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COMMENTARY

Pay raises and judicial independence COMMENTARY JEFFREY MANNING

YOU KNOW THE words. It is an admonition from medieval times. "Don't throw the baby out with the bathwater." It analogizes: in the zeal to rid oneself of something unwanted or offensive you may discard something of true value.

In the political hysteria and histrionics to repeal unvouchered expenses and legislative pay increases, the baby was thrown out with the bathwater. The citizens of Pennsylvania lost an important opportunity to ensure the complete independence of the judges who serve them from the influence of the governor and the legislature. There is no genuine independent judiciary when judges' just compensation is dependent upon politicians' whims.

Judges, in order to preserve dispassionate impartiality, must eschew the political soapbox. Yet, it has been the history of Pennsylvania that judges, who have no ability to raise revenue or propose budgets, have been the poor step-children of and once again victims of politics. Over the years, judges have been forced to come "hat-in-hand" to the edifices on the Susquehanna, to perform the Strawberry Square two-step, to beg, to plead and cajole the General Assembly and chief executive for just and adequate compensation.

The process is tawdry, undignified and evokes an appearance of impropriety. It is unpleasant for all involved. In fact this demeaning drill has repeatedly resulted in the legislature "piggy-backing" salary increases for themselves upon the backs of the judicial branch. The Pennsylvania legislature has consistently balked at the idea that judges might gain remuneration absent their own aggrandizement. If the legislature isn't getting a pay increase, the judiciary is getting nothing.

Judges must be learned in the law, but unlike lawyers holding other public offices, cannot practice law to better their take-home pay. Unless a judge is independently wealthy, he or she is totally dependent upon politicians for a decent stipend. In the 1970s, several extremely erudite trial judges left the bench prematurely because the legislature, for nearly a decade, denied compensation increases while the cumulative inflation rate rose by 70 percent.

The baby in the bathwater, the salutary provision of the now repealed pay bill, was that it tied Pennsylvania's judiciary to the compensation of the federal judiciary. State trial judges were to be paid the same salary as U.S. Magistrate Judges. If the U.S. Congress increased the compensation of Magistrate Judges, by cost of living or otherwise, Pennsylvania's trial judges would receive the same benefit and if not, then not. This meant trial judges needed never again kowtow to nor lobby House and Senate members for just compensation.

The Pennsylvania and U.S. Constitutions have provided from their inception that the compensation of judges "shall not be diminished" during their service in office, but sagacity dictates that increases, over the years, in inflation and in the consumer price index diminishes compensation absent periodic salary increases. The independence of Pennsylvania's judiciary could be only enhanced by completely removing discretion over judicial pay from the other two branches of government. This was the true value within the repealed legislation.

Might we also consider relative worth? What should "just compensation" for trial judges be? The multimillion-dollar baseball player makes more per game than a Pennsylvania trial judge does in an entire year, and he can go "0 for 4." A trial judge who goes "0 for 4" might let a child molester go free, grant custody to the wrong parent, or sentence an innocent man to prison. Young associates, only four years out of law school, are paid salaries by major law firms that are greater than trial judges with decades of experience on the bench.

Of course, judges don't expect professional athletes' pay, nor salaries equal to the highest priced lawyers, nor even that of lawyers with only four years experience. But a reasonable stipend is appropriate, and what could be more appropriate than pairing trial judges with the lowest paid members of the federal judiciary?

U.S. Magistrate Judges perform very important functions. They preside over preliminary hearings, bail and detention hearings. They try misdemeanor prisoner rights cases, and act as fact-finding "masters" for federal trial judges in civil

matters. They also preside over jury and non-jury civil cases with consent of the parties.

But consider what they don't do. They don't preside over death penalty murder trials. They don't sentence child molesters; determine whether a father or mother should have custody; or terminate parental rights. They are not called upon to make critical rulings in malpractice or product liability cases, and they don't decide if the acts of the legislature violate the Constitution. These matters of paramount consequence are just part of the obligations imposed upon state trial judges.

Do they not deserve at least the same compensation as a federal magistrate, and the dignity to not have to beg politicians for an appropriate salary? That was the true value in the rejection of the offensive and unwanted pay-raise legislation. Financial independence for judges preserves their dignity and judicial independence and frees them from the coerciveness of political cronyism.

The news media and the citizens of this Commonwealth need to acknowledge this dilemma and correct it. Otherwise, we may well stand to lose the dedicated public service of experienced trial judges who leave the bench prematurely. And, however you may feel about that, I will be among them.

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