



# CAREER SATISFACTION

## and state trial court judges' plans to leave the bench

**Retaining skilled members of the judiciary is important for the dispensation of justice and the management of our court system.**

by JENNIFER M. JENSEN

A state trial court judgeship is a prestigious position. Judges reach the bench either through election or appointment—denoting respect from politicians or the public, if not both—and once they arrive, the work is intellectually rewarding and substantively significant. Yet a position on the bench involves tradeoffs. The vast majority of judges forego far more lucrative career opportunities. The burdens of heavy caseloads can take their toll. There may be little room for advancement. As judges accrue years of experience on the bench, they might be very satisfied in their positions, or they might be dissatisfied. They might find reasons

to stay in the position. Or they might find reasons to leave.

There has been little systematic research on judicial career satisfaction. There are more general commentaries on the level of job satisfaction that judges *might* have, based on judicial anecdotes, than systematic empirical analyses of the level of satisfaction that they *do* have. Maintaining high levels of job satisfaction among judges is important to attract good jurists and to retain those currently on the bench, and so an understanding of job satisfaction should benefit those who work in and oversee the courts.

This article uses a survey of justices sitting on the New York State Supreme Court—which is a general jurisdic-

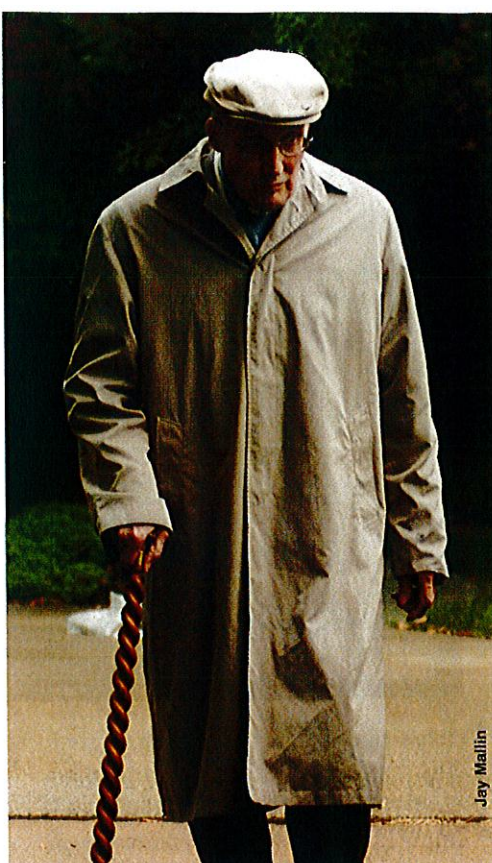
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1. The New York State judicial system is complex, with multiple trial courts. The Supreme Court in New York is generally considered the highest general jurisdiction trial court in the system. In New York City, this court hears major civil and criminal cases; elsewhere, the court hears civil cases. (Outside New York City, criminal cases are heard by county courts.)

tion trial court—to examine judicial job satisfaction, plans to leave the bench, and the relationship between the two.<sup>1</sup> Certainly judicial retention is not the only reason to care about job satisfaction of judges, but retaining skilled members of the judiciary is important for the dispensation of justice and the management of our court system. Furthermore, it serves as a key indicator of broader dissatisfaction on the bench: if low levels of job satisfaction can be linked to an intention to leave the bench earlier than one otherwise would, then that is a bad sign for our courts.

### What We Know About Judicial Job Satisfaction and Retention

Most studies of judges' attitudes focus on judges' views on adjudication or the court system.<sup>2</sup> Although judgeships are considered good jobs, there is little systematic research on job satisfaction levels of jurists.<sup>3</sup> However, the literature does emphasize that most judges are not satisfied with their salaries. Base salaries, cost of living and other raises, and pensions have each been criticized as too low. This is not a new



**Supreme Court Chief Justice William Rehnquist championed pay increases for federal judges.**

criticism; the paucity of judicial salaries has been criticized since the ear-

liest days of nationhood. Nathaniel Pendleton, a federal district court judge for Georgia, resigned from his judgeship in 1791 for reasons of low salary.<sup>4</sup> In more recent years, U.S. Supreme Court Chief Justice William Rehnquist championed pay increases for federal judges, and U.S. Supreme Court Chief Justice John Roberts has argued that inadequate salaries are causing a "constitutional crisis," with low salaries endangering life tenure for federal jurists, and by extension endangering the independence of the courts.<sup>5</sup> Reports detailing the problems stemming from low compensation, or recommending increases in judicial compensation, have been published by organizations such as the American Judicature Society,<sup>6</sup> the American Bar Association, and the National Center for State Courts<sup>7</sup>, as well as by the federal government<sup>8</sup> and state governments.<sup>9</sup> One attorney has even proposed an occupation tax on lawyers as a funding source for increased salaries for fund federal judges,<sup>10</sup> although the judicial community as a whole is aware that the public is unlikely to perceive a need for significant salary increases for judges.<sup>11</sup>

Much of the literature on a judge's likelihood to leave the bench focuses on whether jurists are politically strategic in timing their retirements. Most focuses on the federal courts, and some does not consider the possible effects of judicial compensation.<sup>12</sup> Yet a burgeoning body of research examines how compensation influences judges' decisions to retire from the bench. Richard Posner has argued that judges are affected by the same economic incentives that affect everybody else.<sup>13</sup> Peverill Squire examined retirements on the U.S. Supreme Court and found that pension eligibility increased the likelihood of retirement, but salary did not have a significant effect.<sup>14</sup> Barrow and Zuk studied departures from the lower federal courts from 1900 to 1987 and found that raises and better retirement benefits mattered in some but not all circumstances.<sup>15</sup> Nixon and Haskin's

2. See, e.g., Sophia I. Gatowski, et al., *Asking the Gatekeepers: A National Survey of Judges on Judging Expert Evidence in a Post-Daubert World*, 25 LAW HUM BEHAV (2001).

