Individual Explanations for Serving on State Courts*

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Many studies examine the composition of state and federal judiciaries, but looking at who is currently serving on the bench only tells part of the representation story. To understand how the bench came to look as it does, one must step back and consider those who do not seek seats on the bench as well as those who do. How do those eligible to serve view serving on the courts, and what shapes that perception? By considering both those serving and those who could serve on the courts, we can uncover how the characteristics of judicial office (including partisan elections) influence the decision to run for the judiciary, and how personal characteristics color the perceptions of judicial office. Using a survey of judges and attorneys, this article seeks to understand how people perceive judicial office, including how partisan elections and the gender of the individual influence those perceptions. This article is a descriptive account of how people perceive the judiciary, and how those perceptions vary by individual characteristics.

In his 2006 State of the Judiciary Report, Chief Justice John Roberts focused exclusively on his concern for judicial salary. Roberts expressed concern that federal judges were recruited increasingly from the public sector, a change from the 1950s when judges were largely drawn from private practice. In part, this recruitment from the public sector was because the pay differential between private practice and the bench was too substantial to recruit top private-practice lawyers. He stated in his report, "[i]t changes the nature of the federal judiciary when judges are no longer drawn primarily from among the best lawyers in the practicing bar" (Roberts, 2007:3-4). Such concerns about judicial pay are not unique to the federal bench. The ability to successfully recruit judges and concerns about institutional characteristics, such as judicial pay and methods of selection, have also seen attention at the state court level. With the work of public interest groups such as the American Judicature Society, as well as a few outspoken state supreme court chief justices such as Phillips in Texas, Abrahamson in Wisconsin, and Moyer in Ohio, attention is increasingly being given to how pay and selection influence the representative nature of the state judiciaries, as well as their independence and accountability (Abrahamson, 2003; Provance, 2004; Robbins, 2003). Such public attention, however, raises the question of whether these institutional characteristics influence the individual decision to become a judge or perceptions of the judiciary more generally.

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To understand how institutional characteristics, as well as individual characteristics, influence the perceptions of the bench and the decision to seek a seat, a survey of attorneys and judges in Texas was conducted. With the help of this survey, this article explores the individual decision to run for the bench, and what factors influence this decision. By examining the individual decision process, we can begin to understand how to recruit the best possible judges for the bench and to remove perceptual barriers to participation in public life. Removing such barriers is key to improving the quality of justice as well as the representative nature of the institution.

There are relatively few studies examining individual-level data on the judiciary or the pool of potential judges. Heinz and Laumann's (1982) study of the Chicago Bar Association is one of the few exceptions. While their study is a rich and descriptive account of the characteristics of the members of the bar, no connection is made between the bar and the bench, and no future work went the next step to compare those who could serve to those who do. Without such a connection it is impossible to know how the characteristics of the bar influence the composition of the bench and what prompts such a career move. In fact, political scientists and legal scholars know very little about individual decisions to seek a seat on the bench and what characteristics make such a move more or less likely (for exceptions see Cook, 1983; Williams, 2008), though aggregate level analyses are becoming more common (Alozie, 1996; Bratton and Spill, 2004; Flango and Ducat, 1979; Glick and Emmert, 1987; Hurwitz and Lanier, 2003; Williams, 2007). After better understanding who is likely to move, the next question to consider is why someone would or would not move from the bar to the bench.

The lack of direct study of the movement of lawyers to the judiciary means that candidate emergence studies from other institutions will have to provide the theoretical framework for the analysis. The decision to run for legislative office is a particularly useful area for illuminating such decisions. The decision to seek a public office typically depends on having the ambition for such office (Schlesinger, 1966). One's ambition for office is a function of a number of factors, including the desirability of the office, one's likelihood of winning the position, and the costs and benefits of seeking such a position (Black, 1972; Carroll, 1985, 1994; Copeland, 1989; Fox and Lawless, 2004, 2005; Hibbing, 1986; Kazee, 1994; Lawless and Fox, 2005; Maestas, 2000; Moncrief, Squire, and Jewell, 2001; Oxley and Fox, 2004; Putnam, 1976; Rohde, 1979; Schlesinger, 1966; Stone, Maisel, and Maestas, 2004). One's prior experience running for office, political connections, recruitment, and professional characteristics all weigh in these calculations. Those who were recruited for office, who are connected to the party in power, who feel qualified, or who have prior experience running for office are all likely to act on their ambition because their chances of success seem greater.

Undoubtedly, the characteristics of such an office, including the costs of running and the benefits of holding office, factor into the decision calculus of potential candidates. The characteristics of the office likely to influence the decision to run include the perception of the office, especially how prestigious the position is. Prestige is a ben-

efit of office that may make it more attractive to some potential candidates (see, for example, Rohde, 1979). Related to prestige, the pay for the office can be a significant deterrent to running, an especially noteworthy concern for the judiciary, as both the chief justice of the U.S. Supreme Court and many state supreme court chief justices noted. Concerns about pay are likely to be particularly pronounced in Texas, as those on the state supreme court made $113,000 in 2002 while the average lawyer in Texas made $115,680 (Council of State Governments, 2002; Bureau of Labor Statistics, 2008).[1] Aside from concerns about pay are the issues of campaigning for the judiciary. If potential candidates do not enjoy the process of campaigning, for example, they may not choose to seek the position, no matter how likely they are to win (see, for example, Carroll, 1994, and Lawless and Fox, 2005). In states such as Texas, dislike of partisan politics or campaigning will likely dissuade people from both legislative and judicial office. Even if one is appointed to an interim position on the bench by the governor, one still must run in an election to retain the seat. There would be little utility in changing one's career if one intended to serve only a portion of a term on the bench.

