# Does It Takes a Village to Adjudicate?

## Measuring the Effect of Women's Representation on the ABA's Ratings of Judicial Nominees

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# 1 Introduction

Does the underrepresentation of women on the American Bar Associations (ABA) Standing Committee on the Federal Judiciary (SCFJ) bias the ratings they give to federal judicial nominees? Recent findings suggest that the ABA's ratings are biased against women, racial minorities and conservatives (Smelcer, Steigerwalt and Vining 2012; Sen 2014a, Sen 2014b). While the existence of bias in these ratings has been heavily scrutinized, little research has been done into the origin of this bias. This is largely driven by the black box nature of the SCFJ's process, which is kept secret from the public, with ratings being the only element of the evaluation to escape into the public eye. While understanding the existence of bias in the ratings is an important first step, determining how to address the bias necessitates understanding where it comes from, otherwise we cannot be certain that changes will not just shift the bias from one source to another.

In this paper, I discuss the role of the ABA SCFJ in the nomination process of federal judges and what we currently know about these ratings and other rating systems. While the internal workings of the committee's decision process is unknown, we do know enough about the institutional structure to use knowledge of decision-making in other contexts to the ABA SCFJ in order to understand how the structure may be creating the bias. Combining these two, I argue that the bias against women in the ABA SCFJ's ratings is driven by a lack of representation of women. I empirically test this theory using ratings for district judge nominees from 2000 to 2012. To preview the results, I find that there is support for the idea that the inclusion of women in the rating process does affect the likelihood of receiving a higher rating. However, even this finding may benefit male nominees more than female nominees. Taken together, these findings suggest that who is evaluating judicial nominees does matter, but that women may be harsher judges of female nominees.

## 2 The ABA SCFJ and Judicial Ratings Systems

The American Bar Association's Standing Committee on the Federal Judiciary conducts a public service by evaluating potential nominees to the federal judiciary and providing the results of their evaluation to the public. This practice has run continuously since 1953 for all prospective nominees, with a brief interlude from 2001-2008 during which time they did not receive lists of prospective nominees and thus only evaluated nominees after they had been named. These ratings are provided to the president and to the Senate Judiciary Committee, which is responsible for conducting confirmation hearings.

The SCFJ is comprised of 15 members of the ABA[1] with the sole qualification being the "possession of the highest professional stature and integrity" (ABA 2009, 1). The work of the committee is designed to be confidential, impartial and independent. When a nominee is named, the committee member for the district to which the nominee is being named is assigned with preparing a report. The report is privately assembled and distributed to committee members, and never released publicly. The result of this is that we do not know the contents of the report that the committee uses to consider any nominee. While the committee is supposed to evaluate the potential nominees on their professional qualifications, these are often subjective and open to the committee's interpretation. The three primary areas of consideration are a nominee's integrity, professional competence, and judicial temperament. From the ABA, this consists of the following:

> *When the Committee evaluates "integrity," it considers the prospective nominee's character and general reputation in the legal community, as well as the prospective nominee's industry and diligence.*
>
> *"Professional competence" encompasses such qualities as intellectual ca-*

[1]The 15 consists of one member for each of the 11 circuits, a second member for the ninth circuit, a member for the Federal circuit, a member for the DC circuit, and the committee chair

> *pacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience.*
>
> *In evaluating "judicial temperament," the Committee considers the prospective nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law. (ABA 2009, 3).*

These criteria have a high potential to be affected by gender bias, consistent with findings in the literature showing that how a nominee is perceived and evaluated is linked not only to gender-stereotypes, but also gender-trait stereotypes (Huddy and Terkildsen 1993; Schiller et. al 2018).

In practice, there is reason to believe that these subjective components are allowing the ratings to be biased. Evidence suggests that women and African Americans are more likely to be rated lower than their peers (Lott 2001; Haire 2001; Koenig 2012; Sen 2014a; Sen 2014b). These authors have not been able to pinpoint the source of bias due to the SCFJ's lack of transparency, but suggestions that the discrepancy stems from nominees with these identities having lower qualifications are without merit. The results hold even when matching candidates and controlling for their qualifications. This suggests that the bias originates from perceptions of the nominees rather than actual differences in their resumes.

Empirical studies of the ABA's ratings have shown that this bias is not limited to gender and race, but captures other groups as well. Lindgren (2001) finds bias in the likelihood of receiving higher ratings for nominees with no judicial experience when comparing Clinton and (H.W.) Bush appointments. Smelcer, Steigerwalt, and Vining also find a bias in the ratings against Republican nominees for appellate courts (2012).

The ABA is not the only evaluator of potential judges that exhibit bias. While the ABA is the most visible, providing ratings for prospective federal judges that are invoked in national debates and televised confirmation hearings, state judicial performance evaluation

(JPE) programs have also been found to contain bias against women and racial minorities (Gill, Lazos, and Waters 2011). This should not be surprising as the authors note that over 23 states have chosen to implement such programs based on guidelines from the ABA (Gill, Lazos, and Waters 2011). These programs generally rely heavily on surveys of attorneys, reporting the raw survey results rather than a deliberated decision of the evaluations. This allows for the evaluator's personal bias to more easily enter the process, but, as with studies of the ABA's ratings, studies of state JPE programs focus solely on the potential judge's qualifications and not any qualities of those responsible for evaluating them. This limits our understanding to knowing that a bias exists, but hinders our ability to address it.