3. Notable judicial surveys that addressed job satisfaction include Anleu and Mack's study investigating increases in the professionalization of Australian magistrates and how these changes altered job satisfaction among magistrates, and Chase and Hora's study of drug court judges and other judicial officers, which found that drug court judges reported finding more value in their work than family court judges indicated. Sharyn Roach Anleu & Kathy Mack, *The professionalization of Australian magistrates: Autonomy, credentials and prestige*, 44 J SOCIOLOGY (2008); Deborah J. Chase & Peggy Fulton Hora, *Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 COURT REVIEW (2000).

4. Emily Field Van Tassel, *Resignations and Removals: A History of Federal Judicial Service. And Disservice. 1789-1992*, 142 U PENN LAW REV (1993).

5. John G. Roberts, *2006 Year-End Report on the Federal Judiciary*, January 1, 2007.

6. Richard Chernick & Steven S. Lucas, *The Need For Judicial Compensation Commissions*, 78 JUDICATURE 6 (1994); Anonymous, *AJS Model Statute To Establish A Judicial Compensation Commission*, 78 JUDICATURE 9 (1994).

7. See, e.g., *Judicial Compensation in New York: A National Perspective: A Report to the Chief Judges of the State of New York* (2007); *Federal Judicial Pay Erosion: A Report on the Need for Reform* (Washington: American Bar

Association, 2001); Neal R. Sonnett, *Judicial Pay and the Independence of the Judiciary*, 90 JUDICATURE (2007).

8. See, e.g., *Insecure About their Future: Why Some Judges Leave the Bench*, The Third Branch: The Newsletter of the Federal Courts, February 2002; *Leaving So Soon: Will Pay Issues Mean Only the Wealthy Can Afford To Serve?* The Third Branch: Newsletter of the Federal Courts, February 2007; Kevin Scott, *Judicial Salary: Current Issues and Options for Congress*, Congressional Research Service, Order Code RL34281 (2007).

9. See, e.g., Report of the Commission to Review the Compensation of New York State Judges (1998); *Report and Recommendations of the Committee on the Appointment and Assignment of Senior Judges*, Supreme Court of Florida (2002).

10. R. Paul, *How to Enhance Federal Judicial Compensation*, 92 JUDICATURE (2008).

11. Franklin M. Zweig, et al., *Securing The Future For America's State Courts*, 73 see id. at 296(1990).

12. See, e.g., Timothy M. Hagle, *Strategic Retirements: A Political Model of Turnover on the United States Supreme Court*, 15 POLITICAL BEHAVIOR (1993).

13. Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)*, 3 SUPREME COURT ECON REV 1(1993).

14. Peverill Squire, *Politics and Personal Factors in Retirement from the United States Supreme Court*, 10 POL BEHAV (1988).

15. Deborah J. Barrow & Gary Zuk, *An Institutional Analysis of Turnover in the Lower Federal Courts, 1900-1987*, 52 J POLITICS (1990).

examination of all federal appellate judicial retirements since 1892 found that while retirements could be explained largely by nonpolitical factors, including pension eligibility, salary had an impact in some situations. Salary influenced judges who were considering retirement when the sitting president shared their political party, but did not produce a statistically significant effect in other cases.<sup>16</sup> Hansford et al. found that federal court judges who were not yet eligible for pensions were more likely to leave the bench if salaries lagged.<sup>17</sup> Stolzenberg and Lindgren examined departures on the U.S. Supreme Court and found that “[p]ension eligibility raises the annual odds of retirement by an order of magnitude—a huge effect by social science and employment research standards.”<sup>18</sup> Artemus Ward’s examination of justices on the U.S. Supreme Court also identified pensions as a critical factor explaining retirement.<sup>19</sup> In one of the only studies of state courts, Melinda Gann Hall examined voluntary retirements from state supreme courts from 1988 to 1995 and found that neither salary levels nor salary increases influenced voluntary retirements.<sup>20</sup>

A recent debate has focused specifically on the effects of judicial salaries specifically, apart from pension benefits. No doubt to the chagrin of those sitting on the bench, several studies argue that low compensation does not lead to retention problems, but here again the literature is mixed. Albert Yoon examined federal court judges and found that judges were “becoming increasingly discontent... collectively, however, they do not appear to be ‘voting with their feet’ by leaving the federal bench either after shorter tenure or at younger ages.”<sup>21</sup> Scott Baker found that judicial behavior and productivity of federal circuit judges was not affected by the spread between a judge’s salary and the salary of the judge’s “next best opportunity,” the salary that a law firm in the region would offer to a lawyer with the same years of experience as the judge.<sup>22</sup> (Baker’s conclusions drew spirited rejoinders from Frank Cross,



*Chief Judge Judith Kaye sued the state of New York over the lack of pay raises, which are tied to legislators' pay.*

