are recruited from the rank-and-file work force of manufacturing plants. Almost all top government

officials have a college diploma. An overwhelming majority of presidential appointees have a post-graduate degree.

For a variety of reasons, the wages earned by such workers have increased significantly faster than wages paid to rank-and-file workers, especially in the years since 1980. Figure 4 shows trends in the relative earnings of Executive Schedule office-holders compared with average American workers who have a post-college degree. The top line shows the relative earnings of Executive Schedule I officials, and the bottom line shows relative earnings of Executive Schedule II office holders. The wages of highly educated and highly compensated workers have increased significantly since the 1970s compared with the wages earned by workers with average educational credentials who earn average wages. For example, in 1973 the 95th percentile wage was 2.4 times the median U.S. wage. By 2009 it was almost 3 times the median wage. People with advanced schooling have obtained faster wage gains than workers with average or below-average schooling. People with high levels of schooling and exceptional talents have seen their bargaining position improve. They command higher wages relative to the median wage than was the case in the 1960s and 1970s.

The implication of these trends for recruiting high-level federal employees is straightforward. The wages of people who are most likely to take demanding government positions have increased much faster than those of typical workers. Thus, the relative decline in compensation for top-level federal appointees has been greater than is implied by Figures 3 and 4, because the market wages available to highly educated and exceptionally talented workers has increased considerably faster than the average wage.

Consider earnings trends among men who have obtained a post-college degree, who work in a full-time, year-round job, and who are between 45 and 54 years old. From 1977 through 2000, the average annual earnings of this highly educated group increased 5.2 percent a year. This was faster than the wage gain of production workers in manufacturing, who saw their earnings climb 4.5 percent a year during the same period. It was considerably faster than salary gains for Cabinet-level positions, which averaged just 3.8 percent a year between 1977 and 2000. Although these differences in the rate of wage gain may seem small, over a two-decade period they make a big difference in relative pay. For example, if the wages of two workers are initially the same but one worker receives pay increases that are 1.4 percent faster than the other, at the end of 20 years the worker with faster wage gains will earn one-third more income than the worker who receives smaller raises.

To determine how top federal salaries compare to salaries in high-level positions outside of government, it is useful to consider salaries in specific government jobs and contrast them with the salaries earned in comparable positions outside of the federal government. This kind of comparison highlights the financial sacrifices that highly qualified candidates make in order to accept a senior federal job.

Table 1 shows job titles and salaries of six senior executive branch positions as well as typical salaries of positions from which appointees might be drawn. The first position on the list is assistant secretary for tax policy in the Department of Treasury. The person who holds this job is responsible for developing and analyzing the administration's tax proposals. Candidates are drawn from both legal and academic backgrounds. The job is an Executive Schedule Level IV position, which in 2005 paid an annual salary of $140,300. In comparison, equity partners in the nation's 100 largest law firms could expect to earn more than $1.1 million as their share of partnership profits, roughly 8

times the salary received by an assistant secretary of the Treasury. Note that the 100 largest law firms employ more than 70,000 partners. In 2005 major law firms offered starting salaries to new law school graduates, not including bonuses, that were just slightly lower than the assistant secretary's pay. The Executive Level IV salary is more competitive in recruiting university professors, whose annual salaries are often close to those of senior government officials. For example, the 2004-05 average salary of full professors in private research universities was $159,000, only about 14 percent higher than the salary paid to the assistant secretary of Treasury. However, the academic salary shown in Table 1 understates the income that candidates would have to give up to accept the assistant secretary position. Many academics who are knowledgeable about tax policy have sizeable consulting incomes in addition to their university salaries. People who accept senior government jobs must give up most or all their outside labor income while they hold office.

The commissioner of the Internal Revenue service is responsible for administering an agency with roughly 100,000 employees and an annual budget of about $10 billion. The commissioner holds a Level III Executive Schedule position, which in 2005 entitled the commissioner to receive a salary of $149,200. This is roughly one-eighth the average net income of a partner in a large law firm and 7 percent of the salary and bonus received by the general counsel of a major U.S. corporation. When compared with a partner's income in a U.S. accounting firm, however, the commissioner's pay seems more competitive. The commissioner of Internal Revenue earns about 14 percent less than the average partner of a major accounting firm.

When a top federal job requires detailed knowledge about science or medicine, federal salaries do not seem particularly attractive. The National Institutes of Health (NIH) provides financial support for much of the nation's research on the prevention, detection, diagnosis, and treatment of disease. Though four-fifths of its budget supports research outside the federal government, the NIH also has a large staff that conducts biological and medical research in government laboratories. Five members of its staff have been awarded the Nobel Prize since 1968. It had an annual budget of $29 billion in 2005, and a staff of 17,500, including more than 3,000 research scientists. All directors of the NIH have been physicians, but the size and scope of the NIH are more like those of major universities than of a health institution. Presidents of selective private research universities received an average salary that was more than $600,000 in 2003-04, more than four times the pay of the NIH director. The median salary of a public university president is also much higher than that of the NIH director. The director's salary is less than half the average compensation paid to physician-CEOs placed by Witt/Kieffer, the leading executive search firm specializing in recruitment of managers for health care, managed care, and educational institutions. A physician placed as a CEO will typically be responsible for managing a hospital or a health care company, institutions that are far smaller than the NIH.

The Food and Drug Administration (FDA) is the federal regulatory agency responsible for ensuring that ingredients in the nation's food supply are not harmful and that drugs and devices used in medical practice are safe and effective. FDA's regulatory mandate requires great technical competence and imposes enormous responsibilities on its staff. The commissioner of the FDA oversees 10,400 employees and an annual budget of about $1.8 billion, equivalent to that of a large university. In 2005, the commissioner was paid $140,300. This was 3 percent of the average total compensation received by chief executive officers in the pharmaceutical companies whose products are regulated by the FDA. The executive search firm Witt/Kieffer helps recruit physicians to serve as heads of departments of clinical medicine in medical schools and universities. The average base pay of physicians placed in these positions in 2004 was $325,000. The average pay of department

heads in medical schools and universities is more than twice that of the FDA commissioner.

The last two federal positions shown in Table 1 are in the Department of Education. The two assistant secretaries are responsible for administering a combined total of more than $50 billion in annual spending on the nation's schools, colleges, and universities. Their annual salaries would place them in the lower ranks of public and private university presidents and superintendents of big municipal school systems.

The attractions of senior federal jobs

Most people willing to accept a senior government job recognize that the pay in such a job cannot match that provided by a comparable position in the for-profit sector. Legislators who are answerable to voters cannot allow top salaries to exceed some hard-to-define limit that American voters regard as tolerable. If voters had any say in determining top salaries in the private sector, many would probably vote against most of the pay packages displayed in Table 1. Voters' sense of fairness has only a small impact on the salary structure of private employers, but it is crucial in determining pay at the top of the federal organizational chart.

Lack of voter knowledge may play a role in shaping public attitudes toward compensating high-level government employees. More than three-quarters of American adults believe the financial rewards of federal employment play a big or moderate role in the decision of high-level appointees to serve in administration jobs. Forty-three percent think Cabinet appointees, such as the Secretary of State or Secretary of Defense, obtain salaries in top administration jobs that are equal to or greater than those they would receive in a senior position outside of government.[1] In view of the salary comparisons displayed in Table 1, this view is clearly erroneous, but it is one held by a large minority of voters. Many Americans are apparently unaware of the compensation received by senior executives, doctors, lawyers, and scientists in the private sector. Some may have little knowledge of the actual salaries earned by judges and top federal scientists and executives.

One puzzle is voters' unwillingness to accept top federal pay levels that past generations of Americans were willing to accept. Based on the evidence in Figure 3, it is plain that Americans were once willing to tolerate much higher levels of compensation in top federal jobs. The big drop in relative compensation that occurred after the Great Depression can probably be explained by a general compression of American wages during and after World War II. The salaries in top federal jobs fell in comparison with ordinary workers' wages, but a similar compression in pay also occurred in the private sector.

It is a little harder to explain government pay trends since 1970. U.S. wage inequality increased dramatically after the 1960s, especially in the two and a half decades after 1980. Private-sector employers have moved toward a pay system in which workers with the broadest management responsibilities and the most highly prized technical skills command an outsize share of a firm's total compensation. Some observers argue that these key workers are now also exposed to an outsize risk that their incomes will fall. The risk of job loss is obviously smaller in some top government jobs, but it is not lower in all of them. Political appointees serve at the pleasure of the President, and their job will almost certainly end when an administration leaves office. These appointees serve in top administration jobs for an average of less than two years. The

[1] Judith M. Labiner, *A Vote of No Confidence: How Americans View Presidential Appointees* (Washington, DC: The Presidential Appointee Initiative, 2001), pp. 16-17.

responsibilities of top federal jobs have not shrunk, but, unlike salaries for top private-sector jobs, the pay has. It is curious that Americans appear willing to tolerate bigger pay disparities in private markets, while insisting in the voting booth – or at least on talk radio – that top government salaries should be severely curbed.