This bias is significant because the ratings are highly predictive of a nominee's likelihood of being confirmed, even though the ratings are not predictive of a nominee's quality once they reach the federal bench. Both Sen (2014a) and Gill, Lazos, and Waters (2011) test these relationships, with both finding that higher ratings are unrelated to reversal rates. If the biased ratings are not explaining different behavior on the court, then their ability to explain confirmation rates implies that those responsible for confirming a judge onto the court are being misled about what the ratings provide. In order to remedy this problem, we must understand where the bias against women comes from. Gill, Lazos, and Waters (2011) suggest two possible sources: instrument bias or evaluator bias. Instrument bias would be the result of the survey consisting of questions that induce different evaluations for men and women. Alternatively, the bias of the evaluators or survey respondents could exist in terms of gender stereotypes, limiting evaluators from being able to objectively grade a nominee. If in fact stereotypes are driving the bias, then to the extent that men and women hold the stereotypes at different rates, the lack of gender inclusiveness could be what is driving the result. I turn now to considering the ways in which the identity of group members matters for group decision-making.

# 3 Group Decision-Making

The argument that the composition of a group matters to the decision of the group is driven by the assumption that the possible identities in the group have different interests, experience, and information relevant to the decision at hand. Yelnosky (2014) emphasizes the composition argument, suggesting that the over-inclusion of lawyers on the ABA SCFJ who have represented business interests biases their ratings in favor of judges who are pro-business, and, importantly, that the lawyers are not able to separate their personal interests from their work on the committee. To support this assumption empirically, I point to a number of findings that show a judge's identity matters for decision-making on courts. Collegial courts provide a reasonable comparison to the ABA as they involve a number of individuals working together to make a decision. In both cases, the decision-makers are supposed to be neutral interpreters of a set of rules or laws, objectively determining the outcome. This idea of a neutral evaluator not only contradicts what we know of human nature, but also goes against many findings that a judge's qualities do influence their decisions.

Characteristics of a judge that have been found to affect decision-making include race, gender, having daughters, experience with discrimination, and ethnicity. Kastellec finds that adding one black judge to a panel substantially increases the likelihood of rulings in favor of affirmative action, even when the other two members of the panel are conservative (2013). Boyd (2015) shows that female and African American district judges are more likely to grant motions to the plaintiff than their male and white peers in EEOC cases involving discrimination on the basis of gender and race. Glynn and Sen (2015) show that appellate judges with daughters are more likely to vote in line with feminist opinion on cases involving gender than judges without daughters. Continuing to emphasize the importance of a judge's personal experiences and characteristics, Moyer and Haire (2015) find that female appellate judges are more likely to vote in favor of women in sex discrimination cases, but only when

the female judge attended law school before 1976, when they were more likely to experience sex discrimination themselves. Grossman et al. (2014) find that panels including at least one Arab judge are significantly more lenient with Arab defendants. The key finding in all of these cases is that judges who can relate to the experience of those appearing before them are more sympathetic to them, especially when it involves an identity that has received systematic societal discrimination.

Outside of the courts, existing work on group decision-making has provided insight into how marginalized voices are incorporated into decisions. Karpowitz Mendelberg, and Shaker argue that the inclusion of minority voices in the decision-making process is conditional on the size of their representation and the decision-making rule (2012). That is, when a simple majority rule determines the outcome, women's voice is only active when women constitute a majority. However, when the decision rule requires unanimity, meaning every voice matters, the gap between men's and women's voices decreases. Mendelberg, Karpowitz and Goedert (2014) extend this finding to show that descriptive representation and the decision rule not only affect the content of deliberation, but that, through deliberation, it also influences the outcome. Hannigan and Larimer (2010) also finds differences in outcomes based on the gender composition of the group. They suggest that the differential effect of men and women in these processes is reflective of their distinct life experiences.

While these findings, both in the judiciary and outside of it, align with a normative theory of linear benefits for descriptive representation, an alternative approach suggests a non-linear relationship. This approach relies on two theories: tokenism and critical mass. Tokenism suggests that at low levels of representation, minority[2] voices are included in the process. As they increase towards a token threshold[3], their value to their colleagues increases, producing greater inclusion (Kanthak and Krause 2012). However, when the descriptive rep-

[2]Minority status is determined relative to the decision group.

[3]The token threshold has been estimated to be around 15% (Kanthak and Krause 2012)

resentation crosses the threshold, the majority no longer finds the minority voice novel and begins to decrease the value they place on the minority voice, creating a negative relationship between their descriptive and substantive representation. This continues until the group's size has grown sufficiently large[4] that, with coordination, the group can exert enough influence over the decision-making process to force their colleagues to include their voice (Childs and Krook 2008; Kanthak and Krause 2012; Bratton 2012). After crossing the critical mass threshold, descriptive and substantive representation resume a positive relationship. Both this cubic relationship and the more traditional linear relationship have found empirical support, though the theory of tokenism and critical mass relies more on competing group interests than a mere diversity of opinions.

# 4 A Theory of Bias in the ABA SCFJ

Building on prior work, I argue that the bias of the ABA SCFJ's ratings on federal nominees is driven by the lack of women's representation on the committee. When the committee members interpret the prospective judge's resume before voting, they do so through their own experiences in the legal profession. Women on the committee are therefore able to evaluate the potential judge using a different perspective than their male colleagues. This has the effect of reducing bias against the candidates such that female committee members are more generous to female nominees, thus reducing the overall bias against the prospective female judges.