Rick Kopstein

who objected to parts of Baker’s model and argued that Baker’s null findings did not support his larger argument.<sup>23</sup>) Stephen Choi et al. analyzed the behavior of chief justices of state courts of last resort and concluded that increases in judicial salaries would not improve judicial performance.<sup>24</sup> Scott Duke Kominers, who examined federal judges who resigned to take another position rather than to retire, found that salary erosion increased the likelihood to resign.<sup>25</sup>

The findings, on the whole, are mixed. They are also limited in scope: most examine federal court judges or judges on state courts of last resort. Yet these jurists are in more prestigious positions, and earn higher salaries, than the larger group of judges who sit on state trial courts. In short, there is much we do not know. How

do low salaries affect state trial court judges? As they are in lower prestige positions, these jurists might be more willing to leave the bench if they are dissatisfied with the compensation. Furthermore, we do now know how the effects of satisfaction with compensation compare to the effects of satisfaction with other characteristics of a judgeship. We are limited in our knowledge of the effects of judicial compensation, and we know even less about other dimensions of job satisfaction among judges.

### **The New York State Supreme Court Justices Study**

To investigate how judges’ job satisfaction and motivations, as well as how these factors influence their retirement plans, this article uses responses from a survey of justices serving on the New York Supreme

16. David C. Nixon & J. David Haskin, *Judicial Retirement Strategies*, 28 AM POLITICS RES, 472 (2000).

17. Thomas G. Hansford, et al., *Politics, Careerism, and the Voluntary Departures of U.S. District Court Judges*, 38 see id. at 986(2010).

18. R. Stolzenberg & J. Lindgren, *Retirement and Death in Office of U.S. Supreme Court Justices*, 47 DEMOGRAPHY 269(2010).

19. Artemus Ward, *DECIDING TO LEAVE: THE POLITICS OF RETIREMENT FROM THE UNITED STATES SUPREME COURT* (SUNY Press, 2003).

20. Melinda Gann Hall, *Voluntary Retirements from State Supreme Courts: Assessing Democratic Pressures to Relinquish the Bench*, 63 J POLITICS (2001).

21. Albert Yoon, *Love’s Labor’s Lost? Judicial*

*Tenure among Federal Court Judges: 1945-2000*, 91 CALIFORNIA LAW REVIEW (2003). See also Albert Yoon, *Pensions, Politics, and Judicial Tenure: An Empirical Study of Federal Judges, 1869-2002*, 8 AMER LAW AND ECON REV 143-180(2006).

22. Scott Baker, *Should We Pay Federal Circuit Judges More?*, 88 BOSTON U LAW REV (2008).

23. Frank B. Cross, *Perhaps We Should Pay Federal Circuit Judges More*, 88 BOSTON U LAW REV (2008).

24. Stephen J. Choi, et al., *Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate*, 1 J LEGAL ANALYSIS (2009).

25. Scott D. Kominers, *Salary Erosion and Federal Judicial Resignation* (2008). Available at <http://ssrn.com/abstract=1114432>. Last accessed September 6, 2010.

**TABLE 1. Job Satisfaction and Motivations Unrelated to Compensation (percentages)**

	n	Very Dissatisfied	Dissatisfied	Neutral	Satisfied	Very Satisfied
<b>Satisfaction with:</b>						
Substantively interesting work	109	0.9	1.8	12.8	26.6	57.8
Caseload	109	4.6	11.0	29.4	33.9	21.1
Opportunities for advancement	108	22.2	29.6	37.0	7.4	3.7
Being in a political environment	96	41.7	21.9	28.1	5.2	3.1
<b>Motivated to seek the bench</b>						
by enjoyment in judging	109	3.7	0.9	7.3	33.9	54.1
Content with current responsibilities of job	109	1.8	7.3	13.8	39.5	37.6

Court, which is a general jurisdiction trial court.<sup>26</sup> There are two benefits to using New York State Supreme Court justices as the basis for this study. First, it is a prominent court on which to serve, and it is also the highest court that most of its justices will reach. While a handful of Supreme Court justices will be selected for the appellate bench, most have reached their highest judicial position when they are elected to the Supreme Court.

Second, New York is typical of many states in that judges often go for several years without a pay raise. Justices have not received a pay raise or cost of living adjustment since 1999.

26. The survey of New York Supreme Court justices was conducted by Jennifer M. Jensen and Wendy L. Martinek.

27. Anemona Hartocollis, *New York's Top Judge Sues Over Judicial Pay*, New York Times, April 11, 2008; *Kaye v. Silver*, available at: <http://www.courts.state.ny.us/Whatsnew/pdf/JudicialCompensationlawsuit.pdf>.

28. The New York Court of Appeals found in February 2010 that the state had acted improperly by refusing to consider the pay raises on their own merits, and instead tying them to unrelated policy measures—legislators' salaries. The legislature has not taken any action in response. *Matter of Maron v. Silver*, 14 N.Y.3d 230, 925 N.E.2d 899, 2010 N.Y. LEXIS 39, 899 N.Y.S.2d 97, 2010 NY Slip Op 1528 (2010).

29. Michele McNeil, *Daniels to Sign Judicial Pay Raise Bill*, Indianapolis Star, April 26, 2005.

30. Survey of Judicial Salaries (2006).

31. Cherie Maestas, et al., *The State of Surveying Legislators: Dilemmas and Suggestions*, 3 STATE POL AND POLICY Q (2003).