People who serve in top federal jobs obtain non-monetary benefits from their service, of course, and these benefits help to explain why government jobs continue to attract many outstanding candidates. Public-spirited Americans are eager to serve in influential or high-profile positions, even if the financial rewards are far below those obtainable in a private-sector job. Experience in a senior government job allows workers to acquire skills, knowledge, and reputation that have considerable value outside the government. Few political appointees say they are forced to accept a big cut in pay when they leave federal office. More than one-third of the political appointees who served between 1984 and 1999 say they modestly or significantly increased their earning power as a result of holding a senior administration job.[2]

On balance, however, the non-monetary advantages of serving in senior federal jobs are no larger today than they were 35 years ago, when top federal salaries were substantially higher in constant dollars. The economic rewards of federal service have fallen, especially in comparison with wages and benefits offered to highly qualified candidates in the private marketplace. No one can be sure whether these trends in pay, inside and outside the government, have affected the caliber of people willing to serve in top federal positions.

The basic question facing voters is simple. Do we want the federal government to be deprived of the talents of highly competent people who may be deterred from public service by the financial sacrifice they must accept in order to serve? No careful observer would claim the best public servants are motivated solely by monetary rewards, but no sensible person should assume the decision to serve in a top-level position is totally divorced from financial considerations. For the past quarter century top executives, doctors, lawyers, and scientists in the business and academic worlds have seen their compensation climb much faster than the wages of ordinary workers. Over the same period, top federal appointees have seen their pay shrink, both in purchasing power and in relation to the pay of comparable workers. Talented people who are concerned about their families' well-being may be deterred from accepting top federal jobs under these circumstances. If financial considerations play any role at all in candidates' decisions to serve an administration, the long-term decline in top federal pay has deprived the federal government of an ever-larger fraction of the nation's most talented people.

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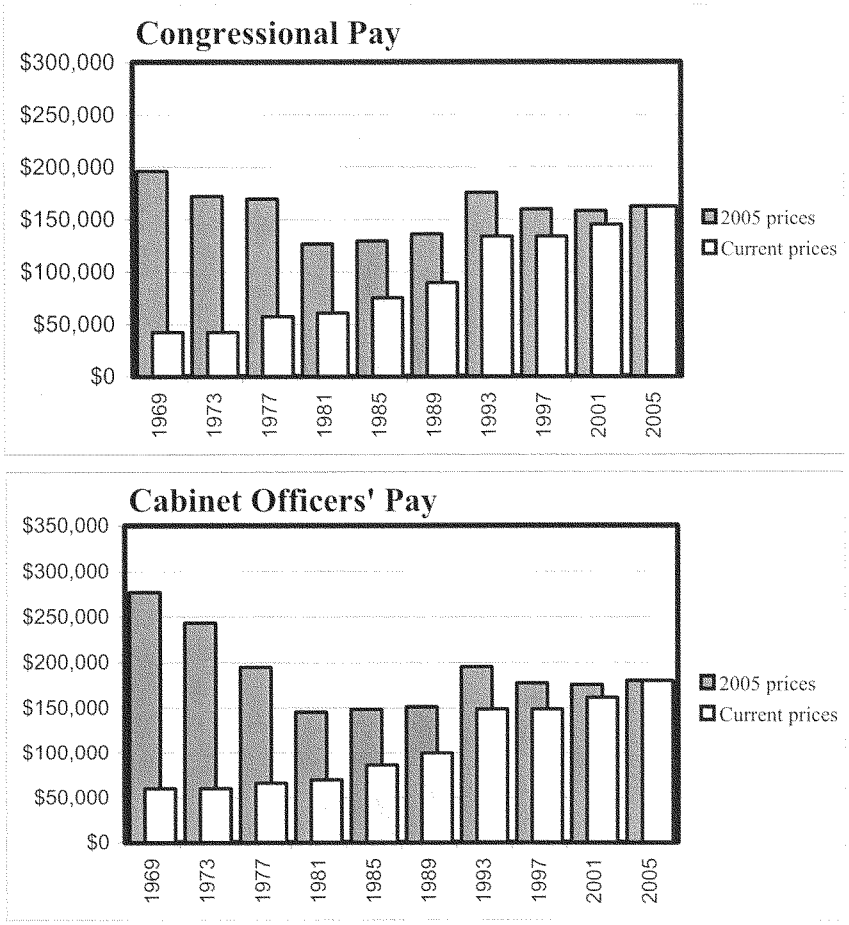
[2] Paul C. Light and Virginia L. Thomas, *Posts of Honor: How America's Corporate and Civic Leaders View Presidential Appointments* (Washington, DC: Brookings and Heritage, 2001), p. 35.

Table 1. Comparison of Salaries in Presidentially Appointed Positions and in Positions Outside the Federal Government, 2005

Federal position / Comparison position	Compensation	Federal salary as % of outside salary	Year
1. *Assistant Secretary for Tax Policy, Department of Treasury*	140,300		2005
a Partner's profit share, 100 largest law firms	1,120,000	13%	2005
b First-year base salary of associates, firms with 500+ lawyers	135,000	104%	2005
c Full professor, private research university	159,045	88%	2004-05
2. *Commissioner of the IRS, Department of Treasury*	149,200		2005
a Partner's profit share, 100 largest U.S. law firms	1,120,000	13%	2005
b General counsel, *Fortune* 500 company (salary plus bonus)	2,025,000	7%	2005
c Partner in accounting firm	173,053	86%	2005
3. *Director of National Institutes of Health, DHHS*	140,300		2005
a Average salary, president of private research university	613,994	23%	2003-04
b Median salary, president of public university	360,000	39%	2003-04
c Base pay of a CEO physician	278,744	50%	2004
4. *Commissioner of FDA, DHHS*	140,300		2005
a Total compensation, CEO of pharmaceutical company in S&P 500	5,271,423	3%	2005
b Base pay of a CEO physician	278,744	50%	2004
c Average base pay, clinical department heads, university medical schools	325,000	43%	2004
5. *Assistant Secretary for Postsecondary Education, Dept. of Educ.*	140,300		2005
a Average salary, president of private research university	613,994	23%	2003-04
b Median salary, president of public university	360,000	39%	2003-04
c Full professor, private research university	159,045	88%	2004-05
6. *Assistant Secretary for Elementary and Secondary Educ., Dept. of Educ.*	140,300		2005
a School district superintendents, districts with 200,000 or more students	207,547	68%	2005

Sources: *American Lawyer*; American Association of University Professors; *Chronicle of Higher Education*; Witt/Keiffer; AFL-CIO.

Figure 1. Annual Congressional and Cabinet Officer Pay Measured in Current and Constant Prices, 1969-2005



Note: Price levels are calculated using the U.S. Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U-RS).

Sources: Author's calculations.

Figure 2.

Ratio of Top Office Holders' Pay to Median Income of Four-Person Families, 1960-2004

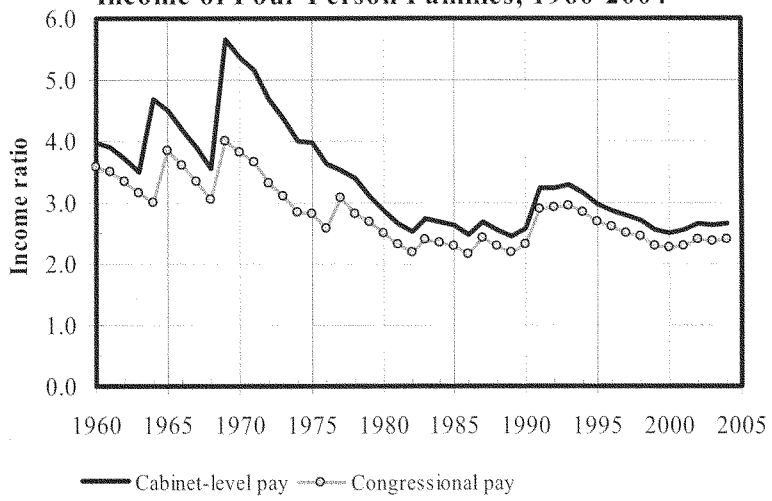


Figure 3.
Salaries of Cabinet Officers and Members of Congress Compared with Average Manufacturing Worker's Pay (1909-2005)