Women on the committee have two pathways to affecting the evaluation and final outcome. The first pathway is through committee membership. The committee member representing the circuit for which a candidate could be nominated to is assigned with preparing a report for the full committee. The committee reads the report and then independently

[4]Estimates have placed the critical mass threshold at around 30% (Kanthak and Krause 2012)

votes to produce a rating for potential judges based on majority rule. However, the committee also notes if there is a minority opinion. Given this decision-making rule, even low levels of dissent can influence the rating of a candidate. Thus, while the rule for a decision on the SCFJ is majority-rule, the voices of all members should be empowered by the inclusion of a minority opinion. In addition, the more female members on the committee, the higher the likelihood that the report on the nominee will be prepared by a female committee member. As such, we should expect the level of women's descriptive representation to have a positive and linear relationship with the likelihood of women receiving a higher rating. This produces the first two hypothesis:

> *H1: The marginal effect of a nominee being female on their likelihood of receiving a high rating is negative when there is low descriptive representation of women on the ABA SCFJ.*
>
> *H2: The marginal effect of a nominee being female on their likelihood of receiving a high rating is not statistically different from zero when there is high descriptive representation of women on the ABA SCFJ.*

A second pathway for women to influence the ABA SCFJ's ratings is through the leadership of the committee. While the members of the committee do not deliberate over the potential nominee, the chair manages the evaluation process, and has the ability to influence the process through reviewing the evaluator's report and the appointment of a second evaluator when needed. If any decision arises regarding a potential nominee, a female chair, understanding the experiences that a female nominee has endured, will be more helpful to a female candidate than a male candidate. While a female chair may not have the power to fully reduce the bias against female candidates, they may be able to mitigate some of the bias. This leads to the second hypothesis.

> *H3: The marginal effect of a nominee being female on a candidate's likelihood of receiving a high rating is not statistically different from zero when*

*conditioning on the chair being a women.*

*H4: The marginal effect of a nominee being female on a candidate's likelihood of receiving a high rating is negative when conditioning on the chair not being a women.*

# 5 Methodology

## 5.1 Method of Analysis

To test the theory of bias in the ABA committee, I develop a model depicting the relationship between a potential judge's rating from the ABA SCFJ and predictive factors, which includes characteristics of the potential judge and characteristics of the ABA SCFJ. I model the relationship using a linear probability model (LPM) estimated with OLS regression with robust standard errors. I also estimate the model using logit regression, but finding no difference in the variables reaching statistical significance, report the results in the body of this paper using the LPM due to the ease of interpretation of the results. Results of the logit regression are reported in the appendix.

## 5.2 Variables

The dependent variable is the probability of receiving a higher rating from the ABA. Prior scholarship has employed a binary variable for this, with 0 accounting for ratings of "Not Qualified" and "Qualified," while 1 signifies "Well Qualified" or "Exceptionally Well Qualified"[5] (Sen 2014a). Given that nearly 97% of the observed ratings fall into either "Qualified" or "Well Qualified," the dichotomous operationalization should not be problematic. I re-run the regression results treating the rating as continuous variable, with no signifi-

[5]The "Exceptionally Well Qualified" rating has been discontinued, but is contained within the data due to the large collection window.

cant changes in the results. The regression table depicting these results is included in the appendix.

The primary independent variables of interest are the percentage of women on the ABA SCFJ and whether the chair of the committee is a woman. The data on the SCFJ's membership is less than complete, with the total reported number of committee members for some years being above or below the stated size of 15. Efforts to validate the membership, with both the ABA and the individual members has been unsuccessful. As such, I choose to operationalize the percentage of women on the committee in a given year as the reported number of women on the committee divided by 15. I additionally test the model operationalizing the percentage of women on the committee in a given year as the reported number of women on the committee divided by the reported number of committee members. The results for the regression analysis using this second operationalization are reported in the appendix, with no significant differences between the two methods.

In addition to the independent variables, I also include covariates consistent with prior work on the ABA's ratings (Sen 2014a; Smelcer, Steigerwalt, and Vining 2012). These include whether the nominee was appointed by a Republican, dummy variables for the candidate's ethnicity, the candidate's age, whether they attended a top-14 law school, whether they attended a private law school, and several binary variables indicating prior professional experiences. A summary of these variables is included in the appendix.

## 5.3 Data

I combine two data sets to conduct the analysis described above. First, I employ Sen's (2014a) data set of 1,652 confirmed US district judges and 121 individuals nominated to serve as a district judge, but not confirmed, whose nomination and, if applicable, confirmation occurred between 1960 and 2012. This data also includes all of the characteristics of the nominees designated as covariates above.

I supplement this data set with data on the ABA SCFJ's membership from Yelnosky (2014). The membership data reports the names, whether they served as committee chair, and years served of committee members for the years 2000-2013. I validated the data on the chair of the committee using a list publicly available on the ABA SCFJ's website, however, I was unable to validate the membership list as the ABA SCFJ does not publicize the list. After contacting the ABA SCFJ spokesperson directly, they were unable to provide rosters for any of the years from 1960-2012. As a result, I rely on the unvalidated Yelnosky data using corrections described above.

Combining these two data sets, I get a data set of 395 nominees to serve as a district court judge, whose nomination occurred between 2000 and 2013. This includes 114 female nominees and 281 male nominees.

# 6 Results

The results of the regression are presented in Table 1. Model 1 replicates Sen's (2014a) Model 3.1. Model 2 adds year and district fixed-effects to Model 1. Model 3 adds to Model 2 the dummy variable indicating whether the SCFJ chair is a woman. Model 4 adds to Model 2 a variable for the percentage of women on the SCFJ when the nominee is nominated. Because the composition of the SCFJ is fixed for a given year, I do not include year fixed-effects in any model containing a variable for the composition of the SCFJ. Model 5 combines Models 3 and 4, adding a variable indicating whether the SCFJ chair is a woman and a variable for the percentage of women on the SCFJ. Model 6 adds to Model 5 an interaction between the variable indicating if the nominee is a woman and the variable indicating whether the chair of the SCFJ is a woman. Model 7 adds to Model 5 an interaction between the variable indicating if the nominee is a woman and the variable indicating the female composition of the SCFJ.