32. An appendix with descriptive statistics is available at <http://bingweb.binghamton.edu/~jjensen>.

Before that, the most recent salary adjustment was in 1993. New York Court of Appeals Chief Judge Judith Kaye even sued the state over the lack of pay raises, which are tied to legislators' pay raises.<sup>27</sup> Kaye won a partial victory; the New York Court of Appeals found that the legislature had improperly tied judicial pay raises to legislative pay raises.<sup>28</sup> However, the legislature has yet to correct itself.

Although New York has gone longer than almost all other states in the time between judicial pay raises, it is not alone in its failure to adjust salaries. For example, Indiana judges went eight years until their pay raise of 2005.<sup>29</sup> In addition, a New York Supreme Court justice's salary of \$136,700 is on par with the 2006 national average salary of \$122,559 for a general jurisdiction trial court judge. (New York judges would point out that adjusting for regional differences in the cost of living, their salaries ranked 37<sup>th</sup> nationally in 2006.<sup>30</sup>) In short, New York Supreme Court justices can be expected to have attitudes and concerns regarding their salaries that are similar to those of jurists in other states where salaries are viewed as uncompetitive or where raises have been scarce.

The survey was distributed to 292 justices throughout the state who held regular appointments on the Supreme Court; certificated and acting justices were excluded. Forty percent of jus-

tices responded. Though not ideal, this response rate is typical of other elite surveys today.<sup>31</sup> Though there is surprisingly limited information about the backgrounds of New York Supreme Court justices, including information on race, the response rate of women respondents reflects the number of women New York Supreme Court justices. In addition, the percentage of respondents from the New York City area mirrors the percentage of justices from that area. Taken as a whole, the respondent characteristics do not indicate a response bias.<sup>32</sup>

### Assessing Job Satisfaction

On the whole, these judges were very satisfied with their jobs (see Table 1). They were motivated to become judges because they had expected to enjoy the activity of judging, and they found the work substantively interesting. A sizeable majority were content with the current responsibilities of their jobs. Judges were less enthusiastic about their caseloads, but on the whole they were not dissatisfied with them. Slightly more than half the judges were dissatisfied with their opportunities for advancement—not entirely surprising, since most judges will not be selected for an appellate bench, and they were ambitious enough to have already achieved prominent positions as trial judges. Only 11 percent were satisfied, but more than one-third were neutral.

**TABLE 2. Satisfaction with Compensation (percentages)**

	n	Very Dissatisfied	Dissatisfied	Neutral	Satisfied	Very Satisfied
Satisfaction with:						
Salary	109	56.0	24.8	13.8	4.6	0.9
Regularity of pay raises	109	93.6	2.8	2.8	0.0	0.9
Pension	109	6.4	11.9	25.7	41.3	14.7

Open-ended comments reinforced these measures of general satisfaction. The final item on the survey asked if the justices had any comments about their career choices and their satisfaction with their current positions. Eighty-four respondents provided comments, and 42 of those provided comments that reflected a general satisfaction with their positions. Many comments were effusive. One judge wrote, "I thoroughly enjoy public service I have loved being a judge every day for the past (more than 20) years."<sup>33</sup> Another wrote, "I love my job. I find it very rewarding. I enjoy working with the attorneys who come before me. I enjoy engaging with jury panels in obtaining a good jury for trials." A third explained, "I decided to run for Supreme Court because I needed a challenge... and it represented a challenge. I've enjoyed it and would do it all over again."

On the whole, however, the justices were dissatisfied with being in a political environment. Interestingly, this question had the largest non-response of any limited response item on the survey. Fourteen justices did not respond to this item (although one skipped the entire page, presumably in error). Perhaps this is because some justices viewed the question as not applicable, that is, they did not consider themselves as working in a political environment despite being chosen by election.

Likewise, open-ended comments also reflected justices' discomfort with politics. Some wrote that the merit selection system used for some positions was just as political as the judicial election process; a few

indicated that the case assignment process was political. In no case was this political influence seen as positive, although in some comments it might have been only neutral.

Justices expressed tremendous dissatisfaction in one area, and that was their salaries (see Table 2). More than half the justices were very dissatisfied with their salaries. Eighty percent were either dissatisfied or very dissatisfied. Only six percent were satisfied or very satisfied. And they were even more upset with their pay raises; 94 percent were very dissatisfied with the regularity of pay raises, and another three percent were dissatisfied. Only one justice was very satisfied with the regularity of pay raises, and that justice had served in the position for only one year.

The open-ended responses underlined this dissatisfaction. Twenty-eight respondents included negative comments about their salaries or pay raises in their survey responses, and many of these comments were quite pointed in their dissatisfaction. Many of these respondents expressed general satisfaction with their positions—often great satisfaction—but still noted significant displeasure, and in many cases anger, about salaries and the lack of pay raises in particular. The comment of one justice was typical of many respondents' sentiments: "I absolutely love my job, but NYS Supreme Court justices are truly suffering from the failure of the other two branches of government to provide us with adequate compensation. Our last raise was in 1998, and our CPI buying power has been reduced by 24.7% in those years.