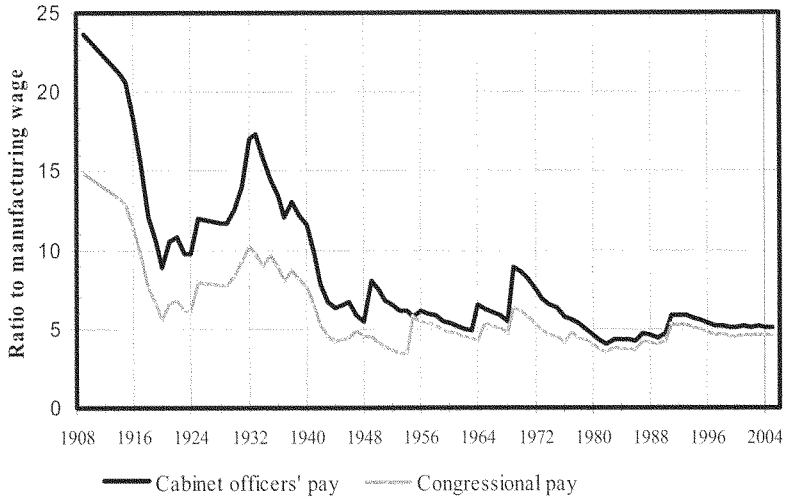
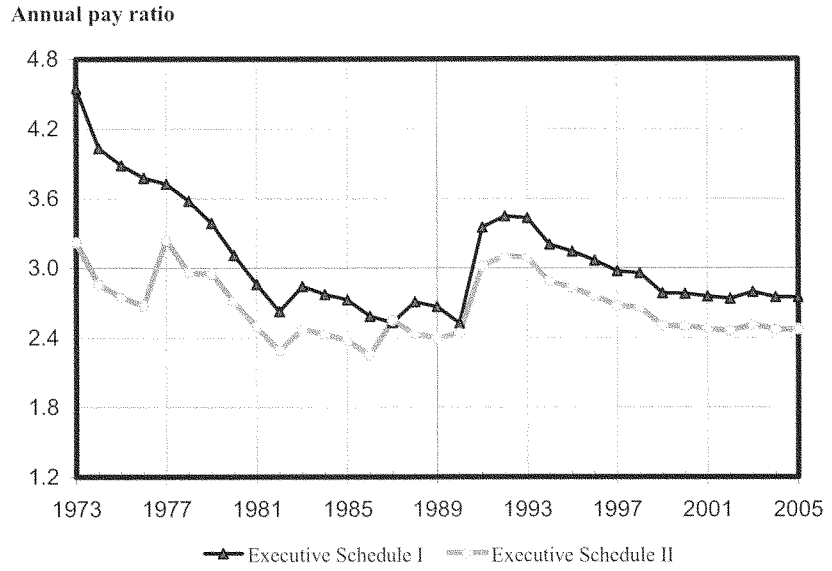


Figure 4. Relative Earnings of Federal Executives Compared with Average Workers with Post-College Degrees 1973-2005



Source: Wage data on post-college earners derived from Economic Policy Institute tabulations of CPS hourly earnings data.

Mr. PORTER. Thank you, Doctor.

I want you to know you are all very lucky today, because we have to be in the Capitol in about 6 minutes to vote and there is a series of three votes, which could take 30 to 40 minutes. So instead of us asking you questions at this point, we will be submitting questions for the record. We appreciate very much that you are here today.

Mr. DAVIS OF ILLINOIS. Mr. Chairman, could I just have a last word. We talked about the umpires and referees and baseball players. I was just reminded of three guys getting ready for the World Series. [Remarks being made off mic.] One said, let me take all the close balls and strikes. The second guy said, well, give me all the close ones and strikes. The third umpire said, well, now, as far as I'm concerned, ain't none of them nothing until I call them. [Laughter.]

Mr. PORTER. That sounds like some judges that I know. Again, thank you all very much for being here. To Mr. Walker, thank you for your time.

And one last point. I would like to recognize Tania, who is the staff director of the minority side. She was engaged over the weekend, so congratulations.

[Applause.]

Mr. PORTER. The meeting is adjourned. Thank you all for being here.

[Whereupon, at 3:35 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

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BERNARD SANDERS, VERMONT,
INDEPENDENT

October 5, 2006

Mr. David Walker
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "*Executive and Judicial Compensation in the Federal Government (Quadrennial Commission).*" I appreciate your willingness to testify before the Subcommittee and allow us the valuable opportunity to better understand the structure of Federal compensation.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on October 5, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than October 18, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

October 25, 2006

The Honorable Jon C. Porter
Chairman
Subcommittee on the Federal Workforce and
Agency Organization
Committee on Government Reform
House of Representatives

Subject: Posthearing Questions Related to Executive and Judicial Pay and Compensation

Dear Chairman Porter:

On September 20, I testified before your subcommittee at a hearing entitled "Executive and Judicial Compensation in the Federal Government (Quadrennial Commission)."[1] This letter responds to your request that I provide answers to follow-up questions from the hearing. The questions, along with my responses, follow.

1. The problem of pay deflation for certain top level executives has been going on for decades. Congress is the only branch of our federal government that can set pay levels. It has been asserted that linking certain salaries (e.g., federal district judges and certain top officials of the Executive Branch) to the salaries of Members of Congress has caused these and other Executive and Judicial Branch officials to be adversely affected when Congress is reluctant to award itself either a pay raise or accept a COLA. Is linking of salaries a problem that needs to be addressed with respect to the overall issue of pay erosion and, if so, how might this problem best be remedied?

Yes, the National Commission on the Public Service recommended in 2003 that Congress break the statutory linkage between the salaries of Members of Congress and those of federal justices and judges and senior political appointees, which has been in place since 1989.[2] The Commission reported that the statutory linkage has contributed to the salaries of these positions falling substantially behind cost-of-living increases and trends in private, educational, and not-for-profit compensation.

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[1]GAO, *Human Capital: Trends in Executive and Judicial Pay Suggest a Reexamination of the Total Compensation Package*, GAO-06-1116T (Washington, D.C.: Sept. 20, 2006).
[2]The National Commission on the Public Service, *Urgent Business for America: Revitalizing the Federal Government for the 21st Century* (Washington, D.C.: January 2003).

As I mentioned at the hearing, a capable and credible commission could provide Congress with the necessary information to help inform any restructuring of executive-level pay, such as a decision regarding the linking of salaries of executive-level positions to the salaries of Members of Congress. Examining this linkage is a key part of a thorough independent analysis of the total compensation structure for each of the executive-level positions that such a commission can undertake with respect to the issue of pay erosion.

2. There appear to be substantive differences between top level executive positions. For example, all Executive Schedule positions are not the same in terms of responsibilities or knowledge and skills needed for job performance. How might these differences affect a restructuring of total compensation?

One principle we reported for any restructuring effort addresses the fact that executive and judicial compensation should be reflective of the responsibilities, knowledge and skills, tenure, contributions, and degree of independence needed for various executive-level positions. Along these lines, as a starting point, executive-level positions could generally fall into three categories: (1) independent or professional positions, such as federal justices and judges, and Inspectors General; (2) policy positions; and (3) leadership, operational, and management positions.

The type of appointment for each executive-level position is also a key factor in determining total compensation. Given the different durations of these appointments, the total compensation for the executive-level positions should be adjusted accordingly. For example, federal justices and judges who need to be independent and who are appointed for life may prefer elements of compensation that are built into their base pay and retirement benefits, and are not performance related. Alternatively, political appointees who are appointed for shorter periods by the agency head or President with or without Senate confirmation may prefer current compensation, with the possibility that it be performance-based.

Finally, statutory requirements for qualifications for certain management, operational, and other executive-level positions should be considered. For example, Congress previously set qualifications in statute when it created the Executive Schedule positions of Chief Financial Officer (CFO) and Chief Information Officer (CIO) at federal departments and agencies. Specifically, the CFOs are to "possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities."[3] The CIOs are to "be selected with special attention to the professional qualifications" required for records management, information dissemination, security, and technology management, among others areas.[4]

3. Several weeks ago, a Senate committee held a hearing on excesses in executive pay—in the private sector. The public, and rightly so, is outraged to hear of multi-million dollar bonuses paid to top executives of private corporations. The hearing on September 20th focused attention not on pay

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[3] 31 U.S.C. § 901.
[4] 44 U.S.C. § 3506.

excesses in the private sector, but just the opposite, pay erosion and pay deflation in the public sector. Could you provide us with your view on why two pay systems, one private and one public, seem to be going in opposite directions? What might be done to make the public more aware of issues such as pay erosion and pay deflation with respect to certain top level federal executive and judicial positions?

There are fundamental differences between the pay systems for the private and public sectors in terms of mission and organizational goals, financial targets, and other areas. Thus, comparisons of executive compensation in the public sector with the private sector could be misleading and inappropriate. In my view, any executive pay comparisons for the federal government should be based primarily on relevant positions in more comparable sectors, such as leaders in not-for-profit, educational organizations, and state and local government.

We have reported that executive and judicial pay plans should be transparent so that Congress, leadership, and the public can easily understand the value of the executive-level compensation and contributions.[5] Among other things, a capable and credible commission may help make the public aware of issues such as pay erosion and pay deflation. Past commissions, such as the National Commission on the Public Service, made their process and results public by, for example, holding public forums or hearings, issuing press releases, and making the results of their reports publicly available.

4. Do you believe that the federal government is at risk of becoming a plutocracy if we do not properly address the issue of pay deflation with respect to certain of our top level executives? In other words, at some point will a critical factor in accepting or rejecting a top level executive or judicial appointment be whether an individual has enough in income already earned to be able to afford to take a top level executive or judicial position? Are we approaching that point now in your opinion?

In concept, the federal government could reach the point in which executive-level pay is so far behind the relevant market that it would seriously and adversely affect the federal government's ability to attract and retain the needed top talent to fill these positions. However, we are not aware of any current evidence that the federal government has already reached this point.

5. Do you think low salaries for top executives might encourage lower ethical standards? One example that immediately comes to my mind concerns the civilian Air Force procurement official who, several years ago, acted unethically in conspiracy with a major contractor in several procurements in order to secure future employment from that company either for herself or a family member. In your view, could the potential for ethical lapses increase if executive pay is too low?

