

Federal Judicial Pay



*An Update
on the
Urgent Need
for Action*

May 2003



The American Bar Association



The Federal Bar Association

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Executive Summary

In 2001, the American Bar Association and the Federal Bar Association collaborated on and issued *Federal Judicial Pay Erosion: A Report on the Need for Reform* because of a shared conviction that the salaries of Federal judges had reached such levels of inadequacy that they threatened to impair the quality and independence of the Third Branch. Over the course of the past two years, the problem has not been rectified; indeed, the problem has worsened. Deeply concerned over the insidious changes in the Federal judiciary that have surfaced because of a decade of salary neglect, the American Bar Association and the Federal Bar Association have issued this updated joint report to document the gravity of the situation and to urge the Bush Administration and the 108th Congress to take immediate and lasting action to avert a crisis in the Federal judiciary.

The U.S. Constitution imposes upon Congress and the President the responsibility for setting the pay of the Federal judiciary. The core problem with the current procedure for setting judges' pay is the statutory linkage of judicial salaries (as well as those of high-ranking Executive Branch officials) to the salaries of Members of Congress. This linkage causes Federal judges and top officials of the Executive Branch to suffer the consequences of Congress' reluctance to award itself a pay increase or even to accept cost-of-living adjustments provided by statute.

Despite a series of attempts by Congress and the President over the last 30 years to enact legislative measures to establish workable solutions to the salary-setting dilemma, none has been fully successful, including the latest reforms, enacted as part of the 1989 Ethics Reform Act. The salary review commission envisioned by the Act never became operational, and the new mechanism for automatic, annual cost-of living adjustments has not worked as intended. While these failed reforms have adversely affected salaries for top-level Federal officials in all three branches of government, this report focuses on their impact on the Federal judiciary.

Over the course of the past three decades, judicial salaries have declined in value, while the salary of the average American worker has increased by 17.5 percent. A comparison of the purchasing power of today's judicial salaries with those that existed in 1969 (the first time judicial salaries were raised significantly, based on recommendations of a non-partisan salary review commission) reveals that real pay has declined 23.5 percent for district court and circuit court judges (and more for Supreme Court justices). Their current salaries would have to be raised by approximately 27 percent to recoup that loss.

Even though judges and other top-level federal officials received a catch-up raise in 1991, it only temporarily arrested the downward trend in judicial salaries. As a consequence of receiving just five cost-of-living adjustments since 1993, judges have suffered a 9.8 percent decline in the value of their salaries from 1993 through 2002. This erosion in judicial pay due to inflation has deprived judges (many of whom accepted significantly reduced compensation to become judges) of the prospect of salary stability during their tenure on the bench.

The phenomenal growth in salaries of attorneys in other fields over the last several years has accentuated the inadequacy and inequity of current judicial salaries. While it would be unreasonable to suggest that Federal judges should be paid at levels comparable to those paid to partners at major law firms, the salaries of leaders of academia and not-for-profit institutions provide more legitimate points of comparisons. But even these comparisons now demonstrate the inadequacy of judicial pay.

Even though market conditions alone should not be the measure of the adequacy of judicial salaries, they do demonstrate the growing disparity in salaries, the extent of the financial sacrifice Federal judges make to serve the public, and the lure of alternative private employment for those who find themselves financially strapped. These sizeable disparities cannot continue without causing harm to our nation's Third Branch.

Members of the Federal judiciary increasingly are choosing not to remain on the bench. Between 1990 and April 2003, 77 Article III judges resigned or retired from the bench, and 64 of them returned to work in the private sector. Those 77 judges account for more than half of the Article III judges who have left the bench since 1958; indeed, 22 of them have departed since January 1, 2000. Premature departures of experienced and capable judges impose both real and intangible costs upon the judiciary—especially now, when the workload has increased markedly.

The specter of a declining salary in real terms also discourages potential candidates from seeking appointment to the bench. Judicial pay may not be a deterrent to individuals who are already in public service, but it is a disincentive for experienced lawyers in private practice who are earning substantial salaries. The Federal judiciary benefits from the collective wealth of experience and expertise of its jurists who have served in different capacities in the public and private sectors. As we continue to strive for a Federal judiciary composed of racially, ethnically and religiously diverse men and women, we cannot afford to lose the diversity of the bench that comes from the appointment of individuals of varying financial means who have served in different capacities in both the public and private sectors.

The Constitutional guarantees of life tenure and an undiminished salary are the hallmarks of our Federal judiciary, providing a mantle of independence and integrity for judicial decision-making, while demanding in return a lifetime commitment to public service. While erosion of pay may not legally constitute a diminution in salary, it undermines the purpose of the guarantee of an undiminished salary. The commitment to lifetime tenure is perilously weakened when financial considerations deter excellent candidates from seeking appointment to the Federal bench and motivate sitting judges to resign prematurely from office to enter private practice.

Congress and the President urgently need to take remedial action, in recognition of the nation's need to attract and retain a judiciary of exceptional quality and diversity, as well as the legitimate expectations of those who have accepted lifetime appointments to the bench to be equitably compensated and protected against salary erosion by inflation.

The American Bar Association and the Federal Bar Association therefore urge the Administration and the 108th Congress to take the following steps to provide for immediate and lasting pay relief:

- Congress and the President should promptly enact legislation to substantially raise the base salaries of Federal judges. The salary increase needs to be large enough not only to restore denied Employment Cost Index adjustments for fiscal years 1995-97 and 1999, but also to raise judicial salaries to levels that reflect the importance of the judicial function and ensure their reasonable relationship with salaries of professionals in comparable jobs.

Bipartisan legislation (S. 1023 and H.R. 2118) to increase Federal judicial salaries by 16.5 percent recently was introduced in Congress and endorsed by President Bush. The legislation, if enacted, will boost judicial salaries by an average amount of \$24,948. This is an encouraging and appropriate step in the right direction.

- Congress and the President should amend the Ethics Reform Act of 1989 to break the statutory link that couples cost-of-living adjustments for Federal judges with those of Members of Congress.
- Congress and the President should repeal Section 140 of Pub. L. No. 107-77, which requires explicit Congressional approval of any cost-of-living adjustment for Federal judges.
- Congress and the President should enact legislation to re-establish a salary review commission, similar to past Quadrennial Commissions, to recommend pay rates for Members of Congress, judges and appointed officials in top Executive Branch positions on a regular basis. Any such commission should be adequately funded and its members appointed promptly to ensure that it is operational soon after its authorization.

Electronic versions of this report are available at:

www.abanet.org/poladv/2003judpay.html

www.fedbar.org/wp-judpay03.html

Introduction

In 2001, the American Bar Association and the Federal Bar Association collaborated on and issued *Federal Judicial Pay Erosion: A Report on the Need for Reform* because of a shared conviction that the salaries of Federal judges had reached such levels of inadequacy that they threatened to impair the quality and independence of the Third Branch. Over the course of the past two years, the problem has not been rectified; indeed, the problem has worsened. Deeply concerned over the insidious changes in the Federal judiciary that have surfaced because of a decade of salary neglect, the American Bar Association and the Federal Bar Association are issuing this updated joint report to document the gravity of the situation and urge the Administration and the 108th Congress to take immediate and lasting action to avert a crisis in the Federal judiciary.

It is undisputed that over the past decade the pay of most top-level Federal officials has been eroded by inflation and that the government's executive pay system has not been adjusted to reflect the rapid escalation in salaries offered to comparably placed officials in the private sector. The failure of top-level Federal salaries to keep pace with changing economic conditions has affected the government's ability to attract and retain qualified, experienced candidates in today's highly competitive job market. Problems with the current Federal compensation system have been compounded by the swelling number of management-level Federal employees who will become eligible to retire in the next several years¹ and the measurable decline in public respect for our government institutions.² These conditions have led to mounting concern that the inadequacy of Federal executive pay threatens to undermine the quality of our public workforce and, by extension, the excellence of governmental institutions.

The 106th Congress implicitly acknowledged the need to substantially increase the compensation of top Federal officials when it passed legislation to double the President's salary from \$200,000 to \$400,000.³ The President's salary, which traditionally sets the upper limit for the salaries of top officials across all three branches of government, had been frozen since 1969.⁴ After many years of pay reform neglect, there was widespread optimism that enactment of the presidential pay increase

¹ See URGENT BUSINESS FOR AMERICA: REVITALIZING THE FEDERAL GOVERNMENT FOR THE 21ST CENTURY, Report of the National Commission on the Public Service, 2, 8 (2003) [hereinafter VOLCKER COMMISSION REPORT] ("Within the next five years, more than half the senior managers of the federal government will be eligible to retire. Not all will, but the best estimates are that by the end of this decade, the federal government will have suffered one of the greatest drains of experienced personnel in its history."); U.S. GENERAL ACCOUNTING OFFICE, SENIOR EXECUTIVE SERVICE—RETIREMENT TRENDS UNDERSCORE THE IMPORTANCE OF SUCCESSION PLANNING, at B-282485 (2000) ("Nearly 71 percent of the 6000 members of the Senior Executive Service will be eligible to retire by 2005").

² See VOLCKER COMMISSION REPORT, *supra* note 1, at 6; G. Calvin Mackenzie and Judith M. Labiner, OPPORTUNITY LOST: THE RISE AND FALL OF TRUST AND CONFIDENCE IN GOVERNMENT AFTER SEPTEMBER 11 (2002).

³ Pub. L. No. 106-58, §644, 113 Stat. 430, 477 (1999). The new compensation level became effective January 20, 2001.

⁴ Because the President's salary had been frozen since 1969, the pay gap between the President and other top government officials had narrowed to the point that there was little or no room for salary increases for other top-level officials in all three branches. Raising the President's salary was the necessary precedent step before the longstanding problem of pay compression for top officials throughout all three branches of government could be addressed through enactment of pay legislation. See *infra* note 11 for a description of pay-relief legislation recently introduced.

signaled a readiness on the part of the Administration and Congress to take the next step and address the adequacy of pay for top-level officials in all three branches of government.

The original joint report was issued in February 2001 to urge the newly installed Bush Administration and Congress to seize the opportunity to redress a fundamental problem that had been escalating over the past decade—the erosion of fair and adequate compensation for the Federal judiciary. The response to the report was encouraging: the media took a renewed interest in the subject; the public gained an understanding of the problem and its implications for good government; and concerned Congressional members began to explore legislative solutions. Unfortunately, these promising efforts stalled last year, largely due to the dramatic and necessary shift in Congress’ agenda following the September 11th terrorist attacks. Consequently, the 108th Congress has inherited a Federal salary system for top-level government officials that is badly in need of reform. This is particularly true with respect to the Federal judiciary.

