

The Implications of Salary for the Quality of Nominations to the Federal District Courts, 1964–2012

Philip Habel

School of Social and Political Sciences, University of Glasgow, Glasgow, United Kingdom

Daniel Bennett

Department of Government, Eastern Kentucky University, Richmond, Kentucky

Shane A. Gleason

Department of Political Science, Idaho State University, Pocatello, Idaho

Scott A. Comparato

Department of Political Science, Southern Illinois University, Carbondale, Illinois

Many have expressed concern over the working conditions of federal district court judges who face comparatively low salaries in contrast to those in peer professions. As a means of enticing new judges of the highest quality, Chief Justices Rehnquist and Roberts have urged Congress and the president to increase judicial pay. However, scholars have not conducted a systematic, empirical investigation of whether higher salaries do, in fact, attract better prospective judges. We turn our attention to this issue. We first develop an exhaustive dataset of ABA ratings for over 1,800 nominees to the federal district courts from 1964 to 2012. We next model the effects of salary on the quality of nominations and confirmations. We find that salary is an important determinant of both the quality of candidates nominated and those confirmed to the federal bench. Our findings have critical implications for public policy, as our results confirm the need for better pay for federal judges.

KEYWORDS: judicial appointment, district courts, trial courts, judicial selection

A common theme in recent year-end reports on the state of the judiciary is the dire need to implement cost of living adjustments for federal judges.¹ In his 2005 report, Chief Justice Roberts argued, “Our system of justice suffers as the real salary of judges continues to decline... Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened. Every time a potential nominee refuses to be considered, the pool of candidates from which judges are selected narrows” (5). Moreover, Roberts has urged Congress to act quickly to confirm nominees, as these vacancies have “created acute difficulties” (2010 Report,

Address correspondence to Shane A. Gleason, Department of Political Science, Idaho State University, 921 South 8th Ave., Pocatello ID, 83204-8073. E-mail: gleashan@isu.edu

¹For example, see discussions in the 2010, 2008, 2007, and 2006 reports, to name a few.

8). The increasing number of vacancies on the federal courts—exacerbated by delays in Senate confirmations—has resulted in greater pressure on the remaining judges to handle larger dockets. In this perspective, judges are underpaid and overburdened, which could have ramifications for careerism, enticing judges to leave the bench or dissuading prospective ones from seeking nominations.

Roberts has not been alone in his advocacy for better compensation. In his 2002 report, Chief Justice Rehnquist reiterated a common theme from prior year-end reports by noting, “In 1989, in testimony before Congress, I described the inadequacy of judicial salaries as ‘the single greatest problem facing the Judicial Branch’... It remains the most pressing issue today” (p. 2). Then-Judge Breyer in 1992 also opined on the increased likelihood “that those who seek judicial office will see that office as a temporary assignment, leaving it after a time for better paid work in the private sector” (Breyer 1992, 7). Beyond the justices, several notable organizations have petitioned Congress for better remuneration. The American Bar Association (ABA) stated that “...inadequate judicial pay undermines commitment to lifetime tenure by deterring candidates from seeking appointment to the bench and discouraging judges from remaining on the bench” (ABA 2010).² Similar concerns have been expressed by the American College of Trial Lawyers³ and deans of numerous law schools.⁴ In like manner to Chief Justice Roberts, the ABA has argued that the independence of the federal judiciary is threatened as judicial salaries fail to keep pace with peer professions.⁵

As the preceding discussion suggests, low compensation has several implications for the careerism of judges: one, that judges are leaving office early to pursue more lucrative opportunities; two, that the quality of judges’ work has been affected; and three, that those who would otherwise consider a federal judgeship have “refused to be considered” and sought careers elsewhere. Of these three policy consequences, considerable attention has been paid to the first. Most studies have found little evidence that salary matters for retirement decisions, both for federal district court and court of appeals judges. Instead, the vast majority of judges retain their positions until they are eligible for a pension, and they then either serve in a part-time capacity as senior status judges or retire (Yoon 2003, 2005, 2006; Vining 2009). However, for the judges who resign from the bench prior to pension eligibility, recent evidence shows that salary could be a factor in their decision calculus (Hansford, Savchak, and Songer 2010; Choi, Gulati, and Posner 2013). In a comprehensive study of district court judges’ careerism, Burbank, Plager, and Ablavsky (2012) find evidence that comports with the Hansford et al. (2010) findings. Based on surveys of federal court judges, Burbank et al. note that resignations over the past four decades were motivated most commonly by “...return to private practice, appointment to other office, and inadequate salary” (12). Moreover, a number of those returning to private practice do so for reasons of better compensation.

²See the *Independence of the Judiciary: Judicial Salaries* report published in 2010, available online at http://www.abanet.org/poladv/priorities/judicial_pay.

³See, for example, their 2007 report titled “Judicial Compensation: Our Federal Judges Must Be Fairly Paid.”

⁴See the 2007 statement to Senator Patrick Leahy, http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/judicial_pay/deansletter.authcheckdam.pdf

⁵See the *Independence of the Judiciary: Judicial Salaries* report published in 2007, available online at http://www.abanet.org/poladv/priorities/judicial_pay/pospaper2007.pdf.

Regarding the second consequence, several scholars have examined whether productivity has been affected by low salaries. Choi, Gulati, and Posner (2009) offer little support for the claim that higher salaries increase the quality of opinions judges produce. This is consistent with Baker (2008), who finds that the sole effect of salary is that judges dissent less often in controversial cases. That is, Baker (2008) finds no discernible effect for whether judges of varying political parties write similarly strong opinions, whether they voice policy preferences in a similar ideological direction, or whether they take longer to decide cases. According to the author, “Given the available data, the effect of low judicial pay is non-existent” (112).⁶ Some more recent scholarship finds workload considerations can influence the quality of judicial opinions on the Supreme Court (Black and Owens 2013) and the sources justices rely on in drafting opinions (Szmer and Ginn 2014). These latter findings are mirrored at the state supreme court level, where salary, as a component of judicial professionalism, predicts judicial prestige (Squire 2008).