While there is much to be learned from studying candidate emergence in legislative office, the decision calculus for potential judges is likely to be different. Unlike most legislative seats, seeking a seat on the state or federal bench means giving up one's previous career entirely. Members of the state legislature may have to move to part-time status in their prior career, even if they practice law, but it would be considered unethical or illegal for a judge to maintain her position in a law practice, even part-time. Thus, moving from lawyer to judge is a much more substantial career move for potential candidates, and, as noted above, one that can involve a significant pay cut. While the relatively low pay of public servants affects state legislators as well, the costs of the career change are much higher for those seeking to move to the bench.

There are, however, a number of benefits to judicial office, benefits legislative office does not involve, that may induce someone to consider judicial office over any other position. Moving from practicing law to a seat on the bench would mean moving to consistent hours and pay, something many lawyers with families may find attractive. Likewise, taking a seat on most benches would not involve relocation to the state capital, nor would it likely involve traveling back and forth from the institution to one's home district. In many states, judicial offices are less competitive than legislative seats, with fewer candidates and, in some states, lower-profile elections; thus, those who are less enthusiastic about campaigning would have less campaigning to do (for evidence to the contrary, see Hall, 2001). The less competitive the seat the more likely the potential candidate can make a career of holding that seat (Rohde, 1979). Interim appointment by a governor, a power given to most governors, may make serving as a judge more attractive, as well. Appointment appears to occur with some frequency in the Texas bench, with 39 percent of the judges responding to the survey

[1] The year 2002 was chosen for this comparison because that is the year in which the survey (discussed below) was administered.

(discussed below), noting they were initially appointed to their position. After the initial appointment to the bench, the person serving is able to run for reelection as the incumbent, offering a significant number of electoral benefits over running for an open seat or as a challenger.

Even with the benefits of judicial office over legislative office or the practice of law, potential judges may not perceive judicial service as an attractive option. There is sufficient reason to believe that candidate perceptions of office, and the decision to run, vary considerably by personal characteristics, especially gender (Bledsoe and Herring, 1990; Buchanan, 1978; Carroll, 1985, 1994; Costantini, 1990; Darcy, Welch, and Clark, 1994; Fox and Lawless, 2004, 2005; Huddy and Terkildsen, 1993; Kahn, 1992; Lawless and Fox, 2005; Leeper, 1991; Martin, 1997; Matland, 1994; McDermott, 1998; Niven, 1998, 2006; Palmer and Simon, 2001, 2003; Sanbonmatsu, 2002, 2006a and b; Sapiro, 1982; Welch and Karnig, 1979; Welch and Studlar, 1990). These differences in the perceptions of office are even more likely as women increasingly report different experiences in the legal profession (Epstein, 1995; Harrington, 1995; Rhode, 1994, 2001a and b). Women are more likely to feel negatively toward campaigning (Carroll, 1994; Lawless and Fox, 2005) and are more likely to perceive barriers to their pursuit of office (Lawless and Fox, 2005; Williams, 2007, 2008). Those without strong political ties, or access to the pipeline for public office, may feel negatively about serving in an office that involves such ties (Carroll, 1994; Lawless and Fox, 2005; Williams, 2008).[2]

Moreover, lawyers and judges may both view the method of judicial selection in Texas, partisan elections, as unbecoming of judicial office or as a corrupting influence on the judiciary. Chief Justice Phillips's concerns about the influence of money and the appearance of corruption, as well as the work of groups such as Texans for Public Justice, are well-known throughout the state. It is thus possible that people who would like to be a judge will not pursue it until a new method of selection is adopted by the state legislature. While partisan elections may prevent people from acting on their ambition for office, it is unlikely to affect their expression of ambition for such office. Thus, it is important to consider those who have run for judicial office separately from those who aspire to such an office.

To understand how those in the legal community perceive the judiciary as an institution, as well as how these perceptions vary by individual, a survey of attorneys and judges was conducted in Texas. There are many aspects of judicial office in Texas that make it a desirable state for such an analysis. Texas has a very large judiciary as well as a large state bar, providing an ample pool of survey respondents for this research. Additionally, judges in Texas are chosen through partisan elections, a method used by eight other states for general-jurisdiction trial courts and five other states for appellate courts, though some form of popular elections are common to over

[2] While there is a rich literature on the issue of descriptive representation, such a discussion is outside the bounds of this particular work. This research simply notes if there are differences in the two groups, not the consequences of such differences or the importance of gender representation more generally.

twenty state benches (AJS, 2008). The terms of the judges are four years for trial courts and six years for the high appellate courts. The similarity of selection between the judiciary and the legislature allows for greater comparison of the perception of judicial office with what scholars know from legislative studies. If the selection mechanism differed it may mask actual differences of the two offices that affect the desire to serve. On a related note, the use of partisan judicial elections is a subject of controversy among scholars and practitioners of the courts (see, for example, Hensler, 1999). Weighing in on this debate is beyond the scope of this research. However, by examining perceptions of the judiciary under this system, including the desirability of serving in such a system, we can begin to understand the effect of partisan elections on the decision to seek a seat on the bench.

Using a list purchased from the Texas State Bar in 2002, a sample of 800 attorneys was randomly selected (400 men and 400 women). The sample includes about 2 percent of female attorneys and 1 percent of male attorneys in the state. All judges serving on Texas general-jurisdiction trial and appellate courts were sent a copy of the survey as well. The list of judges serving in 2002 was created from the 2002 edition of *The American Bench* and cross-referenced with court Web pages. In all, 515 judges were surveyed. All potential respondents were sent a follow-up postcard two weeks after the initial survey mailing. Female judges were sent a second mailing of the survey.[3] Two different versions of the survey were mailed (one to lawyers and one to judges), but there is a significant amount of overlap between the two. Both sets of respondents were asked questions about their perceptions of the judiciary, as well as their professional background and personal characteristics. Both sets of respondents were also asked about their prior political experience and their experiences running for office in the state, if they had any. Judges, and the few attorneys who had served in public office, were asked about their public service, including how they became involved and how long they served in each capacity.

