



REPORT

**ADEQUATE COMPENSATION FOR JUDGES
IS ESSENTIAL FOR NEW YORK'S BUSINESS
AND ECONOMY**

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Adequate Compensation for Judges Is Essential for New York's Business and Economy

This report regarding the impact of the current level of compensation of the New York Judiciary on the State's economy and business community is respectfully submitted by the Atlantic Legal Foundation.¹

Introduction

The Atlantic Legal Foundation is concerned that the current level of judicial compensation may adversely affect the business community and the health of the State's economy. An examination into this subject is important in light of New York's position as the financial and commercial capital of the United States and arguably the world, and New York's troubled current economic environment. Attention has been drawn to the issue by the litigation between Chief Judge of the State of New York, Judith S. Kaye, and the Governor and State Legislature concerning judicial compensation. The impetus for that litigation was the fact that judges in New York have not received a salary increase in ten years.

The Foundation

The Atlantic Legal Foundation, now in its thirtieth year, is a non-profit, non-partisan organization with a history of advocating for limited, effective government, free enterprise, individual liberty, school choice, and sound science in the courtroom. Its Board of Directors includes current and former General Counsels of fourteen major corporations: American Cyanamid, American International Group, Inc., Bethlehem Steel Corporation, Computer Sciences Corporation, CPC International Inc., Crane Co., DuPont Co., GT Solar International, Johnson & Johnson, Lockheed Martin

Corporation, Monsanto, Republic National Bank of New York, Rohm and Haas Company, and Tyco International Limited.² Other members of ALF's Board of Directors and its Advisory Council have substantial responsibility for business litigation at major law firms. The Foundation has been involved in cases significant to the business community and has been recognized for its advocacy of issues that deserve responsible analysis and study. The role of the judiciary in commercial matters has been an area of particular focus.

The Foundation's Study

The Foundation has reviewed relevant statistics, specifically comparisons between the salaries of New York State judges and other public and private sector professionals in New York, and state and federal judges nationwide. The Foundation has also identified and reviewed publicly-available documents that discuss these topics, including news articles, communication from business organizations to New York State leaders, published studies conducted by other organizations,³ and the pleadings and other filings in Chief Judge Kaye's pending lawsuit.

While the public record on this issue is compelling, much of the basis for this study's conclusions is the collective experience and judgment of the Foundation's Board of Directors which includes literally hundreds of years of responsibility for business litigation at major corporations and law firms as well as observation of the capabilities and performance of hundreds of judges. In short, this subject is well known to individuals with core litigation responsibilities.

The Foundation considered conducting surveys. There was concern, however, that surveys of judges would be perceived as reflecting their self-interest in this subject. Surveys of businesses would accomplish nothing more than predictably

indicate that the business community wants better judges and a more cost-effective and productive judicial process.

The Foundation requested interviews with New York Governor David A. Paterson, Assembly Speaker Sheldon Silver, and Senate Majority Leader Dean G. Skelos, but received no response to those requests. The Foundation has, however, considered the positions taken by the Executive and Legislature in the pending litigation.

To evaluate judicial salaries in New York, the Foundation has compared them to compensation of various other relevant groups. Many of the statistics set forth in this report are derived from a study issued in May 2007 by the National Center for State Courts on judicial compensation in New York State.⁴ For close to forty years, the National Center for State Courts has provided services to the courts including research studies, consulting, a variety of educational programs, an extensive web database of information on court administration, the largest library of materials on court administration in the world, and continued assistance in the improvement of inter-branch relations through its lobbying and advocacy services.

New York Judges' Salaries Have Been Lagging While Their Docket Has Been Increasing

New York state judges have not received a pay raise since 1999.⁵ At that time, their salaries “were on a par with judges in U.S. District Court – at \$136,700 a year. Since then, however, the pay for federal judges has risen to \$162,100 [now \$169,300], while salaries for state Supreme Court judges remain at the 1999 level.”⁶ By 2007, the State Judiciary’s pay had been eroded 26% by inflation.⁷

Over the same period, the judges’ caseloads have increased. From 1999 to 2006, “filings in the New York State

courts have increased by approximately 15% (from 3,978,701 to 4,551,232) including an increase of 243,000 filings in 2006. Total civil filings in New York are up 35% from 1.31 million in 1999 to 1.77 million in 2006.”⁸ Yet the number of State judges increased by only slightly more than one percent over the same time period.⁹ In fact, the entire federal judiciary works with a smaller docket. “In 2006, over 4.5 million cases were filed in the New York state courts—nearly triple the number of filings for the entire Federal Judiciary combined.”¹⁰

Given New York’s current troubled economic environment and the litigation which those troubles will inevitably generate, its courts’ dockets are likely either to continue to increase or at least to remain at the current levels. Because New York is the nation’s, if not the world’s, financial and commercial capital, the need for examination of factors relating to the capabilities and performance of the State Judiciary is apparent.