However, researchers have not devoted attention to the third concern—that qualified candidates have been deterred from seeking positions in the judiciary as a result of low salaries. A 2010 cross-national study of European systems by Cross and Donelson (2010) finds higher salaries increase judicial quality. Concerning the United States, Yoon (2006) states, “any adverse effect of salary is likely occurring to an individual’s willingness to join the bench, not to remain once confirmed” (176). We address this claim empirically. We turn our attention to the implications of salary for those nominated to the federal bench over time. We focus our analysis at the level of the district courts, the typical entry point to the federal judiciary—and conveniently for our analysis, the level also offering the highest number of cases. As the entry point, it is here where the adverse effects of salary should be most pronounced, as candidates for the district courts who are deterred by low wages will not enter the pool of potential nominees.⁷ Our study covers a broad period of time, 1964 through 2012, which affords considerable variance in compensation and includes a prodigious number of nominees, over 1,800 in total. As we show, salary has meaningful consequences for the quality of candidates nominated to the federal courts. In a period when social science research has, at times, faced external criticism for a failure of policy relevance, our results have significance for public policy, as they speak to the need for better remuneration for judges if the federal courts are to attract the best and brightest candidates.

THE EFFECT OF SALARY ON THE POOL OF PROSPECTIVE FEDERAL JUDGES

In order to understand the theoretical effects of salary on behavior, we begin by considering the process of selecting judges. In his seminal work, *Picking Federal Judges*, Goldman (1997) argued that presidents can pursue multiple goals when choosing nominees, including selecting candidates for ideological reasons or rewarding political allies for their patronage. More recently,

⁶Baker’s (2008) findings generated a series of reactions in a subsequent volume of the *Boston University Law Review* (Zorn, Henderson, and Czarnetzki 2008; Cross 2008; Marks 2008).

⁷As those serving on higher levels of the federal judiciary have often served previously as district court judges, then those judges and justices will have already accepted a “lower salary.”

much has been written on the role of political and institutional forces acting on the president during the appointment process, with focus on the role of senatorial courtesy, polarization, and the ideological distance separating the president and key member of the Senate (see, for example, Epstein and Segal 2005, Shipan and Shannon 2003, and Binder and Maltzman 2009). Our work does not discount the political and institutional factors that shape the nomination process. Rather, we suggest that less desirable working conditions act as an additional constraint on the selection process—that when salaries are low, the pool of candidates seeking nomination attenuates.

We assume that, on average, presidents would prefer to select candidates of quality. If a president wishes to nominate candidates who are like-minded, the president will desire that such ideological appointees also be highly qualified. Presidents who nominate poorly qualified candidates could face criticism from the media and pundits. Moreover, evidence from the lower federal courts suggests that highly qualified prospective judges are less likely to face delays in confirmation (Martinek, Kemper, and VanWinkle 2002; Solowiej, Martinek, and Brunnell 2005; Shipan and Shannon 2003; Stratmann and Garner 2004; Holmes, Shamode and Hartley 2012), particularly when the president and the Senate are ideologically distant from each other (Sen and Spaniel 2015).⁸ Presidents may strive to make political appointments or reward friends, but we argue that at times when salaries are lower, presidents are forced to select such nominees from a truncated pool of candidates.

If the claims of Chief Justices Rehnquist and Roberts and several other notable followers of the courts are valid, then better qualified candidates are dissuaded from considering a career in the federal courts when compensation is low, and thereby they opt out of the pool of nominees. Thus nominations made from this truncated pool will be of lesser quality in years with lower salaries. By extension, we should also expect that judges confirmed from among the pool of nominees will also be of lesser quality. Even as potential salaries in peer institutions have increased and outside opportunities can appear financially rewarding, we argue that pay remains an important driver of interest in serving in the federal judiciary.

DATA FOR NOMINEES TO THE FEDERAL DISTRICT COURTS

Due to severe data constraints, one cannot reliably locate the set of candidates who are in or out of the pool over time. Even what is meant by “the pool” is difficult to conceptualize, as it is unclear who should be included or excluded. Even for recent periods, reliable data are not available concerning, for example, who was interested in the federal courts, who pursued nomination, who senators and other proposed, who the president considered, and who declined an invitation.⁹ Moreover, finding reliable data across districts over the past several decades, which is necessary to have sufficient variance in salary and in the quality of judges, is not possible. What scholars can observe, however, are those candidates nominated by the president and considered by the Senate Judiciary Committee. There are two reasons that we can have confidence in observing the effects of salary on these prospective judges. First, estimates of the effects of salary on ratings of quality

⁸Binder and Maltzman (2009) find that those with higher ABA ratings are not less likely to face delays. See Table 4.3, p. 96, of their work.

⁹The closest exception is the data located on nominations by Eisenhower and Ford, as published in Rottinghaus and Bergen (2011) and Rottinghaus and Nicholson (2010).

will be, if anything, biased conservatively. According to King, Keohane, and Verba (1994), “any selection rule correlated with the dependent variable attenuates estimates of the causal effects on average” (130). Thus the effects of salary on quality will likely be even more pronounced than what we can observe in our research design. Second, although scholars may have some concern over the quality of those who are (or are not) in the pool, in the end, nominations and confirmations are what matter for the performance of the federal judiciary. These are the candidates who, upon successful confirmation, will serve on the federal bench. If we observe then, on average, better qualified nominees and confirmed judges in years of better pay, then we have evidence that higher salaries entice better candidates.

MEASURING QUALITY

To assess the *quality* of nominees in the face of varying salaries, we rely on the ratings of the American Bar Association, an interest group that has, over a long period of time, compiled detailed information on nominees’ past experiences and temperaments. ABA ratings have been interpreted as meaningful signals of the quality of nominees and confirmed judges by numerous scholars, and they have been an important indicator of quality for most presidents and senators (Slotnick 1983a, 1983b; Goldman 1997; Haire 2001; Nixon and Goss, 2001; Binder and Maltzman 2002; Martinek, Kemper and VanWinkle 2002; Shipan and Shannon 2003; Epstein and Segal 2005; Binder and Maltzman, 2009; Sen 2014). Valid and reliable alternative measures of quality, such as the Choi and Gulati ratings, are not available for the district courts over as broad of a time period as what we examine, thereby limiting both the variance on salary and the size of the pool of nominees. We do acknowledge that ABA ratings have not been without their critics. Navarro Smelcer, Steigerwalt, and Vining (2011) find evidence of political bias in the scores, revisiting a much disputed question (Lott 2001; Lindgren 2001; Saks and Vidmar 2001). Work has found that women (Slotnick 1983a, 1983b) and minorities (Haire 2001) tend to receive lower ratings from the ABA, findings most recently confirmed by Sen (2014). Further, President George W. Bush discounted ABA scores when making nominations, and his nominees were rated later in the process (Goldman 2007; Goldman, Schiavoni and Slotnick 2009; Binder and Maltzman 2009). Fourth, our results suggest that the quality of nominees has increased over time. And while it is beyond the scope of this study to delve into this finding more systematically, there are potential avenues that future work can explore. One is that there are more highly qualified candidates due to increased opportunities for work experience that the ABA values in rating candidates. Our period of analysis begins during a time when even college was available to a select few, much less law school. In that vein, there are more entrants into law schools in recent decades than previous ones, and the number of law schools perceived as quality institutions has grown. Add to those trends greater opportunities for judicial clerkships and a higher availability of state judgeships, and the finding that quality has increased appears much more intuitive—despite evidence that the gap between salaries in the federal courts and those of peer professions has increased. Indeed, our results on increasing quality over time suggest that such an income gap is less alarming than others have claimed.