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Female | -0.047 | -0.096*** | -0.008 | 0.006 | 0.007 | 0.032 | 0.077 |
| | (0.032) | (0.034) | (0.064) | (0.061) | (0.061) | (0.089) | (0.145) |
| ABA SCFJ Female Chair | | | 0.372** | | -0.007 | 0.009 | -0.007 |
| | | | (0.172) | | (0.054) | (0.071) | (0.054) |
| ABA SCFJ Percent Women(of 15) | | | | 0.437* | 0.445* | 0.432* | 0.488* |
| | | | | (0.237) | (0.248) | (0.251) | (0.267) |
| ABA SCFJ Female Chair*Female | | | | | | -0.047 | |
| | | | | | | (0.122) | |
| ABA SCFJ Percent Women(15)*Female | | | | | | | -0.208 |
| | | | | | | | (0.394) |
| African American | -0.155*** | -0.205*** | -0.083 | -0.050 | -0.049 | -0.049 | -0.048 |
| | (0.042) | (0.045) | (0.092) | (0.096) | (0.096) | (0.097) | (0.096) |
| Hispanic | -0.141*** | -0.184*** | -0.201 | -0.179 | -0.179 | -0.179 | -0.175 |
| | (0.051) | (0.065) | (0.124) | (0.121) | (0.121) | (0.121) | (0.121) |
| Republican | 0.011 | -0.388** | 0.200 | 0.033 | 0.033 | 0.034 | 0.039 |
| | (0.024) | (0.163) | (0.181) | (0.077) | (0.077) | (0.077) | (0.078) |
| Age | 0.015*** | 0.013*** | 0.012*** | 0.013*** | 0.013*** | 0.013*** | 0.013*** |
| | (0.002) | (0.002) | (0.005) | (0.005) | (0.005) | (0.005) | (0.005) |
| Top 14 Law School | 0.026 | 0.020 | -0.020 | -0.019 | -0.019 | -0.021 | -0.017 |
| | (0.027) | (0.031) | (0.064) | (0.063) | (0.063) | (0.063) | (0.063) |
| Private Law School | 0.029 | 0.015 | 0.023 | 0.023 | 0.023 | 0.024 | 0.025 |
| | (0.024) | (0.028) | (0.060) | (0.060) | (0.060) | (0.061) | (0.061) |
| Law Clerk | 0.087*** | 0.029 | 0.003 | 0.006 | 0.006 | 0.007 | 0.007 |
| | (0.029) | (0.031) | (0.063) | (0.062) | (0.062) | (0.062) | (0.062) |
| Law Professor | -0.021 | -0.000 | 0.041 | 0.042 | 0.042 | 0.035 | 0.038 |
| | (0.050) | (0.052) | (0.109) | (0.100) | (0.100) | (0.104) | (0.101) |
| Private Practice | 0.119*** | 0.105** | 0.060 | 0.073 | 0.074 | 0.073 | 0.072 |
| | (0.041) | (0.044) | (0.076) | (0.075) | (0.075) | (0.075) | (0.075) |
| US Attorney | -0.070* | -0.042 | 0.023 | 0.024 | 0.024 | 0.027 | 0.023 |
| | (0.042) | (0.045) | (0.097) | (0.095) | (0.095) | (0.095) | (0.095) |
| Assistant US Attorney | 0.149*** | 0.125*** | 0.187*** | 0.192*** | 0.192*** | 0.190*** | 0.191*** |
| | (0.031) | (0.033) | (0.062) | (0.060) | (0.060) | (0.061) | (0.060) |
| Justice Department | 0.037 | -0.024 | -0.065 | -0.047 | -0.048 | -0.044 | -0.048 |
| | (0.053) | (0.057) | (0.119) | (0.112) | (0.112) | (0.113) | (0.112) |
| Public Defender | 0.096* | 0.009 | -0.083 | -0.079 | -0.078 | -0.081 | -0.078 |
| | (0.053) | (0.061) | (0.092) | (0.089) | (0.090) | (0.090) | (0.090) |
| Federal Magistrate | 0.200*** | 0.150*** | 0.213*** | 0.217*** | 0.217*** | 0.216*** | 0.220*** |
| | (0.037) | (0.040) | (0.067) | (0.064) | (0.065) | (0.064) | (0.065) |
| Federal Bankruptcy | 0.118 | 0.204** | 0.139 | 0.060 | 0.060 | 0.056 | 0.043 |
| | (0.084) | (0.094) | (0.174) | (0.168) | (0.169) | (0.173) | (0.173) |
| State Judge | 0.052** | 0.031 | 0.046 | 0.044 | 0.044 | 0.044 | 0.044 |
| | (0.025) | (0.026) | (0.058) | (0.057) | (0.058) | (0.058) | (0.058) |
| Constant | -0.401*** | 0.018 | -0.091 | 0.066 | 0.071 | 0.044 | 0.051 |
| | (0.104) | (0.239) | (0.361) | (0.345) | (0.351) | (0.361) | (0.354) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1652 | 393 | 393 | 393 | 393 | 393 |
| $R^2$ | 0.0933 | 0.2038 | 0.4301 | 0.4132 | 0.4133 | 0.4136 | 0.4138 |
| $\hat{\sigma}$ | 0.476 | 0.465 | 0.419 | 0.418 | 0.419 | 0.420 | 0.420 |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 1: OLS regression results using robust standard errors. Dependent variable is the probability of receiving a rating of "Exceptionally Well Qualified"/"Well Qualified" Versus "Qualified"/"Not Qualified".

Looking at the results, Model 1 fails to find a statistically significant effect for the nominee's gender on their likelihood of receiving a high rating, consistent with Sen (2014a). When adding fixed-effects to Model 2, however, the effect of the nominees gender becomes statistically and substantively significant ($p<0.01$), indicating that women are approximately 10% less likely to receive a high ABA rating than their male counterparts. This finding is also consistent with Sen (2014a). When accounting for characteristics of the ABA SCFJ, as in Models 3-7, however, the effect of the nominee being a woman becomes statistically and substantively insignificant.

