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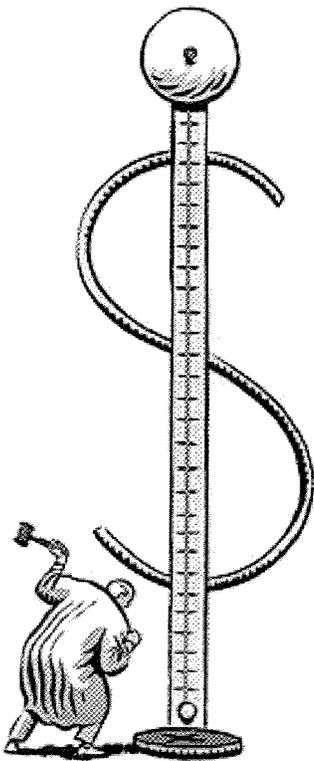
COMMENTARY

## Judgment Pay

By **PAUL A. VOLCKER**

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Anyone appearing before a judge in a federal courtroom -- plaintiff, defendant, juror -- will feel apprehensive. There are big issues at stake. Personal reputation and family fortunes, even imprisonment, may be at risk. Business practices can be questioned. The actions of government itself, even the constitutionality of its laws, can be challenged.



David Gothard

What we have a right to ask -- what we must demand -- is that the cases be decided fairly, by capable judges acting in a context of high professional standards and personal independence. It is those qualities that the framers of our Constitution sought to protect by providing lifetime appointment for federal judges and forbidding reduction in their compensation. Yet those qualities can also be eroded, not consciously, not by

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design, but by an insidious neglect. The simple fact is that judicial compensation has not kept pace with reasonable requirements.

The historical pattern is unambiguous. The last comprehensive review of government salaries, including the judiciary, took place in 1989. Twenty years after the previous full-scale realignment of federal salaries in 1969, the concept and goal set out were clear: the substantial past shortfall -- relative to the cost of living and private-sector pay over the previous 20 years -- would be at least partly corrected. Thereafter, pay was to be annually adjusted based on increases in private-sector wages in order to keep pace with those changes and inflation.

The approach has failed. Congress has simply refused to make good on its expressed goal, and has not even provided cost of living adjustments. It has now been 16 years since this last judicial pay raise took full effect. Since that time, average American workers' wages, when adjusted for inflation, have risen 18.5%. During that same period, federal judges' real, inflation-adjusted pay has declined 10.8%, while the pay of most other federal workers, when adjusted for inflation, has risen by 15.1%. The decline in real pay of district judges has dropped by 25% since the earlier 1969 review.

Political inhibitions over time, gradually and for a while imperceptibly, exact a real cost. Specifically, a judicial system designed to attract men and women of broad experience and independence of judgment will be weakened by the reality of strained personal economic circumstances. And now there is evidence from many of the 100 federal judges who have left the bench in recent years that financial considerations were factors in their decisions.

The force of that concern was brought home to me a few years ago. Instead of feeling any apprehensiveness about appearing before a federal judge, I found myself in a reversal of roles. I was chairman of the National Commission on the Public Service -- a group of men and women with long service in both Democratic and Republican administrations deeply disturbed by the strong evidence of eroding trust in government. In that capacity, I received a request from then Chief Justice William Rehnquist and Associate Justice Stephen Breyer to appear before the commission. They urgently wanted to express their concern about the erosion in judicial compensation and the impact it was having on recruiting and keeping federal judges. Now, that concern has been forcibly reiterated and amplified by present Chief Justice John Roberts in his annual report on the judiciary.

No one, not the two chief justices, not their judicial associates, not I, not my fellow commissioners, certainly not the American public or its elected representatives, argue that judicial salaries need to approach those of successful legal practitioners in the private sector (it has recently been reported that remuneration of partners in the nation's large law firms now typically exceeds \$1 million a year). At the other extreme, it is surely anomalous that federal district court judges make less than the salary plus bonuses of newly minted lawyers in those same prestigious firms in New York, Washington and other big city firms.

The judiciary should -- and historically has -- drawn upon distinguished academics or lawyers serving in different branches of government. Others, over a long career in private practice, have attained financial independence while family responsibilities have diminished. But even among those groups, compensation has become a relevant consideration. More acutely, there are the active practitioners in private law "at the top of their game" -- men and women potentially attracted to public service but with families to raise -- unable or unwilling to accept so small a fraction of their current and potential earnings. And, in fact, the number of appointees from those ranks has been declining.

So what is the reasonable level of judicial compensation? Consider the district courts where the greatest number of judgeships are. While judges cannot expect to equal the salaries of partners in large law firms, the National Commission determined that their compensation should be comparable to that of law school deans, senior professors and other nonprofit leaders. Today, at \$165,200, district judge salaries fall more than 50% below what many law school deans or their top professors make. Moreover, unlike those academics and the leaders of nonprofit institutions, there is very limited possibility of earning other income.

And consider this: if the salary of district court judges had increased from their actual salary in 1969 by the same percentage as the total percentage change in American worker wages from 1969 to 2006, district judge compensation would be \$261,300. That number is consistent with the recommendation of the National Commission on the Public Service.

Three years ago, the National Commission on the Public Service pointed to judicial pay as "the most egregious example of the failure of federal compensation policies." That failure was not been repaired; Congress did pass legislation in 1999, effective Jan. 20, 2001, to double the president's salary to \$400,000 from \$200,000. Now, at long last, my sense is that Congress and the president may finally be prepared to take a new look at judicial salaries, to deal with the political resistance and to recognize what is ultimately at stake.

The truth is there should be no shortage of men and women interested in federal judgeships. Those positions satisfy an urge for public service. They convey (or should convey) a sense of honor and prestige in the community. They can (or should) provide along with intellectual stimulus a sense of independence conveyed by lifetime appointment and financial stability.

The authors of the Constitution took care to protect those qualities by providing a reasonable assurance of financial security for our federal judges. Plainly, the time has come to take heed of the deep concerns of two chief justices and to honor the constitutional intent.

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