Fortunately, for several reasons, these concerns can be mitigated. First, although salaries for district court judges reached their apex in the late 1960s, there is considerable variance even from year to year, such that even within a single presidential administration, salaries can rise and

fall considerably. Consider, for example, the Carter administration. As we show in a subsequent figure, salaries (in 2012 dollar values to facilitate comparison) were nearly 29,000 dollars higher in 1977 than in 1976, but then, due to inflation, salaries fell approximately 14,500 dollars from 1977 to 1978, rose 2,500 dollars in 1979, and then fell over 7,500 dollars in 1980. Thus even if political bias exists in the ABA ratings, such that candidates nominated by presidents of a certain political party are advantaged, it remains true that the ebbs and flows in salary should have implications for quality even within a given administration. Second, our statistical models can add controls for both race and gender to help account for such bias in the ratings, and thus we included measures of whether the nominee or confirmed judge was African-American and/or female. Third, ABA rankings are a sign of quality at the time of nomination, which is the point of time most consequential for our analysis. The scores signal quality, regardless of whether presidents make use of them in their nomination decision. We are able to interpret the rating as meaningful, even if certain presidents ostensibly discounted them (e.g., Nixon, George W. Bush), or even if the ABA score for a given judge did not comport with his or her subsequent performance on the bench. As for the ABA eliminating the exceptionally well-qualified rating, the actual number of prospective judges receiving this rating was very small—only 2.2 percent of all nominees. Previous work using ABA ratings over time has pooled these nominations with the well-qualified ones (Binder and Maltzman 2009), as do we. Finally, it is important to recognize that despite the ratings' shortcomings, the ABA ratings are the most valid and reliable indicator of the quality of nominations available over the entire period of analysis. They represent the best effort to consistently measure quality using multiple dimensions incorporating the professional and educational backgrounds of the nominees.

An important first step, and notable data contribution, is to compile ABA ratings for 1,836 nominees to the district court beginning with the start of the Lyndon Johnson administration through the first term of the Obama administration. The period covers a substantial number of judges and affords considerable variance in salary. Our data collection represents the most comprehensive recording of nominee data to date, and we now briefly describe the process for locating the nominees and their respective ABA ratings, a multi-step process. We collected data on quality, salary, and other variables at the time of the first initial nomination. For those judges ultimately confirmed, we also collected the same measures at the date of the successful nomination that led to the confirmation. We located the time of first nomination and, if relevant, the successful nomination through either print and online publications of the *Journal of the Executive Proceedings of the Senate of the United States of America*. The process for procuring ABA data depended on the type of nomination: whether the nominee was confirmed without need for renomination; whether a candidate was renominated and ultimately confirmed; or whether the nominee was never confirmed, as we describe below. For all nominees, due to the limits of data availability over our entire period of analysis, we rely on the rating of the majority of the ABA committee.¹⁰

For the first type—nominees confirmed without the need for renomination—ABA ratings were accessed through the Federal Judicial Center's (FJC) online directory, "Biographical Directory of Federal Judges." Of our 1,836 nominations, 1,515 (82.5 percent) were nominated

¹⁰Information on the minority ratings would be valuable when candidates did not receive a unanimous rating, but these data are missing for much of the early portion of our period of analysis, the same period when salaries reached their zenith. We were not able to locate information on split ratings.

and confirmed. For the second type, if the subsequent renomination that led to confirmation was temporally close to the first nomination (occurred less than one year apart), then we again relied on the FJC for the rating. Here, though, we ensured that there was no change in the résumé of the candidate within the one year that could have altered their ABA rating. For the third and fourth types—those candidates whose first nomination occurred much earlier than their subsequent successful nomination; and those candidates who were not ultimately confirmed—we compiled ABA scores from several sources.¹¹ For nominees in years 1989 through 2012, we relied on data available electronically through the ABA's website. Prior to 1989, for a number of nominees, ABA ratings could be located in the archives of *ProQuest Congressional*, which offered access to transcripts of the Senate Judiciary Committee's hearings. These transcripts included either documentation of the ABA rating or direct references to the rating by senators. A second source included information compiled by faculty and research assistants for *Picking Federal Judges* (1997), which offered ABA scores for many of the failed nominees in the George H. W. Bush and Clinton administrations.¹² A third source included archival newspaper records available through *Lexis Nexis Academic Universe*, which occasionally made reference to a nominee's ABA rating. When these resources were exhausted, in a few instances, we were able to locate ABA ratings through Internet searches using the name of the failed nominee and the state of the court to which she or he had been nominated. With all of these methods combined, we were able to uncover ABA ratings for all but 9 of 1,836 nominees.¹³ Thus our dataset offers nominee data and ABA ratings for 1,827 candidates nominated to the federal district courts between 1964 and 2012, the most exhaustive ABA data compilation to date. It represents an important data contribution for future scholars to exploit.¹⁴

To offer perspective on ABA scores for nominees over time, we present both a table and an accompanying figure. To ease interpretation, in both the table and figure, we focus on ABA nominee data by presidential administration. In looking at the first column of Table 1, one can see that the ABA included the rating of *exceptionally well-qualified* for the period of 1964 through 1988. Only 40 of our 1,836 nominees qualified for this rating. Moving to the second column, a total of 973 candidates were rated as *well-qualified*, which comprises the majority rating (53.3 percent) for all nominations. Nominees rated *qualified* number 792 over the period of analysis. Lastly, one can see that the *not qualified* rating is the exception—only 1.2 percent of all nominees received this rating. A number of presidential administrations had 0 nominees who were rated as not qualified. The final column lists the total number of nominees by administration. We can see here that Carter was able to nominate the largest number of prospective judges, while Nixon's shortened second administration and Ford's administration accounted for the lowest numbers. Concerning the most recent administration, the number of first-term Obama nominations is on par with that of George W. Bush's first term.

¹¹For some candidates, the window of time between their first nomination and the nomination that was ultimately successful was considerable. As an example, Sue Myerscough was first nominated by Clinton on October 11, 1995. She was later nominated by Obama on January 5, 2011, and confirmed.