When Adjusted For Statewide Cost-of-Living, New York State Judicial Salaries Rank 49th Nationwide

According to the National Center for State Courts, “[i]n 1975, ... New York State ranked first [nationwide], with a salary of \$48,998 for a justice of the Supreme Court – a status commensurate with the State’s status as a global economic and commercial center and its very high cost of living. Since that time, New York’s position has steadily eroded.”¹¹ And “no other state or federal judges anywhere in the United States have gone longer without an increase in their compensation – not even a cost-of-living adjustment.”¹²

Between 1986 and 2006, “judicial salaries nationally increased by 100%, compared to 67% in New York.”¹³ “Since 1999, [while New York state judges have seen no increase in their salaries,] trial judges in the other 49 states

have been given raises averaging 3.2 percent a year, for a combined hike of more than 27 percent” by 2007.¹⁴ Accordingly, by 2007, New York’s ranking dropped to “48th nationwide when adjusted for statewide cost of living. The only two states in the nation that rank[ed] lower ... on an adjusted cost-of-living basis [were] Hawaii and Oregon.”¹⁵ Since May 2007, Oregon’s Judiciary has received a pay raise. Thus, when adjusted for statewide cost-of-living, New York now has the 49th lowest judicial salaries nationwide. These statistics are even more disturbing given New York’s status as the nation’s commercial hub.

New York State’s Judicial Compensation Also Lags Behind The Compensation Of Other New York Government, Non-Profit, And Private Sector Positions

The National Center for State Courts reports that since 1999, “the salaries of New York judges have fallen behind the salaries of hundreds of state-employed professionals, including many with less training and seniority.”¹⁶ For instance:

- “District Attorneys in New York City earn \$190,000 - \$34,000 more than the State’s Chief Judge, and at least \$53,300 more than all of the trial judges before whom they and their assistants appear.”¹⁷
- “The Deans of New York’s two public law schools earn substantially more – the Dean of the University of Buffalo Law School earns \$232,899 and the Dean of the CUNY Law School earns \$215,000.”¹⁸
- “The General Counsel of the City University of New York earns \$220,000.”¹⁹
- “The New York City Corporation Counsel earns \$189,700.”²⁰

- “Attorneys at the State Comptroller’s Office earn up to \$160,540.”²¹

According to a 2004 New York State Bar Association study:

on a statewide average, partners at law firms of all sizes earned significantly more than New York State judges. At small firms with two to nine attorneys, the mean compensation for partners was \$173,000. A more appropriate comparison to judges, in terms of ability and experience, may be the compensation of the more senior partners in those firms (those earning at the 75th percentile level), whose pay averaged \$220,000 a year. At firms with ten or more attorneys, the mean compensation statewide is \$293,000 – more than double the pay of a Supreme Court Justice elected to a 14-year term. If the comparison is to the more senior partners at these firms – the experience level from which judges are drawn – the average compensation is \$350,000.²²

These comparisons are not meant to suggest that New York judges should be paid the same as these other professionals. Obviously, there are many distinctions between judges and other high-level public-sector professionals that bear on the different compensation levels. “Those who enter public services, moreover, certainly do not expect that their pay will approach the compensation of partners in the State’s largest law firms.”²³

This analysis does, however, “provide ... a frame of reference to evaluate the ‘going rate’ in the State for highly trained and experienced public sector professionals entrusted with significant responsibilities. [A]n inordinate gap between the pay of judges and the average pay of private sector attor-

neys at comparable stages of their careers will not allow the Judiciary to compete for legal talent and recruit and retain judges of superior ability and experience from the full spectrum of New York's highly diverse population.”²⁴

The New York Legislature's Failure to Respond

Despite the urging of legal advocacy groups, journalists, civic associations, law school officials and others, the legislature has not responded and has not granted judges any salary increase for ten years. There is widespread agreement as to the cause of the stalemate. As alleged in Chief Judge Kaye's complaint:

Despite this widespread consensus, the political branches have refused to take the necessary action. Judicial pay increases have instead been held hostage to unrelated political initiatives. Legislators, for example, have refused to approve judicial pay increases unless their own salaries are increased at the same time, and the Executive has refused to agree to legislative raises unless legislators agree to an oft-changing raft of initiatives reported to include campaign finance reform, charter schools, education tax credits, congestion pricing, budget policy, racing and wagering, and other initiatives wholly unrelated to judicial compensation.²⁵

In 2006, the Judiciary first submitted a proposal to reform how the State sets salaries for all three branches of government. Under this proposal, quadrennial commissions would designate cost of living increases and salary adjustments for judges, legislators, and executive branch officials. This proposal generated support but not enough to win approval.²⁶

The Judiciary's proposal was in line with the National Center for State Courts' standards for judicial compensation which are designed to promote equity, regularity, objectivity and separation from politics. With regard to political influence, the Center has stated: "Nor should judicial pay be adversely affected because of disagreement between the Legislative and Executive Branches over policy issues unrelated to the compensation of public officers".²⁷

The Judiciary Has Been Negatively Impacted By Its Inadequate Compensation

Inadequate compensation has affected the Judiciary in two important ways: (1) judges are leaving the bench well before retirement age and (2) there is less diversity of professional experience on the bench.

Judges are cash strapped. "Prior to 2005, it was rare for judges to borrow against their state pensions. Only 28 judges had outstanding pension loans at the end of 2004. That number doubled within a year, and has more than quadrupled in two years. As of March 2007, there are 117 judges – about 10% of the entire Judiciary – who have outstanding pension loans."²⁸ It is no surprise then that judges are leaving the bench before retirement age. A January 9, 2008, New York Law Journal article reported that:

An upstate Supreme Court justice, who has not received a pay increase since he took office in 2001, plans to resign by the end of the month because of 'the present unfortunate status of New York State's judiciary.' Oneida County Supreme Court Justice Robert F. Julian signaled his intention in a letter dated Dec. 30 to Governor Eliot Spitzer and distributed by e-mail to the state's 1,300 judges.

As for himself, Justice Julian, who earns \$136,700 a year, wrote, 'I am unwilling to further deplete my savings and reduce my lifestyle to continue in office.' He added, 'I believe a number of other judges have retired prematurely because of this sorry situation.'

In 2006, County Court Judge Stewart A. Rosenwasser of Orange County announced his resignation, saying in a statement that he 'did not foresee the sacrifices my service would impose on my family' when he took office (NYLJ, March 31, 2006).²⁹

An article discussing the same phenomenon in the federal judiciary described what this loss means to those with lifetime tenure, which would be equally applicable to New York Judges:

At the same time that current compensation levels place unacceptable barriers to attracting the best possible candidates for the bench, those levels are forcing sitting judges to rethink their commitments. Over the past several years, dozens of competent, able federal judges have left the bench, many of them making no secret of the financial pressures which led them to do so. In the past few years, at least 10 federal judges left the bench well before normal retirement age; combined, these 10 judges had 116 years left before they reached the age of 65.

The real cost is that those 10 judges – (and scores of others like them) had more than 100 years of prospective judicial experience now forever lost to our society; years they chose to expend in private rather than public pursuits. The loss is incalculable.³⁰

Lower salaries may also lead to a less qualified bench:

The late Chief Justice William Rehnquist raised the issue of pay equity in 19 year-end reports, and grew resigned in his latter years to ‘beating a dead horse.’ But his successor [Chief Justice Roberts] seems ready to press the fight, noting that with salaries stagnant, more and more judges are leaving the bench in search of high-paying positions in private practice. That, in turn, raises the specter that lesser qualified judges – often those whose main qualification is affiliation with the right political party – will succeed them. If that trend continues, then the very concept of an independent judiciary is at stake.³¹

Other Justices have voiced similar concerns. Justice Breyer has stated that lower salaries have led to an “adverse tendenc[y]” of the “professionalizing” of the judiciary:

[T]he decline in real pay levels can make a difference with respect to the pool of applicants. I do not mean that there is a shortage of applicants. I do mean, however, that a federal judgeship should not be reserved primarily for lawyers who have become wealthy as a result of private practice, or for those whose background is that of a judicial ‘professional,’ *i.e.*, a state court judgeship or a magistrate position followed by an Article III appointment.