Earlier this year, the National Commission on the Public Service (otherwise known as the “Volcker Commission”) was established to examine ways to restore and renew government service. This non-partisan Commission, primarily composed of government leaders from past Administrations, released a report that concluded, “Judicial salaries are the most egregious example of the failure of Federal compensation policies.”⁵ After exhaustive study, the Commission added its important voice to the growing number of organizations that have warned of the growing consequences of the government’s repeated failure to properly compensate Federal judges. Succinctly summarizing the severity of the problem, the Commission stated:

The lag in judicial salaries has gone on too long, and the potential for diminished quality in American jurisprudence is now too large. Too many of America’s best lawyers have declined judicial appointments. Too many senior judges have sought private sector employment—and compensation—rather than making the important contributions we have long received from judges in senior status. Unless this is revised soon, the American people will pay a high price for the low salaries we impose on the men and women in whom we invest responsibility for the dispensation of justice....⁶

While the Commission recommended salary increases for top-level Federal officials in all three branches of government, it found judicial pay to be so deplorable and injurious to good government that it unequivocally stated that Congress’ “first priority...should be an immediate and substantial increase in judicial salaries.”⁷

The Commission’s warnings echoed the grave concerns of the Chief Justice of the United States. In his most recent Year-End Report on the Federal Judiciary, Chief Justice William H. Rehnquist stated that

⁵ VOLCKER COMMISSION REPORT, *supra* note 1, at 22-26, 23 (2003). The Commission has been dubbed the Volcker Commission, after its chairman, Paul A. Volcker, a long-time advocate for the revitalization of public service.

⁶ *Id.* at 23.

⁷ *Id.* at 32.

the need for increased judicial pay remains “the most pressing issue facing the judiciary.”⁸ He warned that “inadequate compensation seriously compromises the judicial independence fostered by life tenure” and constricts the “pool of those willing to be considered for a position on the Federal bench.”⁹ Stating that “[w]e cannot continue to use an arrangement for setting pay that simply ignores the need to raise pay until judicial and other high-level government salaries are so skewed that a large (and politically unpopular) increase is necessary,”¹⁰ he urged the President and Congress to tackle this important problem immediately.

Congress and the President responded to the Chief Justice’s request for action. On May 7, 2003, Senator Orrin G. Hatch (R-UT) and Senator Patrick J. Leahy (D-VT), the chairman and ranking minority member of the Senate Judiciary Committee, introduced S. 1023, legislation to raise the salaries of Federal judges (including bankruptcy and magistrate judges) by 16.5 percent, yielding an average pay increase of \$24,948 across all judicial offices.¹¹ President George W. Bush immediately announced his support for the legislation.¹² The following week, on May 15, 2003, Representatives Henry Hyde (R-IL) and John Conyers (D-MI) introduced companion legislation, H.R. 2118, in the House of Representatives. If enacted, the legislation would adjust the salaries of Federal judges as follows:

	<u>Current</u>	<u>Revised</u>
Chief Justice	\$198,600	\$231,400
Associate Justices	\$190,100	\$221,500
Circuit Judges	\$164,000	\$191,100
District Judges	\$154,700	\$180,200
Court of International Trade Judges	\$154,700	\$180,200
Court of Federal Claims Judges	\$154,700	\$180,200
Bankruptcy Judges	\$142,324	\$165,784
Magistrate Judges	\$142,324	\$165,784

The current salaries of Federal judges may seem more than adequate at first glance, especially when compared to the salaries of workers in many other professions. But the average wage earner’s salary is not a fair or reasonable reference point by which to assess the adequacy of judicial salaries. Those lawyers who are most qualified to serve as Federal judges have opportunities to earn two and three times the amount we pay our Federal judges. While judicial salaries will never match private law practice salaries, the amount we are willing to pay our judges needs to be sufficient to attract and retain experienced and well-qualified men and women of diverse backgrounds. This report will

⁸ 2002 Year-End Report on the Federal Judiciary at 2 (Jan. 1, 2003).

⁹ *Id.* at 2.

¹⁰ *Id.* at 2, 4.

¹¹ Six Senators—Lamar Alexander (R-TN), Saxby Chambliss (R-GA), Susan Collins (R-ME), John Cornyn (R-TX), Richard Durbin (D-IL), and Edward Kennedy (D-MA)—joined Senators Hatch and Leahy as original cosponsors. Other Senators have subsequently become cosponsors.

¹² Statement by President George W. Bush, Office of the Press Secretary, May 9, 2003. (“I am pleased to support legislation introduced in the Senate this week that would increase the annual salaries of Justices and Judges of the United States. This bipartisan legislation, S. 1023, responds to the recommendation of the Chief Justice and the Judicial Conference that salary increases be enacted for the Judiciary.”)

examine in depth the various reasons why judicial salaries are inadequate to maintain a highly qualified and independent Federal judiciary.

Even though the American Bar Association and the Federal Bar Association continue to believe that the need for salary reform extends across the judicial, executive and legislative branches, the two organizations share the Chief Justice’s grave concerns and concur with the National Commission on the Public Service that salary issues involving the Third Branch need to be addressed first. Therefore, this report, like the earlier one, focuses exclusively on the urgent need to raise the salaries of the Federal judiciary.¹³

The report begins with a review of the history and effectiveness of the pay-setting mechanisms established by Congress over the past 30 years. It then assesses the adequacy of current judicial salaries and examines the changes that have taken place in the judicial work environment since the last Congressionally mandated review of Federal executive pay in 1988. It next analyzes the debilitating impact and consequences of salary erosion on recruitment and retention within the Federal judiciary. The report concludes by recommending a series of initiatives to the President and Congress to rectify the current pay problems that threaten the quality and independence of the Third Branch.

The Failed History of Federal Pay-Setting Mechanisms

A. Pay Linkage Between the Judiciary and Congress

Congress and the President set the pay of the nearly 1,300 active and senior Federal judges constituting the Article III judiciary.¹⁴ Section 1 of Article III of the Constitution protects judicial independence through the dual guarantees of a salary that cannot be reduced during a judge’s service

¹³ This singular focus also is appropriate, given the core legal missions of both organizations and the need for updated information on the scope of the problem. Throughout the report, references to “Federal judges” and the “Federal judiciary” refer to Article III judges. However, the report has implications as well for magistrate and bankruptcy judges, and for Article I judges (including the judges of the U.S. Court of Federal Claims, the territorial district courts, the U.S. Court of Appeals for the Armed Forces, the U.S. Court of Appeals for Veterans Claims, and the U.S. Tax Court) whose compensation is linked to that of Article III judges. It also has implications for Administrative Law Judges in the Executive Branch, whose salaries, likewise, are linked to the Executive Schedule.

¹⁴ As of May 2003, the Article III Judiciary consists of 858 authorized judgeships, including the nine justices of the Supreme Court, 179 judgeships in the appellate courts, 661 at the district court level and nine Court of International Trade judgeships. In addition, there are approximately 375 senior judges who assist in the work of the courts of appeals and the district courts. *See infra* at 21 and note 64 for an explanation of senior judge status. The Article III judiciary is complemented by approximately 325 full-time bankruptcy judges and 485 full-time magistrate judges, who are judicial officers of the district courts and have statutory authority to handle certain matters within the jurisdiction of those courts. During the 107th Congress, legislation authorizing 12 new permanent district court judgeships to commence on July 15, 2003, was enacted; consequently, as of that date, the Article III Judiciary will consist of 870 authorized judgeships.

in office and life tenure during good behavior. While the political branches cannot constitutionally diminish Article III judges' pay, they have the authority to raise judicial salaries.

Under current law, the political branches can adjust judges' pay in three ways: (1) allow automatic and annual pay adjustments based on changes in the Employment Cost Index, a well-recognized index that measures changes in the compensation of private sector workers; (2) adopt pay raises recommended by the President to Congress, based on the report of a Congressionally established select commission appointed to review and consider the salaries of high-level Federal officials; or (3) pass special legislation authorizing a pay raise. History has shown that these pay-setting procedures have failed to operate to the point that, by any reasonable standard, Federal judges are inadequately and inequitably compensated.

The core problem with the current procedure for setting judges' pay is the statutory linkage of judicial salaries (as well as those of high-ranking Executive Branch officials) to the salaries of Members of Congress.¹⁵ This linkage causes Federal judges to suffer the consequences of Congress' reluctance to award itself a pay increase or even to accept cost-of-living adjustments that have been provided for by statute. Such reluctance stems largely from lawmakers' concern over adverse public reaction to pay increases for themselves. This dynamic has suppressed the pay of judges and other Federal executives and subjected it to the ravages of inflation.

Since 1964, the year that Congress established the Executive Schedule to cover top officials in the Executive Branch, a stable pay relationship,¹⁶ pegged at Level II of the Executive Schedule, has existed between Members of Congress and top-level Federal officials. In 1969, upon the recommendation of the first salary review commission, which was composed of members appointed by the leaders of all three branches of government, the salaries of circuit court judges were linked to those of Congressional members and top-level Executive Branch officials by also being pegged to Level II of the Executive Schedule. Congressional and circuit court judicial salaries stayed in step for the next ten years. From 1979 until 1987, however, the linkage between judicial and Congressional salaries all but disappeared and the salaries of both circuit court and district court judges generally exceeded those of Members of Congress. In 1987, a variant form of linkage reappeared when the President's salary recommendation, calling for pay parity between Members of Congress and district court judges (rather than circuit court judges), was enacted into law. Since then, Congressional and district court judicial salaries have stayed in tandem. This form of linkage—linkage of the base salaries of top-level officials in each branch—is a matter of custom and is predicated on the desire for inter-branch pay parity for work of comparable complexity and importance.

General acceptance of the concept of pay parity for top-level officials across all branches of government gave rise to the statutory linkage of cost-of-living adjustments (COLAs) created by enactment of

¹⁵ Appendix I to this report consists of a chart that illustrates the manner in which pay is linked among Federal judges, Members of Congress and other high-level government officials who are paid according to the Executive Schedule. Appendix II lists Congressional and Article III judicial salaries since 1993.

¹⁶ 5 U.S.C. § 550, et seq.

the Ethics Reform Act of 1989.¹⁷ The Act coupled cost-of-living salary adjustments for Members of Congress with similar adjustments for all Article III judges and high-level Executive Branch officials: by its terms, if the necessary condition precedent is met, all top-level officials are entitled to a COLA.

The statutory linkage of COLAs for top-level Federal employees is most directly responsible for the erosion of judicial pay due to inflation. When Congress, for political reasons, enacts legislation to deny itself a cost-of-living adjustment, all top-level employees paid according to Level II of the Executive Schedule suffer equally. Unfortunately, Congress has chosen not to break this salary linkage for political reasons, hoping to force a consensus on the need for across-the-board salary increases.

As a result, the history of Federal judicial salaries is characterized by sporadic cost-of-living adjustments interspersed with sizable “catch-up” adjustments. Regrettably, the cumulative value of those increases has not brought judicial salaries to where they would be today had smaller, but more regular, increases keyed to inflation been enacted.

In order to fully understand the problem of Federal judicial compensation, it is useful to review the historical forces that have been at work. Therefore, a brief history of the development of the pay-setting mechanisms, from the founding of the Republic to the present day, follows.

