

SALARY EROSION AND FEDERAL JUDICIAL RESIGNATION

SCOTT DUKE KOMINERS*

ABSTRACT. This paper studies the effects of judicial salary erosion on federal judicial resignation levels using biographical data on federal judges. Our study is the first to study resignation levels exclusively and is the first to examine the post-resignation employment of federal judges. Prior literature has identified partisanship and pension eligibility as the primary determinants of judicial turnover. By contrast, we find that salary levels have a striking effect on judicial resignation levels which has been obscured in the turnover literature. Salary erosion increases the rate of judicial resignation and particularly increases the rate of resignation to return to private practice.

1. INTRODUCTION

The salaries of Article III federal judges are constitutionally protected against being “diminished” during a judge’s term of office. This measure is intended to protect judicial independence by ensuring that federal judges at a given level receive a stable salary protected from political reaction to their judicial performance.

These constitutional protections do not extend, however, to “salary erosion,” indirect salary reduction owing to inflation and changes in the cost of living. The rate of judicial compensation is fixed by the legislature, which must approve all adjustments to judicial salaries. As there is no automatic review of federal judges’ pay, upward revisions often lag behind similar adjustments in other government departments.

Indeed, the annual salary of a federal judge has, at times, fallen drastically in real dollars since 1969, while the average wage has risen, especially in the legal profession (see Roberts 2007; Volcker *et al.* 2003). Former Chief Justice William H. Rehnquist highlighted the effects of salary erosion in most of his annual year-end reports. These concerns escalated over the course of Rehnquist’s term in office, to the point at which Rehnquist declared the problem a “crisis” in his 2002 report (Rehnquist 2003; see also Dowling 2006).

*Department of Economics, Harvard University; c/o 8520 Burning Tree Road, Bethesda, MD, 20817; kominers@fas.harvard.edu

JEL Classification: J30, J38, J44, J68, K40, M52

Keywords: Salary erosion; Judicial pay; Judicial resignation; Judicial turnover; Federal judiciary; Post-resignation judicial employment

The author is especially grateful to Andrei Shleifer for his comments, advice, and support, and to Robert Sinnott for his heroic service in discussing and improving the paper. In addition, he is deeply grateful to Zachary Abel, Kjell Carlsson, Barbara Dickstein, Sidney Dickstein, Edward Glaeser, Andrea Hawksley, Gregory Ihrle, Avery Katz, Noam Kirson, Ellen Dickstein Kominers, William Kominers, Daniel Litt, Richard Posner, Mark Ramseyer, John Sheffield, Sam Shleifer, Gabe Sunshine, Ruohua Annetta Zhou, and several anonymous referees for their insightful comments and suggestions. He also thanks Heather Afra, Richard Posner, Steven Saltzgiver, and the Federal Judicial Center for providing the data used in this study.

Worries about the effects of salary inadequacy led to a 1926 bill adjusting the judicial salary level. Subsequently, the Report of the Commission on Judicial and Congressional Salaries (1954) found judicial salaries “grossly inadequate” and recommended increases in judicial compensation. There were also substantial salary increases in 1969 and 1991, owing to general increases in governmental compensation (see Posner 1999).

The levels of judicial compensation have received considerable attention recently. A 1993 Federal Judicial History Office study investigated the causes of judicial resignation. It was found that judges resign for a range of reasons other than age- or health-related concerns. In particular, some judges have cited low salary levels as the cause of retirement. Also, some judges returned to private legal practice after leaving the bench (VanTassel 1993).

Posner (1999) discussed the structure of the federal judiciary and history of judicial compensation. He strongly recommended that the salary structure be reformed, out of fears that salary concerns might affect the quality of the federal judiciary.¹

More recently, The 2003 National Commission on the Public Service chaired by Paul Volcker identified “egregious” failures in the judicial compensation program. The commission recommended Congress “grant an immediate and significant increase in judicial, executive, and legislative salaries to ensure a reasonable relationship to other professional opportunities” (Volcker *et al.* 2003).

Chief Justice Roberts chose to make issues of judicial compensation the focus of his entire “2006 Year-End Report on the Federal Judiciary,” basing many of his arguments on the Volcker Commission’s report (Roberts 2007). In February, 2007, Justice Anthony M. Kennedy echoed these sentiments before the Senate, claiming that the rate of compensation to federal judges is so inadequate that it threatens both the independence of sitting judges and the quality of new judicial appointees (2007).²

We evaluate the effects of salary erosion over the past century, focusing on the relationships between judicial salaries and the rates of judicial resignation. Our goal is to assess the validity and immediacy of the concerns raised by Roberts, Rehnquist, and Kennedy.

We diverge from the prior literature on two counts: First, we study judicial resignation, rather than overall judicial turnover.³ Second, we examine an important variable which has been neglected in the literature: the post-resignation professional behavior of federal judges.

In contrast to the earlier research on judicial turnover, we find significant effects of salary erosion. Our key finding is that salary erosion has had noticeable effects on judicial resignation levels since the 1969 peak of judicial salary levels. The effects of salary concerns on the resignation levels of judges who return to private practice are especially strong and significant.

In Section 2, we develop the framework for our study of judicial resignation levels. In Sections 2.1 and 2.2, we respectively provide background on the judicial pension program and survey the literature on judicial turnover. Section 3 discusses the data used in our study. We then explain our econometric methods in Section 4 and present our results in Section 5. Section 6 concludes.