Model 3 shows a substantial and statistically significant ($p<0.05$) effect for having a female committee chair on the SCFJ. The results indicate that when the committee chair is a woman, nominees have a 37% higher likelihood of receiving a high rating than when the committee chair is a man. Model 4 shows a weakly significant ($p<0.1$), but substantive effect for the gender composition of the committee, with an increase from no women on the SCFJ to 100% women corresponding to a predicted increase of 43.7% in the likelihood of receiving a high rating. However, in Model 5, when accounting for both the gender composition and the chair's gender, the effect from a female chair loses statistical and substantive significance. The effect of the percent of women on the SCFJ maintains its substantive and weakly significant ($p<0.1$) status with a coefficient of 0.445, corresponding to a predicted increase of 44.5% in the dependent variable when shifting from no female representation to all female representation.

Turning now to Models 6 and 7, the models containing interaction terms, the coefficients on the variable for the percentage of women on the SCFJ and the variable indicating a female chair remain largely unchanged from their effect in Model 5. In Model 6, the coefficient on the interaction term (Female Chair*Female)is negative, suggesting that the marginal effect of a female nominee conditional on a female chair of the SCFJ is negative, though statistically insignificant. This effect is plotted in Figure 1. In Model 7, I condition

the effect of the nominee being female on the percentage of women on the SCFJ. I plot the marginal effect of a female nominee conditional on the percentage of women on the SCFJ in Figure 2, showing that the marginal effect is never statistically significant nor substantively large. I plot the marginal effect of the percentage of women on the SCFJ conditional on the nominee's gender in Figure 3. Here we see that when the nominee is a man, the marginal effect is weakly significant ($p<0.1$), but substantive with a value of 0.488. However, when the nominee is a woman, the effect decreases to 0.28, and loses statistical significance.

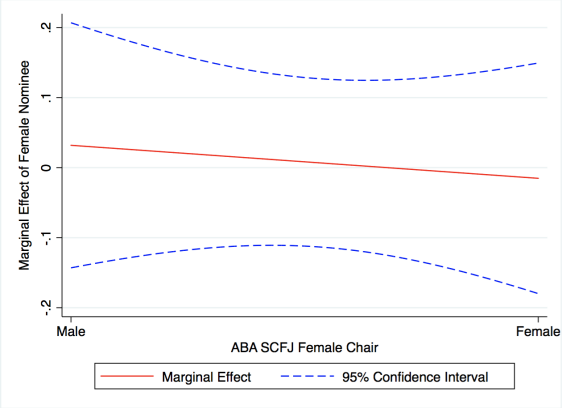


Figure 1: Marginal Effect of a Female Nominee (Conditional on a the gender of the Chair of the ABA SCFJ) on the Likelihood of Receiving a High Rating

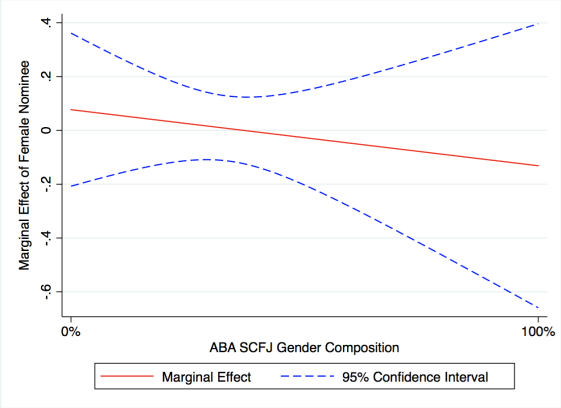


Figure 2: Marginal Effect of a Female Nominee (Conditional on the Gender Composition of the ABA SCFJ) on the Likelihood of Receiving a High Rating

Based on these results, I can reject the null hypotheses for hypothesis 2 and hypothesis 3. I am unable to reject the null hypotheses for hypothesis 1 and hypothesis 4. To summarize these findings, when controlling for the gender of the chair of the ABA SCFJ and the gender composition of the SCFJ, I am unable to find any statistically significant effect of the nominee's gender on their probability of receiving a higher rating from the committee. The results do suggest that the gender composition of the committee does affect their rating of nominees.