A total of 529 surveys were returned, roughly 40 percent of those surveyed. Of the 529 responses, 290 were attorneys (36 percent response rate for the group), while 239 were judges (46 percent response rate). Women comprised 212 of the respondents, with 144 lawyers and 68 judges. Men were 311 of the respondents, with 144 lawyers and 167 judges in the response group. By group the response rates were 36 percent for male and female attorneys, 52 percent for female judges, and 43 percent for male judges. Given the additional mailing of the survey, the higher response rate for female judges is not surprising. Judges may have been more likely to respond to the survey because they have less of an emphasis on billing hours or because they felt they had more experience from which to draw to answer a survey about the judiciary.

[3] Female judges were the rarest group, and were sent a second mailing to ensure enough responses were available for analysis. The budget of the survey constrained sending a second mailing to anyone other than the rarest respondents. While I have no way of knowing with certainty that a person answered the survey twice, no two sets of responses were identical, making the likelihood of duplication low. While male judges certainly outnumber female judges in Texas, as in most states, the statistical analysis conducted here corrects for the differences in group size.

In comparing the perceptions of judicial office by group, whether the comparison is of attorneys and judges or men and women, there are inherent problems. Asking judges why they decided to join the bench may be problematic as the answers they give are likely colored by the passage of time, especially as their initial run for the bench becomes more and more distant. Comparing these sometimes-distant memories to the current perceptions of attorneys may be an unfair comparison in some respects. The benefits of such comparisons, however, outweigh the costs. While a cross-section of current first-time candidates for the bench and current attorneys would be useful, such a survey was not conducted, nor is it likely that there would be ample numbers of new people running for the bench in a single state to make meaningful comparisons. Thus, the recollections of current judges for why they joined the bench are the best available measure for the comparisons here. While the questions about the impetus for running (or not) for a seat on the bench may seem dubious to some, other questions provide more direct comparisons. For example, the desirable and undesirable features of serving on the bench ask both groups about their perceptions of the judiciary at the same point in time. While the two groups may give completely different answers to the question, the different perceptions of the two groups are exactly the point of this study. Until we ask the two groups we may not know that they see the office differently and that their different perceptions affect their decision to run.

A second problem of comparisons between groups, especially attorneys and judges, is the possibility that the design selects on the dependent variable. One might argue that comparing judges to lawyers is really comparing those with ambition to those without. This would only be the case, however, if all the attorneys expressed no ambition for the judiciary. Of the attorneys in this study, however, 24 percent either expressed a desire to serve or sought a seat on the bench unsuccessfully. The three groups, those with expressed ambition, nascent ambition, and no ambition, to use the typology of Lawless and Fox (2005), are represented in numbers substantial enough to provide meaningful comparison for most questions.

WHY JUDGES AND ATTORNEYS SEEK SEATS ON THE BENCH

A useful starting point for examining the survey responses may be to consider why judges initially sought their position on the state bench (see Table 1).[4] Most respondents listed more than one response to the question and responses varied quite a bit. Most commonly, judges report seeking a seat on the bench because they had a desire for public service, or they wanted to make a difference (21 percent of responses). One judge noted that the reason she sought the seat was "[t]o serve the citizens by explaining the law in clear and simple prose." Others were more negative in their assessment of the legal community in Texas and desired to change that. "Dissatisfaction with decisions issuing from the court" was noted by more than one judge as a reason for wanting to join the bench.

[4] The responses were categorized using SPSS Text Analysis Software.

Table 1
Motivations for Seeking Judicial Office*

QUESTION	RESPONSE	% Total (N)	% Judges (N)	% Lawyers (N)	% Women (N)	% Men (N)
Why did you seek your current position/a seat on the bench?	A desire for public service/to make a difference	21 (62)	21 (58)	25 (4)	19 (16)	22 (46)
	The opportunity arose	14 (41)	15 (41)	0 (0)	13 (11)	15 (30)
	Recruitment/encouragement	11 (31)	11 (29)	13 (2)	13 (11)	10 (20)
	Career advancement	10 (29)	10 (27)	13 (2)	7 (6)	11 (23)
	Looking for a new challenge/career change	8 (23)	8 (22)	6 (1)	6 (5)	9 (18)
	Desire/ambition to serve	8 (22)	8 (22)	0 (0)	11 (9)	6 (13)
	Dislike of other candidates/incumbent	8 (22)	7 (20)	13 (2)	7 (6)	8 (16)
	Felt qualified/ready to serve	6 (18)	5 (14)	25 (4)	**12 (10)**	**4 (8)**
	Thought it would be interesting	4 (11)	4 (11)	0 (0)	4 (3)	4 (8)
	Dislike of private practice	3 (9)	3 (9)	0 (0)	2 (2)	3 (7)
	Experience with a temporary/similar position	2 (6)	2 (6)	0 (0)	5 (4)	1 (2)
	The prestige of the position	3 (8)	3 (7)	6 (1)	0 (0)	4 (8)
	Thought they would enjoy the work	3 (8)	3 (8)	0 (0)	2 (2)	3 (6)
What factors influenced your decision to seek your current position/a seat on the bench?	Experience with a similar position	2 (9)	2 (9)	0 (0)	3 (3)	2 (6)
	Timing	5 (18)	5 (18)	0 (0)	5 (6)	4 (12)
	Pay/benefits of the judiciary	7 (26)	7 (26)	0 (0)	3 (3)	8 (23)
	The incumbent/challenger/current bench	9 (35)	9 (35)	0 (0)	13 (15)	7 (20)
	Felt qualified/ready to serve	14 (55)	13 (50)	25 (5)	16 (18)	13 (37)
	New challenge/a desire for change	16 (62)	16 (59)	15 (3)	12 (13)	17 (49)
	To serve the public/make a difference	13 (53)	13 (50)	15 (3)	11 (12)	14 (41)
	Opportunity arose	15 (58)	14 (55)	15 (3)	17 (19)	14 (39)
	Recruitment/encouragement	14 (57)	14 (54)	15 (3)	16 (18)	14 (39)
	Prestige of the position	4 (15)	3 (13)	10 (2)	1 (1)	5 (14)
	Desire/ambition	3 (12)	3 (11)	5 (1)	4 (4)	3 (8)

* Most respondents gave multiple answers to these questions, so there are more responses than respondents to the survey. Percentages in bold were significant at the .05 level in difference-of-proportions tests; t-tests measured significance. There were three responses for judges where gender was left blank. Those responses are not included in this analysis. Of the judges, 23 left the response to "what factors influenced your decision" blank.