¹Greenberg and Haley (1986) point out, echoing Posner, that there is a balance to be maintained. Salary levels should not be so low as to deter qualified candidates from joining the bench but should also not be so high as to disincentivize judicial self-selection.

²Even more recently, Chief Judge of New York Judith Kaye has cited the justices’ arguments in her fight for salary reform in the New York state judiciary (Cooper 2007).

³This choice is motivated by the observation of Adams and Beehr (1998) that retirement and resignation are distinct forms of organizational withdrawal and therefore have different antecedents.

2. FEDERAL JUDICIAL RESIGNATION

2.1. **Background.** A generous pension plan is offered to federal judges who retire after turning sixty-five, when the sum of their age and years of service totals at least eighty. This retirement provision is substantial—such a judge may retire at full pay, augmented by any annual cost-of-living adjustments granted to sitting judges. Moreover, this pension is the only form of retirement benefit available to a federal judge. As a judge must be at the age of sixty-five in order to collect this pension, there is a considerable disincentive to early retirement or resignation.⁴

Nonetheless, there are numerous instances of judges leaving the bench before becoming pension-eligible. According to both Chief Justice Roberts's (2007) assertions and to Van Tassel *et al.* (1993), some of these judges have returned to private practice and are now receiving lucrative annual compensation, probably several multiples of the annual salary of a federal judge. The prospect of judges returning to private practice after resignation has the potential to undermine judicial independence.

The principal differences between work in private practice and service in the federal judiciary are in the type of work, relative workload, and salary level. Of these three differences, the first two are perceived to favor the bench, while the third favors those in private practice. Thus, we would expect resignation trends observed to be guided by salary concerns (Posner 1993). Further, those judges who returned to private practice without spending an interim period of time in government are the most likely to have been driven by salary concerns; in particular, there is no political motivator in this instance.

2.2. **The Literature on Judicial Turnover.** The earliest studies of judicial turnover were descriptive and often focused on state courts.⁵ In an early empirical study of federal judicial turnover, Squire (1988) found Supreme Court justice retirements to be driven by health concerns and pension benefits, rather than by political factors. Brenner's (1999) descriptive study echoed the view that political concerns do not influence justices' retirement decisions. In a more recent, individual-level study, Zorn and Van Winkle (2000) examined the effects of personal considerations, institutional context, and political influences on the retirements of Supreme Court justices. Pension eligibility was found to have significant effects on the likelihood of justices' retirement, whereas partisanship levels had little effect.

By contrast, Hagle (1993) demonstrated an identifiable relationship between political factors and the retirements of Supreme Court justices. Vining, Zorn, and Smelcer (2006) suggested an explanation for the disparities between Hagle's (1993) observations and the other studies of Supreme Court turnover: because of advances in medical technology, modern justices do not face health risks which influenced turnover early in the Court's history. Thus, while early justices' retirements were often driven by health concerns, modern justices may have the luxury of considering political factors in their retirement decisions.⁶

Barrow and Zuk (1990) undertook the first institution-level analysis of federal judicial turnover. They found judges' party affiliations and ideologies to be the most significant determinants of turnover in the circuit and district courts. They found significant, but mixed effects of salary levels

⁴Indeed, Yoon (2006) found pension eligibility to be the strongest determinant of judicial turnover.

⁵Yoon (2006) gives an excellent list of references on this early turnover scholarship.

⁶Vining, Zorn, and Smelcer (2006) support this claim with an empirical study of pre-1869 Supreme Court departures.

on resignation; these effects were primarily split across political party lines.⁷ These results were confirmed by Baker (2000).

Building on this work, Spriggs and Wahlbeck (1995) identified a host of relevant political and nonpolitical factors—including salary erosion—which could influence judicial turnover levels. They then employed maximum likelihood estimation to isolate the effects of these factors on retirements of federal appellate court judges, finding that political factors such as presidential partisanship greatly affect judges' retirement decisions.

Nixon and Haskin (2000) estimated a heteroskedastic panel probit model of federal appellate judges' retirement decisions. They found these decisions to be motivated primarily by personal factors, especially workload and pension eligibility. Salary levels were not found to have a substantial effect and only one political factor—the party of the president—was identified as significant in this study.

Evaluating the importance of sentencing preferences on judicial retirement levels, Boylan (2004) found that some turnover effects in district courts derive from judges' dissatisfaction with constraints on their power. He found that partisanship had no significant effect on turnover behavior.

Yoon (2003) presented evidence that average federal judicial tenure has been increasing over the past 50 years, seeming to contradict Rehnquist's fears that record numbers of judges are leaving the bench. More recently, Yoon (2006) studied the effects of judicial pension eligibility on judicial turnover levels. Surprisingly, it was found that pension eligibility, rather than politics, drives judicial turnover levels at the district- and circuit-court levels; this result starkly contrasts those of Barrow and Zuk (1990) and Spriggs and Wahlbeck (1995).⁸

Most recently, Perry and Zorn (2008) developed a simple model of judicial retirement decisions. They then operationalized this model with a series of new measures designed to be comparable across levels of the federal court system. They found both political and personal effects to affect the retirement decisions of lower court judges.⁹

Both the literature on federal judicial turnover and the assertions of Chief Justice Roberts (2007) suggest that salary concerns chiefly affect the turnover of judges in the lower federal courts. Thus, we focus on the lower courts in this study. We primarily discuss these courts in aggregate, although analogs of our results hold when only district courts are under consideration.¹⁰

The previous studies of these judges have addressed only judicial “turnover,” aggregating resignation and retirement levels into a single variable. As demonstrated by Adams and Beehr (1998), resignation and retirement are distinct forms of organizational withdrawal, hence they are often driven by different factors.¹¹ Since far more federal judges retire than resign, the results of turnover

⁷In particular, Barrow and Zuk (1990) found that salary concerns only affected the turnover rates of Republican judges between 1900–1954. Democratic judges displayed the opposite effect; their turnover was only influenced by salaries in the period 1954–1987.