¹²We thank the author for making these data available to us.

¹³One missing nominee is Len Paletta, who died shortly after his nomination in early 1978. A second is Michael O'Neill, who was nominated in 2008 but was not rated by the ABA.

¹⁴All nominee data will be made publicly available upon article publication.

TABLE 1
ABA Ratings for Nominees by Presidential Administration, 1964–2012

	<i>Exceptionally Well-Qualified</i>	<i>Well Qualified</i>	<i>Qualified</i>	<i>Not Qualified</i>	<i>Missing Rating</i>	<i>Total</i>
Johnson, 1964–1968	10	54	59	5	0	128
Nixon, 1969–1972	8	56	80	0	0	144
Nixon, 1973–1974	1	14	19	0	0	34
Ford, 1974–1976	0	21	29	1	6	57
Carter, 1977–1980	8	100	98	5	2	213
Reagan, 1981–1984	11	57	67	0	0	135
Reagan, 1985–1988	2	83	68	0	0	153
Bush, 1989–1992	.	106	84	0	0	190
Clinton, 1993–1996	.	116	70	4	0	190
Clinton, 1997–2000	.	74	76	0	0	150
Bush, 2001–2004	.	114	51	4	0	169
Bush, 2005–2008	.	73	29	3	1	106
Obama, 2009–2012	.	105	62	0	0	167
Total	40	973	792	22	9	1836
	(2.2)	(53.0)	(43.1)	(1.2)	(0.5)	

Note. For the final row, percentages are in parentheses.

In order to better visualize the difference in well-qualified versus qualified nominations over time, we offer a bar chart of the percent of well-qualified and qualified nominees by administration. In like manner to other studies using ABA ratings over time, both here and in our subsequent statistical analyses, we pool the 40 candidates (2.2 percent of all nominees) rated exceptionally well-qualified with those rated well-qualified (Binder and Maltzman, 2009). Figure 1 shows that certain presidential administrations, namely both of the George W. Bush terms and the first Clinton term, were characterized for being remarkably successful at recruiting well-qualified candidates. For George W. Bush, well-qualified nominees more than doubled those rated qualified. The figure also shows that well-qualified candidates have become more common over time. In all but Clinton's second administration, since 1985, well-qualified nominees have exceeded qualified ones. This finding is interesting, as the past thirty years also represents the period when salaries in the private sector have outpaced those of the federal judiciary (Rutkus 2008). Despite the growing disparities in pay, the federal courts are still able to attract a substantial number of well-qualified nominees.

MEASURES

We now turn to a discussion of the measures used in the subsequent statistical models to shed light on the relationship among salary and the quality of nominees. For our models, the dependent variable is a dichotomous indicator of the ABA rating, where 1 equals well-qualified (and exceptionally well-qualified) and 0 equals qualified. Again because the ABA dropped the exceptionally well-qualified rating, and only a small percentage of district court nominees received this rating,

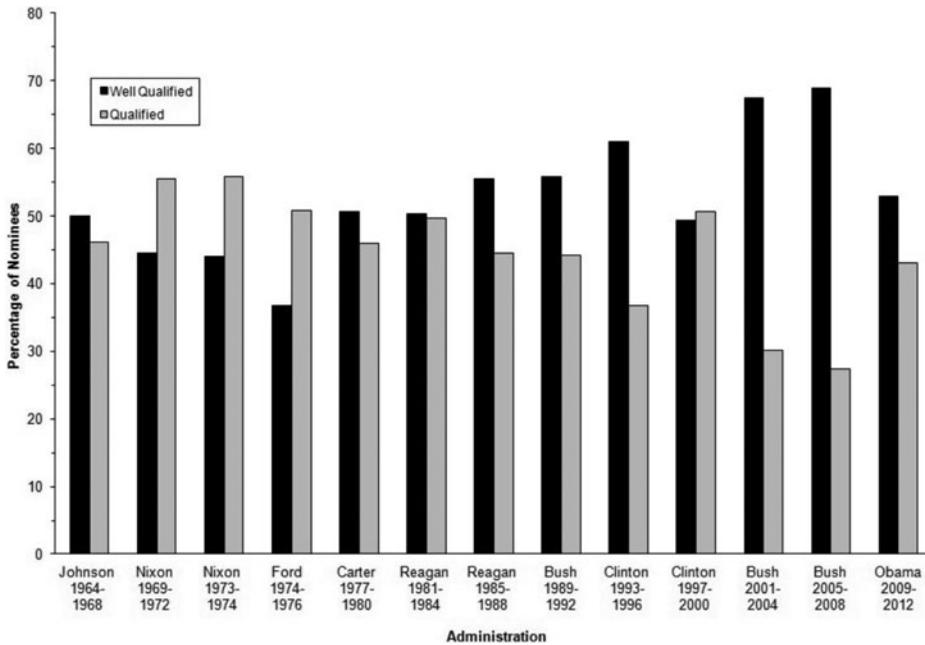


FIGURE 1 Percent of well-qualified and qualified nominations by presidential administration, 1964–2012.

we pool these prospective judges into the well-qualified category, coded 1. (See Binder and Maltzmann 2009 for a similar approach.)¹⁵ We also drop the 22 nominees rated as not qualified from our analysis (1.2 percent of all nominees), because these prospective judges may be categorically distinct from other nominees, given that the rating was used so infrequently.¹⁶ Thus our model captures the effect of increases in salary on the likelihood of receiving a high rating from the ABA.

Our principal explanatory variable concerns the annual salary of district court judges. *Salary* is the annual measure of an extant judges' compensation at the time of nomination.¹⁷ All salary measures are adjusted for inflation, to 2012 dollar values, so that comparisons can be made over time.¹⁸ To offer some sense of the variance in compensation over time, we present both nominal

¹⁵If we do not pool these potential judges, we are temporally limited in making inferences about the effect of salary. That is, the analysis must end with the end of the Reagan administration.

¹⁶We estimated models with unqualified candidates included where non-qualified and qualified nominees are coded 0 and well-qualified and exceptionally well-qualified candidates are coded 1. In these models, the results are substantively the same as the models presented below. We do not include non-qualified nominees in the models presented below because their low number (22) and the stark differences between a qualified and non-qualified candidate. However, the non-qualified models are available in the Appendix in Table A1.

¹⁷Of course, another consideration would be the future salaries of judges, but nominees have little information to forecast when the next salary increase will arrive, nor are they able to judge the effect of future inflation on their remuneration.