The federal bench should reflect diversity not simply in terms of race or gender, but in respect to professional background as well.

That diversity, important as it is to the institution, is gradually disappearing. If one examines the federal district court judges at the time of President Eisenhower, one finds that only about 1/5 previously has been state court judges or magistrates. If we examine appointees in the last fifteen years, however, the percentage of those whose career has followed a judicial 'professional' path has increased, from about 20% to more than 50% of district court judicial appointments, and the percentage coming from other sectors has correspondingly declined.

These figures mean that those who followed the judicial 'professional' path accounted for roughly one in five district court judges fifty years ago, but they now account for more than one out of every two appointments. I repeat that those who have previously served as state court judges or magistrates are typically fine judges. But the growth in the number of such appointments indicates a judiciary that has become increasingly professionalized.

Of the adverse tendencies of a real salary decline that I have mentioned thus far, it is the loss of diversity of background and the increased administrative 'professionalizing' of the judiciary that I most fear.³²

In February 2007, Justice Anthony M. Kennedy testified before the United States Senate Judiciary Committee that:

Congress needs to restore judicial pay to its historic position vis-à-vis average wages and the wages of the professional and academic community. A failure to do so would mean that we will be unable to attract district judges who come from the most respected and prestigious segments of the practicing bar. One of the distinguishing marks of the Anglo-American legal tradition is that many of our judges are drawn from the highest ranks of the private bar.³³

Three days later, on February 17, 2007, a law professor at the University of Wisconsin commented on Justice Kennedy's congressional testimony:

Needing to present himself as an excellent judge, Justice Kennedy couldn't say anything intemperate. Think of what he didn't say.

If the pay is low, the judges will be the kind of people who don't care that much about money. They might be monkish scholars, or they might be ideologues who see in the law whatever it is they think is good for us. Justice Kennedy could say that judicial work is satisfying in ways that have nothing to do with money. He couldn't say that we can't trust people who don't care enough about money.

We need judges who are the kind of solid, common-sense lawyers who factor money into their decisions. These are the same people who take the kind of conventional law-firm jobs that pay a good salary and require the greatest sacrifice to leave.

Low judicial pay should trouble us not because the judges will somehow lack ‘excellence.’ It should trouble us because the law will be articulated by ideologues and recluses.³⁴

Low compensation means that a judicial post is no longer what a seasoned practitioner seeks at the pinnacle of his or her career. As Justice Breyer has noted: “A federal judgeship was once seen as the capstone of a long and successful career, seasoned practitioners with years of experience and accomplishment accepted appointments to the bench, Now, sadly, the federal bench is more and more seen, not as a capstone, but as a stepping stone, ... following which the judge can reenter private life and more attractive compensation.”³⁵ The American College of Trial Lawyers has reinforced this point: “It is an undeniable fact that some of the best and brightest lawyers are found in the private sector, and it is a regrettable fact that fewer and fewer of those persons are seeking appointment to the bench.”³⁶

In June 2008, The Metropolitan Corporate Counsel interviewed the Honorable Myron T. Steele, Chief Justice, Supreme Court of Delaware. He discussed how having the second highest paid state judiciary in the country had led to an efficient court system as well as having judges with the relevant “private sector experience:”

Our General Assembly and governors in the last thirty years have not overlooked the importance of Delaware’s court system to the economy of Delaware. They know that the court system is one of the reasons we have the chartering business and that 21 percent of our state budget comes from chartering business and another 10 percent or more from legal services.

Delay is not a problem in Delaware because of the expertise and diligence of our judges. All the judges on the Supreme Court, the Court of Chancery and on the Superior Court (General Jurisdiction) have had private sector experience.

Delaware trial judges, with the exception of two pockets in California, are the highest paid in the nation. Their compensation is on par with federal district court judges.³⁷

With the current problems within the financial services and insurance industries, New York state's economy is obviously troubled. This is likely to lead to additional complex commercial litigation. Accordingly, the need for a State Judiciary with a background in dealing with such commercial matters is apparent. Such a judiciary will only be possible when their compensation increases.

