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By Steve Lash

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## 2 justices tell Congress judges need raises

WASHINGTON -- Supreme Court Justices Stephen G. Breyer and Samuel A. Alito Jr. crossed Capitol Hill on Thursday to urge Congress to raise the salaries of federal judges, saying stagnant judicial pay is discouraging the legal profession's best from joining or staying on the bench and could undermine the quality of American justice.

Breyer, appearing before a House panel, said being a member of the federal judiciary is a "treasure" that will lose its value for many current and would-be judges if lawmakers continue to deny them a pay raise. Judicial salaries, in terms of real dollars, have not kept up with pay increases in other jobs, particularly at private law firms, he said.

Salaries of private-sector attorneys have skyrocketed, prompting many judges to leave the bench and causing others to contemplate stepping down, having lost faith that Congress will provide them financial relief, Breyer said. The departure of experienced judges due to the increasing pay disparity is "slow, it's insidious and over time you find that the treasure is gone," he told a House Judiciary subcommittee.

Breyer wistfully recalled his early days as a lawyer in the 1960s, when members of the legal profession regarded a federal judgeship as a wonderful "capstone" to a career. But with judicial salaries trailing other jobs and not keeping up with inflation, judges and lawyers are treating the judiciary, perhaps not consciously, as a "stepping stone" to lucrative private salaries, he said.

"It was unheard of [back then] that a federal district judge would leave to take a better paying job," Breyer said. Now, with the disparity so great, thoughts of leaving the bench enter the minds of most judges, though these thoughts "can be so subtle," Breyer told the Subcommittee on Courts, the Internet and Intellectual Property.

Alito said that the U.S. District Court for New Jersey has been hard hit since 2000, as seven judges have left not for retirement but to go into the private sector. While the quality of the federal judiciary remains strong, the stagnant pay has been demoralizing and frustrating for judges and could compel more to leave the bench, said Alito, who served on the 3d U.S. Circuit Court of Appeals in Newark, N.J., before becoming a justice.

"We are approaching a very unfortunate tipping point," Alito told the subcommittee. "Surely, over time, that [decline in quality] will happen."

Federal judges' salaries have dropped 23.9 percent since 1969, when adjusted for inflation, while the average American worker's pay has climbed 17.8 percent during that span, according to data compiled by the Administrative Office of the U.S. Courts.

Breyer and Alito's call for increased judicial pay was well received by many members of the House Judiciary Committee and its courts subcommittee.

Rep. John Conyers Jr., D-Mich, the committee chairman, said that if Congress does not raise judicial pay "we will be limiting our judiciary to people of more privileged background" who are not so dependent on annual salaries.

Rep. Lamar S. Smith of Texas, the committee's ranking Republican, added, "We simply have to pay them more" to retain and recruit the best and brightest for the federal bench.

But Rep. Howard Coble of North Carolina, the subcommittee's ranking Republican, said judges do not need a pay raise as they are already in the top 2 percent of American wage earners and enjoy the prestige of being on the federal judiciary.

With their joint congressional appearance, Breyer and Alito became the latest in a string of justices who this year have urged lawmakers to raise the pay of federal judges. These justices, while saying they enjoy their jobs and are not seeking pay raises for themselves, have asserted that continued congressional inattention to the pay issue will harm the federal judiciary as a whole.

"To become a Supreme Court justice, lightning has to strike twice," Breyer said in explaining how fortunate he feels to be on the high court. But lower-court judges, and lawyers contemplating a nomination to the federal bench, must be discouraged when they see salaries not keeping pace with inflation and being so greatly outpaced by the private sector, Breyer said.

"It's all that snowball [effect] that eventually changes the institution" of the federal judiciary, he said.

Chief Justice John G. Roberts Jr. on Jan. 1 began the high court's call for greater judicial pay. In his annual State of the Federal Judiciary message, Roberts said low pay has compelled some judges to leave for the private sector and discouraged talented lawyers from accepting nominations to the bench.

Justices Anthony M. Kennedy and Clarence Thomas made similar comments in March during their appearance before a House Appropriations subcommittee considering the Supreme Court's budget for fiscal year 2008, which begins Oct. 1.

Federal appeals court judges earn \$175,100 annually and U.S. district judges are paid \$165,200 per year, according to the Administrative Office of the U.S. Courts. Roberts earns \$212,100 annually as chief justice while the other justices are paid \$203,000 per year, the Supreme Court press office reported.