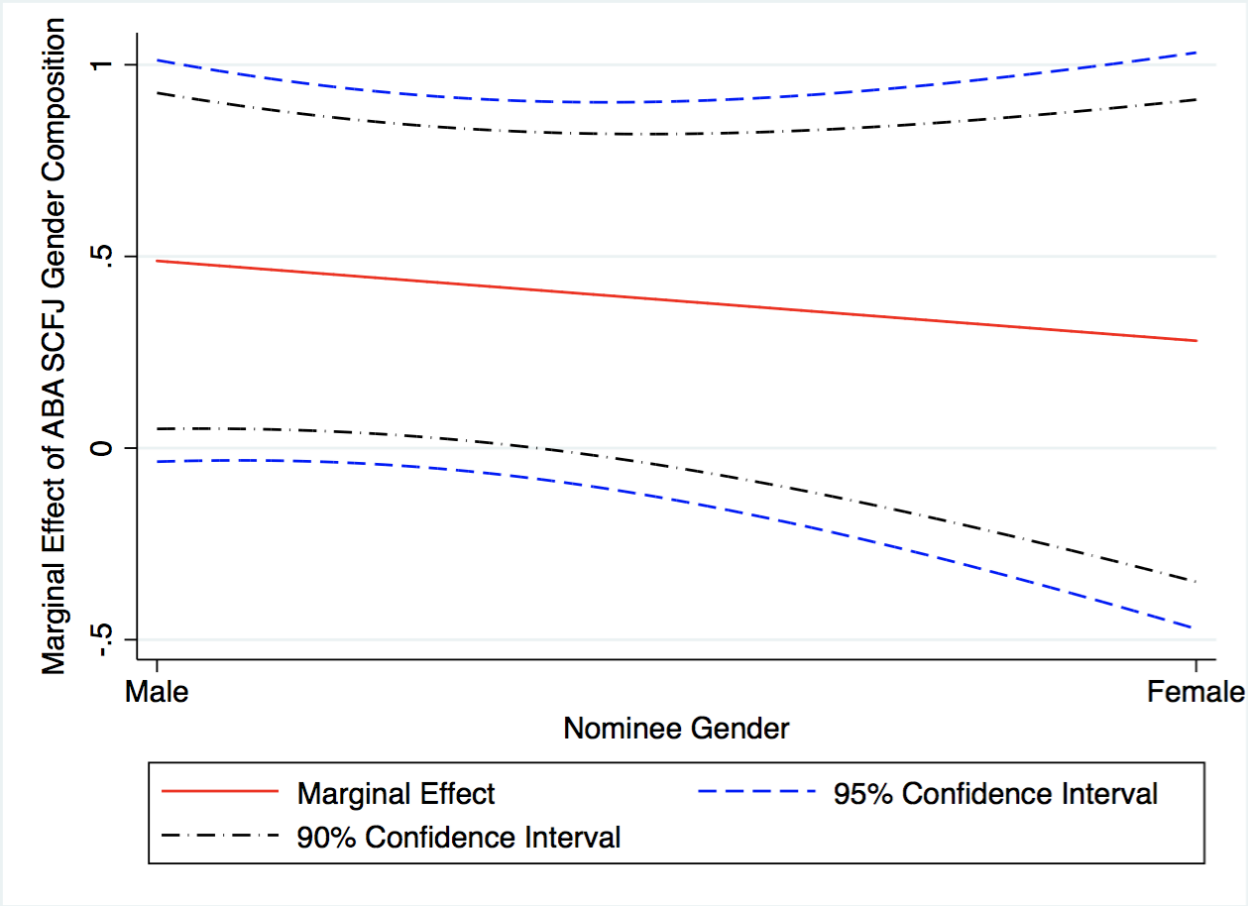


Figure 3: Marginal Effect of the Gender Composition of the ABA SCFJ (Conditional on the Nominee's Gender) on the Likelihood of Receiving a High Rating

# 7 Discussion

The results of the analysis in the previous section suggest that, when controlling for characteristics of the ABA's SCFJ, the group of individuals responsible for evaluating potential judges, the effect of a nominee's gender is insignificant. This is in stark contrast to prior findings of bias against women in the ABA's rating of judicial nominees. What might explain these findings? The consistent finding of a weakly significant effect from the gender composition coupled with insignificance on its interaction suggests that when more women are on the ABA's SCFJ, the committee is more likely to award a higher rating. For the 395

judges for whom I have data on the composition of the SCFJ that evaluated them, the mean percentage of women on the committee when evaluating female nominees is 0.314, while the mean percentage for male nominees is 0.356. These means are statistically different at $p<0.01$. This suggests that the perceived "bias" in the ABA's ratings of judicial nominees is actually an artifact of male nominees being evaluated by a committee that is, on average, more female and more generous in their ratings.

These results provide several important insights for our understanding of judicial nominee evaluations. First, the results suggest that the ratings are not biased against women. While Sen (2014a) finds a bias when controlling for characteristics of the nominee, she fails to account for dynamics of the evaluating committee, which the results of this paper strongly suggest are what is driving the process. Calls to eliminate the ABA's prized position as the judge of judges because of the perceived bias are thus without merit. Second, age, prior experience as an Assistant US Attorney, and prior experience as a federal magistrate all are statistically significant across all model specifications. This is consistent with prior studies and adds strength to the claims that these are valued pathways to attaining a hire rating and thus improve an individual's chances of being confirmed into the federal judiciary.

Finally, the results of the analysis suggest that the likelihood of receiving a high rating is contingent on the evaluating panel. Women members of the ABA's SCFJ are on average more generous in their rating than their male counterparts. This suggests that an individual rated as "well qualified" in one year, may not receive the same rating the next year, depending on the make-up of the SCFJ in each year. Contrary to prior research, this has nothing to do with the nominee and everything to do with who is evaluating the nominee. If the American Bar Association is intent on conducting a public service by evaluating judicial nominees, they would do well to prevent any potential criticisms of their evaluation process. So long as the gender composition of the SCFJ is allowed to fluctuate, the ratings will not be consistent across years.

# 8 Conclusion

This paper began as an attempt to explain the origins of gender bias in the ABA SCFJ's ratings of federal judicial nominees. In doing so, I focused on a piece of the puzzle that had been left unexamined in prior studies on bias in the ABA's ratings: characteristics of the evaluators. I posited a theory in which the lack of individuals on the committee who could understand and relate to female nominees is what drove the ratings to be biased. However, in conducting the analysis, I uncovered a different story. In summary, the nominee's gender does not affect their likelihood of receiving different ratings, but was merely obscuring the fact that male and female candidates have systematically been evaluated by differently composed committees, with men facing more generous committees on average than women. As a result, the ratings only appear to be biased against women.

This study relies on observations for a subset of the available ratings (13 of 52 years). In order to garner stronger support for the results of this study, I will seek to gain additional data on the gender composition of the ABA's SCFJ. The results of this study and potential future studies employing greater years of data would do well to address the origins of the other areas of identified bias. If the results of this study stand, then it is highly likely that the bias against Republican appointed nominees and racial minorities are also constructs of the differences in the committees evaluating the nominees.