Inadequate Judicial Compensation Negatively Impacts The New York Economy

The link between a high quality judiciary and a healthy economy seems undisputed. In May 2007, thirty-seven senior legal officers of companies with substantial presence in New York State wrote to the then governor and leaders of the legislature, saying, in part:

We write to emphasize the importance of this issue to the business community and to the continuing economic vitality of New York. A state's legal climate, including the quality of its judges, can have a

significant impact on a corporation's decisions about where to do business. As the heart of the international business and financial community, New York must have judges with the background and ability to handle complex commercial litigation in a just and efficient manner. Under the Chief Judge's leadership, the New York courts have become a forum of choice for business. We need to maintain that standard. With stagnating compensation, the harsh reality is that few gifted lawyers will seek to become judges and seasoned judges will be forced to leave the bench. Ultimately, New York's business community, and all New Yorkers, will pay the price.³⁸

The State of Texas reached a similar conclusion in an economic study, finding that “[i]nvesting in the state court system by increasing the compensation for judges at the trial and appellate levels is a move in the right direction. It will lengthen jurists’ tenure and increase efficiency, thereby affording Texas an excellent opportunity to enhance its economic environment and further increase its competitive advantages on a national and global scale.”³⁹

Justice Breyer has testified before the House Committee on the Judiciary about the connection between competitive compensation for the judiciary and “economic prosperity”:

I remember listening to Alan Greenspan tell an audience that, if he could create a single institution necessary to promote economic development and thereby create the conditions necessary for economic prosperity, it would be an independent judiciary. That institution would assure the honest enforcement of contracts, produce investment, and lead to prosperity.⁴⁰

Inadequate Judicial Compensation Impacts The Business Community

The business community nationwide has complained about the lack of judges with commercial litigation experience. On February 21, 2007, General Counsel of 60 major American corporations wrote to various Congress members, urging

a substantial increase to the salaries of federal judges. . . . We agree with Chief Justice Roberts that the shrinking percentage of federal judges drawn from the private bar, as opposed to the public sector, creates serious concern, as does the number of judges resigning from the bench with years of active practice still before them. . . . Each of our companies has a significant litigation docket and thus we share a deep interest in the quality of the civil justice system, both federal and state. . . . [W]e urge that congressional and judicial salaries be decoupled⁴¹

In April 2008, John H. Martin, Partner at Thompson & Knight in Dallas, Texas, and President of the Defense Research Institute, noted that another one of the repercussions of underfunded state court systems are “intolerable case backlogs.”⁴² Such backlogs are bound to motivate businesses to change their behavior by, for instance, operating in states with more efficient court systems. In fact, in California, a privately-compensated judge noted that:

[o]ne of the factors driving the trend [of an increased use of privately compensated judges] is the manner of appointment and assignment of state court judges They may or may not have experience in the legal field to which they are assigned.

This is particularly an issue in counties where the bulk of new appointees are former prosecutors who must learn not only civil procedure but also complex areas of civil law in a short time

As state courts struggle to find new sources of funding at a time when they are already seriously overburdened, short-term options are few. Private judging may be a short-lived phenomenon if the state courts find the systems and resources to allow them to address the needs of all litigants adequately. If not, it is likely that more and more litigants will find alternative means to resolve their legal issues.⁴³

Supreme Court Justice Kennedy has recognized that “[p]rivate litigants depend on our judges to process complex legal matters with the skill, insight, and efficiency that come only with years of experience at the highest level of the profession.”⁴⁴

The Eleventh Circuit recently noted:

At an increasing rate, civil litigants are avoiding the federal district courts; they go elsewhere, to other fora, for the resolution of their disputes, especially complicated commercial disputes. The district courts’ civil caseloads reflect this. The contemporary litigation culture has effectively reduced the federal court civil dockets, nationwide. This is not surprising. The exponentially increasing transaction costs the parties must bear in order to resolve their civil disputes in the federal district courts is driving litigants away, especially those involved in complex commercial matters. This has a negative effect on

the development of the rule of law in the federal courts. When issues that ought to be presented to the courts for clarification, and to stabilize the rule of law, are removed to non-judicial fora for resolution, the public bears the cost-in the form of more litigation and a judiciary unable to handle it.⁴⁵

Conclusion

The inadequate compensation of New York Judges and its unfortunate present and impending impact on New York's economy is an undisputed fact, recognized by an unusually broad array of journalists, legal advocacy groups and civic organizations. Remarkably, the business community has so far failed to marshal adequately its substantial influence and resources behind compensation reforms that all agree are both fair and necessary. The New York business community, individually and collectively, must be more vocal in calling attention to the damage that will be inflicted on the State's economy if the current stalemate is not promptly resolved.