Something must be done."<sup>34</sup> Another justice said that "the financial disparity between public and private jobs is becoming too wide. It is hard to justify to your family." Many justices distinguished between their satisfaction with their career choice and their dissatisfaction with salaries and pay raises, often delimiting their overall satisfaction because of the salary issue. For example, one respondent wrote, "This is the best job a lawyer can have, *provided* the legislature can raise the pay to a reasonable level and then have a mechanism for regular increases in compensation" (emphasis added).

On the other hand, justices were much more satisfied with their pension benefits. Only 18 percent of respondents were dissatisfied or very dissatisfied with their benefits, whereas more than half were satisfied or very satisfied. Jurists participate in the New York State Employees' Retirement System (ERS), which is the plan available to most state employees. The ERS is complex, with different tiers for employees who entered the system in different times, and benefits are less generous for those who began state employment more recently. Thus individual circumstances affect the calculation of pension benefits, but judges typically must contribute three percent of gross salary to the plan during the

33. To protect respondents' anonymity, I have not specified the exact number of years that respondents specified their served in a judgeship or another position.

34. The legislature last approved pay raises for judges in 1998; these raises went into effect in 1999.

**TABLE 3. Under what circumstances are you likely to leave this position? (percentages)**

	n	Very Unlikely	Unlikely	Neutral	Likely	Very Likely
To retire	109	2.8	5.5	3.7	24.8	63.3
To take senior status (certificated)	101	43.6	23.8	16.8	9.9	5.9
Elected to a different judicial position	105	57.1	26.7	11.4	4.8	0.0
Appointed to a different judicial position	108	32.4	15.7	25.0	21.3	5.6
To take a non-judicial government position	110	52.7	27.3	11.8	7.3	0.9
To take a position in the private sector	109	33.9	20.2	26.6	14.7	4.6

first 10 years of service; are vested after five years of service; and can retire at age 62 without a reduction in benefits. Benefits are calculated based on years of service and the average of any three consecutive years of service when earnings were the highest. A justice with 10 years of service in the Employees' Retirement System—whether as a judge or in some other employment capacity, but with the highest three years of service at the Supreme Court salary of \$136,700—would have an annual pension of approximately \$22,800. A justice who serves for one term, or 14 years, and has no other service credit with the state will have an annual pension of approximately \$31,900. A justice with 20 years of service will retire with an annual pension of approximately \$54,700.<sup>35</sup> Justices who began state employment prior to 1976 may receive higher benefits.<sup>36</sup>

How good a pension this is depends on the comparison. It is no better pension than most other state workers have, except that it is based on a higher salary, and it is smaller than many judicial pensions in other states, but it is generous enough to create an incentive to serve at least until one is eligible for it.

35. New York State and Local Employees' Retirement System, *Your Retirement Plan: Coordinated Plan for Tier 3 and 4 Members* (Articles 14 & 15) (New York State Office of the State Comptroller 2010).

36. New York State and Local Employees' Retirement System, *Your Retirement Plan: New Career Plan For Tier 2 Members* (Sections 75-h and 75-i) (New York State Office of the State Comptroller 2010).

### **When and Why Justices Are Likely to Leave the Bench**

In general, justices are not seeking a more prominent position on the bench or in politics. Justices answered an open-ended question that asked, "Given your current situation, what elected or appointed political office at any level of government would you eventually like to reach?" Seventy percent of justices indicated that there was no other office that they wished to reach, and several commented that they had achieved the position that they had wished to reach.

Another question asked, "Judges leave office for a variety of reasons. Under what circumstances are you likely to leave this judgeship?" Respondents could then indicate, on a five-point scale, how likely they were to leave their judgeship under a variety of different circumstances, such as retirement or to take another position (see Table 3). Many justices indicated on multiple response options that they would be likely or very likely to leave for that particular reason. From this we can infer that many justices were open to opportunities that might arise, or they were at least somewhat uncertain about their plans.

Eighty-eight percent of respondents indicated that it was likely or very likely that retirement would be why they would leave the bench. Fewer than 10 percent indicated that this was unlikely or very unlikely—meaning that they saw themselves as likely to leave the bench for other reasons. However, even those who

leave the bench to retire might do so at varying ages. A justice might expect to retire at age 62, when state pension benefits are not reduced. Or perhaps a justice might plan to retire age 65, when eligible for full Social Security benefits. Or a justice might wait as long as possible to retire. A justice is not required to retire until the end of the year in which he or she turns 70, and may then may seek senior status and serve as a certificated justice until age 76.

The second most common reason to expect to leave the bench was to accept an appointment to a different judicial position. Twenty-seven percent of justices indicated that they would be likely or very likely to leave their positions for this reason. (Appellate judgeships in the New York State Unified Court System are appointive positions.) The next biggest pull was a non-judicial position in the private sector. Nineteen percent indicated that they were likely or very likely to leave their positions to take such a position, which likely would mean moving from the bench to a law practice. Only eight percent of respondents indicated that they were likely or very likely to leave their positions to take a non-judicial position in government.

Notably, the private sector holds almost as much appeal as an appellate judgeship. A position in the private sector is also much more easily attained: presumably all judges could leave the bench to join a law practice or set up their own shops, while only a small number of Supreme Court jus-

**TABLE 4. If you decided to seek a different position, how much would the following factors influence your decision? (percentages)**

	n	Does not matter	Matters a little	Matters some	Matters a lot
To seek a more prestigious position	106	42.5	19.8	31.1	6.6
To seek a higher salary	106	9.4	17.0	32.1	41.5
To have a less stressful job	106	42.5	28.3	20.8	8.5
To seek a position that is not involved in politics	102	62.8	17.7	8.8	10.8
To seek a more sociable environment	105	62.9	17.1	16.2	3.8
To have fewer work hours	105	66.7	21.0	9.5	2.9

tices will be appointed to the Appellate Division of the New York State Supreme Court.