¹⁸Salary data were accessed from the Federal Judicial Center at the following link: http://www.fjc.gov/history/home.nsf/page/js_3.html. We adjust nominal dollar values for inflation using the online tool of the Bureau of Labor Statistics

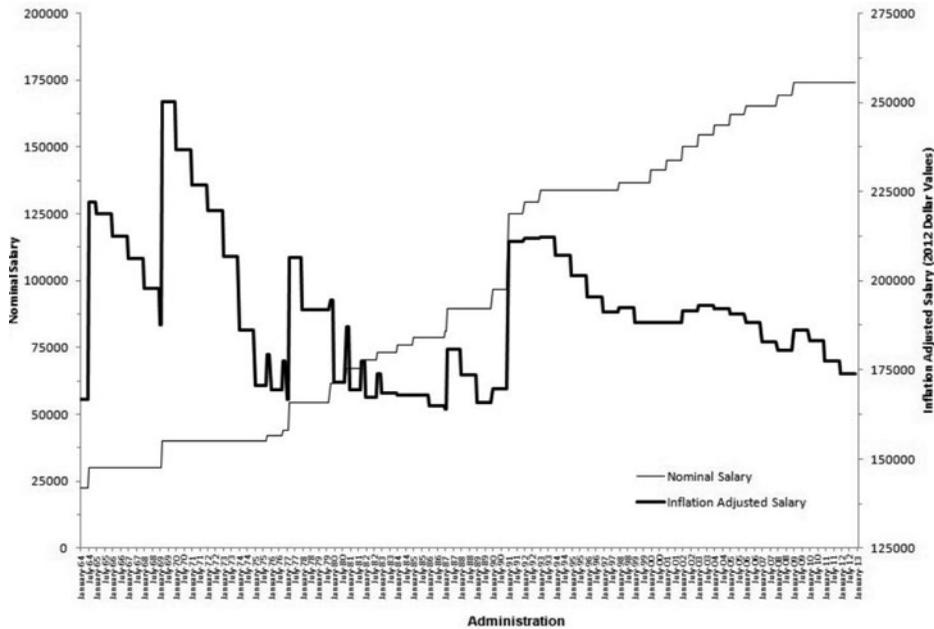


FIGURE 2 Nominal and inflation adjusted salaries of federal district court judges, 1964–2012. Nominal salary data were obtained from the Federal Judicial Center. Salaries were adjusted for inflation to 2012 dollars through the Bureau of Labor Statistics's online tool.

and inflation adjusted salary data in Figure 2. Nominal data are represented by a thin line, with the corresponding y-axis on the left. Inflation-adjusted data are represented by a bolded line, with the corresponding y-axis on the right. Because salaries often changed midyear in the earlier period of analysis, the data are recorded in months. For ease of interpretation, the x-axis includes tick marks for January and July of each year. As one can see, earnings were highest from March to December of 1969, with district court judges receiving over 250,000 dollars in 2012 values. In contrast, judges' salaries fell to under 165,000 dollars from January to December of 1986. The figure demonstrates that salaries have fluctuated considerably over our period of analysis, and even within a given presidential administration, as we earlier discussed.¹⁹

Our other independent variables include a measure of the size of the court and the workload of judges. We include the number of *Authorized Judgeships* for the court to which the prospective judge was nominated at the time of his or her nomination. Larger courts are associated with areas with more dense populations—areas that tend to include more firms, law schools, and other private-sector opportunities. As a result, we should expect that the pool of nominees in these areas

(http://www.bls.gov/data/inflation_calculator.htm). In our subsequent statistical models, salary is recorded in thousands of dollars. Although it would be helpful to have salary information available by district, we cannot locate reliable inflation-adjusted data for each district going back annually to 1964. Earlier models also included an annual *Change in Inflation-Adjusted Salary* measure, which was not statistically significant, and thus dropped from this analysis.

¹⁹For a helpful overview of recent policies related to the changes in federal judicial salaries, see Schwemle (2011).

will be, on average, more qualified.²⁰ We also control for the workload of extant judges on the court to which the nominee is appointed. Some evidence suggests that higher caseload responsibilities drive judges to leave office early (Spriggs and Wahlbeck, 1995; Hansford, Savchak, and Songer, 2010), and thus higher caseloads could deter potential qualified nominees. We record *Weighted Case Filings*, published annually for each district court by the Administrative Office of the U.S. Courts. Among the measures of caseload introduced in Habel and Scott (2014), *Weighted Case Filings* best captures the perception nominees would have of the workload of the district courts, as the measure adjusts filings according to the work required to oversee them. For each nominee, we record the most recently published data according to their time of the nomination.²¹ Our expectation is that the sign of the coefficient for this variable will be negative, as higher caseloads should deter better qualified nominees.

Finally, we include two measures capturing the race and gender of the candidates, and a third measure for the *Nomination Year* of the nominee.²² Concerning the demographic variables, because earlier studies have demonstrated that women and African-American candidates tend to receive lower ABA ratings (Slotnick 1983a, 1983b; Haire 2001; Sen 2014), we control for these effects by the inclusion of dichotomous indicators for both. Because the claims of Chief Justice Roberts would have us believe that the quality of those being nominated at the present time has decreased from that of an earlier period because the disparity between salaries in the public and private sectors has grown, we include a final variable capturing the year of nomination.²³ We should expect that the sign of the coefficient for this variable is negative; however, our descriptive statistics above suggest quality has actually increased over time.²⁴

MODELS OF QUALITY FOR NOMINEES

Our theoretical expectation is that we will observe better-qualified nominations and confirmations in periods when salary is high. We now turn to our statistical analysis to test these claims. As our dependent variable is dichotomous, we estimate a series of logit models. Because all those who are nominated in a given year experience the same salary, we report robust standard errors, with

²⁰We could not locate reliable measures of annual population by district from 1964 to 2012.

²¹We recorded weighted case filings in hundreds of cases. We use the filings data published for a given court immediately prior to the date of nomination. For example, for a judge nominated to the District of Maine on November 1, 1983, we would record the weighted case filings for the District of Maine for the period July 1, 1982 to June 30, 1983.

²²Additional models incorporated measures for political factors, including Judicial Common Space distance scores and an updated series of Goldman's (2003) obstruction and delay index. In these models, we found that our salary variable remained positive and statistically significant, as did *Nomination Year*. However, political factors are not significant. Both of these models are presented in the Appendix in Tables A2 and A3.

²³This variable also serves to capture any trend occurring over time.

²⁴We also estimate additional models that did not include this trend variable, but rather included dummy variables by administration, with the Obama administration as the excluded category. In these models, we found consistent substantive results concerning the effects of salary, and the signs and statistical significance of the dummies for administration showed that quality has increased over time.