B. Early History and Constitutional Intent

The framers of the Constitution were keenly aware that it was essential to the national well-being that the Federal judiciary operate completely independent of political influence. For this reason, the framers placed critical priority on the economic independence of Federal judges, and insulated them from the potential for pay cuts meted out by a Congress in retribution for controversial decisions. Thus, Section 1 of Article III of the Constitution guarantees Federal judges absolute protection against diminution of their pay during their “continuance in office.” Moreover, realizing the importance of both the impact of inflation and the need to maintain a qualified judiciary, the framers rejected the original draft of the compensation clause of Article III, which would have prohibited upward as well as downward adjustments of judicial pay, and instead authorized Congress “to increase salaries as circumstances might require.”¹⁸ As Alexander Hamilton noted, “It will be readily understood, that the fluctuations in the value of money and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible. What might be extravagant today might in half a century become penurious and inadequate.”¹⁹

The framers also conferred on Congress the responsibility for setting its own pay, as well as the pay of

¹⁷ Pub. L. No. 101-194 (1989). However, note that true parity between Members of the House of Representatives and United States Senators was not achieved until 1991, through legislation that extended to Senators the 25 percent pay increase and the prohibition against acceptance of honoraria for speeches and writings, two provisions of the Ethics Reform Act of 1989 that had previously applied only to House members, judges and other top officials. Pub. L. No. 102-90, § 6, 105 Stat. 447, 450.

¹⁸ They did so, however, over the objection of James Madison, who was concerned that making judges beholden to Congress for periodic salary increases could create an undesirable dependence.

¹⁹ THE FEDERALIST NO. 79, at 491-92 (Lodge ed. 1908).

the President and other top-level officials in the Executive Branch.²⁰ Congressional efforts to discharge this responsibility have frequently met with negative public reaction, starting in 1816 with Congress' first attempt to raise its own pay from \$6.00 per day to \$8.00 per day. As a result, over the last 30 years, Congress and the President have enacted a series of legislative measures to establish workable solutions to the salary-setting dilemma. Their objectives have been two-fold: to make fair decisions about compensation and to minimize the political battles that inevitably accompany salary decisions for Members of Congress, judges, and officials in the Executive Branch.

C. The Federal Salary Act

In 1967, Congress passed the Federal Salary Act.²¹ Among other things, it created a Commission on Executive, Legislative and Judicial Salaries, commonly referred to as the "Quadrennial Commission." The independent commission was composed of private sector members appointed by the President, leaders of the Senate and House of Representatives, and the Chief Justice of the United States. From 1968 to 1988, the Commission convened every four years and made salary recommendations for Members of Congress, judges, and other high-ranking officials. These recommendations were sent to the President, who made final recommendations to Congress. The President's recommendations became effective unless specifically rejected by Congress.²²

The Quadrennial Commission system was designed to insulate Congress from the politically sensitive task of fixing the salaries of its own members by creating a system whereby the necessary adjustments of salaries would be recommended by the Commission and adjusted to political realities by the President. The process was intended to serve both the public interest and minimize political interference.

The process worked as intended in 1969. Responding to the substantial pre-existing erosion of salaries, the process produced what was then the largest salary increase in history for top-level executives in all three branches of government. District judges' pay was adjusted from \$30,000 to \$40,000 and circuit judges' pay was adjusted from \$33,000 to \$42,500. Unfortunately, that advance was quickly followed by a retreat; judges and other high-level officials were denied salary adjustments for the next six years.

D. The Executive Salary Cost-of-Living Adjustment Act

To deal with the ensuing problem of salary erosion, Congress enacted the Executive Salary Cost-of-Living Adjustment Act in 1975.²³ That legislation was intended to grant judges, Members of Congress

²⁰ *Id.* U.S. CONST. art. 1, § 6; art. II, § 1.

²¹ Federal Salary Act of 1967, Pub. L. No. 90-206, § 225, 81 Stat. 624-645 (1967).

²² The process by which Congress reviewed the President's salary recommendations was modified several times, the last of which responded to *INS v. Chadha*, 462 U.S. 919 (1983), a Supreme Court decision that declared the legislative veto invalid and held that the Congressional law-making process requires the presentation of an act or resolution to the President for his signature or veto.

²³ Pub. L. No. 94-82, 89 Stat. 419 (1975).

and high-level Executive Branch officials the same automatic cost-of-living adjustments accorded to rank-and-file Federal employees. The adjustments made under the Act were to be automatic unless specifically rejected by Congress. They were to be in addition to any salary raise granted through the Quadrennial review process.

In practice, the Adjustment Act did not live up to its promise because Congress frequently rejected or reduced the annual cost-of-living salary adjustments available under the Act for itself, judges, and others for political reasons. However, two Congressionally rejected pay adjustments were restored to the Federal judiciary after a group of judges successfully brought a lawsuit on behalf of the entire judiciary challenging Congress' authority to block adjustments scheduled to go into effect in 1976, 1977, 1978 and 1979.²⁴

Angered by the decision in that lawsuit, Congress in 1981 appended "Section 140" to a continuing appropriations bill that was enacted into law. The provision, which required specific Congressional approval to permit judges to receive cost-of-living adjustments, stated:

Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted: *Provided*, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or any Justice of the Supreme Court.²⁵

From time to time during subsequent years, Congressional members sought clarification from the Comptroller General regarding the continued viability of Section 140. Even though Section 140 was incorporated into an appropriations bill that was set to expire on the last day of the 1982 fiscal year, the Comptroller General of the United States consistently interpreted Section 140 to be permanent, binding legislation.²⁶

Following the enactment of Section 140, Congress repeatedly scuttled cost-of-living adjustments for itself and the judiciary. Further, it only approved a substantially scaled-back version of the salary recommendations of the 1986 Quadrennial Commission and rejected all of the recommendations of the 1988 Commission.²⁷ The crisis over Federal pay continued to build.

²⁴ U.S. v. Will, 449 U.S. 2000 (1980) (holding that the revocations of the 1976 and 1979 pay adjustments each constituted a diminution in judicial salary proscribed by the Compensation Clause in Article III of the Constitution because they vested before Congress acted to block them).

²⁵ Pub. L. No. 97-92, § 140, 95 Stat. 1182, 1200 (1982).

²⁶ 62 Comp. Gen. 54 (1982); 62 Comp. Gen. 358 (1983); 63 Comp. Gen. 141 (1983); 65 Comp. Gen. 352 (1986). These interpretations were abandoned when the legality of Section 140 was successfully challenged in *Williams v. United States*, *supra* note 37. See *infra* pp. 10-11 for a detailed discussion of Section 140 and the *Williams* case.

²⁷ Quadrennial Commissions were established in 1968, 1972, 1976, 1980, 1984, 1986, and 1988; however, the 1984 Commission addressed only the Constitutional problem presented by the Supreme Court's ruling in *INS v. Chadha*, *supra* note 22.

E. The Ethics Reform Act of 1989

The anticipated exodus of top officials from the Judicial and Executive Branches and mounting concern over the Federal government's ability to recruit highly qualified replacements prompted Congress to enact the Ethics Reform Act of 1989.²⁸ In addition to restoring two cost-of-living salary adjustments and providing a comparability pay adjustment,²⁹ the Ethics Reform Act amended the Federal Salary Act and the Adjustment Act in two respects—it replaced the Quadrennial Commission with a Citizens' Commission on Public Service and Compensation,³⁰ and it revised the mechanism for fixing the annual pay adjustments for judges, Members of Congress, and other high-level officials.

Under the new law, judges, Members of Congress and Executive Branch officials were to receive a salary adjustment automatically whenever a COLA was conferred on Federal workers paid according to the General Schedule. The Employment Cost Index (ECI), a quarterly index measuring the change in wages and salaries paid to private sector employees, was adopted as the basis for determining the amount of their salary adjustment.³¹ Congress intended the ECI mechanism to provide top government officials with regular pay increases to alleviate the future need for major “catch-up” adjustments of the type enacted in 1989.

In addition to amending existing salary adjustment mechanisms, the Ethics Reform Act limits the amount of income that judges and Members of Congress may earn from sources such as teaching and writing, and bars receipt of honoraria³² and imposes mandatory workload requirements on senior judges.³³

F. The Effectiveness of the Current System

In practice, the new pay system instituted by the Ethics Reform Act has failed to meet the expectations of Congress and the President. It has functioned no better than the pay system it replaced. Congress has permitted its Members, top Executive Branch officials and Federal judges to receive only five COLA increases since 1993—a 2.3 percent adjustment in 1998, a 3.4 percent adjustment in 2000, a 2.7 percent adjustment in 2001, a 3.4 percent adjustment in 2002 and a 3.1 percent adjustment in 2003 (applied retroactively for judges only, commencing March 2003).³⁴

As a result of this salary neglect, the real pay of these officials has been reduced 9.8 percent by

²⁸ Pub. L. No. 101-194 (1989).

²⁹ See *infra* p. 11 for additional information regarding the size of the salary increase.

³⁰ Under the new process, six Commission members are to be appointed by leaders of the three branches and five are to be selected from the public at large; the names of these latter individuals are to be drawn by the Administrator of the General Services Administration from voter registration lists.

³¹ 28 U.S.C. § 461(a)(2). Any such adjustment cannot exceed five percent, nor can it be higher than a comparable adjustment for the General Schedule.

³² The annual limit is approximately \$20,000.

³³ Senior judges are those who retire from active, full-time judicial service but elect to continue to serve by handling a reduced caseload.

³⁴ The reason for the delay in applying the 2003 ECI adjustment is explained in the next section of this report.

inflation since 1993. If the Federal judiciary had received the ECI adjustments called for by the Ethics Reform Act of 1989, district court judges would now be paid \$169,800 (compared to the current \$154,700) and court of appeals judges \$180,000 (compared to the current \$164,000). The salary of associate justices now would be \$208,700 (compared to the current \$190,100) and the salary of the Chief Justice \$218,000 (compared to the current \$198,600).

Not only has the new adjustment mechanism failed to function as planned, the revamped salary review commission has never become functional. In the 14 years since the enactment of the 1989 Ethics Reform Act, no money has ever been appropriated for the Citizens' Commission, and Congress and the President have never appointed its members. As a result, there has been no systematic review of the adequacy of Federal judicial salaries (or those of Congressional members and top-level Executive Branch officials) since 1988, the date of the last Quadrennial Commission.

G. The Harmful Effects of “Section 140” on Interbranch Relations

In December 1997, judicial discontent precipitated the filing of Williams v. United States in the United States District Court for the District of Columbia.³⁵ This class-action lawsuit was filed by a group of judges seeking restoration of annual ECI adjustments denied to them by Congress in 1995, 1996 and 1997. In those years, Congressional members decided to forego COLAs for themselves and enacted blocking legislation. By virtue of the statutory linkage created in 1989, such action also prevented judges from receiving their COLAs. Williams also challenged Section 140 on the grounds that: (1) it was meant to apply only to the 1982 fiscal year; (2) it was superseded by the Ethics Reform Act of 1989; and (3) to the extent that Section 140 would act to bar pay adjustments under the Ethics Reform Act, it was unconstitutional.