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[5]GAO, *Human Capital: Trends in Executive and Judicial Pay*, GAO-06-708 (Washington, D.C.: June 21, 2006).

No. It is the responsibility of all federal employees to maintain the highest standards of ethics regardless of their salary level. Moreover, while executive-level salaries may not be as competitive as they should be, they are adequate to provide a reasonable standard of living for the incumbents. In addition, many political executive-level appointees only serve for relatively short periods of time. Governmentwide, the average tenure of political appointees was just under 3 years for the period of 1990 through 2001. Lower salaries can never be an explanation or excuse for unethical and illegal behavior by executives.

6. In your opinion, does pay erosion due to inflation make it more difficult for the federal government to attract and retain a culturally diverse group of individuals within top level executive and judicial positions?

Yes, such erosion can have an adverse effect over time for some types of executive-level positions. However, we are not aware of any evidence that pay erosion has reached the point where there is a broad-based problem for the federal government to attract and retain a diverse group of individuals for executive-level positions.

7. In your statement, and in the GAO report, it was indicated that a commission may be an option for maintaining a reasonable relationship in executive and judicial pay and compensation.

a. Please elaborate on your ideas for this commission and how we could move forward with this idea.

As I mentioned, a capable and credible commission may be an option for reexamining executive and judicial pay and compensation and exploring ways to maintain a reasonable relationship across the executive-level positions and the relevant markets. This would help ensure that the federal government's total compensation is reasonable and competitive in order for the government to obtain and retain the top talent it needs.

b. & c. What do you see as the critical success factors for making a commission succeed? Whom would you appoint to the commission?

To help ensure a commission's success, there are several critical success factors that can be applied including:

- A statutory basis with adequate authority—when provided with a clear mandate and adequate authority, a commission can comprehensively access and analyze information related to a given policy issue and thereby provide more informed policy options for the President and Congress to consider.

- A clear purpose and timeframe—a commission should have a clear purpose for its objectives and activities to help guide the members in carrying out their responsibilities. In addition, a fixed agenda and timeframe can help keep a commission focused and on track. However, a commission should have a broad enough scope to help ensure it has the authority to address all the issues necessary in order to come up with a comprehensive and integrated solution

without encountering any constraints in the process as to what it can or cannot consider.

- Key leadership support—institutional leadership, commitment, and support from the President and Congress are necessary to help a commission succeed.

- An open and transparent process—by having an open and transparent process, such as public hearings, a commission can help build consensus among the public for its goals by gaining their input and support.

- A balanced and capable membership—such membership can help lessen political influences and build consensus among the commission members when carrying out its purpose. Specifically, a commission should involve both professionals and current or former Members of Congress from both parties and chambers. A balance between current or former elected officials can help ensure viability of a commission's proposals due to their experience. In addition, well-known experts on the topic should also be on the commission. In the case of past commissions on executive and judicial pay, the members were to be appointed by the President, Congressional leadership, and the Chief Justice, among others.

- Accountability—clear accountability for a commission can help foster specific, useful outputs that could help inform the public and provide specific policy options and, hopefully, recommendations for Congress and the President.

- Resources—the success of the commission is dependent on having the adequate resources to carry out its purpose and any potential recommendations.

d. Do you have any concerns about a commission?

Generally, one concern regarding a commission for executive and judicial compensation may be whether or not there is sufficient buy-in from key stakeholders on the purpose of the commission along with a commitment to act on any resulting recommendations. Any recommendations by a commission in a final report are generally advisory in nature and may not automatically result in any public policy changes. Congressional action through subsequent legislation with Presidential support would be necessary for the commission's recommendations to be implemented and for any changes to occur.

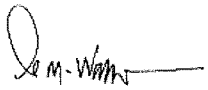
8. If not a commission, what other approach might the federal government take to assure adequate compensation for top level executives and judges that will have the confidence of the public and the members of the legislative, executive, and judicial branches of government?

In the past, Congress has approved a onetime pay increase for executive-level positions as part of legislation, such as through the Ethics Reform Act of 1989. Such an adjustment could be based on work performed by GAO, such as our report that

was discussed at the hearing[6], the National Academy of Public Administration, or another capable and credible organization. However, this approach of a onetime pay increase is not a substitute for a more regular, systematic analysis of executive-level pay and compensation, which a commission could carry out.

For additional information, please contact me at 512-5500 or Lisa Shames, Acting Director, at 512-6806 or shamesl@gao.gov.

Sincerely yours,



David M. Walker
Comptroller General
of the United States

(450543)

[6]GAO-06-708.

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BERNARD SANDERS, VERMONT,
INDEPENDENT

October 5, 2006

The Honorable Philip Pro
Chief Judge
United States District Court
333 Las Vegas Boulevard South, #7015
Las Vegas, NV 89101

Dear Judge Pro:

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "*Executive and Judicial Compensation in the Federal Government (Quadrennial Commission).*" I appreciate your willingness to testify before the Subcommittee and allow us the valuable opportunity to better understand the structure of Federal compensation.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on October 5, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than October 18, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

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ELEANOR HOLMES NORTON, DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

October 5, 2006

D. Brock Hornby
Judge
U.S. District Court for the District of Maine
Edward T. Gignoux Courthouse
156 Federal Street
Portland, ME 04101

Dear Mr. Hornby:

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "*Executive and Judicial Compensation in the Federal Government (Quadrennial Commission).*" I appreciate your willingness to testify before the Subcommittee and allow us the valuable opportunity to better understand the structure of Federal compensation.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on October 5, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than October 18, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

Responses from Judges Brock C. Hornby and Philip M. Pro to Questions from Chairman Jon C. Porter, House Government Reform Subcommittee on Federal Workforce and Agency Organization, related to the September 20, 2006 Hearing on "Executive and Judicial Compensation in the Federal Government"

- Submitted on November 1, 2006 -

Question 1: The problem of pay deflation for Article III judges has been going on for decades. Congress is the only branch of our federal government that can set pay levels. It has been asserted that linking certain salaries (e.g., federal district judges) to the salaries of Members of Congress has caused certain Judicial Branch officials to be adversely affected when Congress is reluctant to award itself either a pay raise or accept a COLA. Is linking of salaries a problem that needs to be addressed with respect to the overall issue of pay erosion and, if so, how might this problem best be remedied?

Answer 1:

The Judicial Conference endorses reasonable and regular salary adjustments (including COLAs) for judges, Members of Congress, and high-level executive branch officials. The Conference also understands and appreciates the political difficulties Members of Congress face in justifying their own salary increases. However, the judiciary believes that the quality of government institutions should be Congress' paramount concern when it considers salary adjustments for judges and high-level officials in the executive branch. For this reason, the federal salary structure should not rely on the principle of fixed or automatic "linkage" if it prevents any salary increases for anyone. Salaries for officials in the judicial and executive branches should be based on other factors, including the compelling need to recruit and retain the best people possible.

After recounting the decline in the value of the salaries of Article III judges, the Second National Commission on the Public Service concluded that "[j]udicial salaries are the most egregious example of the failure of federal compensation policies." *See* Second National Commission on the Public Service, *Urgent Business For America: Revitalizing the Federal Government for the 21st Century*, January 2003, at p. 22. In the view of the Commission, the downward trend in judicial salaries "is arguably inconsistent with" the Constitutional guarantees of judicial independence and an irreducible salary. *Id.* The Commission understood that these guarantees are for the benefit of the nation as a whole (and not necessarily for judges individually), and it stated that unless this trend is reversed "the American people will pay a high price for the low salaries we impose" on federal judges. *Id.*, at p. 23.

Question 2: Chief Justice Roberts, like his predecessor Chief Justice Rehnquist, strongly believes that our system of justice suffers as the real salary of judges continues to decline. Could you give us some examples of the many ways in which salary deflation threatens the judiciary, and, in particular, the independence of the judiciary?

Answer 2:

The failure to compensate federal judges adequately contributes to the weakening of the judiciary in three principal ways: recruitment, retention, and morale.

The judiciary does not have statistical data to that can be generated to prove or illustrate that the recruitment of Article III judges is a problem. However, those who have served in the government with the responsibility for recruiting persons to the federal bench occasionally comment on the difficulty of attracting qualified judicial candidates.

In 2002, then White House Counsel Alberto Gonzales stated that he was "aware of both young lawyers with family obligations and established prominent lawyers with substantial investment in their practice and community who feel that they cannot afford to go on the federal bench." *See* "An Interview with White House Counsel Alberto R. Gonzales," *The Third Branch*, May 2002. He added that "[t]he Judiciary suffers when it cannot attract top tier lawyers for whatever reason." *Id.*

Others with similar responsibilities have echoed these same views. In March 2000, Senator Richard Durbin (D-IL) told a Senate Governmental Affairs subcommittee that a vacancy for a district court judgeship had attracted only 12 applicants from among the tens of thousands of lawyers in the Chicago area. *See* Patricia Manson, "Pay not Always Commensurate with Experience for those Who Sit on Bench," *Chicago Daily Law Bulletin*, Apr. 21, 2001.

