

**Judging Pay;
A Senate bill addresses the 'constitutional crisis'
of an underpaid federal judiciary.**

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JOHN G. ROBERTS JR. wants a raise. In a report issued on New Year's Day, the chief justice of the Supreme Court argued long and hard that federal judges should earn more money. Underpaying jurists, he said, is threatening the independence of the judiciary and creating a "constitutional crisis." The Senate is now considering a bill, whose sponsors include both the majority and minority leaders, that would remedy the purported crisis by raising pay for federal judges by 50 percent.

It's hard to claim that federal judges are in the poorhouse, and so Chief Justice Roberts shrewdly avoided naming specific salary figures (current pay ranges from \$165,200 for district judges up to \$212,100 for chief justice of the Supreme Court). He also didn't mention that judges can receive their full salary for life, even after retirement, without having to make any contributions to fund this pension.

Instead, the chief justice argued for higher pay on comparative grounds, some of them misleading. He, and the Senate bill's supporters, have contended that compared with pay in 1969, real income paid to federal judges has declined 23.9 percent. This is accurate, but using 1969 as a baseline overstates the case. Cost-of-living adjustments aside, judges are given raises infrequently, but when they are, their salaries increase by sizable amounts. A big raise was given in 1969, so the real salary any year since then will look small by comparison. Perhaps more meaningful is the median salary from 1969 to 2006, which, adjusted for inflation, is not much higher than what judges receive today.

The more valid argument for a raise is the growing gap between federal judiciary pay and salaries received by comparably successful lawyers who have chosen other career paths. Law school deans and senior professors at the nation's top schools earn twice as much as district judges, whereas district judges earned higher salaries than many of their top academic counterparts in 1969. And, of course, federal judges earn far less than the most successful practicing attorneys, which has long been the case to varying degrees.

This relatively lower pay doesn't appear to be hurting the quality of the federal judgeship applicant pool. Federal judges also are not engaging in a mass exodus to the private sector; bench departures have indeed increased over the last few decades, as supporters of the pay raise say, but so have total judgeships by a nearly proportional rate. Higher pay would be unlikely to greatly increase the number of qualified applicants from the private sector. A lawyer who doesn't want to exchange his earnings of \$1 million per year in a corporate partnership for a prestigious

and influential federal judgeship that pays \$165,200 probably also won't leave for one that pays \$246,800.

Still, Congress is right to reconsider how judicial pay works, since it's far from a flawless system. Judicial pay should be unlinked to congressional pay, for one. It should also be adjusted for cost of living annually (so real income doesn't fluctuate greatly from year to year) and regionally (so a judge in New York isn't earning the same pay as a judge in Little Rock). A real pay raise -- though not 50 percent -- is called for. In the long run, raising judicial pay might sway superstar lawyers who are on the fence about contributing to academia or federal service.