In December 2000, the District Court for the District of Columbia ruled for the plaintiffs on a motion for summary judgment. An appeal was filed and the Court of Appeals for the Federal Circuit issued its opinion in February 2001, holding that even though Congress enacted into law a mechanism for annually adjusting the salaries of judges, the COLAs permitted under the 1989 Ethics Reform Act do not vest until the first day of the fiscal year in question; therefore, it is constitutionally permissible for Congress to deny judges a COLA prior to the time it takes effect. The Federal Circuit also held that Section 140 was no longer viable because it was not meant to be permanent law and was superceded by the Ethics Reform Act of 1989. The plaintiffs filed a petition for certiorari, but the Supreme Court declined to hear the case on March 4, 2002. Justices Breyer, Scalia and Kennedy jointly issued a vigorous dissent. A petition for rehearing likewise was denied on April 15, 2002.

The 107th Congress responded to the Federal Circuit's ruling by re-enacting Section 140 and including language to clarify that it is meant to be permanent law,³⁶ thereby fixing the problems with the

³⁵ Williams v. United States, 48 F. Supp.2d 52 (D.D.C. 1999), aff'd and rev'd, 240 F.3d 1019 (D.C. 2001), *petition for cert. denied*, 535 U.S. 911 (2002) (Breyer, J., dissenting), *rehearing denied*, 535 U.S. 1012 (2002).

³⁶ Pub. L. No. 107-77 (2001).

original Section 140 that prompted the Federal Circuit to declare it void.

The injurious effect of re-enacting a provision that holds judicial COLAs hostage to the will of Congress, even when Congress does not deny itself a COLA, was magnified when the 107th Congress failed to waive Section 140 prior to adjournment. As a consequence, at the close of 2002, Federal judges were ineligible to receive a COLA in 2003 while Congressional members and Executive Branch officials prepared to receive a 3.1 percent COLA. Even though the 108th Congress and the President rectified this problem by enacting legislation that complied with Section 140, *albeit* nearly two months after the COLA for Congress took effect, the failure of the 107th Congress to waive Section 140 demonstrated its insidious effects and needlessly strained interbranch relations.

The Inadequacy of and Real Decline in Judicial Salaries

Over the course of the past decade, judges have experienced both an absolute loss in purchasing power and a relative decline in remuneration as the salaries of peer groups have risen dramatically. Inflation has eroded the value of judicial salaries while the phenomenal growth in salaries of attorneys in other fields has accentuated the inadequacy and inequity of current judicial salaries. This same scenario existed before the last major salary raise was enacted into law in 1989. Prior to its enactment, the 1988 Quadrennial Commission observed that the conditions that then existed threatened “to diminish the quality of justice in this country by dissuading the best and the brightest in all sectors of society from service on the Federal bench.”³⁷ After initially rejecting the salary recommendations of the Quadrennial Commission, and after much heated debate and public outcry, Congress and the President finally heeded the warning and provided judges with a 7.9 percent increase in 1990 (the COLA for that year and restoration of the previously denied 1989 COLA) and a 25 percent “catch-up” raise to base salary to take effect January 1, 1991. In addition, judges (as well as Members of Congress and top Executive Branch officials) received a 3.6 percent cost-of-living adjustment in 1991. As a result of the pay raise and COLAs, judicial salaries increased approximately 37 percent from 1989 to 1991. Having waited years to correct salary inequity in the judicial branch, this substantial salary increase was required in order to restore some level of reasonableness to judicial pay.

Today, because of persistent inaction over the last decade, a substantial salary increase again is required. Congress and the president should act immediately, in recognition of the nation’s need to attract and retain a judiciary of exceptional quality and diversity, as well as the legitimate expectations of those who have accepted lifetime appointments to the bench to be equitably compensated and protected against salary erosion by inflation.

³⁷ COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES, FAIRNESS FOR OUR PUBLIC SERVANTS at 27 (1988) [hereinafter 1989 Quadrennial Commission].

A. Erosion of Judicial Salaries

Despite enactment of the Ethics Reform Act of 1989, judicial salaries have not kept pace with inflation over the past decade because intervening Congresses have not allowed it to operate as intended. As a consequence of receiving just five cost-of-living adjustments since 1993, judges have suffered a 9.8 percent decline in the purchasing power of their salaries from 1993 through 2002. Salary erosion over the last 10 years has offset the benefit derived from the 25 percent catch-up raise that went into effect in 1991. That raise, while substantial, was not sufficient to restore judicial salaries to their 1969 benchmark level and only temporarily arrested the downward trend.

The year 1969 generally serves as the baseline for public and private analyses of the adequacy of Executive Level salaries because it was the year when the recommendations of the first Quadrennial Commission were enacted into law.³⁸ Experts, including every subsequent Quadrennial

Commission,³⁹ consistently have used it for over 30 years as a marker by which to judge salary reasonableness.

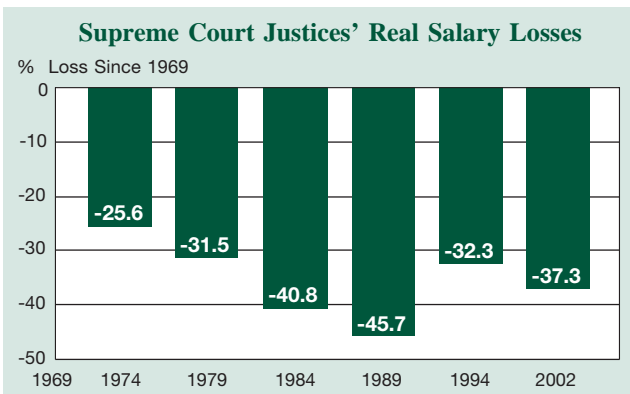


Chart A

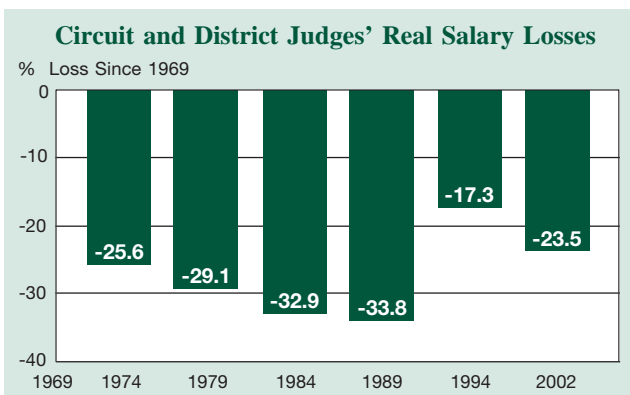


Chart B

Between 1969 and 2002, when adjusted for inflation, Supreme Court justices experienced a 37.3 percent loss in purchasing power, while circuit court and district court judicial salaries lost 23.5 percent. The Chief Justice would now be earning \$306,400 and the Associate Justices, \$294,100 if their salaries had kept pace with the value of their 1969 benchmark salaries of \$62,500 and \$60,000, respectively. Likewise, district court judges would now be earning \$196,100 and circuit court judges \$208,300 if their salaries had kept pace with the 1969 benchmarks of \$40,000 and \$42,000, respectively. Current district and circuit court judicial salaries would have to be raised by approximately 27 percent to achieve these levels. Charts A and B clearly illustrate the historical pattern of real salary losses for judges at all levels of the Federal judiciary.

³⁸ Ironically, computations of salary loss premised on the 1969 baseline understate the full magnitude of loss, since the salary levels enacted in 1969 were approximately 20 percent less than the recommendations of the first Quadrennial Commission.

³⁹ 1989 QUADRENNIAL COMMISSION, *supra* note 37 at 11. See also COMPARATIVE SALARY DATA: A SUPPLEMENT TO: PROMISES MADE, PROMISES STILL UNKEPT: RESTORATION OF INFLATION-INDUCED SALARY CUTS FOR TOP GOVERNMENT OFFICIALS, A REPORT TO THE COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES, at 116 n.1 (1986).

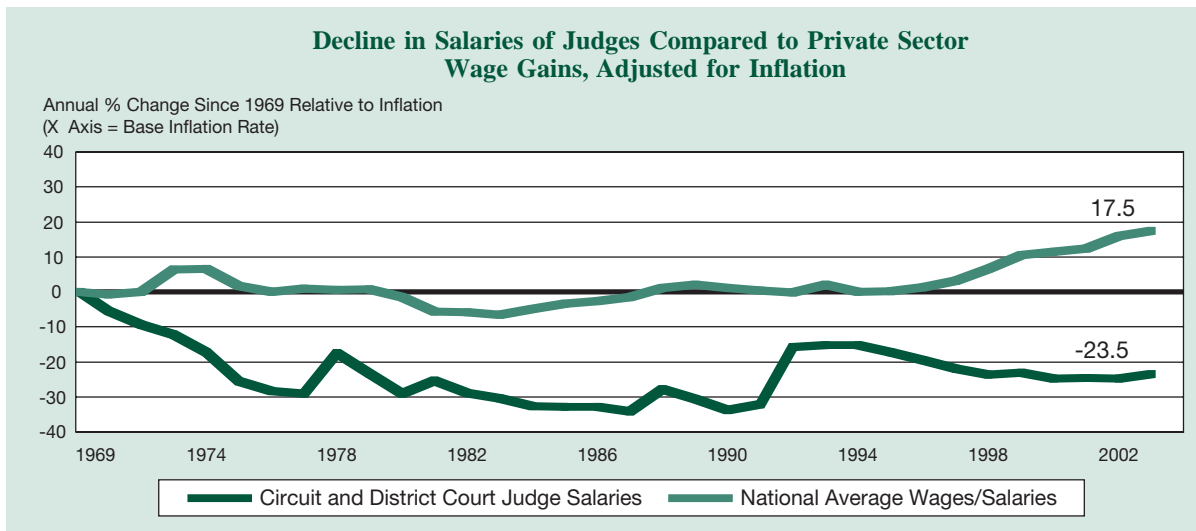


Chart C

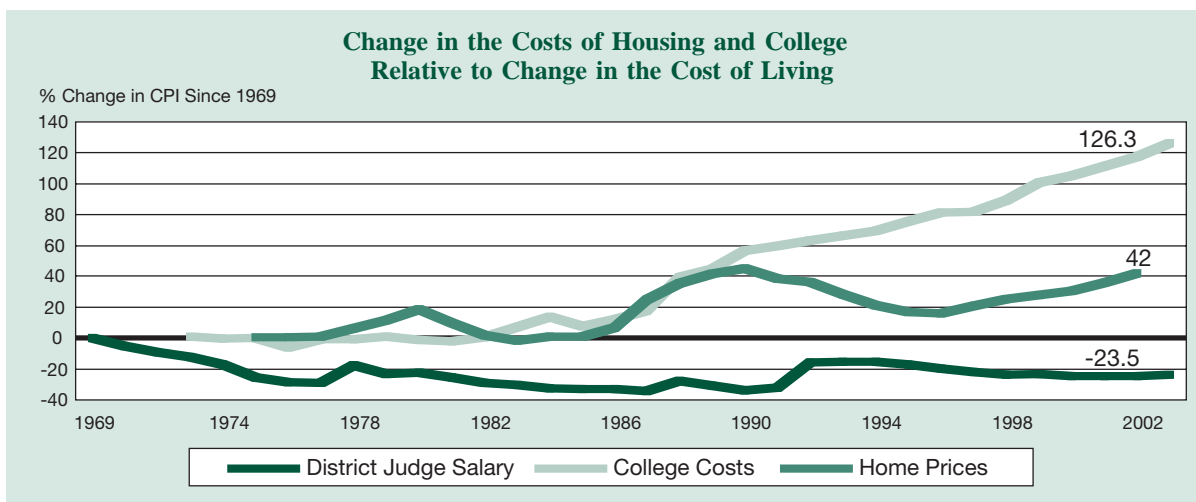


Chart D

American private sector workers have fared far better in their ability to stay apace with inflation. Since 1969, when adjusted for inflation, the real pay of the average American worker actually increased by 17.5 percent over inflation, while the salaries of Federal trial court and appellate court judges declined by 23.5 percent (see Chart C).