⁸Barrow and Zuk (1990) did not find pension-related variables to have a significant effect on turnover levels. Although Spriggs and Wahlbeck (1995) identified pension concerns as relevant and positively correlated with retirement levels of some judges, they still found political effects to dominate over compensation concerns.

⁹However, only personal concerns were found to significantly affect Supreme Court turnover. Additionally, Perry and Zorn (2008) found that the personal variables to demonstrate weaker effects upon Supreme Court justices than upon lower court judges.

¹⁰There were not enough appellate court observations for an analogous study solely considering appellate courts.

¹¹For example, Adams and Beehr (1998) show that the availability of work alternatives is more tightly correlated to resignation than to retirement.

studies are skewed towards the behavior of retiring judges.¹² As we observe, this prevented the prior studies from observing the effects of salary erosion on judicial resignation levels.

An additional problem with the prior literature is that the post-resignation professional activity of federal judges has never been studied formally. The propensity of judges to return to private practice after resignation has been central to the concerns of Chief Justices Rehnquist (2003) and Roberts (2007). Distinguishing between judges' post-resignation professional behaviors, we confirm that judges who resign because of salary concerns often return to private practice after serving on the bench.

3. DATA

For data on judicial resignation, we use the Biographical Directory of Federal Judges compiled by the Federal Judicial History Office of the Federal Judicial Center (2007). This data set contains biographical information for every judge to serve in an Article III court since inception. Birthdates, dates of appointment, and dates of commission are available for all federal judges. Educational histories are available for almost all judges in the database. Dates of and reasons for termination of service are available for all federal judges to leave office after 1900.

Van Tassel gives statistics on the post-retirement destinations of judges who left the bench prior to 1993 (VanTassel 1993, Appendix Table 1). The Biographical Directory of Federal Judges contains the current employment status of most recent judicial retirees and resignees. In particular, the database indicates a judge's years spent in private practice, government, or academia. This allows us to observe a judge's post-resignation professional activity.

Our data on judicial salary levels is based on Richard Posner's original computation of federal judicial salaries (1999, Table A.1) and on Posner's recently updated records of judicial salary levels (2006). This salary data is in year-dollars; we convert the data into constant (2007) dollars using a GDP measure recorded from the Bureau of Economic Analysis of the United States Department of Commerce. These GDP data are available from 1929 onwards (Bureau of Economic Analysis 2007).

3.1. Preliminary Observations. We observe in Figure 1 the relationship between average judicial salary levels and resignations of federal judges who returned to private practice after leaving the bench. Particularly stark is the apparent correlation from the period from 1969 onwards, highlighted in Figure 2.

In examining the Biographical Directory of Federal Judges, we find that 97 federal judges resigned from the federal court system before age sixty-five between 1930 and 2004. Of these, 11 were elevated during their tenure on the bench; we exclude these observations since the behavior of judges who resign after elevation may not be representative. Of the 86 resigning judges who had never been elevated, 73 served in federal district courts and 10 served in appellate courts.¹³

Higher-level courts provide additional satisfaction to judges through a sense of power. Furthermore, a district court judge has a heavier, more monotonous workload than does a higher-level

¹²Some turnover studies (such as Boylan (2004)) even include two different types of "retirement" in the turnover discussions. In particular, both complete retirement from service and "senior status" adoption are considered to be instances of retirement (see Posner 1999).

¹³The remaining three resignations in this period were resignations of Supreme Court justices. The most recent justice to resign, Abe Fortas, resigned following a financial scandal. Earlier, both Justice Arthur Joseph Goldberg and Justice James Francis Byrnes resigned to enter government. Since these resignations all occurred in exceptional circumstances, we exclude them from our study.