Almost all judges provided brief additional remarks on when and why they were likely to leave the bench. Most indicated that they would retire at the end of their term, at "retirement age" or upon reaching the statutory age limit for a justice, but some gave other reasons for retirement. The other commonly listed reason for retirement was financial concerns, which were mentioned by 13 percent of those who provided open-ended responses. Half these respondents indicated that pension benefits—that is, qualifying for pension benefits, maximizing pension benefits or reaching a pension limit—were the reason for their retirement timing, and half indicated that low salaries or lack of pay raises were the reason.

Every respondent who said that salary was influencing their retirement plans was under age 60, and most were in their late 40s or early 50s. In all but one case, these respondents indicated that they would retire before—sometimes well before—age 65. (The remaining justice indicated that if he were to leave before retirement, it would be for financial reasons.) Overall, just under 20 percent of respondents indicated that they intended to retire before age 65. The small sample means we should be cautious with inferences, but these open-ended responses indicate that younger justices who are dissatisfied with

their salaries are more likely than their older counterparts to leave the bench early.

What about leaving the New York Supreme Court for another position, either another judgeship or some other employment? Justices were asked, "If you decided to seek a different position, how much would the following factors influence your decision?" Table 4 presents the percentage of justices indicating that a particular factor "matters a lot." Salary was by far the most influential factor.

### Modeling the Intention to Retire

So on the whole, justices are quite satisfied with most aspects of their jobs, and they are really unhappy about their compensation. Are either of these two factors linked to retirement plans?

One survey question asked, "In about how many years do you believe you will leave your current position?" Respondents selected one of eight response options: 1-2 years; 3-4 years; 5-9 years; 10-14 years; 15-19 years; 20-24 years; 25-29 years; or 30 or more years. This question provides an opportunity to link job satisfaction with a justice's intentions to leave the court. I used an ordinary least squares regression model, which allows for the examination of explanatory factors while controlling for other factors in the model, to tease out the answer to this question. The independent variables can be grouped into two main

categories: job satisfaction and motivation related to compensation; and satisfaction and motivation related to non-compensatory aspects of the position. I also include two variables to control for age and years on the bench.

For each of the variables tapping job satisfaction, I expect that more satisfied justices will expect to remain on the bench longer than their less satisfied colleagues. I use five survey items to measure satisfaction with job characteristics that are unrelated to compensation. The first variable taps career ambition. A sizeable minority of justices—30 percent—are ambitious to move up in their judicial careers.<sup>37</sup> Particularly since appointees to the New York Supreme Court, Appellate Division must be selected from the pool of sitting Supreme Court justices, I expect justices who are interesting in moving to a higher court will remain on the bench longer. To test this hypothesis, I use a survey item tapping *satisfaction with opportunities for advancement*.

A heavy daily workload might lead a justice to retire sooner rather than later, and so I include a variable capturing *satisfaction with caseload*. Though a weighted caseload is considered a better measure of workload, as it in essence considers both

37. Jennifer M. Jensen and Wendy L. Martinek, *The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges* 62 POLITICAL RESEARCH Q (2009).

**TABLE 5. In how many years do you expect to leave the bench?**

Independent Variable	Coefficient
Age in years	-0.423*** (0.0832)
Years served in position	-0.0673 (0.0775)
Satisfaction with salary	-0.358 (0.567)
Satisfaction with regularity of pay raises	-1.142 (1.276)
Satisfaction with pension	-0.0728 (0.465)
Satisfaction with opportunities for advancement	0.844* (0.489)
Satisfaction with substantively interesting work	-0.539 (0.639)
Satisfaction with caseload	0.812* (0.458)
Contentment with current responsibilities	-0.535 (0.523)
Motivated by enjoyment in judging	1.034* (0.540)
Years in a firm with 10 or more attorneys	0.297** (0.131)
Upstate judicial district	2.147* (1.082)
Constant	31.670*** (5.929)
Observations	106
R-squared	0.456

\*\*\* =  $p < .01$ ; \*\* =  $p < .05$ ; \* =  $p < .10$   
Standard Errors in parentheses.

supply and demand, caseloads still provide a serviceable measure of workload.<sup>38</sup>

Three variables reflect a justice's attitudes regarding the work itself. I expect that justices who were originally *motivated to seek the bench due to an interest in the activity of judging* will stay on the bench longer. To measure the effect of a justice's satisfaction with the position more

broadly, I include a justice's *contentment with the current responsibilities of his or her job*. The third variable is a justice's *satisfaction with the work as substantively interesting*. Despite the fact that the large majority of justices are satisfied with these aspects of their positions, each of these three variables taps different dimensions of job satisfaction, and should have different effects.<sup>39</sup>

Three straightforward survey items to gauge satisfaction with compensation: *satisfaction with salary*, *satisfaction with the regularity of pay raises*; and *satisfaction with pension benefits*. As with the other satisfac-

tion and motivation variables, they are coded on a 1 to 5 scale, with 5 indicating the highest level of satisfaction.