Factors related to the political opportunities of running also prompted respondents to seek the bench (14 percent of responses). An open seat, a new court, a weak incumbent, and an interim appointment were all given as reasons for why the judges sought their current positions. A number of judges noted that they sought the position after learning it would be appointed by the governor for an interim term. Recruitment by a public official and encouragement by family or friends were also given as reasons for joining the bench (11 percent). In fact, a number of times the issues of recruitment and opportunity went hand in hand, as the person recruiting the current judge for the seat was often the retiring judge. Thus, similar to studies of legislative participation, opportunities are important to those seeking to serve on the bench, and the creation of a social network for potential new judges is a strong influence on the individual path to the bench.

Other factors influencing the decision to seek a seat on the bench were fulfilling a life long goal of being a judge (8 percent), looking for a career change or advancement (10 percent), and disliking the other candidates or incumbents (7 percent). One judge said "[m]y life and work experiences, combined, led to my decision that the judiciary should be my next goal." Sometimes the life goal was prompted by a family member serving on the bench as well. As one judge noted she "wanted to be a judge" and she was "following family footsteps" to the bench. Another took a more pragmatic perspective, "I did not like to think the other candidates would be judging my clients' cases." A third group of judges was outspokenly negative about the competition: "Because I believed the incumbent was incompetent and the people deserve better. I also felt that the system did not provide for election of the best candidates so I decided to run for office."

The comparison of private practice to judicial life also prompted people to serve on the courts, most often because of a strong dislike of private practice in some way (3 percent). One judge noted he was "[t]ired of practice" and the "[b]enefits (insurance, retirement)" were better on the bench. One female judge noted that the "hours were more consistent than private practice and I have 2 children." Other judges described a more general feeling of burnout and a need to slow down later in life as prompting their decision to serve on the bench. It was the "right time of life" and the judge felt "[r]eady to slow down and not have hassles of running [my] own business."

Less common answers included feeling qualified (5 percent), the prestige of the position (3 percent), or experience with a temporary judicial position (2 percent). A number of judges noted the experience as a temporary judge, usually assigned to help with workload issues on the court, gave them the desire for a more permanent position. One judge said, "I served as a temporary judge for 2 months and felt like I found my niche." Thus, these temporary assignments can be used as a way to recruit new people to the bench. Surprisingly, the prestige of the position was not listed by many, but those who went to the bench because of its prestige felt strongly about it. "I consider it the highest honor a lawyer can achieve," one judge said.

Table 2
Barriers to Serving on the Bench

QUESTION	RESPONSE	% Total Attorneys (N)	% Female Attorneys (N)	% Male Attorneys (N)
If you have considered a seat on the bench, why have you not run?	Campaigns cost too much/don't want to raise money	22 (19)	19 (8)	24 (11)
	It would be a pay cut/salary too low	18 (16)	10 (4)	27 (12)
	Not ready/qualified yet	14 (12)	21 (9)	7 (3)
	Don't like politics/I'm apolitical	14 (12)	14 (6)	13 (6)
	Not likely to win/wrong ethnicity/party to win	11 (10)	5 (2)	18 (8)
	Dislike of campaigning	8 (7)	12 (5)	4 (2)
	Lack of political connections	7 (6)	10 (4)	4 (2)
	No desire/ambition	6 (5)	10 (4)	2 (1)
What circumstances would make you more likely to seek a seat on the bench?	A change in the method of judicial selection	33 (49)	29 (20)	37 (29)
	Getting older/ready to slow down/when kids grown	22 (33)	26 (18)	19 (15)
	When I have a better chance of winning	19 (28)	20 (14)	18 (14)
	When I am in a better financial position	10 (15)	6 (4)	14 (11)
	If I were recruited/asked	7 (10)	7 (5)	6 (5)
	If the opportunity arose	5 (7)	7 (5)	3 (2)
	If I were convinced of a need/didn't like incumbent	5 (7)	6 (4)	4 (3)

Attorneys, while unlikely to have sought a position on the bench, gave similar answers to what prompted them to try to become a judge.[5] A desire to serve the public was again common (25 percent), but, interestingly, feeling qualified was a more common response among lawyers than judges (25 percent). One attorney noted she ran "because I believed I had a broad background that could help me be a good and fair judge." Given the small number of attorneys who sought judicial office, not much confidence can be placed in the differences, but future research can explore the differences between attorneys and judges in more depth.

WHAT PROHIBITS ATTORNEYS FROM JOINING THE BENCH

Those attorneys who considered serving as judge but did not actively seek a position on the bench were asked why they never ran. The question was intended to understand why those with ambition for the bench do not act on such ambition. While levels of ambition were certainly lower among those in the legal profession than those on the bench, a significant number of attorneys said they had considered such a position (24 percent of attorney respondents). The number of people is sufficient to analyze both barriers to participation and justifications for not acting on ambition (see Table 2).