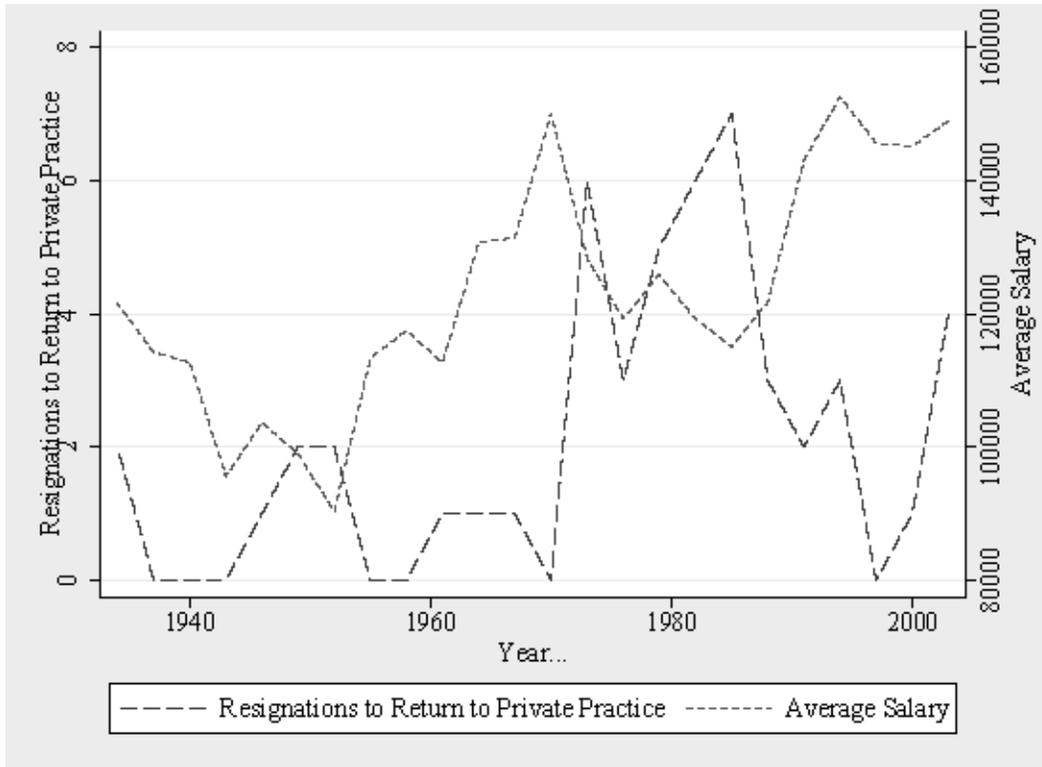


FIGURE 1. Plot of Resignations of Judges Who Returned to Private Practice against Judicial Salary Levels in Constant (2007) Dollars

judge and so he or she is more likely to “burn-out,” leaving him or her open to outside options other than private practice (see Posner 1993). Therefore, we expect that judges in federal district courts will exhibit a higher propensity to resign than will judges in higher-level courts. Consistent with this expectation, we observe that district judges comprise 84.2% of the sample; by contrast, district judgeships comprise only 73.4% of active federal judgeships.¹⁴

Judges were categorized by their professional behavior after leaving the federal bench. In general, judges who did not retire after resignation spent post-resignation time in at least one of three activities within the legal profession: private practice, government, and academia. A total of 59 of the judges who resigned between 1930–2004 spent time in private practice after leaving the bench, while only 23 retired after resignation. Judges who left the bench to enter government but did not retire often returned to private practice after completing governmental service. Of the 86 appellate and district court judges to resign between 1930–2004, 38 judges returned to private practice without spending time in government.¹⁵

4. METHODS

We split our data sample at the 1969 peak of judicial salary levels, as we predict some large-scale difference between the resignation behaviors of federal judges before and after 1969, arising from differences in expectations of salary increase. In the first half of the twentieth century, judicial

¹⁴This percentage of judgeships is based upon The Federal Judicial Center’s 2007 appraisal.

¹⁵As discussed above in Section 2.1, we expect these judges to be especially motivated by salary concerns.

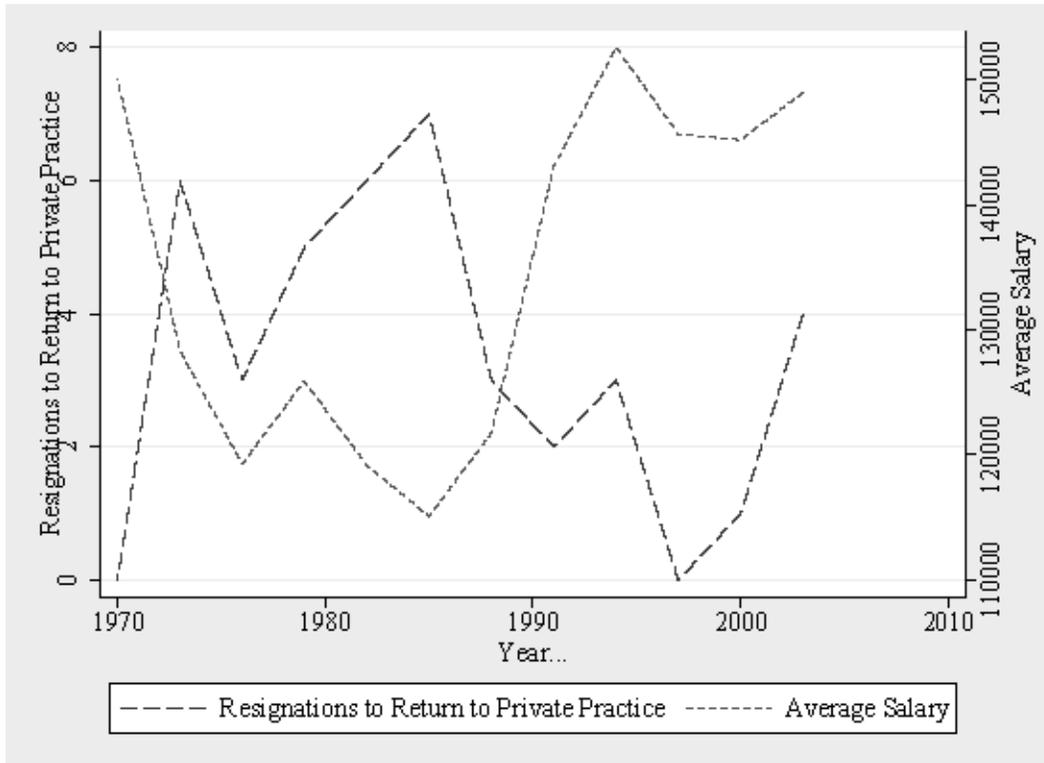


FIGURE 2. 1969–2004 Inset of Figure 1

salaries were often adjusted in response to increased levels of judicial resignation (Posner 1999). This effect seems to have diminished in recent years, when judicial salary adjustment has mainly reflected cross-bureaucracy cost-of-living concerns. Also, following the salary spike in 1969, there has been widespread attention to judicial salary levels which could also affect judicial expectations regarding salary levels.