TABLE 2
The Effects of Salary and Caseload on the Quality of Nominees to the District Courts, 1964–2012

	<i>Nominees</i>	<i>Confirmed Judges</i>
Salary	0.005* (0.002)	0.006* (0.003)
Weighted Case Filings	0.001 (0.034)	0.022 (0.033)
Authorized Judgeships	0.017* (0.008)	0.018* (0.009)
Year of Nomination	0.025* (0.005)	0.026* (0.006)
Female	-0.468* (0.127)	-0.458* (0.150)
African American	-1.028* (0.193)	-0.964* (0.208)
Constant	-50.430* (10.177)	-53.376* (10.938)
<i>N</i>	1784.0	1657.0

Note. We report logit coefficients with robust standard errors, clustered by nomination year, in parentheses. Two-tailed significance tests, where $*p < .05$. Salary and Change in Salary are per 1,000 dollars. Caseload is per 100 filings.

clustering by the year of nomination.²⁵ If the claims of the chief justices and others are valid, we should observe that salary predicts quality.

In Table 2, we present two models: the first for all nominees, and a second for those who were subsequently confirmed. For the nominee model, the ABA ratings, salary, and other explanatory variables are measured at the time of the candidate's first nomination to the federal courts, whether successful or unsuccessful. For the confirmed judges' model, the data are from the date of the nomination that led to a successful confirmation.²⁶ As one can see, the *N* for the confirmed model is lower, as these judges are a subset of all nominees.

In looking at the results, in both models, we find that salary is an important factor in accounting for the quality of candidates nominated to the district courts. The sign of the coefficient on *Salary* is positive and statistically significant across both specifications.²⁷ We also find that courts with more authorized judgeships attract better-qualified candidates. These areas correspond to a wider pool, including a greater number of private practice attorneys and state and lower court judges. We also see that the year of nomination is positive and significant, with more recent years featuring better-qualified candidates. Again, this finding runs counter to the claim that as the gap between

²⁵The total number of nominees during our period of analysis is 1,836. Our *N* for our nominee model is 1,784, however. As we noted, we were missing ABA scores for 9 nominees. A remaining 18 potential judges were nominated in periods where caseload data is unavailable, particularly for the District of Columbia from 1964 through 1973.

²⁶As we described earlier, for some judges, the time between their unsuccessful and subsequent successful nomination was short, oftentimes less than one year. But for other judges, the window was much longer.

²⁷We estimated additional multi-level models and found the substantive results for salary to be robust. However, since Steenbergen and Jones (2002) note that clustered standard errors function akin to multi-level models while also mitigating concerns over specification error, we opt to not include the multi-level models in this article.

salaries in the private sector has grown, the quality of candidates nominated to the court has decreased. Lastly, we find that our demographic variables are statistically significant, with results consistent with the literature that shows that women and African-Americans are less likely to receive a well-qualified rating.

Concerning the magnitude of the effect of salary on the quality of judges, because we use logit models, the coefficients are difficult to interpret directly. Thus we estimate the effect on the likelihood of nominating (or confirming) a well-qualified candidate as salary changes from its lowest to highest values.²⁸ For the first model, we find that raising salary from its lowest value to its highest increases the probability of a well-qualified candidate by 0.085. For the confirmed judges model, we find that raising salary from the lowest to highest values increases the probability of confirming a well-qualified candidate by 0.099. Although these effects may not seem large, an 8.5 to 10 percent increase in the likelihood of nominating a well-qualified candidate simply by increasing pay should not be trivialized, given the importance of the office represented.

DISCUSSION

We have considered the effects of salary on the decision to join the federal judiciary. In doing so, we have developed an exhaustive dataset of nominees and their respective ABA ratings. The arguments from Chief Justice Roberts and others have claimed that low judicial pay can threaten the very integrity of the federal courts. Without talented and committed judges who perceive their position on the federal courts as the pinnacle of their careers, the courts would be unable to dispose effectively of the cases before it and fulfill its role in our system. Our findings suggest that salary has important consequences for the quality of nominees to the district courts. Our models demonstrate that well-qualified judges are more likely to be nominated when salaries are higher.

Our results should be considered in a broader context. First, concerning salary, it is notable that the mean level of compensation is less than 200,000 dollars during our period of analysis (in 2012 dollar values); that salary has risen above 225,000 dollars for only 34 months over our entire 53-year period; and that the maximum salary in mid-to late 1969 is just over 250,000 dollars in 2012 values. What we cannot observe, then, is the effect of salaries *substantially greater* than 250,000 dollars on attracting prospective judges. We already find salary to be an important incentive for better-qualified candidates, and one is left to wonder what the consequences of having salaries that keep pace with peer institutions would be. Moreover, higher pay might ensure that the federal district bench is more reflective of the nation writ large. Second, an increase in judicial pay could lead to a lower reliance on information provided by interest groups as amici, as higher-quality judges are better able to craft their own opinions without outside information (Szmer and Ginn 2014). Third, concerning our measure of quality, we have focused on the distinction between well-qualified candidates and qualified candidates, as rated by the ABA. It is important to note

²⁸We use CLARIFY in Stata 12 (Tomz, Wittenberg, and King 2003) for both models, examining the first difference in the predicted probability for lowest and highest salaries. We set the size of the court to the median; caseload to the median; the nomination year to 2012; and the race and gender of the candidate to be the modal category, a Caucasian male.

that few nominees have been designated “not qualified,” regardless of how low salaries had fallen. Thus it could be that followers of the federal courts will perceive our results as less than a mandate for better pay. If the level of competence and ability demonstrated by nominees rated qualified is satisfactory, then the need for increasing salaries is not as pressing a concern.

Fourth, our results suggest that the quality of nominees has increased over time. And while it is beyond the scope of this study to interpret this finding, there are many potential explanations. One is that the ABA’s rating standards have simply changed over the years. Additionally, the increasingly polarized and scrutinized nature of judicial nominations may force contemporary presidents to nominate more qualified nominees than their predecessors.

We are left with several avenues for future research. We have examined the effect of salary on nominees, but one can turn greater attention to the various potential effects of salaries for those serving on the federal bench. Particularly since the workload of federal district court judges has increased in recent decades, future work might explore the relationship between productivity and salary. It could also be that lower salaries have consequences for the general morale of extant judges, an area insufficiently explored by scholars. Interviews with judges and more qualitatively orientated research could aid in addressing these important issues. Second, more work should investigate the puzzle of the rise in quality of nominees in the face of increasing salaries at peer institutions. Qualitative studies should investigate how presidents recruit candidates for the judiciary in the face of these trends. Third, our study could be carried out at the courts of appeals level to determine whether we observe similar consequences there as well. Already some work on state supreme courts suggests that low salaries are consequential for court productivity and prestige (Caldeira 1985; Squire 2008). Third, although issues with locating valid and reliable data arise, future work could consider additional measures of judicial quality beyond ABA scores, perhaps including other past experiences prior to nomination. Finally, and related, researchers could examine the implications for salary for the diversity of the federal bench—whether better salaries attract more women and minorities.