This study has made an important contribution to the literature on judicial selection by addressing the dearth of research on how elements of evaluating groups affect the ratings received by nominees. Whereas past findings had suggested that the ratings themselves were biased against women, racial minorities, and Republican appointed nominees, the findings outlined above suggest that the ABA's SCFJ is not biased, at least not against women. Future studies searching for bias must be sure to account for who is evaluating the nominees in addition to nominee characteristics.

# Appendix Table of Contents



# Appendix A - Summary Statistics

This section provides summary statistics and graphs for the primary variables of interest. Table A1 below provides the number of observations, minimum value, median value, maximum value, mean and standard deviation for all variables included in the regression. Figures A1-3 are histograms of the distribution of the dependent variable and the two main independent variables.

| | Count of Obs. | Min | Median | Max | Mean | St. Dev. |
|---|---|---|---|---|---|---|
| High ABA Rating (Binary) | 393 | 0.000 | 1.000 | 1.000 | 0.679 | 0.467 |
| ABA Rating (Continuous) | 393 | 0.000 | 0.667 | 0.667 | 0.556 | 0.164 |
| Female | 393 | 0.000 | 0.000 | 1.000 | 0.285 | 0.452 |
| ABA SCFJ Percent Women(of 15) | 393 | 0.133 | 0.333 | 0.600 | 0.350 | 0.139 |
| ABA SCFJ Percent Women(of N) | 393 | 0.167 | 0.312 | 0.562 | 0.344 | 0.124 |
| Critical Mass | 393 | 0.000 | 1.000 | 1.000 | 0.555 | 0.498 |
| Female Majority | 393 | 0.000 | 0.000 | 1.000 | 0.193 | 0.395 |
| ABA SCFJ Female Chair | 393 | 0.000 | 1.000 | 1.000 | 0.506 | 0.501 |
| African American | 393 | 0.000 | 0.000 | 1.000 | 0.094 | 0.292 |
| Hispanic | 393 | 0.000 | 0.000 | 1.000 | 0.102 | 0.303 |
| Republican | 393 | 0.000 | 1.000 | 1.000 | 0.664 | 0.473 |
| Age | 393 | 36.000 | 52.000 | 65.000 | 51.193 | 6.202 |
| Top 14 Law School | 393 | 0.000 | 0.000 | 1.000 | 0.247 | 0.432 |
| Private Law School | 393 | 0.000 | 1.000 | 1.000 | 0.532 | 0.500 |
| Law Clerk | 393 | 0.000 | 0.000 | 1.000 | 0.336 | 0.473 |
| Law Professor | 393 | 0.000 | 0.000 | 1.000 | 0.046 | 0.209 |
| Private Practice | 393 | 0.000 | 1.000 | 1.000 | 0.873 | 0.334 |
| US Attorney | 393 | 0.000 | 0.000 | 1.000 | 0.071 | 0.258 |
| Assistant US Attorney | 393 | 0.000 | 0.000 | 1.000 | 0.275 | 0.447 |
| Justice Department | 393 | 0.000 | 0.000 | 1.000 | 0.066 | 0.249 |
| Public Defender | 393 | 0.000 | 0.000 | 1.000 | 0.076 | 0.266 |
| Federal Magistrate | 393 | 0.000 | 0.000 | 1.000 | 0.178 | 0.383 |
| Federal Bankruptcy | 393 | 0.000 | 0.000 | 1.000 | 0.013 | 0.112 |
| State Judge | 393 | 0.000 | 0.000 | 1.000 | 0.379 | 0.486 |