As shown in the table below, more Article III judges have left the federal bench since 1990 than at anytime in the history of this nation. The increasing rate of departures has grown in tandem with the financial pressure of being a federal judge. See Answer 5, below, for further details.

Time Period	Number of Departures
1958 to 1969	3
1970 to 1979	22
1980 to 1989	41
1990 to 1999	55
2000 to October 19, 2006	45

Resignations from the federal bench once were rare. Now such resignations are increasingly frequent. Since January 1, 2006, eight Article III judges have resigned or retired from the federal bench. It is our understanding that six of these judges sought other employment. Four judges entered the private practice of law (presumably at much higher salaries). One judge

resigned to accept a state judicial appointment (at a higher salary). Another judge retired to accept an appointment to a quasi-governmental position.

In 2005, nine Article III judges resigned or retired from the bench, which was the largest exodus from the federal bench ever in one year. Four of those nine judges joined JAMS, a California-based arbitration/mediation service, where they have the potential to earn the equivalent of the district judge salary in less than two months.

One of the most eloquent and insightful statements on the subject of judicial retention was communicated to Congress by former President Jimmy Carter:

> The Constitution wisely provided that Federal judges would be appointed for life. The founders believed, and experience has confirmed, that lifetime service enhances the integrity and independence of a judge's performance. It also strengthens public confidence that judges possess these qualities, and increases public respect for their decisions. When lifetime judges leave the bench because of inadequate salaries, the public loses more than their experience and efficiency. The public also loses confidence in the judicial process that is central to the success of our Constitutional system.

See Promises Made, Promises Still Unkept: Report of the 1986 Commission on Executive Legislative, and Judicial Salaries, 49-50 (1986).

The judiciary does not want experienced judges to leave the bench because they are unable to afford to put their children through college or because their salaries are eroded by inflation. For judges to emulate the pattern of executive branch service as a mere steppingstone to reentry into private sector law firm practice is inconsistent with the traditional lifetime calling of federal judicial service.

In his 2005 Year End Report, Chief Justice Roberts explained that inadequate judicial salaries negatively affect the pool of attorneys willing to be considered for a position on the federal bench. *See* http://supremecourtus.gov/publicinfo/year-end/2005year-endreport.pdf. Our federal courts are enriched by judges from diverse backgrounds. Our judges represent different races, ethnic backgrounds, religions, and prior practice interests and expertise covering a broad range of experiences.

In addition to negatively affecting the recruitment and retention of federal judges, the erosion in judicial pay and the disparity in the salaries of judges and their peers are having a demoralizing effect. In his written submission to the Second National Commission on the Public Service, Justice Stephen Breyer wrote that the gap between judicial salaries and non-profit or teaching salaries also threatens the judiciary:

> It diminishes the comparative attractiveness of judicial office to well-qualified lawyers outside the system. It increases the tendency towards promotion from within, with a consequent risk of bureaucratization.
>
> * * *
>
> [S]alary differences do matter; and continuous cuts in the salaries of those who lead an organization will over a period of time sap an institution's strength, lowering morale, injuring its reputation, diminishing its power to attract and to retain well-qualified workers. In this way the cuts contribute to diminished institutional performance, which in turn promotes public disenchantment, a lack of trust in a government less able to get the job done well, and a lack of interest in participating in the work of that government.

See Statement of Justice Stephen G. Breyer to the Second National Commission on the Public Service, July 15, 2002, http://a257.g.akamaitech.net/7/257/2422/16jul20020700/www.supremecourtus.gov/publicinfo/speeches/ncps_project.pdf.

Question 3: Several weeks ago, a Senate committee held a hearing on excesses in executive pay – in the private sector. The public, and rightly so, is outraged to hear of multi-million dollar bonuses paid to top executives of private corporations. The hearing on September 20th focused attention not on pay excesses in the private sector, but just the opposite, pay erosion and pay deflation in the public sector. Could you provide us with your views on why two pay systems, one private and one public, seem to be going in opposite directions? What might be done to make the public more aware of issues such as pay erosion and pay deflation with respect to Article III judges?

Answer 3:

The two pay systems are going in opposite directions because the private sector system is driven by the market while the public (i.e., federal) sector system is driven by the vagaries of politics.

A corporate official recently stated that the so-called "war" for executive talent may be summed up as follows: "The problem is, we're living in a world where .220 hitters make $10 million, so look at what you have to pay when you finally find a .300 hitter." *See* Rik Kirkland, "The Real CEO Pay Problem," *Fortune*, June 30, 2006, http://money.cnn.com/magazines/fortune/fortune_archive/2006/07/10/8380799/index.htm.

According to Kirkland, the average Chief Executive Officer's (CEO) salary was $11.8 million in 2004, which was 430 times the pay of a production (i.e., non-management) worker

(whose annual pay was $27,500). *Id.* (In contrast, in 2004, the salaries of members of Congress and district judges were fixed at $158,100, which was about six times the pay of a production worker.)

Professor Gary Burtless reported that measured as a multiple of the annual pay of a member of Congress, average CEO compensation jumped from 13 before 1980 to 93 in 2000. *See* Gary Burtless, "How Much is Enough? Setting Pay for Presidential Appointees," Presidential Appointee Initiative (Brookings Institution), Mar. 22, 2002. Compensation for corporate executives below the rank of CEO rose more rapidly than salaries of Members and high-level federal executives too. *Id.*

The executive pay issue does not involve just salaries, it also involves the liberal use of stock options and other benefits as forms of executive compensation. These non-pay benefits are unavailable to public sector employees, including judges, Members of Congress, and Executive Schedule officials.

Arguably, direct pay comparisons with the private sector are inappropriate for most all high level federal positions. With what job in the private sector, for example, would one "compare" a circuit judge, a Member of Congress, or the Secretary of State? Even if "comparable" private sector jobs could be found, would Congress and the President be willing to pay, and would the public support, a comparable salary?

The Second National Commission on the Public Service concluded that the compensation of these officials should be "on a par with the compensation of leaders in educational and not-for-profit organizations." *See Urgent Business For America: Revitalizing the Federal Government for the 21st Century*, at p. 25.

Insofar as what might be done to enhance the public's understanding of the problem of judicial compensation, there may be no truly effective way to make the public more aware or interested in this issue. This is a good government issue, and as such, it depends on leadership from Congress, the President, and other opinion-makers in business, the media, and the not-for-profit sector.

Question 4: Do you know how much law clerks in your area earn if they join a law firm after they leave their clerkships? How do those salaries compare with those of top judiciary professionals (or with your salaries)?

Answer 4:

The market for former federal judicial law clerks is national in scope, and it can be lucrative. Major law firms throughout the U.S. compete for a limited pool of law clerks with federal court experience. According to hiring partners at law firms these individuals are in such

demand because they "tend to be people who can think through and solve the toughest problems for . . . clients." *See* Kellie Schmitt, "Munger, Tolles Bags 4 High Court Clerks," *The Recorder*, Sept. 26, 2005.

Furthermore, a former law clerk who joins a law firm usually will be given the salary of an associate with equivalent year's experience (i.e., they will be paid more than other new associates) and credit toward partnership. *See e.g.*, http://www.velaw.com/careers/judicial_clerkship.asp; http://www.kramerlevin.com/careers/clerks/; http://weblaw.usc.edu/news/archive/2003/clerkships.cfm. Many law firms pay a bonus to new associates who bring with them judicial clerkship experience.

On October 30, 2006, the Washington Post reported that the law firm of Latham & Watkins offered six former Supreme Court law clerks starting salaries of $165,000 in addition to a signing bonus of $200,000. *See* Amy Joyce, "Latham & Watkins Lands 6 Coveted Clerks," *Washington Post*, Oct. 30, 2006. Earlier this year, the *Washington Post* reported that former Supreme Court law clerks could command hiring bonuses (exclusive of salary) equal to the annual salary of an Associate Justice of the Supreme Court (which is currently $203,000). *See* Charles Lane, "Former Clerks' Signing Bonuses Rival Salaries on the High Court," *Washington Post*, May 15, 2006. This bonus is in addition to a salary that may start (in Washington, D.C.) at $150,000 (plus any other annual bonuses the law firm may pay). *See* http://avidademiguel.blogspot.com/2006/06/former-clerks-signing-bonuses-rival.html.

In 2006, the starting salaries of first-year associates at large law firms rose steeply. In cities such as Chicago, Houston, Los Angeles, New York, San Francisco, and Washington starting salaries now range from $135,000 to $150,000 plus bonuses. *See e.g.*, Jerry Crimmins, "IP Firm Breaks from Pack on 1st-Year Pay," *Chicago Daily Law Bulletin*, Apr. 18, 2006; L.M. Sixel, "Law Firms Pay Big for Top Young Talent," *Houston Chronicle*, Apr. 13, 2006; Brenda Sapino Jeffreys, "Six More Firms Pack Associate Pay Punch," *Texas Lawyer*, Apr. 3, 2006; Anthony Lin, "Sullivan & Cromwell Boosts Associates' Pay," *New York Law Journal*, Feb. 2, 2006; Marie-Anne Hogarth and Kellie Schmitt, "MoFo, Manatt Match Associate Base Pay," *The Recorder*, Feb. 2, 2006.