Chart D illustrates the financial dilemma facing judges. It portrays the changes from 1969 to 2002 in the real cost of a home and the cost of a college education against the change in the real salary of district judges. Purchasing a home and paying for college for one's children represent major expenses that judges, like most Americans, want to be able to afford for their families. The cost of each has risen substantially faster than the CPI, while judicial salaries have declined relative to the CPI.⁴⁰

⁴⁰ Chart D presents data (current through 2002) derived from analyses prepared by the College Board, the Federal Housing Finance Board and the Bureau of Labor Statistics.

In more practical terms, these developments mean that judges must now allocate a larger part of their salaries for living costs than they did in the past. Because living costs vary widely across the country, judges who live in expensive metropolitan areas, such as San Francisco, Houston and New York, experience even greater erosion in the purchasing power of their salaries. Unlike rank-and-file Federal employees in these higher-cost areas, judges are statutorily precluded from receiving locality-based comparability pay increases.

While judges understand the need for some financial sacrifice when they assume a position on the Federal bench, it should not be necessary for them to exhaust their own personal resources or go into debt. And it certainly should not be necessary for judges, once in office, to worry that the purchasing power of their salaries will continue to decline unabated. Indeed, a former Federal judge recently recounted the financial consequences of his tenure on the bench:

Most of us entered the judiciary in mid-life anticipating a career in judicial service. Most of us also expected that there would be a coherent system for raises that could serve as the basis for some financial planning. The system we encountered was just the opposite. There was absolutely no way of knowing from year to year whether we would get a raise. In fact, in many years we did not. This financial uncertainty, the inability to anticipate even a cost-of-living increase, was demeaning and disruptive.⁴¹

Those concerns are not unique. Another former Federal judge stated:

My decision to leave the bench to return to private practice was a difficult one. One of the reasons for my decision was my frustration with the judicial compensation system. When I took the job as a magistrate judge, little did I know that I would not be receiving automatic cost-of-living increases as I had when I served as an assistant U.S. Attorney, a trial attorney with the Department of Justice and a law clerk for the Chief Judge for the Western District of New York ... The problem of pay compression and failure to keep pace with inflation are very real problems. At the end of my eight-year term as a magistrate judge, I had two children in high school and my ex-spouse had unexpected[ly] died. Even in the relatively modest community of Buffalo, New York, 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. To me, the decision with which I was faced was clear. Much as I loved public service and being a judge, the practicalities of the situation won out. Although I am happily working as a partner in a major upstate New York law firm, I regret that the judicial compensation system forces individuals like me to make these tough choices.⁴²

⁴¹ Letter dated June 20, 2002, from Cumberland School of Law Dean John Carroll to Honorable Deanell R. Tacha, Chair, Judicial Conference Committee on the Judicial Branch. Dean Carroll, a former U.S. Magistrate Judge, resigned from the Federal bench to become the Dean of the Cumberland School of Law at Samford University in Birmingham, Alabama.

⁴² Letter dated June 6, 2002, from former Magistrate Judge Carol E. Heckman (W.D. N.Y) to Honorable Deanell R. Tacha.

Judges are also concerned that the purchasing power of their salary will continue to decline unabated. Some judges are worried that they will not have enough money to send their children to college. For example, Judge Joe Kendall (N.D. Tex.), who resigned in January 2002 after nine years of service to enter private practice, explained, “I need to do what I’m doing...I have financial concerns.” Judge Kendall has two children who will soon be college-bound, and a third child with special needs.⁴³ Judge Kendall is not alone. Judge Alfred J. Lechner Jr. (D. N.J.), who resigned in October 2001 to return to private practice, stated that with three children in college, his tuition bills were considerably more than his take-home pay as a district judge.⁴⁴ Despite having served on the Federal bench for 15 years, Judge Lechner was not entitled to any immediate or deferred annuity upon his departure.

Other judges have expressed concern that they will not have enough money to meet the costs of long-term care for family members in need. Former Chief Judge Edward Davis (S.D. Fla.), who retired from judicial office in July 2000 after 20 years of judicial service to enter private practice, stated that a better salary would guarantee the long-term care of a handicapped family member. Judge Davis observed, “If I had been sure I’d have enough money to care for the child, I would not have left the bench, but I couldn’t feel secure about the future.”⁴⁵

It is one thing to ask a lawyer to accept reduced compensation to become a judge; it is quite another not to maintain at least real dollar equivalence in compensation thereafter. That judicial pay has not even kept pace with inflation has robbed judges of the prospect of salary stability during their tenure on the bench. While erosion of pay may not legally constitute a diminution in salary, it “breaches faith with the Constitution.”⁴⁶ The very minimum that Federal judges rightly should expect is protection of their salaries from the ravages of inflation.

B. Salary Comparisons with Legal Jobs in the Private and Nonprofit Sectors

High-level public servants understand that public service has its own intrinsic rewards and will never command the same salaries as the private sector. Public servants’ more modest salaries are supplemented by non-monetary rewards—the so-called “psychic income” derived from the nature of their work.⁴⁷ Not surprisingly, surveys of government executives consistently report that the rewards of a career in government service are primarily non-financial and include such qualities as the opportu-

⁴³ *Insecure About their Future: Why Some Judges Leave the Bench*, THE THIRD BRANCH, Feb. 2002, at 1.

⁴⁴ *Id.*

⁴⁵ Judge Davis’ comments were quoted by Leonidas Ralph Mecham, Secretary, Judicial Conference of the United States, in correspondence submitted to the Volcker Commission, June 14, 2002, in response to its request for public comment. Appendix III of this report recounts the experiences of additional judges who have candidly acknowledged the role that pay inadequacy and unpredictability played in triggering their decisions to resign from judicial office.

⁴⁶ COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES, QUALITY LEADERSHIP: OUR GOVERNMENT’S MOST PRECIOUS ASSET, at 189 (1986). Several other Quadrennial Commission reports also expressed grave concern that inadequate salaries threaten the core of judicial independence.

⁴⁷ See 1989 QUADRENNIAL COMMISSION, *supra* note 37 at 15; REBUILDING THE PUBLIC SERVICE: TASK FORCE REPORTS TO THE NATIONAL COMMISSION ON THE PUBLIC SERVICE, at 212 (1989).

nity to engage in interesting, exciting and challenging work, as well as the satisfaction of serving the public and participating in important public policy decisions.⁴⁸

For judges too, rendering public service in a highly visible and respected role and serving in a lifetime appointment are intangible benefits that help compensate for the reduced salary levels associated with the bench. Compensation levels for attorneys from other work sectors, nonetheless, are relevant to the issue of fair and adequate judicial compensation because a marked disparity between public and private salaries negatively affects the ability to attract highly qualified judicial candidates and retain highly experienced judges. It also has implications for the value that our society places on the work Federal judges perform. Therefore, compensation trends in the fields from which judges are selected, and to which they might reasonably be expected to return should they leave the bench, provide a legitimate point of reference. The inescapable conclusion to be drawn from such comparisons is that, even though service in the Federal judiciary has long been regarded as the pinnacle of success and prestige in the profession, the disparity between judges' salaries and those of their peers has reached an unacceptable level.⁴⁹

Salaries paid to lawyers in private practice soared during the period from 1999-2001. Over the last two years, rates of pay for attorneys at law firms have stabilized at, or slightly above, the high rates set during those years. Salaries paid to first-year associates at major law firms across the country now average \$112,000.⁵⁰ Law firms in major metropolitan areas, including Los Angeles, Washington, D.C., and Philadelphia, continue to pay first-year associates, on the average, \$125,000 a year and bonuses ranging from \$10,000 to \$50,000.⁵¹ Continuing a trend that started in the late 1990s, many first-year

⁴⁸ See, e.g., MARK A. ABRAMSON ET AL., RESULTS OF THE GOVERNMENT LEADERSHIP SURVEY: A 1999 SURVEY OF FEDERAL EXECUTIVES (The PricewaterhouseCoopers Endowment for the Business of Government, 1999).

⁴⁹ Contrary to some assertions, retirement benefits for Federal judges clearly do not offset their significantly lower salaries. Highly-paid lawyers in the private sector often receive retirement benefits far in excess of those provided to judges. In contrast to typical law-firm plans, judicial retirement benefits "vest" only when a judge reaches retirement age. Judicial retirement benefits are thus an "all or nothing" proposition. If a judge voluntarily resigns and leaves the bench before satisfying the statutorily specified age and years-in-service requirement (the so-called "Rule of 80"), the judge forfeits all retirement benefits. See 28 U.S.C. § 371 (a judge between the ages of 65 and 70, whose age and years of service total 80, may elect to either retire from judicial office or "retire in senior status"). Moreover, the Rule of 80 compels younger appointees to work longer to gain entitlement to exactly the same retirement benefits received by older colleagues who may have served as judges for a considerably shorter period of time. In contrast, the retirement rules covering Members of Congress are arranged in a distinctly different manner. Congressional pensions hinge on the recognition that tenure in elected office generally covers a shorter span of time than a judicial lifetime appointment. Lawmakers with longer careers in Congress can generally collect pension benefits at a far earlier age than their counterparts with similar service in the judiciary. A former Member of Congress becomes vested to receive retirement benefits after as few as five years of service, with retirement benefits available at age 50 after 20 years of service, or at any age after 25 years of service. Pensions for Members of Congress retiring under the Federal Employees Retirement System are computed on a variable accrual rate linked to their three highest years of salary. On the other hand, a judge may receive 100 percent of his or her salary upon retirement, *but only* upon satisfaction of the demanding Rule of 80. In addition, the annuity of a retired Member of Congress is annually increased by COLAs, whereas the annuity of a retired judge remains fixed at the level of salary the judge received at the time of full retirement from judicial office. Senior judges do receive COLAs while they remain on the bench.

⁵⁰ *25th Annual Survey of the Nation's Largest Law Firms*, NATIONAL LAW JOURNAL (hereinafter NLJ 250 survey), November 18, 2002, at C-4. This survey includes data on starting salaries for associates at the nation's largest law firms.