The Atlantic Legal Foundation's review and analysis of the adequacy of compensation of the New York judiciary leads to these conclusions:

First, no rational justification for the current stalemate has been advanced. There is none.

Second, judicial compensation in New York is in no sense competitive and is not adequate to continue to attract and retain jurists of the highest skill and experience; most notably, seasoned commercial lawyers in private practice are no longer attracted to the New York Judiciary in adequate numbers.

Third, lack of judicial experience and expertise in commercial matters can have a negative impact on the quality of

decisions handed down in commercial cases, especially complex litigation. Thus, low compensation will likely reduce the quality of decisions in commercial cases and may increase the costs of litigation due to errors, appeals, and delays.

Fourth, the business community needs an efficient, reliable judiciary to resolve controversies. Without an experienced, diverse and skilled judiciary, business activity will be diverted elsewhere, companies will incorporate or move elsewhere because they will lose faith in the ability of the State's judicial system to resolve commercial lawsuits promptly and competently, and New York State's economy will suffer.

Fifth, predictability of judicial decisions is essential to the business community because companies need to be able to anticipate the legal consequences of their business decisions to avoid litigation. If judges are not experienced and expert in commercial matters, the predictability of the judicial decision-making process will suffer and more lawsuits will result, diverting the time and attention of businesses from their primary objectives and hampering their ability to generate revenues and profits. Needless business litigation ultimately has a negative impact on the ability of businesses to pay taxes and to fund payrolls.

Sixth, the New York experience over the past decade demonstrates convincingly that decisions as to judicial compensation going forward should not be left to other branches of government but instead judicial compensation should be established and regularly reviewed by an independent body free from competing political concerns.

Seventh, business leaders in New York and elsewhere must exert their influence to ensure that the judiciary's quality, both in diversity and experience in commercial controversies, is commensurate with New York's place in the national and global market place.

Eighth, adequate compensation for New York State judges will benefit the business community and the State's economy. Accordingly, the business community should devote appropriate resources and take steps necessary to achieve this objective. In particular, business organizations in New York should include adequate judicial compensation among the principal components of their legislative agenda and individual businesses should support and participate in efforts by those organizations to improve judicial compensation.

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of Directors of the Atlantic Legal Foundation and are not necessar-
ily the views of the corporations with which ALF’s Directors are, or
have been, affiliated.

3 A compendium of editorials, comments of the legal
community and civic and business organizations addressing the
compensation stalemate has been published by the New York
Unified Court System: “They Deserve Better...Unanimous Support
for Judicial Compensation Reform.” The Unified Court System is
co-plaintiff with the Chief Judge in the pending litigation.

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TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 5 (MAY 2007)
(“NCSC REPORT”). George S. Frazza, Esq., a director of Atlantic
Legal Foundation also serves as a Director of the National Center
for State Courts.

5 NCSC REPORT at 5.

6 Editorial: *An overdue raise*, ALBANY TIMES UNION, Jun.
1, 2005.

7 NCSC REPORT at 1.

8 *Id.* at 5.

9 *Id.* at 6.

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11 *Id.* at 9.

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York State Assembly, The New York State Senate, David A.
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40076/08 (Sup. Ct. N.Y.Cty. 2008) at ¶ 1.

13 NCSC REPORT at 10.

14 *Id.* at 9; *see also* STATEN ISLAND ADVANCE, Dec. 5,
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15 NCSC REPORT at 9.

16 *Id.* at 10.

17 *Id.*

18 *Id.* at 11.

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21 *Id.*

22 *Id.* at 12.

23 *Id.*

24 *Id.*

25 Chief Judge Kaye Compl. at ¶ 7.

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28 *Id.* at 13.

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31 Editorial, *A judge's pay*, ALBANY TIMES UNION, Jan. 9, 2006.

32 TESTIMONY OF HON. STEPHEN BREYER 6, 7; *see also A Corporate Counsel Imperative – More And Better Judges*, THE METROPOLITAN CORPORATE COUNSEL 24 (Feb. 2008).

33 TESTIMONY OF ASSOCIATE JUSTICE ANTHONY M. KENNEDY BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, JUDICIAL SECURITY AND INDEPENDENCE 9 (FEB. 14, 2007) ("TESTIMONY OF HON. ANTHONY M. KENNEDY"), AT APPENDIX 3 TO THE TESTIMONY OF HON. STEPHEN BREYER.

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