Among those who expressed ambition, the most common reason for not running for a seat on the bench was the concern that a campaign would cost too much money (22 percent of responses). Not only did the general cost of campaigns prohibit people from seeking a seat on the bench, but the amount of work necessary to raise campaign money discouraged many from running. One attorney noted, "judges are elected in Texas. Fort Bend county has approximately 350,000 people. I was told a campaign would cost $125,000 or more." In addition to the general costs of elections, the early money needed to run a campaign was prohibitive for some attorneys. More than a few noted that they could not afford the "substantial payout" associated with running for the bench. The concerns about the need for a substantial amount of money to run for judicial office are not without basis. The American Judicature Society noted that there was a 250 percent increase in the costs of elections in the 1980s alone (AJS, 2008).

Related to the concerns about the costs of running for a seat on the Texas judiciary were a general dislike of partisan politics and the process of campaigning (14 percent)—a necessary component of joining the Texas bench for any length of time. One attorney said, "I have been in state government, 30 years, and don't like the election process, especially for judges." Other attorneys were not just turned off by the process of political campaigns generally, but also the negativity of judicial elections that is particularly pervasive in Texas. One said he "wish[ed] to avoid political 'mudslinging'" in the state. Still other attorneys felt negatively about the process of campaigning because they had firsthand experience with the process. One attorney said "after working to get others elected I discovered enough about the political process to convince me to avoid it at all costs." Thus, a movement to a new method of selection may encourage a new

[5] Eighteen attorneys noted that they ran for a seat on the bench.

breed of attorneys to seek seats on the state bench.

In addition to the process of elections deterring attorneys from joining the bench, the substantial pay cut from private practice was listed in 18 percent of the responses as a reason they never ran. While some attorneys noted that the compensation level was merely "too low" others noted specifically that the movement from private practice to the bench was too costly given the work they do. One attorney said, "As a solo practitioner, it would directly impact my ability to sustain sufficient income when running for office." As a small-business owner in solo practice, attorneys cannot afford to put their practice on hold while they run for office. This concern is particular to those who would leave private practice to serve on the courts, as opposed to other avenues of participation in public life. For other attorneys it was the wrong time in their lives to take a substantial pay cut and join the bench. One female attorney noted, "I was a newly single parent and did not want to take pay cut." Thus, just as Chief Justice Roberts (2007) noted with respect to the federal bench, the pay differential between attorneys and judges is preventing the recruitment of the broadest swath of attorneys to the bench.

Another group of concerns influencing the decision to seek a seat on the bench were those related to the likelihood of winning the seat. Such concerns ranged from not having the political connections to be successful (7 percent) to thinking they were the wrong party to win where they lived (11 percent). One attorney said she lacked "local political backing—very necessary in [a] small town/county." Another noted, "[o]nly Republican Party members can win elective office in Brazoria County Texas, I am not a Republican." While some thought they may be able to attain an initial appointment, retaining their seat would be a problem. One male attorney said, "I am a liberal Democrat, there is no possible way I could be elected to a post to which I was appointed." In addition to the concerns about ties to local politics and proper party affiliation, some attorneys noted that there were ethnic or racial divisions where they lived that made them an unattractive candidate. "I am an [A]nglo in a county which is 90 percent [H]ispanic. It is virtually impossible for a non-[H]ispanic to be elected as a judge in this area," one attorney noted.

Concerns about the qualifications necessary to run for office were another part of the decision calculus (14 percent). The formal years of practice requirement in the state are not too burdensome, but enough to discourage young lawyers from seeking judicial positions. "I have not been practicing long enough and do not feel I am experienced enough to seek a district court bench yet" one young female attorney noted. Beyond meeting the formal years-of-practice requirement, others felt uncertain of their prospects because they did not have enough litigation experience. "I don't feel I have enough trial experience" was noted by more than one lawyer.

POSITIVE PERCEPTIONS ABOUT THE BENCH

Important in understanding whether someone will attempt to join the judiciary are the positive and negative perceptions of judicial office. By surveying both attorneys and

Table 3
Perceptions of the Bench

QUESTION	RESPONSE	% Total (N)	% Judges (N)	% Lawyers (N)	% Women (N)	% Men (N)
What do you see as desirable about serving on the bench?	Being able to make a difference/serve public	46 (303)	46 (156)	47 (147)	**53 (125)**	**43 (178)**
	Pay/benefits/consistent schedule/retirement	19 (123)	19 (65)	19 (58)	16 (37)	21 (86)
	Prestige/honor of the position	11 (73)	10 (35)	12 (38)	8 (19)	13 (54)
	Work is challenging/interesting/love of the law	13 (88)	**18 (63)**	**8 (25)**	13 (30)	14 (58)
	Enjoy the people (lawyers, judges, staff)	3 (17)	5 (17)	0 (0)	3 (6)	2 (9)
	Being able to use my experience/skills	1 (5)	0 (0)	2 (5)	1 (2)	1 (3)
	A chance to learn	1 (6)	2 (6)	0 (0)	2 (4)	<1 (2)
	Career advancement	1 (5)	0 (0)	2 (5)	<1 (1)	1 (4)
	Power	2 (12)	0 (0)	4 (12)	2 (4)	2 (8)
	Nothing	3 (22)	0 (0)	7 (22)	3 (8)	3 (14)
What do you see as undesirable about serving on the bench?	Elections/politics/campaigning	39 (272)	**33 (120)**	**46 (152)**	**45 (115)**	**36 (157)**
	Pay too low	20 (137)	22 (81)	17 (56)	**13 (34)**	**23 (103)**
	Lack of challenge/boring/tedious	4 (29)	0 (0)	9 (29)	4 (9)	5 (20)
	Don't like publicity	6 (45)	7 (26)	6 (19)	**10 (26)**	**4 (19)**
	Workload too high	6 (42)	7 (24)	5 (18)	7 (18)	5 (24)
	Bad lawyering/undesirable people	4 (25)	2 (7)	5 (18)	4 (10)	3 (15)
	Administrative hassles/dealing with legislature	11 (75)	**16 (60)**	**5 (15)**	**7 (19)**	**13 (56)**
	Lack of schedule control	2 (12)	0 (0)	4 (12)	4 (9)	1 (3)
	Seeing effects of decision making/bad side of life	6 (42)	**8 (31)**	**3 (11)**	4 (11)	7 (31)
	Isolation	2 (17)	5 (17)	0 (0)	2 (4)	3 (13)

judges this research is able to determine how the perceptions differ whether one is inside the profession or outside. The attorneys and judges were each asked what they saw as desirable and undesirable about serving on the bench. While the answers were similar across the two positions, the frequency differed somewhat. These differences deserve further explanation (see Table 3).