Following Spriggs and Wahlbeck (1995), we maintain that judicial resignation is primarily driven by observable factors, although individual resignations may occur under distinguishing circumstances. Thus, we may apply an event count model to the resignation data.

To reduce sample noise levels, the data were aggregated into three-year periods, with average salaries computed across each period.¹⁶ Although we only present the results for three-year periods here, our results are robust to the consideration of two-, four-, and five-year periods, with reduced levels of significance.

We then ran both OLS and Poisson regressions¹⁷ with robust standard errors to examine the total number of resignations, the number of resignations by judges who return to private practice, and the number of resignations by judges who return to private practice and never spend time in

¹⁶There is a substantial amount of noise in the individual-year data because only a few resignations occur in each year.

¹⁷Both of these regression models analyze the frequency of resignation events. While the Poisson model is slightly more appropriate for the event count setting, as detailed in Spriggs and Wahlbeck (1995), the ease of interpreting the OLS regression results helps to clarify our discussions.

government.¹⁸ Although our aggregation of the data reduced the total number of observations in these regressions, we still obtain statistically significant results.¹⁹

Regressions were run over the complete data set of judges who resigned from district and appellate courts.²⁰ We also ran regressions over the district court subset of the sample. We do not report these regressions here, as their results are nearly identical to those for the entire sample. There were slightly too few instances of appellate court resignation for us to run a separate regression over just the appellate court resignations.

The regressions were run with age, tenure length, court size, political, gender, and race controls.²¹ Age and tenure length are the key determinants of pension eligibility, hence older judges or judges who have already served long terms may stand to lose more by resignation than do younger judges or judges who have served short terms. Also, as discussed in the literature on retirements, age proxies for health variables and may also be related to job satisfaction.²² As Congressional acts increased the size of the federal judiciary during the period under consideration, we must also control for court size. Our political control captures the single political factor Nixon and Haskin (1999) found to be a significant determinant of judicial turnover behavior: the effect of opposing-party presidents. The inclusion of gender and race variables is motivated by the observation of Blau and Kahn (1981) that resignation frequencies differ systematically across both genders and races. The construction of our independent variables is detailed in Table 1.²³

5. RESULTS

In Tables 2–4, we give the results of OLS regressions run over the whole sample and over the periods 1969–2004 and 1930–1968. In Tables 5–7, we give analogous Poisson regression results. Throughout, *** denotes significance at 1%, ** denotes significance at 5%, and * denotes significance at 10%.

Our regression coefficients for salary levels are negative across the board. The OLS coefficients for salary levels are particularly large in magnitude.²⁴ The OLS coefficients for salary effects were also highly significant: over the entire sample, they were significant at the 1% level and in

¹⁸As indicated in prior sections, judges who return to private practice may be more likely to be driven by salary concerns. The latter two dependent variables allow us to test this hypothesis.

¹⁹The number of observations in each regression is the number of periods.

²⁰There is one three-year period in which no resignations occurred. Since our controls cannot be computed if there are no judges resigning, we omit this period from our analysis. As the salary effects of this period were captured in the regressions on four- and five-year data—which showed results analogous to those found for three-year periods—this omission does not appear to be material to our results.

²¹Pension-eligibility controls are unnecessary, as all of the judges in our study were ineligible for their pensions at the time of resignation. Neither workload nor specific health data were consistently available.

²²See Feldman (1994) for details and further references.

²³To verify the independence of the age variable, Age at Resignation, from the tenure variable, Years on the Bench, we also tested our model with Age at Resignation replaced by the average age at appointment of judges resigning in the period. The results were not materially affected by this substitution.

The gender and race variables do not appear in the regression over resignations between 1930–1968, as they were constant over this period.

²⁴The relative magnitudes of the regression coefficients are deceptive, since most of the control variables are normalized. Looking at a concrete example, however, we see that the salary coefficients suggest that about \$5,250 of salary erosion has, in recent years, been sufficient to induce additional judges to resign and re-enter private practice. Such levels of erosion do arise in practice and can even occur in a single year.

Independent Variable	
Salary Level	Average salary level across the period, measured in thousands of 2007 dollars
Age at Resignation	Average age of judges resigning in the period.
Years on the Bench	Average number of years spent on the bench by judges resigning in the period.
Number of Judges	Average number of judges serving in federal appellate and district courts during the period.
President	Period average of a dummy variable which takes a value of 0 for a judge if the president serving when he or she resigned has a political party affiliation different from that of the appointing president.
Gender	Period average of a dummy variable taking a value of 1 for a female judge and of 0 for a male judge.
Race	Period average of a dummy variable taking a value of 1 for a non-white judge and of 0 for a white judge.