Satisfaction with compensation is a critical part of the model, and yet satisfaction with compensation is likely to rest at least in part on how far that compensation stretches. A salary of \$136,700 is not small, but it will not stretch as far in Brooklyn as it does in Buffalo. I do not have home address information for the respondents, but I do have information on the location of the county in which they serve. Though there are certainly variations in the cost of living in different areas in and around New York City, as well as variations in the cost of living in different parts of upstate New York, it is commonly known that downstate is a lot more expensive than upstate, in large part due to housing costs. To this variation into account, I constructed a dichotomous variable to indicate whether a justice *works in upstate New York*. This variable differentiates between upstate and downstate judicial districts—the latter of which include the five counties that comprise New York City, the two counties that comprise Long Island, and Westchester County.

Whether one is satisfied with a particular level of compensation is also likely to depend on depend on one's personal wealth. This is not to say that salaries are not significant in other ways—even a wealthy judge might be dissatisfied with a salary that he or she believed it did not represent appropriate payment for the work—but for those who are not wealthy, the realities of needing money to pay the mortgage, send the kids to college, and save for retirement might lead compensation to play a large role in job satisfaction.

The dataset does not contain information on justices' net worth, but it does contain information on the years worked in other legal capacities, and this can be used as a proxy for income. In 2008, attorneys with five years of experience who were working for nonprofits or the government had average salaries that clustered between \$48,000 and

38. Brian J. Ostrom & Neal B. Kauder, Examining the Work of State Courts 1997: A National Perspective from the Court Statistics Project (National Center for State Courts 1998).

39. No correlation between any two of these factors was higher than .35.

\$60,000 in 2008. Lawyers with five years of experience in private firms had average salaries from \$99,250 to \$183,000, with the average salary increasing with the size of the firm.<sup>40</sup> Private sector salaries are more likely than public sector salaries to increase significantly with years in practice—particularly for those who become partners—and so the income disparity grows greater when one looks at an attorney with 10 years of experience. All else being equal, the larger firms tend to offer the highest incomes,<sup>41</sup> and attorneys in these firms could accumulate a nest egg that could insulate one from the lower pay of a judgeship. Of course a law firm of 10 attorneys would be very small in New York City, but much more sizeable in Utica. Nevertheless, the variable provides a reasonable discriminator. Eighteen percent of the survey sample had experience in a private practice with 10 or more attorneys; of these, half had between one and four years of experience, and half had between five and 20 years of experience. I use a variable for the *number of years the respondent worked in a firm with 10 or more attorneys* as a measure of wealth potential.

Finally, I use two control variables in the model. The first is *age in years*; as justices age, they grow closer to various benchmarks for retirement: the classic age of 65, the statutory age of 70, or the age of departure if one exercises the opportunity to be certified to serve as a retired justice through age 76. I expect that older justices will expect to retire sooner than their younger colleagues. I also include a variable for *years in the position*. As justices serve longer, they accrue greater pension benefits; some may become less interested in the work over time. I expect this variable to have a negative effect as well. Age and tenure in a position are widely considered predictive of employee turnover.<sup>42</sup>

Table 5 presents the results of the analysis. I excluded one outlier observation, the survey responses of one justice who was highly satisfied with his salary, regularity of pay raises,

and pension benefits. This was the only justice who was highly satisfied in these areas. He had served on the Supreme Court for only a year, and he had started in this post at retirement age. He had very atypical levels of satisfaction regarding compensation, likely due to his particular circumstances. This was an observation with extremely high leverage, meaning that it had the potential to skew the results, and thus I removed it from the analysis.

None of the three variables tapping satisfaction with compensation were statistically significant. It seems that judges' dissatisfaction with their salaries and pay raises, and relative satisfaction with their pension benefits, do not lead them to alter their expected retirement timing. Of course, as 94 percent of the justices were "very dissatisfied" with the regularity of pay raises, there is very little variation in responses to this survey item, and that could inhibit the power of this variable in the model. The other two variables that capture income effects—presiding in an upstate court and the number of years worked in a law firm with 10 or more attorneys—did have an effect on plans to leave, however. Justices who presided in upstate courts expected to leave the bench later than their downstate colleagues.<sup>43</sup> Likewise, those who have spent more time working in law firms with more than 10 attorneys are more likely to remain on the bench longer. These justices have had more time in higher-earning positions, and are likely to have savings to augment judicial salaries. We should keep in mind that a relatively small proportion of justices had experience in private practice firms. Perhaps attorneys in these firms are less likely to leave their salaries for the bench in the first place.

Justices' retirement plans do seem to be affected by their satisfaction with non-monetary aspects of their positions. Judges who are more satisfied with their opportunities are more likely to retire later, all other things being equal. Since a Supreme Court judgeship is a gateway to more

prominent judgeships, it makes sense that those with ambition would expect to stay on the bench longer. Those who are actually chosen for a state appellate position—the most likely next appointment—are relatively few in number, and such an appointment is not a certainty, so we would not expect to see a negative effect. On the other hand, for the sizeable proportion who are ambitious for an appellate position, it makes sense to eschew other opportunities to stay on the bench.

A judge's caseload represents a critical factor in overall workload. Justices who are more satisfied with their caseloads were also more likely to expect to leave the bench later than their less satisfied colleagues. Those who are more satisfied might not actually have a lighter caseload, but they are more satisfied with whatever caseload they do have.