Both attorneys and judges most often listed the desire to serve the public or make a difference as what they saw as desirable about the bench (46 percent of responses from judges, 47 percent of attorney responses). One attorney said, "You can make a positive difference in the lives of people and for the community as a whole." Particularly appealing to a number of attorneys was the ability to be fair in dispensing justice, instead of advocating for a side. One attorney said being a judge was desirable because of the "[p]otential ability to evenly apply law to insure justice for everyone; not simply advocating a position or furthering a personal agenda." Being a judge provides the opportunity not only to serve the public, but also to serve the greater legal community. The "opportunity to impact development of law and administration of justice" was appealing to a number of attorneys. Judges echoed the comments of lawyers, often saying it was a desirable position because they can "have the immediate ability to positively change lives." Like attorneys, judges enjoyed being able to choose a side to favor, instead of advocating for one particular point of view. "You get to be fair for a living. You need not advocate a position you don't personally hold," one judge said.

Aside from enjoying the ability to make a difference, the perks of judicial office were attractive to both attorneys and judges. Many judges noted that while the pay is not substantial, it is consistent and preferable to billing hours (19 percent). Likewise, the retirement, benefits, and consistent hours made the position more desirable than staying in private practice. Other judges noted that since they controlled the courtroom, they were able to set their own schedules. It was especially important to one female judge that she had "[w]eekends and evenings free for family." Likewise, judges enjoyed not having to deal with the hassles of running a small business, as they did when they were lawyers. What judges noted as the best aspects of their jobs attorneys also saw as desirable (19 percent). One attorney said the judiciary was desirable because the work hours were "less hectic." Another said it would be nice to have "more control over your life." A third attorney noted, "I believe the lifestyle would be more relaxed and less stressful with the ability to actually take vacations." Other attorneys focused on the consistency of the pay, saying the judiciary offered "steady income for 4 years—good benefits if you sit long enough to vest." Other attorneys looked long-term at the benefits of being a judge. One attorney said job security made the position desirable because "even if you serve only 1 term you are considered a judge forever, [making] the next job easier to get."

Where attorneys and judges diverged is the extent to which the challenging nature of the work made it a desirable office. This response was far more common among the judges than the attorneys, showing up in 18 percent of judicial responses, but a mere 8 percent of attorney responses. Judges were especially likely to emphasize

the variety of cases they saw and how it kept them current in the profession. One judge noted that "the wide variety of cases I hear as a judge of general jurisdiction" allows her to "keep a real pulse on our community." It was not just the variety of cases but the type of cases that judges noted made the work interesting and, thus, desirable. More than one noted that they found the work to be intellectually stimulating. One judge mentioned that the work got more interesting as he rose in the judicial hierarchy. He said, "Having gone through the different levels of judgeship, the district court has given me the opportunity to try more cases in a variety of legal subjects that have made my work more interesting and more rewarding." Attorneys, while less likely overall to say that the challenging or interesting nature of the work made it desirable, made comments similar to the judges. One attorney noted, "The interaction w[ith] people would be interesting and the many different legal issues would also be interesting."

The prestige and honor of judicial positions was listed by 10 percent of attorneys and 12 percent of judges, though it ranked above the interesting nature of the work for attorneys. Both attorneys and judges noted that the judiciary was a prestigious job, and many noted that it was "the highest calling" in the profession. Many respondents in both groups saw the level of respect given to judges as a factor making the job desirable. One attorney noted, "I can think of no higher calling than protecting justice through the courts." Judges spoke of the honor of the position in much the same way. One judge said, "Judging is a noble profession. Judges at their best resolve disputes peacefully, under the law."

Perhaps a more significant difference among attorneys and judges is that while judges focus on the desirability of the people with whom they work (5 percent), attorneys see the power of the position as desirable. One attorney said that "[t]he sense of power and a certain amount of clout" made the position desirable. While power was mentioned among attorneys (4 percent of respondents), no judges noted this as a positive aspect of the office. Whether the position is not as powerful in practice as it seems is an issue worthy of further exploration.

NEGATIVE PERCEPTIONS OF THE BENCH

Aside from the desirable aspects of judicial life, there are characteristics of the judiciary that make it undesirable, both for attorneys and judges. Most common among both groups was the lack of desirability to undergo partisan elections. Feeling negatively about campaigns and politics was the number-one undesirable characteristic of the judiciary for both attorneys and judges (33 percent of judicial responses, 46 percent of attorney responses). Some judges were very specific regarding the more negative aspects of a popularly elected judiciary. One judge said, "[r]unning for election every 4 years and raising money to buy TV time and run a county wide campaign" were the undesirable characteristics of the job. Other judges mentioned their dislike not only of campaigning, but also of the appearance of impropriety as they receive contributions from attorneys. One judge noted, "The fundraising of the judiciary is harmful to the institution. The public perceives it as wrong and attorneys feel compelled to give if

they practice in that court." Other judges complained about "imposing on your time and your family" with campaigning. Some judges simply did not consider themselves political.