⁵¹ *Id.* In fact, approximately one-half of the law firms ranked in the NLJ 250 survey offered starting salaries of \$125,000. See Brenda Sandburg, *Bittersweet Payday*, THE RECORDER, September 10, 2002, retrieved April 8, 2003 from <<http://law.com>>; Jennifer Batchelor, *Dechert Announces \$20K Hike in First-Year Associate Pay*, THE LEGAL INTELLIGENCER, August 30, 2002, retrieved 4/8/03 from: <<http://www.law.com>>; Alexei Oreskovic, *Pillsbury Gives Associates a Salary Boost*, THE RECORDER, January 31, 2002, retrieved 4/08/03 from <<http://law.com>>.

associates received more compensation in 2002 than district and appellate court judges, all of whom were highly experienced lawyers before they joined the bench. To exacerbate an already demoralizing situation, some of our Federal judges report that these high-earning, first-year associates clerked for them the preceding year.

More experienced private-sector attorneys provide a better reference point in terms of comparable knowledge and “value” to their employer. Not surprisingly, their salaries present an even starker contrast. On average, partners at the major law firms received compensation in excess of \$700,000 and profits ranging from \$270,000 to \$3,285,000 in 2001.⁵² General counsels of major companies earned cash salaries averaging \$445,000 and substantial bonuses in 2000.⁵³ In 2001, the one hundred highest-paid general counsels in the nation each took home salaries and bonuses totaling more than \$800,000.⁵⁴

While the vast majority of Federal judges have the requisite years of experience and excellent legal skills that would enable them to command such salaries in the private sphere, it would be unreasonable to suggest that Federal judges should be paid at levels comparable to those paid to partners at the most prestigious law firms. Over the years, salary studies have used the salaries of leaders of academia or nonprofit institutions as reference points because the level of education and expertise required of leaders of these institutions is similar to that required of federal judges, and these leaders, like judges, derive non-monetary rewards from the work they perform.⁵⁵ The Volcker Commission embraced this approach, stating: “More reasonable comparisons may exist with reference to the leading not-for-profit and academic institutions. But even those comparisons now indicate a significant shortfall in real judicial compensation that requires immediate correction.”⁵⁶

The average salary of chief executive officers (CEOs) of large nonprofit organizations in 1999 was \$212,000—approximately 20 percent higher than that of a Supreme Court Justice and about 35 percent higher than that of a Federal district judge.⁵⁷ Over the last three years, it is safe to assume that CEO salaries have increased at a faster rate than have judicial salaries, thereby widening the salary gap.

The differential between Federal judicial salaries and salaries of leaders in the academic world is even larger. In 2002, *The Chronicle of Higher Education* reported that the median compensation of presidents of private doctoral institutions had increased 18 percent from 1996 to 2001 to reach \$356,092.⁵⁸

⁵²Jim Schroeder, *The Am Law 100: An Overview*, THE AMERICAN LAWYER, July 1, 2002, retrieved 5/02/03 from <<http://law.com>>. The Am Law 100 refers to the 100 highest-grossing U.S. law firms. Similar statistics, derived from salary information from a cross-section of selected law firms, were reported in: *What Lawyers Earn: NLJ's Annual Report*, NATIONAL LAW JOURNAL, August 6, 2001. NLJ did not conduct this survey in 2002.

⁵³ *What Lawyers Earn: NLJ's Annual Report*, NATIONAL LAW JOURNAL, August 6, 2001.

⁵⁴ *The 2001 GC Survey*, CORPORATE COUNSEL, September 21, 2001, retrieved 5/01/03 from <<http://www.law.com>>.

⁵⁵See e.g., FAIRNESS FOR OUR PUBLIC SERVANTS: THE REPORT OF THE 1989 COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES at 15 (1988).

⁵⁶ Volcker Commission Report, *supra* note 1 at 24.

⁵⁷ Prepared Statement of Justice Stephen G. Breyer before the National Commission on the Public Service, July 15, 2002 at 2.

⁵⁸ Julianne Bassinger, *The Growing \$500,000 Club*, THE CHRONICLE OF HIGHER EDUCATION, Nov. 22, 2002, retrieved 11/27/02 at <<http://chronicle.com/free/v49/i13/13a03001.htm>>.

Many presidents and chancellors of the best public universities are receiving comparable compensation packages.⁵⁹

Nationwide, the average salary of law school deans for 2002-03 was approximately \$200,000 while deans of law schools at public and private doctoral institutions earned more—\$209,000.⁶⁰ The Volcker Commission reported that the *average* salary for deans of the 25 top-ranked law schools was \$301,639.⁶¹ Regardless of the selectivity of the group of law schools surveyed, law school deans make substantially more than district court judges. Furthermore, their compensation has not remained stagnant: 2002-03 salaries were approximately \$9,000 higher than 2001-02 salaries.

Even though market conditions alone should not be the measure of the adequacy of judicial salaries, they do demonstrate the growing disparity in salaries, the extent of the financial sacrifice Federal judges make to serve the public, and the lure of alternative private employment for those who have significant financial responsibilities. These sizeable disparities cannot continue without causing harm to our nation's Third Branch.

The Demands of the Judiciary's Increased Workload

While the real value of judicial salaries has declined, the workload burden upon the judiciary has not. Judges' caseloads and the complexity of their work continue on an upward trajectory at a pace similar to that which existed at the time of our 2001 report.

Despite Congress' creation of additional judgeships in the district courts and courts of appeals over the years, the average per-judge caseload is much higher now than it was in 1969. The total number of civil and criminal cases filed in the district courts has almost tripled over the past 30 years, from 110,778 cases in 1969 to 341,841 in 2002.⁶² Average caseloads for district court judges increased during this same period from 339 to 537 per judge, a 58.4 percent increase (see Chart E).

The situation is even worse in the courts of appeals, where annual filings skyrocketed from 10,709 in 1969 to 57,555 in 2002, more than a five-fold increase. Average caseloads for circuit judges grew from

⁵⁹ *Id.*

⁶⁰ *Facts and figures: Median Salaries of College Administrators by Type of Institution, 2002-03*, THE CHRONICLE OF HIGHER EDUCATION, April 11, 2003, retrieved 4/11/03 from <<http://chronicle.com/weekly/v49/i31/31a03901.htm>>.

⁶¹ Volcker Commission Report, *supra* note 1 at 23 (summarizing findings from a survey conducted in 2002 by the Administrative Office of the U.S. Courts on the salaries of professors and deans at the twenty-five law schools ranked highest in the annual *U.S. News and World Report* survey).

⁶² The statistics in this section were compiled by the Administrative Office of the United States Courts, based on data from its report, *2002 ANNUAL REPORT OF THE DIRECTOR: JUDICIAL BUSINESS OF THE UNITED STATES COURTS*. The workload statistics were calculated based on the actual number of judges in office, not authorized judgeships.

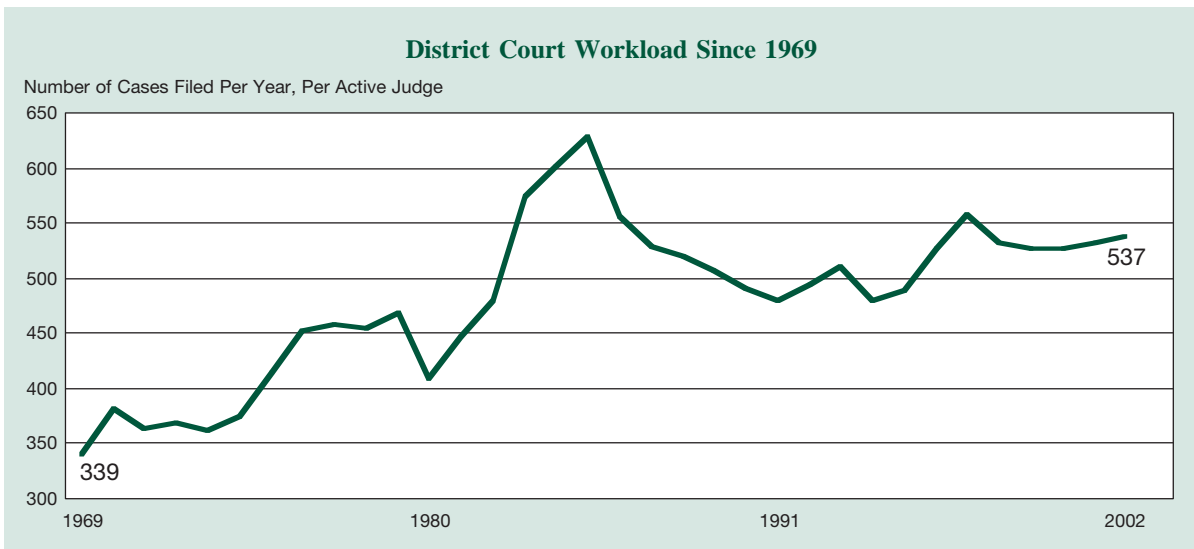


Chart E

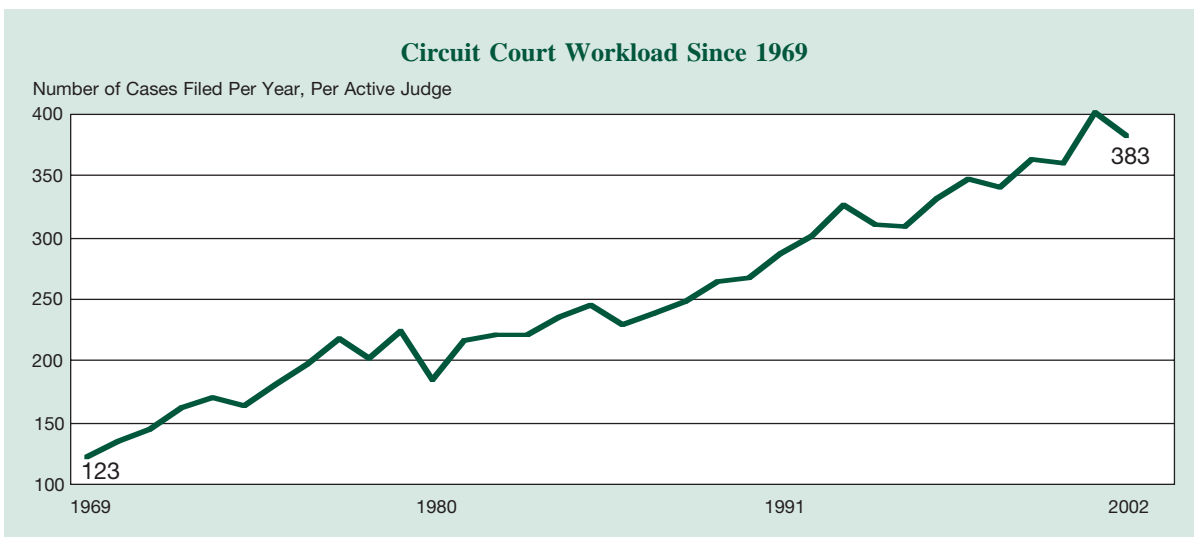


Chart F

123 cases per judge in 1969 to 383 in 2002, a 211.4 percent increase (see Chart F).

