

President's Report



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Judicial pay and the independence of the judiciary

The Chief Justice devoted his 2006 Year End Report on the Federal Judiciary to a single subject—"the failure to raise judicial pay"—and argued that the issue "has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary."

Some chided his characterization as hyperbole, but Chief Justice Roberts, and then Justice Kennedy in testimony before the Senate Judiciary Committee, have drawn renewed and important attention to an issue that presents a clear and present danger to the quality and the independence of our nation's judiciary.

The issue is certainly not new. The National Commission on the Public Service, headed by Paul Volcker, reported several years ago that the "lag in judicial salaries has gone on too long, and the potential for the diminished quality in American jurisprudence is now too large."

But now, large law firms in major cities are paying new law school graduates more than federal judges, and many senior law professors and deans at major law schools earn more than twice as much as federal judges. From 1969 through 2006, real pay for federal judges has declined approximately 25 percent. More dedicated and experienced judges are leaving the bench for financial reasons, and fewer seasoned lawyers from the private bar are seeking judgeships. Thus, as the

New York Times editorialized on January 5, "Mr. Roberts is right to note the link between maintaining an adequate standard of judicial compensation and preserving the quality and independence of the judiciary, and to prod Congress on this issue."

In February, AJS Board member **Alex Reinert** and I attended a meeting that organized a broadbased coalition of major legal organizations, corporations, public interest groups, law firms, and academics to support increased compensation for federal judges. As part of that effort, the general counsels of 60 major U.S. corporations submitted a letter to Congress which argued that failing to restore judicial salaries to an appropriate level "threatens the administration of justice by undercutting the quality and diversity of candidates drawn to and retained on the bench." A similar letter was submitted to Congress by more than 120 law deans.

The judicial compensation problem, however, is not limited to the federal judiciary, but extends to many state judiciaries. For example, New York judges have not had a raise since 1999 and Chief Judge Judith Kaye stated recently that "[n]o society can expect its courts to function with the excellence the public deserves when the issue of judicial compensation reaches such a level of unfairness and disdain, when our judiciary can no longer expect to attract and retain the very best

lawyers at the pinnacle of their careers." In Oregon, where judicial pay ranks last among the 50 states, the *Salem Statesman Journal* has called for a pay raise to insure that Oregon has judges "who are experienced, wise and committed to the highest ethical standards."

AJS has responded to other serious threats to the independence of the judiciary: unwarranted attacks on judges; radical and dangerous ballot initiatives such as those defeated last year in South Dakota and Colorado; and efforts to strip courts of jurisdiction to decide certain types of cases, such as the habeas stripping provisions of the Military Commissions Act of 2006.

This threat—lack of adequate judicial compensation – has, indeed, reached the level of a constitutional crisis, and AJS will work with our coalition partners to respond with vigor and determination. I hope you will support our efforts. ☞