Attorneys were likely to mention the same undesirable characteristics. One noted that he did not enjoy the "[p]olitical or campaign pressures to satisfy interests of purported supporters, constituency or party." In addition to the partisan pressures of judicial selection in Texas, some attorneys thought elections beneath the judiciary. One attorney said, "You have to campaign and be elected. It is partisan—I don't think judges should have to be affiliated w[ith] a particular party. It should be distinguished from politics." Other attorneys saw the need to get elected as negative because of the effect it would have on their personal integrity. One said, "I believe I would be bought and paid for. I would have to compromise my values in order to gain the political support needed to get elected." More than one attorney noted that the particularly hostile nature of Texas judicial elections was an undesirable trait of the office. One attorney expressed the dislike of campaigning rather simply by saying that "having to campaign . . . it seems demeaning!"

In addition to the negative feelings about campaigning, the pay for judges in Texas was noted by both groups as especially low (22 percent of judicial responses, 17 percent of attorney responses). The low pay, however, was spoken about slightly differently by judges and attorneys. The judges were more likely to complain about the lack of pay raises for judges, or how underpaid both they and their staff were. One judge noted that being a judge was "[n]ot as financially prosperous as private sector," while another more bluntly stated, "You can't 'hit the big one' [and] get rich like is possible practicing law." A number of judges noted that, given the Code of Judicial Conduct in the state, they were limited in their ability to supplement a low income. Attorneys were less descriptive, noting the pay of judges was "low," "poor," "much lower than private practice," "too low," or "not competitive."

While there is similarity between attorneys and judges in their top two undesirable traits of the judiciary, they differ on the third. Judges were more likely to note the administrative hassles of serving on the bench (16 percent), while attorneys cared more about the tedium of judicial work (9 percent). Administrative hassles, especially insufficient resources for court administration, were common answers among judges. Judges frequently noted they did not have enough resources to handle their workload, and they felt badly about their staff being underpaid. Unlike the attorneys, when judges spoke about the more negative aspects of being a judge, they were more likely to say it was "difficult" to listen to consecutive plea bargains, but not that it was boring (8 percent of responses noted the difficulty of decision making). Judges were also more likely to speak negatively about the particular kinds of cases they face, especially family law. Judges frequently noted it was difficult to handle the "bickering" in such cases; "[c]hildren who are emotionally impacted by divorce" was difficult to witness with any degree of regularity for some of the judges. Other judges noted that they saw "a darker side of life" than most people see, and they often found it difficult "not to

bring cases home." Still other judges found it difficult to see the impact of their decisions on litigants and the families of litigants.

Judges also complained about the publicity associated with being a judge (7 percent). Judges frequently described public life as akin to "living in a fishbowl," and they often noted that they did not like the public attention that came with the job. Many judges said they did not like having their lives or the lives of their families subject to intense public scrutiny, and they felt as if they were unfairly characterized by the media or the other branches of government. The intense scrutiny of public life was especially pronounced in small towns. One judge noted he disliked "[h]aving people approach me in public places, such as restaurants, etc. in an attempt to discuss pending cases." The public scrutiny prompted more than one judge to note that they feared for their safety and that of their family.

It is not surprising that the attorneys did not mention the burdens of public life, as it is something likely only to be experienced once one is in the spotlight. From outside the judiciary, attorneys were more concerned about the "boring" or "repetitive" nature of the work of judges. It should be noted that judges also mentioned this as a negative aspect of being a judge, but not as often as attorneys. One attorney mentioned the "drudgery of the work" and the "burn-out potential" associated with judicial work. Another attorney said the "[g]reat majority of cases are not challenging or interesting." Other attorneys were more specific, noting that picking juries, "slip and falls," or car accidents, for example, would be especially boring. In comparative terms, one attorney saw being a judge as "boring, after the initial novelty wears off, compared to being a lawyer which has new challenges every day."

GENDER DIFFERENCES

While the profession of respondents did prompt some different assessments of judicial office, the differences were more pronounced when response groups were broken down by gender. In asking why they sought their current position, women were more likely than men to say they ran for their current seat because they felt ready or qualified to run (12 percent), or because they had experience with a temporary position that piqued their interest in serving full-time (5 percent). Women were also more likely to say they ran for their current position because they had always wanted to be a judge (11 percent). Public service was still the most common answer among women, as it is with all judges, but the number of women remarking that they felt qualified or ran because of a prior experience is noteworthy. While the few attorneys who sought judicial positions were more likely to be women, the group was so small any analysis of gender differences is meaningless.

Among attorneys who said they considered a seat, women were more likely than men to list not feeling qualified as what prevented them from running (21 percent). Women were also more likely than men to say that a dislike of campaigning persuaded them against pursuing a seat on the bench (12 percent). Women were also concerned about lacking the political connections necessary to be successful (10 percent).

Thus, moving women into public life may require additional efforts at recruitment, as women feel less tied to the political pipeline necessary to be successful.

In asking attorneys what circumstances would make them more likely to consider a seat on the bench, there were some interesting gender differences. A change in the selection system was still the more common answer, but women were more likely than men to say that the opportunity would cause them to consider such a bid (7 percent). Likewise, women also emphasized being convinced of the need to run (6 percent), being recruited (7 percent), and waiting until they were later in life to run for such office (26 percent). In fact, almost as many women noted that waiting until a later time would prompt them to consider such a bid as mentioned a change in the method of selection. In speaking of the timing issue, women tended to emphasize they would wait because of family considerations or until children were older. One wonders if the timing issue would be less of a consideration for women if an alternate method of judicial selection was used in the state, especially given the time considerations of campaigning in a large state such as Texas, but such a question must be answered by future research looking across states.

In looking at what attorneys and judges saw as desirable about serving on the bench, women were more likely than men to say the ability to make a difference was a desirable characteristic (53 percent). Women were less likely to emphasize the pay, the prestige, and the challenge of the work than their male counterparts (16 percent, 8 percent, and 13 percent, respectively). While making a difference was the most common answer regardless of gender, the gender differences over the other desirable characteristics suggests that they may be entering the profession based on a different set of criteria than their male counterparts.