TABLE 1. Regression Variables

Independent Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.1443*** (.0339)	-.1096*** (.0336)	-.0862*** (.0295)
Age at Resignation	-.0816 (.0806)	-.1037 (.0719)	-.0602 (.0523)
Years on the Bench	-.1022*** (.0583)	-.0467 (.0723)	.0029 (.0480)
Number of Judges	.0125*** (.0025)	.0084*** (.0025)	.0060** (.0024)
President	-2.0403* (1.0610)	-2.5274** (1.1581)	-1.5331** (.6873)
Gender	.5884 (3.8719)	-.1149 (3.1234)	1.5855 (2.7697)
Race	2.2221 (6.6954)	-.8264 (6.1756)	-.9196 (4.3780)
Observations (Number of Periods)	24	24	24
Total Resignations	86	59	38
R ²	.6940	.5575	.5601

TABLE 2. OLS Regression Results for Resignations 1930–2004 (robust standard errors in parentheses)

Independent Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.1834 (.1028)	-.1914* (.0805)	-.1406* (.0640)
Age at Resignation	.0940 (.1899)	.0391 (.2320)	.1789 (.1001)
Years on the Bench	-.2822 (.4645)	-.5085 (.5035)	-.2512 (.3159)
Number of Judges	.0108 (.0142)	.0142 (.0120)	.0067 (.0096)
President	.3505 (5.8219)	-3.4250 (5.4661)	.9449 (2.6337)
Gender	1.7515 (5.9302)	-2.6668 (7.4295)	2.9102 (4.2145)
Race	-.5808 (10.0579)	-4.5307 (7.1983)	-3.8476 (3.4293)
Observations (Number of Periods)	12	12	12
Total Resignations	63	42	28
R^2	.6920	.6007	.8681

TABLE 3. OLS Regression Results for Resignations 1969–2004 (robust standard errors in parentheses)

the 1964–2004 period the OLS salary coefficients for the resignation of judges to return to private practice (both with and without spending time in government) were the only significant coefficients found.

We observe that older judges are generally less likely to resign. This is reasonable, as older judges are closer to pension eligibility than are younger judges and younger judges stand to gain marginally upon changing jobs. Although this effect was significant in the 1930–1968 period, it was insignificant and may have reversed in recent years.²⁵

The coefficient tracking the effect of judicial tenure demonstrates substantial variation in sign.²⁶ This is surprising at first glance, given the judicial pension program. Indeed, we might expect that these coefficients would always be negative, as additional time on the bench decreases the amount of time a judge must serve before being able to claim a pension. However, a look at the data quickly justifies this effect. The average tenure of a judge who resigned was just under 7.5 years, so that a judge who resigned would be expected to resign at most two periods after the period in which he or she was appointed. Although judges may be less likely to resign the longer they serve, a judge is very unlikely to resign after serving more than half of the time necessary for pension eligibility.

²⁵The 1969–2004 OLS age coefficients are all positive, indicating a positive correlation between age and resignation in this period. The magnitudes of these coefficients are commensurate with those of the age coefficients in the full-sample regression. However, this reversal does not appear in the Poisson regressions and none of these coefficients are significant.

²⁶Although this variable is usually insignificant, it does not even display a consistent sign when it is significant.

Independent Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.0586* (.0265)	-.0409 (.0300)	-.0130 (.0371)
Age at Resignation	-.0652* (.0325)	-.0673 (.0394)	-.0390 (.0308)
Years on the Bench	-.0017 (.0300)	.0509 (.0274)	.0692* (.0328)
Number of Judges	-.0023 (.0026)	-.0002 (.0027)	-.0017 (.0032)
President	-.9483* (.4128)	-1.4616** (.4855)	-1.1734* (.5621)
Observations (Number of Periods)	12	12	12
Total Resignations	23	17	14
R^2	.5732	.4754	.4487

TABLE 4. OLS Regression Results for Resignations 1930–1968 (robust standard errors in parentheses)

Therefore, little variation in tenure enters into our sample, rendering the effect of the number of years on the bench unclear.

In the regression over the full data set, we also observe high significance of the always-positive coefficient tracking the number of judges. However, these coefficients are all small in magnitude.²⁷ Both of these facts are unsurprising—as bench grows, the number of potential resignees grows but there are few resignations in total.

The political variable coefficients are highly significant in both the full-sample and 1930–1968 period OLS regressions. Surprisingly, however, these coefficients are negative, indicating that a judge is more likely to resign when the presiding president is not of the same party as the president who appointed the judge. Thus, it appears that resigning judges do not retire strategically.

Finally, the gender and race coefficients are both inconsistent and insignificant. Variation in these coefficients is likely a consequence of the low number of positive observations for these two variables.

Turning now to the Poisson regression results, we see that all the results are highly robust: the χ^2 statistic values for all but one regression are significant at 1%.²⁸ The pseudo R^2 term indicates the amount of behavior accounted for by our model. For example, we see that our variables explain 30% of the variation in recent resignation levels of judges who return to private practice without spending time in government.

In all cases, increases in the salary level are seen to reduce the frequency of resignations. Examining the salary coefficients, we see in all cases that the coefficients for total resignations have

²⁷An increase of approximately eighty judgeships corresponds to a single additional resignation.

²⁸That one regression not significant at 1%, the 1930–1968 regression of judges returning to private practice without entering government, is significant at 5%.

Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.0380*** (.0084)	-.0510*** (.0136)	-.0534*** (.0108)
Age at Resignation	-.0287 (.0243)	-.0742* (.0404)	-.0720* (.0395)
Years on the Bench	-.0347 (.0220)	-.0189 (.0538)	.0385 (.0293)
Number of Judges	.0035*** (.0004)	.0041*** (.0007)	.0037*** (.0009)
President	-.6355** (.3163)	-1.4561*** (.5612)	-1.0892*** (.3524)
Gender	-.1158 (.4906)	-.4443 (.8826)	.6525 (.8455)
Race	-.1441 (1.0280)	-1.1642 (1.7152)	-1.2976 (1.6883)
Observations (Number of Periods)	24	24	24
Total Resignations	86	59	38
χ^2	137.65***	45.58***	51.60***
Pseudo R^2	.2839	.2628	.2564

TABLE 5. Poisson Regression Results for Resignations 1930–2004 (robust standard errors in parentheses)

the smallest magnitudes, consistent with the hypothesis that the judges most motivated by salary concerns return to private practice after resignation. Furthermore, in the 1969–2004 sample, both the coefficient of resignations to enter private practice and the coefficient of resignations to reenter private practice without entering government are twice as large as the coefficient of total resignations and are significant at 1%. The salary coefficients in the 1930–1968 sample predominantly exhibit reduced significance,²⁹ but this is hardly surprising given the small resignation sample size in this period.

We again observe that older judges are less likely to resign; this effect is moderately significant in the full-sample regression. As in the OLS regressions, the number of judges is positively correlated with the number of resignations and is significant in the full-sample regression. Likewise, the results on the tenure, president, gender, and race variables are analogous to those found in the OLS regressions.

²⁹The coefficient for total resignations for the 1930–1968 period is an exception; it is approximately equal in magnitude to that for the 1969–2004 period and is significant at the 1% level.

Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.0248* (.0133)	-.0551*** (.0207)	-.0426*** (.0236)
Age at Resignation	-.0085 (.0301)	-.0191 (.0524)	.0567 (.0411)
Years on the Bench	.0087 (.0699)	-.1390 (.1281)	-.1076 (.1063)
Number of Judges	.0006 (.0017)	.0034 (.0026)	.0023 (.0042)
President	.4977 (.7719)	-1.0142 (1.1845)	.6750 (1.3830)
Gender	.8588 (.7953)	-.5633 (1.3825)	1.1440 (1.7040)
Race	.3625 (1.2914)	-1.0949 (1.7760)	-.6612 (1.3417)
Observations (Number of Periods)	12	12	12
Total Resignations	63	42	28
χ^2	156.94***	24.08***	48.86***
Pseudo R^2	.2096	.2050	.3038

TABLE 6. Poisson Regression Results for Resignations 1969–2004 (robust standard errors in parentheses)

6. CONCLUSION

The total number of judicial resignations is quite low, even in recent years, so it is hard to speak of a “crisis” of resignations.³⁰ However, the evidence from recent years supports the hypothesis that salary erosion is inducing judges to resign from the federal judiciary in order to enter private practice.

In recent years, those judges most driven by financial concerns have been the most likely to resign. Therefore, the justices’ fears of the effects of salary erosion on judicial resignation appear accurate. Our results predict that annual judicial resignation levels should increase following only a few years of inflation-induced salary erosion.

We observe that judges do not resign strategically—salary concerns may eclipse judges’ political considerations. This is an important distinction between our study and the studies of judicial

³⁰It is worth noting that 2006, which saw a particular spike in resignation totals, was not included in our sample due to the decision to break our sample at the 1969 salary spike and then aggregate the data into three-year periods. Our results are robust to the re-running of the regressions for the period 1932–2006 instead of the period 1930–2004.

Variable	Resignations of federal judges	Resignations of federal judges who reenter private practice	Resignations of federal judges who reenter private practice without entering government
Salary Level	-.0335*** (.0070)	-.0801** (.0318)	-.0396 (.0433)
Age at Resignation	-.0423** (.0172)	-.1436* (.0846)	-.0658 (.0742)
Years on the Bench	.0021 (.0141)	.0771** (.0310)	.0827*** (.0291)
Number of Judges	-.0019* (.0011)	.0037 (.0041)	.0006 (.0039)
President	-.4695** (.2157)	-2.1416*** (.7713)	-1.6206* (.8550)
Observations (Number of Periods)	12	12	12
Total Resignations	23	17	14
χ^2	86.36***	17.78***	13.68**
Pseudo R^2	.0951	.1574	.1424

TABLE 7. Poisson Regression Results for Resignations 1930–1968 (robust standard errors in parentheses)

turnover. Resignations may be driven by salary erosion, whereas overall turnover levels are likely to be driven by other factors.³¹

The contrast between our results and those for judicial turnover suggests that salary erosion does not drive retirement decisions. However, both our study and those on turnover omit an important channel through which salary erosion may affect the judiciary: recruitment. Indeed, in the presence of salary erosion, potential judges may be less willing to leave lucrative private practice careers. Determining the strength of this effect is an important problem for future work.

REFERENCES

- Adams, G. A. & Beehr, T. A. (1998). Turnover and Retirement: A Comparison of their Similarities and Differences. *Personnel Psychology*, 51, 643–665.
- Baker, K. J. (2000). Note: Senior Judges: Valuable Resources, Partisan Strategists, or Self-Interest Maximizers? *Journal of Law and Politics*, 52, 457–476.
- Barrow, D. J. & Zuk, G. (1990). An Institutional Analysis of Turnover in the Lower Federal Courts, 1900–1987. *Journal of Politics*, 52, 457–476.