Question 5: Typically, what do these judges do after their service on the bench? Do they go into related fields, like private arbitration or mediation? Do they make more money than when they were on the bench?

Answer 5:

Of the 100 judges who have left the bench since 1990, 77 retired from the judicial office and 23 departed before reaching retirement age (without any right to an annuity). To our knowledge, 62 of the aforementioned 100 judges (62 percent) stepped down from the federal

bench to enter the private practice of law (including private dispute resolution firms). Nineteen judges sought other employment (e.g., government and quasi-government agencies, academia, and the non-profit sector). What this means is that 81 percent of judges who left the federal bench did so for other employment and, in most cases, for significantly higher compensation.

Of the 45 judges who have left the federal bench since January 1, 2000, 33 retired from the judicial office and 12 resigned before reaching retirement age (without any right to an annuity). Thirty (or 67 percent) of these judges entered the private practice of law (including mediation/arbitration). Four judges accepted appointments to other government or quasi-government offices (one in the federal executive branch, two in state government, and one in a quasi-government agency). Another judge accepted an appointment as chief legal officer of a not-for-profit institution.

To our knowledge, 18 former circuit, district, and magistrate judges are with JAMS (described above). We believe that other former judges have joined similar firms.

While we do not know exactly how much judges earn when they leave the bench, there is every reason to believe that they make considerably more than they earned on the federal bench. For example, judges who join JAMS as arbitrators/mediators have the potential to earn up to $700/hour.

A district judge from Nevada, who retired from the bench in 2005, informed the President that he "must return to the private sector to earn enough to see three of [his] children through college."

A district judge from the Northern District of California "retired" to JAMS in June 2001, after having served for 17 years, stating that he retired for workload and compensation reasons. Referring to his family, the judge stated that he wanted to "make a financial contribution to their lives." At the same time that the district judge left the bench to take the position with JAMS, he was accompanied by a magistrate judge from his court who according to experts, has "mediated more class action settlements than any human being in the country." *See* Jason Hoppin, "JAMS Raids Fuel Brain Drain Fears," *The Recorder*, Apr. 26, 2001. In resigning, the magistrate judge said that he was leaving the bench for JAMS to assist his family and because the federal judicial salary "really isn't a salary for a professional in the Bay Area." See Michael Joe, "Legge Retires for JAMS Position," *The Recorder*, Apr. 23, 2001.

A bankruptcy judge in the Southern District of Texas left the bench in 2004 stating that he had to return to "private practice so he [could] foot the bill for his children's education." *See* Dennis Fitzgerald, "Show Him the Money," *The Deal*, June 14, 2004.

A circuit judge who resigned, without any right to a judicial annuity, to become general counsel of a Fortune 500 corporation "readily acknowledge[d] that the low salary of federal

judges was a factor in his decision." *See* Tony Mauro, "There Goes the Judge," *Corporate Counsel*, July 2006. The judge has two children approaching college age.

A district judge from the Northern District of Oklahoma who resigned from the bench to join KPMG as its Vice Chair for Legal Affairs reportedly was paid a salary in the seven-figure range. A May 2000 article in *Washingtonian* reported that several Washington area firms bid up to $1 million (annually) for the services of a retired district judge. *See* Kim Eisler, "Irascible Judge Joins Law Firm to Court the Dot-Com Kids," *Washingtonian*, May 2000. The judge eventually signed onto a law firm that offered him a salary of $800,000 a year (reportedly because the work was more interesting).

Similarly, in the fall of 2000, a chief district judge from Florida was reported to have been offered a salary of at least $300,000 annually to join a law firm. *See* "Insecure About Their Future: Why Some Judges Leave the Bench," The Third Branch, Feb. 2002, http://www.uscourts.gov/ttb/feb02ttb/feb02.html#insecure. The judge reluctantly left the bench in order to provide for a handicapped family member. *Id.*

A judge from the Northern District of California felt compelled to resign (without any right to a judicial annuity) from the bench to pursue a higher paying job in the private sector after one of her children was diagnosed with a serious medical disorder. *See* Krysten Crawford, "Shortchanged?," *The American Lawyer*, March 1999. The judge "didn't think she could provide a lifetime of expensive medical care on a government salary." *Id.*

A bankruptcy judge from the Central District of California left the bench in 1999 citing financial reasons. *See* Liz Valentine, "Bankruptcy Judge Finds a Home at Dewey Ballantine." *Los Angeles Daily Journal*, Apr. 9, 2001. The judge stated that she had "a daughter at Yale, two high schoolers and one middle schooler. The federal bankruptcy judge salary is $30,000 to $40,000 less than what a first-year associate is making at a large firm. I was facing financial strain." *Id.* (Upon resigning from the bench, this judge was recruited by JAMS (as a mediator) before joining the bankruptcy department of a major law firm.)

In 2002, a district judge from the Northern District of Texas resigned, without any right to a judicial annuity, to return to private practice because "[i]t's what is in the best interest, financially, for my family." *See* Todd Bensman, "Kendall Stepping Down as Federal Judge," Dallas Morning News, Jan. 3, 2002.

A magistrate judge in the Western District of New York was forced to leave the bench after her husband unexpectedly died and she became the sole provider for her children (both of whom were in high school). She stated that "I knew that the top salaries in private law firms in Buffalo far exceeded those of the judiciary, and that my skills were a highly sought after commodity." *See* Leonidas Ralph Mecham's letter dated June 14, 2002, to the Honorable Paul Volcker.

The above anecdotes represent the stories of just a handful of former judges who resigned or retired due to financial circumstances.

Question 6: Do you believe that the federal government is at risk of becoming a plutocracy if we do not properly address the issue of pay deflation with respect to Article III judges? In other words, at some point will a critical factor in accepting or rejecting a judicial appointment be whether an individual has enough income already earned to be able to afford to take a top level judicial position? Are we approaching that point now in your opinion?

Answer 6:

In his 2005 Year-End Report on the Federal Judiciary, Chief Justice Roberts stated that unless the pay gap between judges and their peers in the private sector is soon addressed,

> the judiciary will over time cease to be made up of a diverse group of the Nation's very best lawyers. Instead, it will come to be staffed by a combination of the very wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

There is growing evidence that the composition of the bench is changing. According to Sheldon Goldman, a professor of political science at the University of Massachusetts,[1] an increasing percentage of appointees to the courts of appeals have a net worth of over $1 million. According to Professor Goldman, nearly 53 percent of President George W. Bush's (first-term) circuit appointees had a net worth of over $1 million (up from about 51 percent of President Clinton's circuit appointees). *See* Sheldon Goldman et al., "W. Bush's Judiciary: The First Term Record," 88 *Judicature* 244 (2005). In contrast, 43 percent of President George H.W. Bush's circuit appointees had a net worth of $1 million (vice just 17 percent for President Reagan's circuit appointees and 10 percent for President Carter's circuit appointees).

There may be many explanations for these statistics. One possible explanation for this development is that candidates for the bench are reluctant to accept a judicial appointment until they are financially established and can afford to take the job. *See* e.g., Ruben Castaneda, "U.S. Judge Grateful for Second Chance at Appointment," *Washington Post*, Feb. 26, 2004 (reporting that a judge who accepted a federal judicial appointment in 2004 had turned down a similar appointment in 1987 because he "was not prepared to leave a lucrative private practice for the relatively low-paying judgeship").

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[1] Professor Goldman, who has studied the federal judicial selection process for many years, has focused on the politics of the selection process and the backgrounds and attributes of those individuals chosen for judgeships.

As discussed above (under Answer No. 2), then White House Counsel Alberto Gonzales stated that he was "aware of both young lawyers with family obligations and established prominent lawyers with substantial investment in their practice and community who feel that they cannot afford to go on the federal bench." *See* "An Interview with White House Counsel Alberto R. Gonzales," *supra*.

There is another trend developing as well. Nearly half of all district judges have prior judicial experience, whether on a state or local court or as a federal magistrate or bankruptcy judge. Sixty years ago the proportion was closer to one-third. *See* http://www.uscourts.gov/ttb/sept01ttb/interview.html (2001 interview of Professor Goldman in the judiciary's Third Branch newsletter). In his 2001 Year-End Report on the Federal Judiciary, former Chief Justice Rehnquist stated that this nation has never had "and should not want, a Judiciary composed only of those persons who are already in the public service." Chief Justice Rehnquist cautioned that the result would be a judiciary "quite different from our common law system, with our practice of drawing on successful members of the private bar to become judges." This trend has the potential to lead to a loss of the perspective of lawyers who had spent their careers in the private practice of law.

Question 7: Do you think low salaries for Article III judges might encourage lower ethical standards? One example that immediately comes to my mind concerns the civilian Air Force procurement official who, several years ago, acted unethically in conspiracy with a major contractor in several procurements in order to secure future employment from that company either for herself or a family member. In your view, could the potential for ethical lapses increase if judicial pay is too low?

Answer 7:

We are fortunate that, during the long history of this nation, our federal judges have exhibited and promoted the highest standards of judicial conduct so as to promote and reinforce public confidence in the judiciary. The judiciary hopes that the value of federal judicial salaries would never plunge to the level that they would encourage corruption.