Individual judges' caseloads would be even greater absent the significant contributions of senior judges, who retire from regular active status but retain their office and continue to carry substantial caseloads.⁶³ Currently, approximately 375 senior judges assist in the work of the courts of appeals and the district courts. In 2002, they participated in almost 16 percent of the appeals and presided over nearly 19 percent of the trials.

⁶³ Judges on senior status, unlike judges who retire from judicial office, are required to carry at least 25 percent of a normal workload (although most assume a much heavier load) and, in turn, receive any adjustments to their salary that are awarded to regular active Article III judges.

Moreover, not only has the quantity of work increased, the nature of the work has changed as well. Over the last 30 years, the work of Federal judges has become much more complex. Judges now are called upon to resolve many of the major legal, political and social disputes of our time. Consider, for example, the litigation arising from this nation’s response to the terrorist attacks on September 11, 2001. In addition, rapid developments in information technology, medical science, e-commerce and globalization are spawning novel and complicated disputes requiring timely and intellectually rigorous adjudication, challenging the Federal judiciary as never before. In short, their jobs demand more and more, but judges are effectively being paid less and less.

The Debilitating Impact of the Erosion of Judicial Pay

The Constitutional guarantees of life tenure and an undiminished salary are hallmarks of our Federal judiciary, providing a mantle of independence and integrity for judicial decision-making, while demanding in return a lifetime commitment to public service. That commitment to public service is perilously weakened when financial considerations deter excellent candidates from seeking appointment to the Federal bench and motivate sitting judges to resign prematurely from office to enter private practice or some other form of lucrative employment.

A. The Adverse Impact Upon the Retention of Judges

Life tenure is often depicted as not only protecting impartial decision-making, but also as a major “perk” of the job. It is not quite such an attractive “perk” when one considers that the longer a judge remains on the bench, the more that judge is penalized by the absence of automatic pay adjustments designed to keep pace with inflation.

It is not surprising, therefore, that members of the Federal judiciary increasingly are choosing *not* to remain on the bench. And increasingly, judges are departing from the bench at an earlier age, eschewing senior status in favor of returning to the private practice—chiefly because of economic reasons.⁶⁴ Even though the absolute number of departures is not large, the trend is alarming because the number is increasing significantly (even after factoring in the overall growth of the judiciary) in a profession where there is an expectation, grounded in the Constitution, of life tenure. The Secretary of the Judicial Conference of the United States has observed, “For judges to emulate the pattern of executive branch Federal service as a mere steppingstone to reentry into private sector law

⁶⁴ Appendix III summarizes the remarks of several recently retired Federal judges who have openly talked about why they have left the bench.

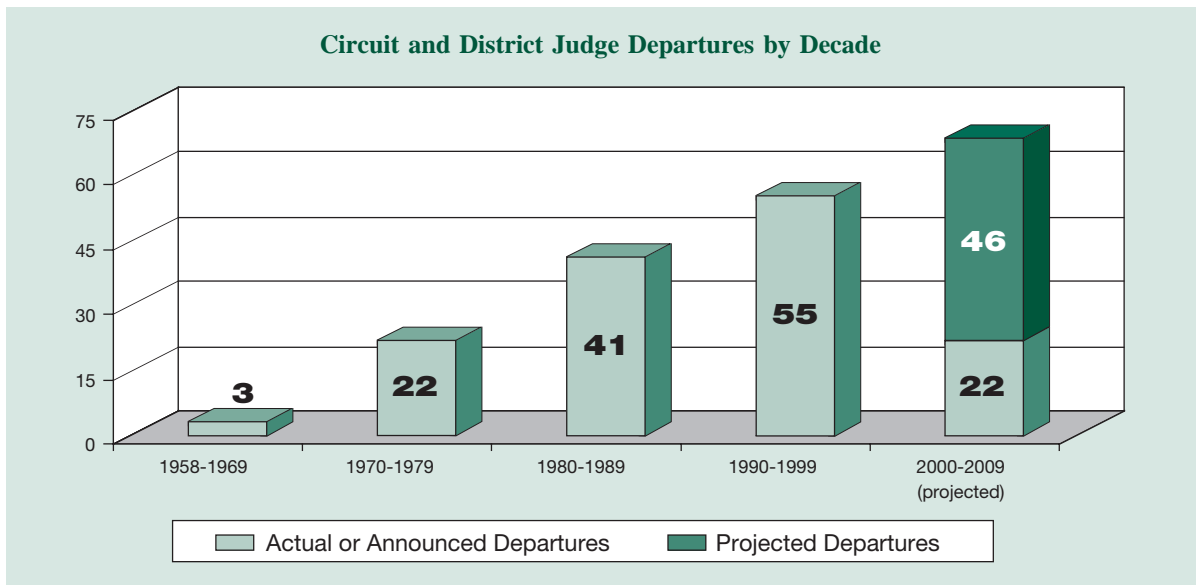


Chart G

firm practice is inconsistent with the traditional lifetime calling of Federal judicial service.”⁶⁵ Undeniably, this development weakens our judicial system.

Between 1990 and April 2003, 77 Article III judges resigned or retired from the Federal bench and many of them returned to private practice (see Chart G).⁶⁶ Those 77 Article III judges account for more than half of the 143 Article III judges who have left the Federal bench since 1958. Sixty-four of these 77 judges were lured to other non-judicial jobs: fifty-one (nearly 66 percent) entered the private practice of law (including private dispute resolution firms); nine judges accepted appointments to other positions in government or quasi-governmental entities; four judges took positions in the field of education (including teaching at universities); and one judge accepted an appointment to the International War Crimes Tribunal at The Hague. Sixteen of those 77 judges departed before reaching retirement age. They, in particular, departed at great personal cost, having lost all retirement benefits, including their right to an undiminished salary for life. For these judges, the incentive to leave the bench must have been very great indeed.

Premature departures from the bench impose both real and intangible costs upon the Third Branch, as the Federal judiciary loses some of its most capable and experienced men and women. More alarming, the rate of departures is increasing in tandem with the decreasing rate of real salary levels for Federal judges and the escalating legal salaries in the private sector.

When an experienced Federal judge retires or resigns, the caseloads of the remaining judges on that court, by necessity, increase until the resulting vacancy is filled (a process that can take months, and

⁶⁵ Prepared Statement of Leonidas Ralph Mecham, Secretary, Judicial Conference of the United States, to the National Commission on the Public Service, June 14, 2002, at 4-5.

⁶⁶ Seven of the sixteen judges who left the bench before reaching retirement age have resigned in the last thirty months.

sometimes years). In addition, the judiciary loses the valuable skills and insights of the departing jurist—assets that are not quickly or easily replaced. Rarely do new appointees join the bench with the range of judicial capabilities and experience that years of service confer.⁶⁷ Moreover, the loss of the services of judges who elect complete retirement from judicial office rather than senior status is especially costly to the government. Not only does the judiciary lose experienced jurists, but, in addition—because judges who take senior status and continue to work part time receive essentially the same salary as judges who elect complete retirement—the judiciary loses the labor that would have been provided at no extra expense had the judges leaving the bench instead taken senior status.

It is worth emphasizing here that, while the pay problem also affects the Executive Branch severely, the problem has an added dimension in the case of judges. Executive Branch officials accept appointments for a limited period of years and anticipate that they will move to other, potentially more lucrative positions at the end of their term. Judges, on the other hand, accept lifetime appointments and indeed are only hitting their full stride at about the same time an Executive Branch employee may be completing his or her service.

B. The Adverse Impact Upon the Recruitment of Judges

Inadequate judicial pay also disadvantages the Federal judiciary in the “war for talent.”⁶⁸ Those responsible for recruiting and reviewing judicial candidates report that the insufficiency of salaries is the single most important factor discouraging potential candidates from seeking judicial appointment.⁶⁹ Its impact upon potential judicial candidates will inevitably affect the composition of the Federal bench.

In his last two Year-End Reports,⁷⁰ the Chief Justice of the United States observed that judicial pay is not a deterrent to individuals who are already in public service, but that it is a strong disincentive for experienced lawyers in private practice who are earning substantially higher salaries. Noting that their varied experiences bring a perspective and independence that is vital to the judiciary, he warned that we stand to lose this pool of potential candidates if the inadequacy of judicial salaries is not rectified soon.

An analysis of the occupations held immediately prior to the confirmation of all district and circuit

⁶⁷ Former Chief Justice Warren Burger noted, “It takes five years for a qualified attorney to reach peak efficiency as a Federal judge.” CORPORATE COMMITTEE FOR FAIR COMPENSATION OF THE FEDERAL JUDICIARY, *FEDERAL JUDICIAL SALARIES: A GAMBLE WITH THE FUTURE*, at 1 (1985).

⁶⁸ *Managing Human Capital in the Twenty-First Century: Hearing Before the Subcom. On Gov’t Management, Restructuring, & the Dist. Of Columbia, Senate Comm. On Governmental Affairs*, 106th Cong., 2d sess., at 18 (Mar. 9, 2000) (remarks of Sen. Richard Durbin).

⁶⁹ See e.g., Prepared Statement of Leonidas Ralph Mecham, *supra* note 65 at 9 (reporting that Chief Judge Roger Vinson for the Northern District of Florida recently observed, “There was a time when I always recommended a Federal judgeship to someone considering it, without any hesitation or qualification. Now, however, I hedge a lot—especially for those who are not independently wealthy. The compensation is simply not comparable to the private sector, and the prospects are that it will get worse instead of better.”).

⁷⁰ 2001 YEAR-END REPORT at 2-3 (January 1, 2002); 2002 YEAR-END REPORT at 2-3 (January 1, 2003).

court judges appointed during the Carter, Reagan, George H. Bush, Clinton and George W. Bush presidencies support Chief Justice Rehnquist's apprehension. A review of judicial appointments from 1977 through 2002 reveals a pronounced trend for district court appointees increasingly to come from the public sector. During President Carter's term of office from 1977 through 1981, 49.5 percent of his district court appointees came from the public sector. During President Reagan's term, 50.3 per cent of his district court appointees left jobs in the public sector to join the bench. That number increased to 52.7 percent during the presidency of George H. Bush, and climbed to a high of 59.7 percent for President Clinton's appointees. This trend has continued with President George W. Bush's district court appointees through the 107th Congress: 57.5 percent of them have come from the public sector.⁷¹

White House Counsel Alberto Gonzales recently made the same point in an interview. He said:

We are 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. The judiciary suffers when it cannot attract top tier lawyers for whatever reason.⁷²

The average age at time of judicial appointment is 52 years for circuit court judges and 50 years for district court judges.⁷³ By that age, most individuals who have been tapped for the bench have spent 20 to 25 years building their careers. Most, if not all, are stars in their profession and at the pinnacle of their earning power. And, like many other individuals entering their sixth decade, they face mounting expenses because of big-ticket items, such as college tuition for their children or long-term health care for their parents or in-laws. Yet, this is the time we ask them to forego their private-sector salaries and accept a salary that is a fraction of the size and not even protected from the deleterious effects of inflation. It is no wonder that salary considerations weigh heavily in the decision to join the Federal bench.

