COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION

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The District of Columbia Bar

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COMMENTS OF THE SECTION ON COURTS,
LAWYERS AND THE ADMINISTRATION OF JUSTICE
OF THE D.C. BAR ON
PAY LEVELS FOR FEDERAL JUSTICES AND JUDGES
OF THE COURTS OF THE UNITED STATES

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Steering Committee of the
Section on Courts, Lawyers
and the Administration
of Justice

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COMMENTS OF
THE COURTS, LAWYERS AND THE
ADMINISTRATION OF JUSTICE SECTION
OF THE D.C. BAR
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PAY LEVELS FOR JUSTICES AND JUDGES
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We understand that under the Federal Salary Act of 1967, the Commission on Executive, Legislative and Judicial Salaries must report to the President by December 15, 1988, its recommendations for changes in the compensation of government officials. The report will focus, among other things, on the Chief Justice and Associate Justices of the Supreme Court of the United States, and on Judges of the United States Courts of Appeals and District Courts. The Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar submits these comments to the Commission for its consideration in preparing this report.

The imperative that should guide the Commission is the need to attract the most qualified attorneys to the federal bench. Federal judges are the cornerstone of our system of justice. We have been fortunate in the quality of our Judiciary. However, in the view of our Section, the current pay levels of federal judges make it more difficult both to recruit the best lawyers for

the bench, and to retain those judges already sitting. This is particularly true with respect to judges who reside in high-cost urban areas, and we believe that it would be useful for the Commission to consider implementing cost-of-living differentials which could ease the burden on judges living in those localities.

Though it has recently moderated, inflation over the last 20 years has significantly decreased the real income of federal judges compared to 1969 salary levels. The salaries of Supreme Court Justices have declined in real terms by 43% over that period, while the salaries of other federal judges have declined about 30%.

Judges have received only two major pay increases over the last two decades -- one in 1977, and a 10% increase in 1987. At the time President Reagan signed the Federal Salary Act of 1987, he expressly recognized that this increase was but a first step in rectifying the loss in real income suffered by federal judges.

It is particularly disturbing that while the real income of federal judges has been declining, compensation for other members of the legal profession has increased substantially. At some major law firms, an associate two years out of law school earns more money than a Supreme Court Justice or a federal judge with 20 years on the bench. Young law clerks for federal judges, upon leaving that position, may

immediately earn more than the judge for whom they worked. Many, if not most, judges could earn several times their current salary in private practice.

While a differential between the compensation for public service and private practice is both expected and appropriate, we believe that this differential for federal judges has grown too large. Judges are under increasing pressure to leave the bench in order to provide for their families and to educate their children. Resignations from the Federal Judiciary have increased, with more in the last several years than ever before. Many other qualified candidates have opted out from consideration for federal judgeships.

We are aware that many people in this country earn less than federal judges are currently paid. However, realism dictates that we not draw comparisons to the average per capita income nationally for all professions. Rather, we must consider the average income of the peers of those whom we ask to sit as federal judges. On that comparison, the salaries for judges are too low.

In sum, the Courts, Lawyers and the Administration of Justice Section urges the Commission to recommend a substantial increase in compensation for federal judges. They deserve no less.