In his written submission to the Second National Commission on the Public Service, Chief Justice Rehnquist passionately explained why adequate judicial compensation is so essential to this nation:

> The prospect that low salaries might force judges to return to the private sector rather than stay on the bench risks affecting judicial performance -- instead of serving for life, those judges would serve the terms their finances would allow, and they would worry about what awaits them when they return to the private sector. John Adams warned in his 1776 pamphlet, "Thoughts on Government," that judges' "minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men."

See Statement of Honorable William H. Rehnquist, Chief Justice of the United States Before the National Commission on the Public Service, July 15, 2002, http://supremecourtus.gov/publicinfo/speeches/sp_07-15-02.html.

As discussed above (in Answer No. 2), Justice Stephen Breyer, in his written submission to that same commission, explained that inadequate judicial salaries will inevitably "sap [the judiciary's] strength, lowering morale, injuring its reputation, diminishing its power to attract and to retain well-qualified workers." *See* Statement of Justice Stephen G. Breyer to the Second National Commission on the Public Service, *supra*. Inevitably, the judiciary's ability to perform its critical functions will be diminished, which in turn will promote "public disenchantment, a lack of trust in a government less able to get the job done well, and a lack of interest in participating in the work of that government." *Id.* Of course, these concerns apply to the political branches of government as well.

While we understand that some outside observers have expressed the fear that judges who are looking for future employment may be tempted to rule in ways that might bring them future business, to our knowledge there is no evidence of such a trend.

Question 8: In your opinion, does pay erosion due to inflation make it more difficult to attract and retain a culturally diverse group of individuals within top level judicial positions?

Answer 8:

We would incorporate by reference our replies to Questions 2 and 6. We would also refer you to Chief Justice Rehnquist's written submission to the Second National Commission on the Public Service, wherein he stated that,

> Providing adequate compensation for judges is basic to attracting and retaining experienced, well-qualified and diverse men and women to perform a demanding position in the public service. We need judges from different backgrounds and we want them to stay for life.

See Statement of Honorable William H. Rehnquist, Chief Justice of the United States Before the National Commission on the Public Service, *supra*.

Question 9: In the GAO Report, it was indicated that a commission may be an option for maintaining a reasonable relationship in executive and judicial pay and compensation.

a. Please elaborate on your ideas for this commission and how we could move forward with this idea.

b. What do you see as the critical success factors for making a commission succeed?

c. Whom would you appoint to the commission?

d. Do you have any concerns about a commission?

Answer 9.a:

While the judiciary would urge the Subcommittee to recommend that the President and the Congress establish a new quadrennial salary review process to avoid repeating the problems we face today, we do not believe that pay relief for judges, members of Congress, and Executive Schedule officials should be put off until such a commission is impaneled. Such pay relief is warranted and needed now.

As we said in answering Question 9a, the GAO report focuses attention on the broken quadrennial salary review process and the government's fragmented pay system for high-level officials, which have led to the twin problems of salary compression and inversion.

The Judicial Conference has long endorsed the revitalization of a federal advisory entity on salary policy similar to the former Commission on Executive, Legislative and Judicial Salaries (popularly known as the "Quadrennial Commission"). Insofar as how the Committee on Government Reform could move forward with this commission concept, a relatively simple alternative would be to revitalize the former Quadrennial Commission by repealing those provisions of the Ethics Reform Act of 1989 that provided for the establishment of the Citizens' Commission on Public Service and Compensation and restoring or reviving any provisions of law that were amended or repealed by those provisions (of the Ethics Reform Act).

Answer 9.b:

In the judiciary's view, the Commission should be given an unambiguous mandate: to propose salaries that are adequate to attract and motivate people of outstanding ability whose standard of living depends upon current income, rather than the depletion of personal savings, investments, or other income or assets.

The judiciary understands that Americans do not want to compensate high-level federal officials at levels that equal or even approach the salaries of senior corporate executives. On the other side of the coin, Americans also do not want qualified individuals to turn down jobs because the salaries are too low. A judge's or Member's salary ought not to involve so substantial a drop in living standards – at least with respect to certain fundamentals such as the education of one's children – as to discourage highly qualified people from taking or retaining high-level federal positions.

The commission's organic statute should also require Congress to act promptly and affirmatively on any recommendations. That statute should also provide that recommended salary increases may take effect over a period of one or more years (unlike the former Quadrennial Commission process, which required that any recommended increases must take effect within a period of one year). Also, any such commission process should be open to the public and provide for field hearings. At least 21 states have permanent salary commissions (constitutional or statutory) that are authorized to consider the compensation of judges and sometimes other high-level public officials. *See* http://www.ncsconline.org/WC/Publications/KIS_JudCom_Commissions2002_Pub.pdf.

Answer 9.c:

While we take no position, under the former Quadrennial Commission process, each commission was composed of nine members. Three were appointed by the President and two each by the Chief Justice, the President pro tempore of the Senate, and the Speaker of the House.

Answer 9.d:

Yes. Absent an amendment to the Constitution that would transfer the authority for setting Congressional salaries to an outside body,[2] the question of the salaries of Members, judges, and Executive Schedule officials will inevitably turn on the vagaries of the political process (notwithstanding the recommendations of a Quadrennial Commission).

The commission must have the support of congressional leaders and the President, who would implement the recommendations. For example, in the state of Pennsylvania, across-the-board increases for officials in all three branches of government became a political issue and were ultimately repealed by the state legislature. The leaders of the political branches must be willing to consistently and persuasively articulate the need for salary increases for officers in all three branches of government. These increases are for the benefit of the nation as well as the office holders.

Question 10: If not a commission, what other approach might the federal government take to assure adequate compensation for judges that will have the confidence of the public and the members of the legislative, executive, and judicial branches of government?

Answer 10:

The judiciary would like nothing better than to resolve the problem of judicial, congressional, and Executive Schedule pay once and for all. The current process has led to the

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[2] Such an amendment was proposed by former Senators Howard Baker and Russell Long in 1983. *See The Quiet Crisis: A Report by the 1984-85 Commission on Executive, Legislative, and Judicial Salaries.*

unseemly practice of judges having to implore Congress to authorize annual COLAs or other salary adjustments. To the extent that judges interact with Congress it should be on substantive matters respecting the laws of this nation as they affect and are affected by the federal judiciary.

While the judiciary would urge you to recommend that the President and the Congress establish a new quadrennial salary review process to avoid repeating the problems we face today, we do not believe that pay relief for judges, Members of Congress, and Executive Schedule officials should be put off until such a commission is impaneled. On behalf of the Judicial Conference, we urge Congress to enact legislation to remedy promptly the problem of judges' and judicial executives' compensation. Specifically, we recommend that Congress and the President enact legislation that accomplishes the following objectives: (1) equalizes COLAs for General Schedule employees and judges, so that these adjustments better reflect annual inflation and relieve the pay compression problem; (2) restores four years of missed COLAs for both the judiciary and the Congress, alleviating, in part, their substantial losses in real dollars; and (3) raises judges' salaries to alleviate pay compression and inversion in the judiciary and to restore fairness and improve the appeal of public service.

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INDEPENDENT

October 5, 2006

Gary Burtless
Economist
The Brookings Institution
1775 Massachusetts Avenue, N.W.
Washington, DC 20036

Dear Dr. Burtless:

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "*Executive and Judicial Compensation in the Federal Government (Quadrennial Commission).*" I appreciate your willingness to testify before the Subcommittee and allow us the valuable opportunity to better understand the structure of Federal compensation.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on October 5, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than October 18, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

The Erosion of Compensation for Federal Executives and Judges

Responses to questions of REPRESENTATIVE JON C. PORTER,
Chairman, Subcommittee on the Federal Workforce and Agency Organization
Committee on Government Reform
U.S. House of Representatives

Prepared as a follow-up to a hearing of the Subcommittee on
2:00 p.m.
September 20, 2006

by

GARY BURTLESS
The Brookings Institution

1. The problem of pay deflation for certain top level executives has been going on for decades. Congress is the only branch of our federal government that can set pay levels. In your written testimony, you point out that the practice of linking certain salaries (e.g., certain top official of the Executive Branch) to the salaries of Members of Congress has caused certain executive and judicial branch officials to be adversely affected when Congress is reluctant to award itself either a pay raise or accept a COLA. What is your view on how the practice of linking salaries should be remedied?

Response: The crucial problem is that Executive and Judicial branch pay is formally or informally linked to the pay that Congress sets for its own Members. Because voters distrust legislators' motives when Congress increases a pay standard that also affects Congressional pay (directly or indirectly), Members of Congress are reluctant to expose themselves to voter wrath by voting for (or tacitly accepting) an increase in the pay standard. A simple solution to this problem is to eliminate the direct or indirect link between Congressional pay and top-level pay in the Executive and Judicial branches. Executive and Judicial pay should be determined separately from Congressional pay. If Congress is reluctant to raise its own pay (or to accept an automatic pay increase based on changes in economy-wide wages or the consumer price index), it should not deny to senior officials in the Executive and Judicial branch the pay increases needed to keep salary levels at an appropriate level compared to salaries outside the federal government.

