

# **Scripps Howard News Service**

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### **Judges Should Be Paid Properly**

By Dan K. Thomasson, Scripps Howard News Service

Back in 1968 I asked then Supreme Court Justice Abe Fortas about a sweetheart deal he and several other federal jurists had with a leading real estate magnate that reduced dramatically their income tax liabilities. The limited partnerships were perfectly legal at the time even though there were obvious ethical implications not the least of which was that the property in which the judges shared benefits was 99 percent occupied and 100 percent white and had been the subject of an inquiry by the Federal office of civil rights.

Fortas' reply was startling because it was delivered with a candor bordering on bitterness. He said he really didn't pay much attention to his tax position but merely signed what his accountants put before him every year, adding that in his current job he didn't make enough money to worry about it. He said when he made real money in private practice taxes were more of a concern to him. Before joining the court he had belonged to a more prominent Washington law firms.

That conversation came back to me recently when the matter of judicial salaries once again became a major topic on Capitol Hill. Congress must decide whether to increase judicial salaries by a sum that approaches 50 percent as proposed in a bipartisan Senate bill, a raise long argued by proponents as necessary to improve the quality of those who occupy the federal bench. It was a long-term goal of the late Chief Justice William Rehnquist and is supported by his successor, John Roberts, who has said that underpaying judges has provoked a constitutional crisis by threatening the independence of the judiciary.

Currently, salaries range from \$165,200, tied to that of a member of Congress, for a district judge to \$212,100 for the chief justice. That amount is augmented by the fact that it is for life.

Opponents contend that there is no evidence that higher salaries would result in a better quality of applicants for federal service. They say that raising the pay to \$246,000 still would not attract super lawyers who can make five or six times that annually. Also, they argue that there seems to be no shortage of those seeking the job despite a steady increase in bench departures.

One need only look at the quality of the American judicial system from the lowest elected level to the federal bench to understand that while paying a proper wage for these enormously important positions isn't the entire answer for improvement, it would make a major difference. Far too many judges are among the least successful in private practice. Those who aren't often have independent wealth that allows them the luxury of serving at half of what they generally could make privately.

Law school deans and professors earn far more than a federal district judge, sometimes twice as much. As a friend of mine who is departing the bench noted, prestige goes only so far when

trying to feed and educate a family.

The plight of the judiciary at every level mirrors that of public officials from county commissioners to Congress to the White House. We entrust these servants with enormous responsibility without paying them at a level commensurate with the importance of their jobs. Congress and, for that matter, the presidency are perfect examples. There is no doubt in my mind that dramatically increasing congressional pay would produce a better crop of lawmakers and would limit the temptations for corruption.

Doing the same for the presidency is just common sense and equity. Why should we not pay those in the most demanding job in the world what it is worth? Why should one have to be independently wealthy to become president?

Since the beginning of the public school system, we have done the same to teachers, entrusting our children to those who are drastically underpaid, counting on their personal dedication to offset the hunger pangs. As a result of this skinflint approach we have fostered unions, driven men out of the lower grades and left the system in a shambles.

Fortas was a brilliant lawyer and jurist. But he also reflected anger at the lack of just compensation for the position he and his colleagues held. This resentment ultimately led him to ethical gaps that forced his resignation from the Supreme Court and left him in disgrace. Who knows if that could have been avoided by higher pay, but it is vital that judges earn a salary that matches the importance of their assignment.

(Dan K. Thomasson is former editor of the Scripps Howard News Service.)