REFERENCES

- Baker, Scott. 2008. “Should We Pay Federal Circuit Judges More?” *Boston University Law Review* 88: 63–112.
- Binder, Sarah, and Forrest Maltzman. 2002. “Senatorial Delay in Confirming Federal Judges, 1947–1998.” *American Journal of Political Science* 46(1): 190–99.
- . 2009. *Advice and Dissent: The Struggle to Shape the Federal Judiciary*. Washington DC: Brookings Institution Press.
- Black, Ryan C., and Ryan J. Owens. 2013. “Bargaining and Legal Development in the United States Courts of Appeals.” *American Politics Research* 41(6): 1071–101.
- Breyer, Stephen. 1992. “Statement to the National Commission.” http://www.supremecourt.gov/publicinfo/speeches/ncps_project.pdf (accessed December 15, 2010).
- Burbank, Stephen B., S. Jay Plager, and Gregory Ablavsky. 2012. “Leaving the Bench, 1970–2009: The Choices Federal Judges Make, What Influences those Choices, and their Consequences.” *University of Pennsylvania Law Review* 161(1): 1–102.
- Caldeira, Gregory A. 1985. “The Transmission of Legal Precedent: A Study of State Supreme Courts.” *American Political Science Review* 79(1): 178–94.
- Choi, Stephen J., G. Mitu Gulati, and Eric A. Posner. 2009. “Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate.” *Journal of Legal Analysis* 1(1): 47–117.
- . 2013. “The Law and Policy of Judicial Retirement: An Emperical Study.” *Journal of Legal Studies* 42(1): 111–50.
- Cross, Frank B. 2008. “Perhaps We Should Pay Federal Circuit Judges More.” *Boston University Law Review* 88: 815–27.

- Cross, Frank B., and Dain C. Donelson. 2010. "Creating Quality Courts." *Journal of Empirical Legal Studies* 7(3): 490–510.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, & Organization* 23(2): 303–25.
- Epstein, Lee, and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. New York: Oxford University Press.
- Goldman, Sheldon. 1997. *Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan*. New Haven: Yale University Press.
- . 2003. "Assessing the Senate Judicial Confirmation Process: The Index of Obstruction and Delay." *Judicature* 86: 251–8.
- . 2007. "Picking Judges in a Time of Turmoil: W. Bush's Judiciary During the 109th Congress." *Judicature* 90: 252–83.
- Goldman, Sheldon, Sara Schiavoni, and Elliot E. Slotnick. 2009. "W. Bush's Judicial Legacy." *Judicature* 92: 258–88.
- Habel, Philip, and Kevin Scott. 2014. "New Measures of Judges' Caseload for the Federal District Courts, 1964–2010." *Journal of Law and Courts* 2(1): 153–70.
- Haire, Susan Brodie. 2001. "Rating the Ratings of the American Bar Association Standing Committee on Federal Judiciary." *Justice System Journal* 22(1): 1–17.
- Hansford, Thomas G., Elisha Carol Savchak, and Donald R. Songer. 2010. "Politics, Careerism, and the Voluntary Departure of U.S. District Court Judges." *American Politics Research* 38(6): 986–1014.
- Holmes, Lisa, Salmon A. Shamode, and Roger E. Hartley. 2012. "The Confirmation Obstacle Course: Signaling Opposition through Delay." *American Review of Politics* 33(1): 23–49.
- King, Gary, Robert O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry*. Princeton: Princeton University Press.
- Lindgren, James T. 2001. "Examining the American Bar Association's Ratings of Nominees to the Courts of Appeals for Political Bias, 1989–2000." *Journal of Law and Politics* 17(1): 1–30.
- Lott, John R. 2001. "The American Bar Association, Judicial Ratings, and Political Bias." *Journal of Law and Politics* 17(1): 41–61.
- Marks, Stephen. 2008. "A Comment on the Relationship between Judicial Salary and Judicial Quality." *Boston University Law Review* 88: 843–53.
- Martinek, Wendy, Mark Kemper, and Steven R. VanWinkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977–1998." *Journal of Politics* 64(2): 337–61.
- Navarro Smelcer, Susan, Amy Steigerwalt, and Richard L. Vining. 2012. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65(4): 827–40.
- Nixon, David, and David L. Goss. 2001. "Confirmation Delay for Vacancies on the Circuit Courts of Appeals." *American Politics Research* 29(3): 246–74.
- Rehnquist, William. 2003. "2002 Year-End Report on the Federal Judiciary." <http://www.supremecourt.gov/publicinfo/year-end/2002year-endreport.aspx> (accessed December 15, 2010).
- Roberts, John J. 2006. "2005 Year-End Report on the Federal Judiciary." <http://www.supremecourt.gov/publicinfo/year-end/2005year-endreport.pdf> (accessed December 15, 2010).
- . 2007. "2006 Year-End Report on the Federal Judiciary." <http://www.supremecourt.gov/publicinfo/year-end/2006year-endreport.pdf> (accessed December 15, 2010).
- Rottinghaus, Brandon, and Chris Nicholson. 2010. "Counting Congress In: Patterns of Success in Judicial Nomination Requests by Members of Congress to Presidents Eisenhower and Ford." *American Politics Research* 38(4): 691–717.
- Rottinghaus, Brandon, and Daniel E. Bergan. 2011. "The Politics of Requesting Appointments: Congressional Requests in the Appointment and Nomination Process." *Political Research Quarterly* 64(1): 31–44.
- Rutkus, Denis Steven. 2008. "CRS Report for Congress—Judicial Salary: Current Issues and Options for Congress." Order Code RL34281, Updated September 16, 2008.
- Saks, Michael J., and Neil Vidmar. 2001. "A Flawed Search for Bias in the American Bar Association's Ratings of Prospective Judicial Nominees: A Critique of the Lindgren Study." *Journal of Law and Politics* 17: 219–54.
- Schwemle, Barbara L. 2011. "Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries." <http://www.senate.gov/CRSReports/crs-publish.cfm> (accessed March 1, 2013).