2. In your written testimony, you note that lack of voter knowledge may play a role in shaping public attitudes toward compensating high-level government employees. What might be done to make the public more aware of issues such as pay erosion and pay deflation with respect to certain top level federal executive positions?

Response: Influential Members of Congress, sitting and retired federal judges, and well-known current and former members of the Cabinet have primary responsibility for publicizing this issue.

3. Political appointees within the Executive Schedule serve the federal government for a shorter period (just under 3 years on average) than, for example, federal justices and judges. How might these differences affect a restructuring of total compensation?

Response: Since most federal judges will stay in their positions for much of their remaining careers, it is important that the retirement benefits they receive appropriately compensate them for their long tenures. In contrast, Executive Schedule appointees will not derive much benefit from retirement benefits (including retiree health protection),unless they have accumulated prior federal service. For Executive Schedule appointees, one reward of public service is that their abilities may become more widely known. As I note in my formal testimony, "Experience in a senior government job allows workers to acquire skills, knowledge, and reputation that have considerable value outside the government."

4. Do you believe that the federal government is at risk of becoming a plutocracy if it does not properly address the issue of pay deflation with respect to certain of our top level executives? In other words, at some point will a critical factor in accepting or rejecting a top level executive or judicial appointment be whether an individual has enough in income already earned to be able to afford to take a top level executive or judicial position? Is the federal government approaching that point now in your opinion?

Response: Given the relatively low compensation paid to federal judges and senior executive branch personnel, there is a risk that service in these positions will only be attractive to people who fall in one of these categories: (1) Do not intend to serve in the position very long; (2) Have very poor earnings prospects outside the government; (3) Are very publicly spirited and willing to serve in the government at considerable financial sacrifice; and (4) Are independently wealthy. My view is that there may be many skillful and competent people in these four groups. The more serious problem, however, is that the ceiling on wages to judges and senior executive branch personnel also puts a ceiling on the salaries that can be paid to federal employees who also serve in demanding positions that are below the very top rank. By necessity, many of the people who serve in those positions will have worked for many years in the federal service before attaining those positions. If new college, law school, and graduate school graduates believe top government jobs pay very poor salaries, they will not find the prospect of long-tenure federal service to be very attractive. The federal government will disproportionately attract mediocre or unambitious young graduates.

5. Do you think low salaries for top executives might encourage lower ethical standards? One example that immediately comes to my mind concerns the civilian Air Force procurement official who, several years ago, acted unethically in conspiracy with a major contractor in several procurements in order to secure future employment from that company either for herself or a family member. In your view, could the potential for ethical lapses increase if executive pay is too low?

Response: It is easier to enforce tough ethical standards – and expect the standards to affect day-to-day behavior in the federal service – if the perceived penalty for violating the standards is painful. It is obviously less painful to lose a position where one's salary is 30% or 40% below the competitive market wage than it is to lose a job in which the compensation is equal to that in non-government positions where the skill requirements and responsibilities are similar. Therefore, I think it is easier to enforce high ethical standards when senior government positions pay competitive salaries.

6. In your opinion, does pay erosion due to inflation make it more difficult for the federal government to attract and retain a culturally diverse group of individuals within top level executive and judicial positions?

Response: I do not know about the impact of salaries on the cultural diversity of the senior federal workforce. I think it is likely that, whatever the diversity of the workforce, it is easier to attract a highly motivated and skilled senior workforce when workers receive competitive salaries.

7. The GAO Report mentions that a commission may be an option for maintaining a reasonable relationship in executive and judicial pay and compensation.

a. Please elaborate on your ideas for this commission and how we could move forward with this idea.

Response: At a minimum, the commission would require members with high visibility and public stature. It would also need the highly publicized support of senior Members of Congress, the President, and Supreme Court justices. Perhaps the commission should include well-known figures who have *previously* served in those positions. I am not a political scientist, and I have never studied the factors that make some federal commissions successful while other commissions produce reports that no one reads.

b. What do you see as the critical success factors for making a commission succeed?

Response: See response to a. above.

c. Whom would you appoint to the commission?

Response: See response to a. above.

d. Do you have any concerns about a commission?

Response: No.

8. If not a commission, what other approach might the federal government take to assure adequate compensation for top level executives that will have the confidence of the public and the members of the legislative, executive, and judicial branches of government?

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Response: I wish I knew. I strongly believe that it would be in the best interests of voters, taxpayers, people seeking justice in federal courts, and the nation as a whole for salaries in senior federal positions to be set at a level that is rationally linked to the salaries received by senior people who are employed outside the federal government.

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October 5, 2006

The Honorable Sean O'Keefe
Chancellor
Louisiana State University
Baton Rouge, LA 70803

Dear Mr. O'Keefe:

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "*Executive and Judicial Compensation in the Federal Government (Quadrennial Commission).*" I appreciate your willingness to testify before the Subcommittee and allow us the valuable opportunity to better understand the structure of Federal compensation.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on October 5, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than October 18, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

LOUISIANA STATE UNIVERSITY
Office of the Chancellor

October 25, 2006

The Honorable Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization
House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for the opportunity to contribute additional information to the *Executive and Judicial Compensation in the Federal Government (Quadrennial Commission)* hearing record.

1. The problem of pay deflation for certain top level executives has been going on for decades. Congress is the only branch of our federal government that can set pay levels. It has been asserted that linking certain salaries (e.g., certain top official of the Executive Branch) to the salaries of Members of Congress has caused these and other Executive ranch officials to be adversely affected when Congress is reluctant to award itself either a pay raise or accept a COLA. Is linking of salaries a problem that needs to be addressed with respect to the overall issue of pay erosion and, if so, how might this problem best be remedied?

Yes, linking the salaries of top-level federal executives to the salaries of members of Congress contributes to the compensation erosion problem. Given the expectations that have developed, a clear linkage has been established. A compensation expert should be consulted to document erosion that has occurred and establish a better mechanism for determining salary levels.

2. Several weeks ago, a Senate committee held a hearing on excesses in executive pay – in the private sector. The public, and rightly so, is outraged to hear of multi-million dollar bonuses paid to top executives of private corporations. The hearing on September 20th focused attention not on pay excesses in the private sector, but just the opposite, pay erosion and pay deflation in the public sector. Could you provide us with your views on why two pay systems, one private and one public, seem to be going in opposite directions. What might be done to make the public more aware of issues such as pay erosion and pay deflation with respect to certain top level federal executive positions?

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The best way to highlight the issues of pay erosion and pay deflation is to continue to emphasize the challenge of recruiting and retaining high-performing senior-level executives. The data suggest that this is extremely difficult to achieve, particularly among appointees. In short, we need to keep talking about the problem.

3. Do you believe that the federal government is at risk of becoming a plutocracy if it does not properly address the issue of pay deflation with respect to certain of our top level executives? In other words, at some point will a critical factor in accepting or rejecting a top level executive or judicial appointment be whether an individual has enough in income already earned to be able to afford to take a top level executive or judicial position? Is the federal government approaching that point now in your opinion?

Absolutely. Among the senior appointee ranks the federal government has been a plutocracy for some 20 years. The critical factor is that salaries for top-level federal jobs are attractive only to those in the early stages of their careers. To those nearing retirement age, or to the independently wealthy, compensation is not an inhibitor to public service. But, to middle-age professionals, often they "cannot afford" to take top-level federal positions given the combination of compensation limits and ethics rules limitations on future employment options

4. In your opinion, does pay erosion due to inflation make it more difficult for the federal government to attract and retain a culturally diverse group of individuals within top level executive and judicial positions?

Absolutely, without a doubt.

5. Within the pay plans selected by GAO as set forth in Figure 1 of the GAO Report, are there specific elements of total compensation (i.e., cash, noncash benefits, deferred benefits) for a particular pay plan or plans that you would recommend for changes now? If so, what changes would you recommend?

Consult a compensation expert.

6. In your statement, and in the GAO Report, it was indicated that a commission may be an option for maintaining a reasonable relationship in executive and judicial pay and compensation.

a. Please elaborate on your ideas for this commission and how we could move forward with this idea?

I endorse the GAO Report and agree entirely with the strategy on such a commission articulated by Comptroller General David Walker in his testimony before the Committee.

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b. What do you see as the critical success factors for making a commission succeed?

For the commission to succeed, Congress must commit to implementing the commission recommendations.

c. Whom would you appoint to the commission?

Commission members should be named according to standard methodology used for such appointments. The Congressional leadership and the Executive Branch should have the opportunity to nominate and recommend candidates, as well as the Judicial Branch guided by the Chief Justice of the U.S. Supreme Court.

d. Do you have any concerns about a commission?

No.

7. If not a commission, what other approach might the federal government take to assure adequate compensation for top level executives that will have the confidence of the public and the members of the legislative, executive, and judicial branches of government?

If a commission is not created, the Committee should expand this inquiry to include a careful examination of the effects of ethics rules on the recruitment of senior-level, particularly appointed, executives. Many appointees are prohibited from employment in their professional fields when they leave public service. This combined with the issue of adequate compensation are disqualifiers for many excellent individuals.

Thank you for the opportunity to comment on these important questions.

Respectfully submitted,

Sean O'Keefe
Chancellor

cc: The Honorable David Walker (Comptroller General)

Original sent via electronic-mail

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