Judges expected to leave the bench later if they were motivated to seek the bench because they enjoyed—or at least expected to enjoy—the activity of judging. This variable had a slightly larger effect than the others, and it is unsurprising that such a fundamental aspect of the job would influence judges' desire to remain in the position.

Finally, while years served in the position did not have a statistically significant effect, age did matter. Younger judges expected to leave later.

40. National Association for Law Placement, *New Findings on Salaries for Public Interest Attorneys*, NALP Bulletin (2008).

41. National Association for Law Placement, *Salaries at Largest Firms Continue to Rise Rapidly*, NALP Press Release (2007).

42. Rodger W. Griffeth, et al., *A Meta-Analysis of Antecedents and Correlates of Employee Turnover: Update, Moderator Tests, and Research Implications for the Next Millennium*, 26 J. MANAGEMENT (2000); William F. Barnes & Ethel B. Jones, *Differences in Male and Female Quitting*, 9 J. HUM. RESOURCES (1974).

43. To clarify whether this effect might actually reflect of serving in New York City, or the type of cases a justice hears, I tested to additional variables—a dichotomous variable for serving in New York City and a dichotomous variable for hearing only civil cases. Neither of these variables was statistically significant, which strengthens the validity of the variable for serving in an upstate versus downstate court as a measure of cost of living.

## Implications

Some job satisfaction factors do appear influence the plans to retire. In particular, I have linked satisfaction with non-monetary aspects of judgeships to the intention to leave the bench. There is some evidence that one's financial situation affects a justice's plans to retire. Justices who preside in upstate New York, where costs of living are substantially cheaper than in New York City and its surrounding counties, are more likely to intend to remain on the bench longer. These justices also work in counties where the income difference between a Supreme Court justice and a partner in a law firm is not nearly so great as in New York City. Likewise, the longer justices have practiced in private firms with 10 or more attorneys, the more likely they are to leave the bench later. The longer an attorney works in such a firm, the larger the nest egg that could cushion a judge from the financial constraints of a comparatively modest salary for a well-regarded, experienced attorney.

Yet there is no link between satisfaction with compensation and intentions to leave the bench, despite copious evidence of dissatisfaction with salaries, and comments from a number of justices that low salaries were influencing their decisions about leaving the bench. Where does this leave us?

First, we should remember the lack of variation in the measure for satisfaction with pay raises. It is quite possible that the pay raise variable did not have a statistically significant effect because justices are so uniformly dissatisfied with the regularity of their pay raises; there is not enough variation among the responses to tap any effect. This does not hold for the satisfaction with salary measure, however. While most justices are dissatisfied, they vary in exactly how dissatisfied they are, and so this should not limit the analysis.<sup>44</sup>

44. To mitigate the effects of the lack of variation, I created an index of the three variables tapping satisfaction with salary, pay raises, and pension. An index would be less sensitive to the distribution of responses for the three composite variables. This index was also statistically insignificant, and that model is not presented here.

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# THERE IS NO LINK BETWEEN SATISFACTION WITH COMPENSATION AND INTENTIONS TO LEAVE THE BENCH, DESPITE COPIOUS EVIDENCE OF DISSATISFACTION WITH SALARIES.

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As much as judges are dissatisfied with their salaries, only a minority actually appear to consider departing their positions as a result. Justices' general satisfaction with their positions seems to outweigh their dissatisfaction with remuneration. In particular, justices' satisfaction with non-monetary aspects of their jobs influences their intentions to leave the bench. Those who are very satisfied with the substance of their positions—the workload, the nature of the work—plan to stay on the bench longer. Justices who are satisfied with their caseloads and who were motivated to move to the bench by enjoyment in the activity of judging are more likely to stay on the bench. Furthermore, those who are satisfied with opportunities for advancement are likely to remain on the bench. The longer one stays on the bench, the more appellate vacancies will occur, and the more opportunities a justice will have to be chosen. If a justice does not share the governor's party identification, time might bring a change of partisanship in the governor's mansion, thus increasing ones chances for advancement. Leaving the Supreme Court eliminates any opportunity to be selected for New York's intermediate appellate court.

What does all this mean for the debate on the impact of low judicial salaries? New York justices are angry about their low compensation, about the long years between pay raises, and the linkage between legislative salaries and judicial salaries. But there is no link between this dissatisfaction and the intention to leave the bench. Certainly there are

individual cases where justices have left the Court to seek a higher salary in private practice, but these are the anomalies. The justices might complain, and some might be bitter, but on the whole they like their jobs, and few will leave earlier than they otherwise would have because of concern about low salaries. In the end, it seems, justices might be deeply angry about the salary situation facing New York State jurists, but the vast majority love the job enough to want to stay in it, often for as long as possible.

But this does not mean that this dissatisfaction with salary would not have other effects. Relatively few justices in this study had significant experience in a large private practice. *Ceteris paribus*, low judicial salaries will be least attractive to the highest earners, those who would lose the large incomes if they moved to the bench. Dissatisfaction can more broadly affect the work performance of the dissatisfied, and it can affect both mental and physical health. To say that low judicial salaries have no impact would be painting with too broad a brush. But what this analysis shows is that all other things being equal, justices who are satisfied with the intrinsic and career dimensions of their jobs wish to stay on the bench longer; those dissatisfied with salaries do not necessarily wish to leave it sooner. ★

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