- Sen, Maya. 2014. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates." *Journal of Law and Courts* 2(1): 33–65.
- Sen, Maya, and William Spaniel. 2015. "How Uncertainty About Judicial Nominees Can Distort the Confirmation Process." *Journal of Theoretical Politics*, in press.
- Shipan, Charles, and Megan L. Shannon. 2003. "Delaying Justice(s): A Duration Model of Supreme Court Confirmations." *American Journal of Political Science* 47(4): 654–68.
- Slotnick, Elliot E. 1983a. "The ABA Standing Committee on the Federal Judiciary: A Contemporary Assessment, Part 1." *Judicature* 66: 348–62.
- . 1983b. "The ABA Standing Committee on the Federal Judiciary: A Contemporary Assessment, Part 2." *Judicature* 66: 385–93.
- Solowiej, Lisa A., Wendy L. Martinek, and Thomas L. Brunnell. 2005. "Partisan Politics: The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics* 11(5): 557–77.
- Spriggs, James F., and Paul J. Wahlbeck. 1995. "Calling it Quits: Strategic Retirements on the Federal Court of Appeals, 1893–1991." *Political Research Quarterly* 48(3): 573–97.
- Squire, Peverill. 2008. "Measuring the Professionalism of State Courts of Last Resort." *State Politics and Policy Quarterly* 8(3): 223–38.
- Steenbergen, Marco R., and Bradford S. Jones. 2002. "Modeling Multilevel Data Structures." *American Journal of Political Science* 46(1): 218–37.
- Stratmann, Thomas, and Jared Garner. 2004. "Judicial Selection: Politics, Biases, and Constituency Demands." *Public Choice* 118(3–4): 251–70.
- Szmer, John, and Martha Humphries Ginn. 2014. "Examining the Effects of Information, Attorney Capability, and Amicus Participation on U.S. Supreme Court Decision Making." *American Politics Research* 42(3): 441–71.
- Tomz, Michael, Jason Wittenberg, and Gary King. 2003. CLARIFY: Software for Interpreting and Presenting Statistical Results in Journal of Statistical Software. Vol. 8., 2003. <http://scholar.harvard.edu/gking/clarify>. (accessed July 1 2012).
- Vining, Richard L. 2009. "Politics, Pragmatism, and Departures from the U.S. Courts of Appeals, 1954–2004." *Social Science Quarterly* 90(4): 834–53.
- Yoon, Albert. 2003. "Love's Labor's Lost? Judicial Tenure Among Federal Court Judges, 1945–2000." *California Law Review* 41: 1029–60.
- . 2005. "As You Like It: Senior Federal Judges and the Political Economy of Judicial Tenure." *Journal of Empirical Legal Studies* 2(3): 495–549.
- . 2006. "Pensions, Politics, and Judicial Tenure: An Empirical Study of Federal Judges, 1869–2002." *American Law and Economics Review* 8(1): 143–80.
- Zorn, Christopher, William D. Henderson, and Jason J. Czarnezki. 2008. "Working Class Judges." *Boston University Law Review* 88: 829–42.

APPENDIX

Table A1 presents the results when non-qualified nominees are included. This model employs the same dependent variable, except non-qualified nominees are coded 0, along with qualified candidates. The results are substantively similar to those presented in Table 2.

Tables A2 and A3 present the same models as found in Table 2. However, in these models an additional control is included for Goldman's (2003) measure of obstruction, which we have updated through 2012, and a measure of the ideological distance between the president and the Senate from Epstein et al.'s (2007) Judicial Common Space. In both instances, the substantive results are the same and the additional variable fails to achieve statistical significance.²⁹

²⁹The Judicial Common Space only extends to 2007, thus the last five years of our data are excluded from Table A3.

TABLE A1
The Effects of Salary and Caseload on the Quality of Nominees to the District Courts, 1964–2012 (With Non-Qualified Judges)

	<i>Nominees</i>	<i>Confirmed Judges</i>
Salary	0.005* (0.024)	0.006* (0.003)
Weighted Case Filings	0.010 (0.032)	0.016 (0.033)
Authorized Judgeships	0.019* (0.009)	0.020* (0.009)
Year of Nomination	0.025* (0.005)	0.026* (0.006)
Female	−0.461* (0.129)	−0.443* (0.149)
African American	−1.040* (0.193)	−0.969* (0.205)
Constant	−50.012* (10.184)	−52.584* (10.971)
<i>N</i>	1806.0	1672.0

Note. We report logit coefficients with robust standard errors, clustered by nomination year, in parentheses. Two-tailed significance tests, where * $p < .05$ Salary and Change in Salary are per 1,000 dollars. Caseload is per 100 Filings.

TABLE A2
The Effects of Salary and Caseload on the Quality of Nominees to the District Courts, 1964–2012 (With Goldman Measure of Obstruction)

	<i>Nominees</i>	<i>Confirmed Judges</i>
Salary	0.005* (0.002)	0.006* (0.003)
Weighted Case Filings	0.009 (0.033)	0.018 (0.032)
Authorized Judgeships	0.017* (0.008)	0.018* (0.009)
Year of Nomination	0.030* (0.007)	0.030* (0.007)
Female	−0.460* (0.125)	−0.452* (0.149)
African American	−1.024* (0.196)	−0.965* (0.213)
Goldman Obstruction	−0.277 (0.339)	−0.232 (0.339)
Constant	−60.079* (13.877)	−61.110* (14.847)
<i>N</i>	1784.0	1657.0

Note. We report logit coefficients with robust standard errors, clustered by nomination year, in parentheses. Two-tailed significance tests, where * $p < .05$ Salary and Change in Salary are per 1,000 dollars. Caseload is per 100 Filings.

TABLE A3
 The Effects of Salary and Caseload on the Quality of Nominees to the District Courts, 1964–2012 (With JCS Measure of Institutional Distance)

	<i>Nominees</i>	<i>Confirmed Judges</i>
Salary	0.005* (0.002)	0.006* (0.003)
Weighted Case Filings	0.020 (0.036)	0.025 (0.034)
Authorized Judgeships	0.023* (0.006)	0.025* (0.010)
Year of Nomination	0.023* (0.006)	0.027* (0.006)
Female	-0.492* (0.138)	-0.514* (0.144)
African American	-1.259* (0.183)	-1.121* (0.203)
JCS Distance	0.267 (0.526)	0.123 (0.525)
Constant	-47.069* (11.366)	-55.115* (12.260)
<i>N</i>	1620.0	1516.0

Note. We report logit coefficients with robust standard errors, clustered by nomination year, in parentheses. Two-tailed significance tests, where * $p < .05$ Salary and Change in Salary are per 1,000 dollars. Caseload is per 100 Filings. JCS measures only extend through 2007.