The differences between men and women were less pronounced on what was desirable than undesirable. Most notably, women were more likely to note that elections were an undesirable characteristic of judicial office (45 percent). Women were less likely to emphasize pay and administrative hassles than their male counterparts (13 percent and 7 percent). However, women emphasized the publicity aspect more than men (10 percent) and they focused on the workload more often (7 percent). In fact, while women were not half of all judges surveyed they were almost half of all respondents listing publicity as an undesirable characteristic of serving as a judge. Women were also likely to complain about the lack of flexibility in the work schedule (4 percent) and to speak of the workload in terms of the unreasonable docket loads they faced on the bench. While the ways in which women and men talk about campaigns, workload, and publicity are not different, women were more likely to focus on these three aspects than men.

While the differences between attorneys and judges in their perceptions of the bench may not be surprising, the gender differences are noteworthy. Consistent with other studies of women's participation in public life (for example, Lawless and Fox, 2005), women not only are joining the bench for different reasons from men, but also are *prohibited* from joining for different reasons, as well. Perhaps many of these differ-

ences are prompted by the greater responsibility of women for child care. Women were more likely to list waiting until later in life to run for office, not wanting to have their family in the public spotlight, and not enjoying campaigning—all reasons that could relate back to their families. Perhaps a change in selection method, along with greater recruitment, would lead to more female judges. Such questions, however, must be left to future research.

CONCLUSION

As an initial study of the perceptions of judicial office, and what prompts someone to choose such a path, the conclusions this study is able to reach are somewhat limited. However, the tentative conclusions provide ample fodder for future work. The two main conclusions are that while there are significant differences in how attorneys and judges view participation on the bench, the more pronounced differences are between women and men. These perceptual differences not only may prevent the most talented private-sector lawyers from pursuing a seat on the bench, but also may be depressing the descriptive representation of the institution. Those interested in opening the path to the judiciary to the broadest swath of people should take both perceptual differences into account as they seek a more representative, legitimate, and powerful judiciary.

In terms of the positive perceptual differences between attorneys and judges, attorneys are more likely to focus on the prestige of the institution, while judges enjoy the challenging work. Interestingly, what judges saw positively, attorneys viewed negatively, perceiving the nature of the work as boring. Focusing on the negative aspects of the job, judges were more likely than attorneys to mention a dislike of the publicity associated with public life. Overall, the perceptual differences are perhaps not that striking, as judges tend to enjoy aspects of the job (or dislike others) that attorneys will not understand until they themselves serve on the bench.

Judges and attorneys do agree with respect to the selection of judges in the state, as well as about judicial pay. Both groups saw both factors overwhelmingly negatively, suggesting that the recruitment of attorneys to the bench, especially young attorneys, is hindered by both the pay differential and the time needed to campaign in the state. While some attorneys could never be persuaded to serve on state courts, others would be willing to consider such a move if the selection mechanism were different, if running did not take so much time and money, or if the pay for all the work of campaigning made the job worth it. Calls to change the method of judicial selection in the state, especially by the former chief justice, may have prompted such a strong response, but pay and selection are nonetheless a concern that deserves further explanation. It is possible that states with more competitive pay, or with alternate selection methods, may see greater interest in serving on the bench, but such answers must be left to future research.

A more significant set of differences appears in the responses of women and men across occupations. Women were more likely to focus on feeling "ready" or on having

the necessary experience to serve as the impetus for their move, a finding similar to the legislative literature, which notes that women are more risk averse than their male counterparts (see, for example, Lawless and Fox, 2005). This suggests that the key to increasing women's representation on the bench is filling temporary positions with women and otherwise encouraging their participation, whether encouragement comes from the party or the current members of the bench. Interim gubernatorial appointments, for example, can be a key way to see more women on the courts.

Potentially hindering the governor's ability to diversify the bench with interim appointments, however, are the negative feelings women have about being in the public spotlight, especially bringing their family into such heightened circumstances, and the difficulty of seeing the impact of judicial decisions on families. While a change in selection may help with the former concern, the latter is more difficult to solve, although calls for increased counseling services for judges may lessen such concerns (see, for example, Zimmerman, 2006).

Perhaps the easiest problem to solve in getting more women to the bench is for judges, be they male or female, to talk with attorneys about how much easier it is balance work and family while on the bench. While attorneys thought maintaining a flexible schedule would be more difficult on the bench, judges were more likely to mention their flexibility and ability to spend increased time with their families. Whether the reason for the flexibility is because judges have moved away from billing hours, giving them consistent pay and benefits, or because as the judge they set the court's schedule is not really of consequence; either way, attorneys may be more likely to serve if they know that they can better balance work and family on the bench. The benefits of this information are not unique to women; younger men also may be more likely to run if they know that time on the bench does not mean time away from family.

While there is certainly no magic solution to the problems of judicial recruitment and representation, there are some pieces of advice that can be offered to those looking to achieve the best bench possible. Moving away from partisan elections is key to opening the process to a broad class of people. Both attorneys and judges mentioned that partisan elections do not allow for the most qualified to serve, ultimately affecting the quality of the justice delivered by these courts. Likewise, increasing judicial salaries not only allows the best and brightest among those in private practice an opportunity to serve on the bench, but also increases the independence of the judiciary relative to a group of state legislators who can supplement their income much more easily. Finally, changing or diversifying the composition of state benches may require changes to the opportunity structure, with governors or other party elites not only recruiting a different group of people to the bench but also appointing them to temporary positions that demonstrate the joys and benefits of judicial service. The more the pool of potential judges is aware of benefits of judicial office, the broader the interest will be, allowing for the greatest pool from which to draw members of the bench. **jsj**

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