³¹We therefore conclude that judicial retirement is primarily driven by the turnover-driving factors observed by Barrow and Zuk (1990), Spriggs and Wahlbeck (1995), Baker (2000), Nixon and Haskin (2000), Boylan (2004), Yoon (2006), and Perry and Zorn (2008). Of course, resignation levels are never driven by the pension concerns studied in Yoon (2006), as judges who resign forfeit their pensions *a priori*. The effects of salary concerns eclipse the other turnover-influencing variables' effects on judicial resignation levels.

- Blau, F. D. & Kahn, L. M. (1981). Race and Sex Differences in Quits by Young Workers. *Industrial and Labor Relations Review*, 34, 563–577.
- Boylan, R. T. (2004). Do the Sentencing Guidelines Influence the Retirement Decisions of Federal Judges? *Journal of Legal Studies*, 33, 231–253.
- Brenner, S. (1999). The Myth that Justices Strategically Retire. *The Social Science Journal*, 36, 431–439.
- Bureau of Economic Analysis. (2007). *National Income and Product Accounts Table: Table 1.1.4. Price Indexes for Gross Domestic Product* (computer file). Washington, D.C., U.S. Department of Commerce. <http://www.bea.gov/bea/dn/nipaweb/>.
- Cooper, M. (2007). New York's Top Judge Threatens Suit to Get Raises for Bench. *The New York Times*, April 10.
- Dowling, S. L., ed. (2006). *State of the Federal Judiciary: Annual Reports of the Chief Justice of the Supreme Court of the United States*, 2006 revised ed. Buffalo, N.Y.: William S. Hein & Co.
- Federal Judicial History Office. (2007). *History of the Federal Judiciary: Biographical Directory of Federal Judges*. Washington, D.C.: Federal Judicial Center. <http://www.fjc.gov/history/home.nsf>.
- Feldman, D. C. (1994). The Decision To Retire Early: A Review and Conceptualization. *Academy of Management Review*, 19, 285–311.
- Greenberg, P. E. & Haley, J. A. (1986). The Role of the Compensation Structure in Enhancing Judicial Quality. *Journal of Legal Studies*, 15, 417–426.
- Hagle, T. M. (1993). Strategic retirements: A political model of turnover on the United States Supreme Court. *Political Behavior*, 15, 25–48.
- Kennedy, A. M. (2007). Testimony before the United States Senate Committee on the Judiciary. Washington, D.C.: Federal Judiciary Newsroom Archive, February 14. <http://www.uscourts.gov/testimony/JusticeKennedy021407.pdf>
- Nixon, D. C. & Haskin, J. D. (2000). Judicial Retirement Strategies: The Judge's Role in Influencing Party Control of the Appellate Courts. *American Politics Research*, 28, 458–489.
- Perry, J. & Zorn, C. J. (2008). The Politics of Judicial Departures in the U.S. Federal Courts. Working paper. <http://ssrn.com/abstract=1120773>.
- Posner, R. (2007). *Judicial Salaries Since 1968* (computer file). Chicago, Ill.
- Posner, R. (1999). *The Federal Courts: Challenge and Reform*, . Cambridge, Mass.: Harvard University Press.
- Posner, R. (1993). What do Judges and Justices Maximize? (The Same Thing Everybody Else Does). *Supreme Court Economic Review*, 3, 1–41.
- Rehnquist, W. H. (2003). 2002 Year-End Report on the Federal Judiciary. Washington, D.C.: Federal Judiciary Newsroom Archive, January 1. <http://www.uscourts.gov/2002Year-End%20Report.htm>.
- Report of the Commission on Judicial and Congressional Salaries. (1954). Washington, D.C.
- Roberts, J. (2007). 2006 Year-End Report on the Federal Judiciary. Washington, D.C.: Federal Judiciary Newsroom Archive, January 1. <http://www.uscourts.gov/newsroom/yearend06.pdf>
- Spriggs, J. F. & Wahlbeck, P. J. (1995). Calling It Quits: Strategic Retirement on the Federal Court of Appeals, 1893–1991. *Political Research Quarterly*, 48, 573–597.

- Squire, P. (1988). Politics and Personal Factors in Retirement from the United States Supreme Court. *Political Behavior*, 10, 180–190.
- Van Tassel, *et al.* (1993). Why Judges Resign: Influences on Federal Judicial Service, 1789–1992. Washington, D.C.: Federal Judicial History Office, Federal Judicial Center.
- Vining, R., Zorn, C., & Smelcer, S. N. (2006). Judicial Tenure on the U.S. Supreme Court, 1790–1868: Frustration, Resignation, and Expiration on the Bench. *Studies in American Political Development*, 20, 198–210.
- Volcker, P., *et al.* (2003). Urgent Business for America: Revitalizing the Federal Government for the 21st Century. Washington, D.C.: Federal Judiciary Newsroom Archive, January 8. <http://www.uscourts.gov/newsroom/VolckerRpt.pdf>
- Yoon, A. (2003). Love’s Labor’s Lost? Judicial Tenure among Federal Court Judges: 1945–2000. *California Law Review*, 94, 1029–1060.
- Yoon, A. (2006). Pensions, Politics, and Judicial Tenure: An Empirical Study of Federal Judges, 1869–2002. *American Law and Economics Review*, 8, 143–180.
- Zorn, C. J., & Van Winkle, S. R. (2000). A Competing Risks Model of Supreme Court Vacancies, 1789–1992. *Political Behavior*, 22, 145–166.