The Federal judiciary benefits from the collective wealth of experience and expertise of its jurists who have served in different capacities in the public and private sectors. It is enriched by their diverse backgrounds, including race, gender, religion, financial status and career path. As we continue to strive for a Federal judiciary that is racially, ethnically and religiously diverse, we cannot afford to lose the diversity of the bench that comes from the appointment of individuals of varying financial means who have served in different capacities in both the public and private sectors.

⁷¹ These statistics were derived from data on the website of the Federal Judicial Center at its History of the Federal Judiciary web page (http://air.fjc.gov/history/judges_frm.htm) and were corroborated by Sheldon Goldman, Professor of Political Science, University of Massachusetts, Amherst. He is a noted expert in the field and long-time author of articles examining the Federal judicial appointments of each administration, which are published periodically in *Judicature*, the journal of the American Judicature Society.

⁷² THE THIRD BRANCH, May 2002 at 10.

⁷³ The statistics reflect the average age of Federal judges who joined the bench from 1999–2002. The data used to develop these statistics were compiled by the Federal Judicial Center and accessed through its History of the Federal Judiciary website, *supra* note 71.

Reform Initiatives

The framers of the Constitution appreciated the relationship between compensation and independence. They realized that the vitality and well-being of the judiciary depended on furnishing judges with adequate compensation that was protected from retaliatory pay cuts, and that inflation could render once-satisfactory compensation inadequate. Congress and the President were entrusted with the power to set the pay of Federal judges and to make subsequent upward adjustments, as needed, with the expectation that they would exercise this power with due regard for the independence and importance of the Third Branch. During the last decade, this responsibility has been neglected.

Judicial pay is now so inadequate that it threatens the vitality of the institution. Judicial pay needs to be raised to fair and adequate levels immediately, and the current pay-setting mechanisms need to be reformed so that judges don't have to beseech Congress for future salary adjustments—a spectacle that is, at best, unseemly and, at worst, destructive of the Third Branch's independence. It is incumbent upon the Administration and Congress to exercise the power entrusted to them by taking decisive action now.

The American Bar Association and the Federal Bar Association therefore urge the Administration and the 108th Congress to take the following steps to provide for immediate and lasting pay relief:

- Congress and the President should promptly enact legislation to substantially raise the base salaries of Federal judges. The salary increase needs to be large enough not only to restore denied Employment Cost Index adjustments for fiscal years 1995-97 and 1999, but also to raise judicial salaries to levels that reflect the importance of the judicial function and ensure their reasonable relationship with salaries of professionals in comparable jobs.

Bipartisan legislation (S. 1023 and H.R. 2118) to increase Federal judicial salaries by 16.5 percent recently was introduced in Congress and endorsed by President Bush. The legislation, if enacted, will boost judicial salaries by an average amount of \$24,948. This is an encouraging and appropriate step in the right direction.

- Congress and the President should amend the Ethics Reform Act of 1989 to break the statutory link that couples cost-of-living adjustments for Federal judges with those of Members of Congress.
- Congress and the President should repeal Section 140 of Pub. L. No. 107-77, which requires explicit Congressional approval of any cost-of-living adjustment for Federal judges.
- Congress and the President should enact legislation to re-establish a salary review commission, similar to past Quadrennial Commissions, to recommend pay rates for Members of Congress, judges and appointed officials in top Executive Branch positions on a regular basis. Any such commission should be adequately funded and its members appointed promptly to ensure that it is operational soon after its authorization.

Appendix I

Salary Linkage Among Judicial, Legislative and Executive Branches

Judicial	Legislative	Executive	FY 2003 Salary
		President*	\$400,000
Chief Justice of the United States	Speaker of House	Vice President	\$198,600
Associate Justices, Supreme Court			\$190,100
	President Pro Tem of Senate Other House & Senate Leaders	Executive Level I Cabinet Secretaries Attorney General	\$171,900
Court of Appeals Judges			\$164,000
District Court Judges	Senators	Executive Level II	\$154,700
International Trade Court Judges	Representatives	Deputy Cabinet Secretaries	
Court of Claims Judges		CIA Director	
Bankruptcy Judges** Magistrate Judges			\$142,324

* Legislation enacted in 1999 (Pub. L. No. 106-58, §644, 113 Stat. 430, 477) provided for the doubling of the President's salary, from \$200,000 to \$400,000, effective upon the inauguration of the President in 2001. This marked the first increase in the salary of the President since 1969.

** Salaries for bankruptcy and magistrate judges (who are judicial officers of the United States district courts) are set at a level equal to 92 percent of a district judge's pay.

Appendix II

Effect of Cost-of-Living Adjustments on Congressional and Judicial Salaries Since 1993

Fiscal Year	COLA *	Circuit Judges	District Judges	Members of Congress
2003	3.1%	\$164,000	\$154,700	\$154,700
2002	3.4%	\$159,100	\$150,000	\$150,000
2001	2.7%	\$153,900	\$145,100	\$145,100
2000	3.4%	\$149,900	\$141,300	\$141,300
1999	0	\$145,000	\$136,700	\$136,700
1998	2.3%	\$145,000	\$136,700	\$136,700
1997	0	\$141,700	\$133,600	\$133,600
1996	0	\$141,700	\$133,600	\$133,600
1995	0	\$141,700	\$133,600	\$133,600
1994	0	\$141,700	\$133,600	\$133,600
1993	3.2%	\$141,700	\$133,600	\$133,600

* Cost-of-Living Adjustment: In 1994, no federal employee received a COLA. In 1995, 1996, 1997, and 1999, for political reasons, Congress decided to deny itself COLAs. Judges were prevented from receiving COLAs in those years, too, because of the statutory linkage of their COLAs to those of Members of Congress.

Appendix III

Departed Judges Speak Out

Some judges who have prematurely departed from the Federal bench have talked openly about how their inadequate judicial salaries affected their decision to resign. Their comments are summarized below.

- **Judge Joe Kendall**, a district judge in the Northern District of Texas, resigned in January 2002 after nine years of service to enter private practice. He stated, “I need to do what I’m doing...I have financial concerns.” Judge Kendall has two children who will soon be college-bound, and a third child with special needs.⁷⁴
- **Judge Alfred J. Lechner, Jr.**, a district judge in New Jersey, resigned in October 2001 to reenter private practice. He stated that with three children in college, his tuition bills were considerably more than his take-home pay as a district judge.⁷⁵ Despite having served on the Federal bench for 15 years, Judge Lechner resigned with no entitlement to either an immediate or deferred annuity.
- **Former Chief Judge Edward Davis**, a district judge in the Southern District of Florida, retired from judicial office in July 2000 after 20 years of judicial service to enter private practice, stating that a better salary would guarantee the long-term care of a handicapped family member. Judge Davis observed, “If I had been sure I’d have enough money to care for the child, I would not have left the bench, but I couldn’t feel secure about the future. We’d been assured we would receive cost-of-living increases after the pay raise in 1989. Then Congress said no to the promised COLAs.”⁷⁶ Judge Davis also stated, “Something is horribly wrong when my law clerks can leave me, after serving two years, and go to New York and make more money than I made as a judge.”⁷⁷ Judge Davis is now associated with the same law firm as former **Chief Judge Joseph Hatchett** of the Eleventh Circuit U.S. Court of Appeals, who also “retired” to private practice in May 1999 after having served for 20 years.
- **Judge Michael Burrage**, a district judge in the Eastern District of Oklahoma, resigned in

⁷⁴ *Insecure About their Future: Why Some Judges Leave the Bench*, THE THIRD BRANCH, Feb. 2002, at 1.

⁷⁵ *Id.*

⁷⁶ *Id.* at 2-3.

⁷⁷ *Lagging Judicial Pay Gives Some People Second Thoughts About Careers on the Bench*, THE WASHINGTON POST, Mar. 11, 2001, at C-2.

March 2001 after six years of service (without entitlement to an immediate or deferred annuity) to return to private practice. He stated, “Congress kept expanding Federal jurisdiction without increasing our courts’ resources. When we were prevented from earning honoraria after the Ethics Reform Act, and still didn’t get the promised annual COLAs, well, it was time to leave.”⁷⁸ Judge Burrage warned that the pay gap will shrink the applicant pool to “people who are filthy rich and for whom salary makes no difference. It is going to cut out a segment of very capable people.”⁷⁹

- **Judge Carlos Moreno**, a district judge in the Central District of California, resigned in October 2001, after three years of Federal judicial service to accept an appointment to the California Supreme Court. He stated, “My leaving the federal court had nothing to do with dissatisfaction, unless you mean the overwhelming workload and the lack of pay.” Judge Moreno observed that as a California Supreme Court justice, he earned more than he did as a Federal district judge and that his benefits were better, with full medical and dental coverage.⁸⁰
- **Judge James Ideman**, also a district judge in the Central District of California, resigned from the Federal bench in September 1998, after having served for 14 years, to return to the state bench in California where he previously had been a judge for over 5 years. At the time, Judge Ideman stated that he retired because of “a sense of betrayal by Congress, which has denied Federal judges regular cost of living increases, allowing inflation to eat away at my salary.”⁸¹
- **Judge Lisa Hill Fenning**, a bankruptcy judge in the Central District of California, left the bench in 1999, citing financial reasons. “I have a daughter at Yale, two high schoolers and one middle schooler,” she said. “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.”⁸²
- **Judge Charles Legge**, a district judge in the Northern District of California, retired from the bench in June 2001, after having served for 17 years, and accepted a job with JAMS, a private firm comprised of former Federal and state judges who provide dispute resolution services. Judge Legge stated that he retired for workload and compensation reasons. Referring to his family, Judge Legge stated that he wants to “make a financial contribution to their lives.” **Magistrate Judge Edward Infante**, also of the Northern District of California, joined Judge Legge soon thereafter. According to court experts, Judge Infante has “mediated more class action settlements than any human being in the country.”⁸³

⁷⁸ See THE THIRD BRANCH, Feb. 2002, at 3.

⁷⁹ See THE WASHINGTON POST, Mar. 11, 2001, at C-2.

⁸⁰ See THE THIRD BRANCH, Feb. 2002, at 3, 12.

⁸¹ LOS ANGELES DAILY JOURNAL, June 21, 1999.

⁸² *Id.*

⁸³ JAMS Raids Fuel Brain Drain Fears, THE RECORDER, April 26, 2001.

Research and Writing

**Denise Cardman, Senior Legislative Counsel
American Bar Association**

**Bruce Moyer, Government Relations Counsel
Federal Bar Association**

American Bar Association

740 15th Street, NW
Washington, DC 20005-1022
Telephone: (202) 662-1760
Fax: (202) 662-1762
E-Mail: cardmand@staff.abanet.org
Website: www.abanet.org

Federal Bar Association

2215 M Street, NW
Washington, DC 20037-1416
Telephone: (202) 785-1614
Fax: (202) 785-1568
E-Mail: grc@fedbar.org
Website: www.fedbar.org

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