Table A1: Summary Statistics for All Regression Variables

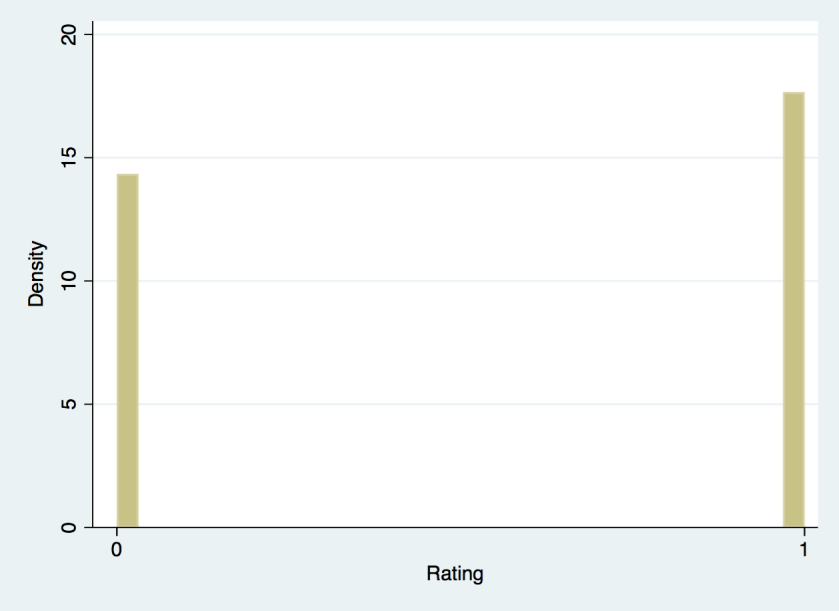


Figure A1: Distribution of Dependent Variable - Binary ABA SCFJ Rating

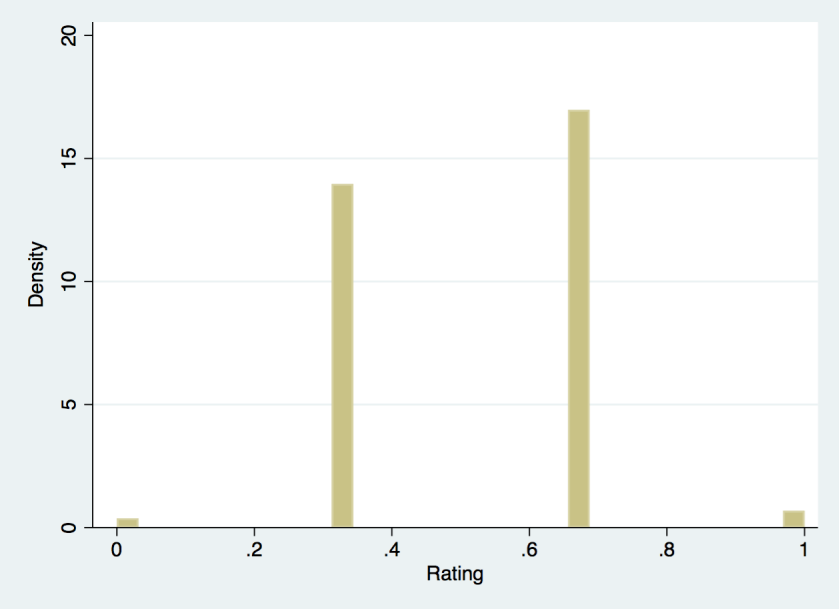


Figure A2: Distribution of Dependent Variable - Continuous ABA SCFJ Rating

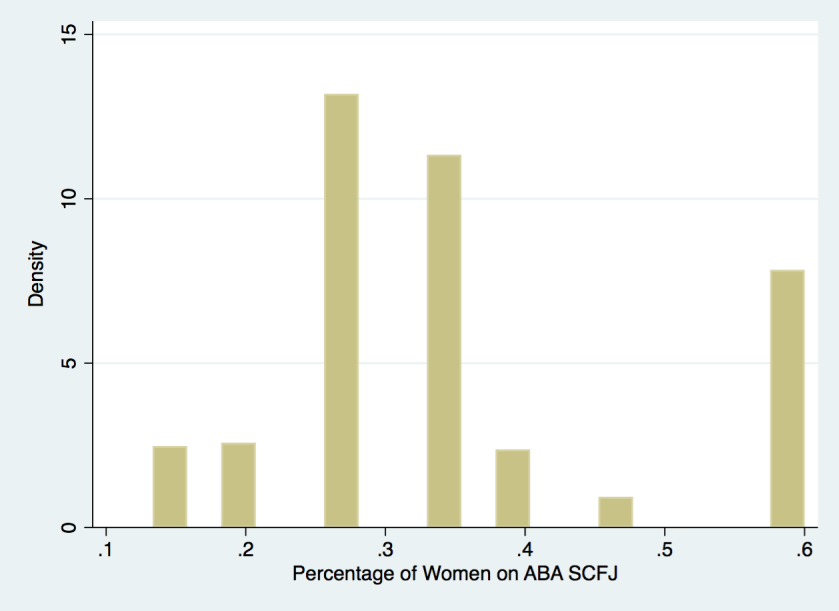


Figure A3: Distribution of Independent Variable - Percent of Women on the SCFJ (Out of 15)

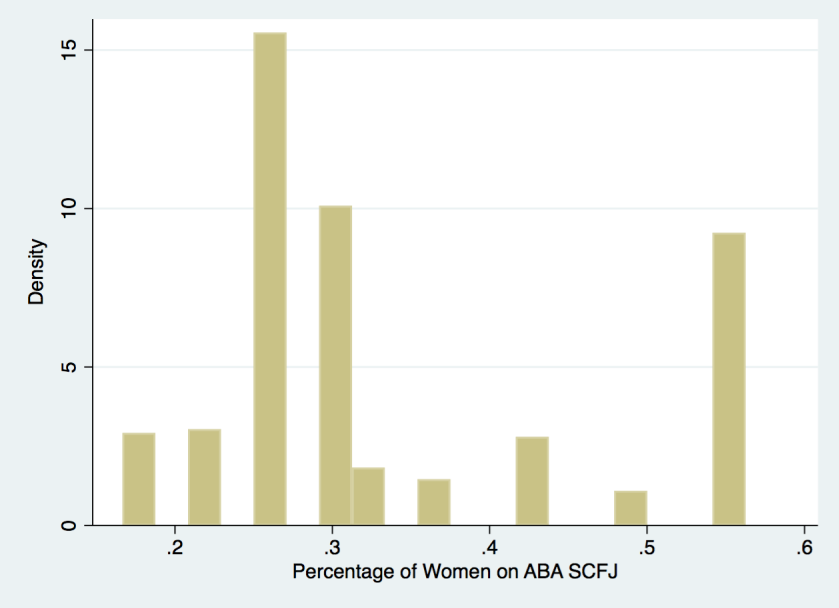


Figure A4: Distribution of Independent Variable - Percent of Women on the SCFJ (Out of Reported Total)

# Appendix B - Robustness Tests

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Female | -0.047 | -0.096*** | -0.008 | 0.007 | 0.007 | 0.034 | 0.067 |
| | (0.032) | (0.034) | (0.064) | (0.061) | (0.061) | (0.089) | (0.145) |
| ABA SCFJ Female Chair | | | 0.372** | | 0.002 | 0.018 | 0.002 |
| | | | (0.172) | | (0.053) | (0.070) | (0.053) |
| ABA SCFJ Percent Women(of 15) | | | | | | | |
| ABA SCFJ Female Chair*Female | | | | | | -0.051 | |
| | | | | | | (0.122) | |
| ABA SCFJ Percent Women(15)*Female | | | | | | | -0.180 |
| | | | | | | | (0.391) |
| African American | -0.155*** | -0.205*** | -0.083 | -0.048 | -0.049 | -0.048 | -0.048 |
| | (0.042) | (0.045) | (0.092) | (0.096) | (0.096) | (0.097) | (0.096) |
| Hispanic | -0.141*** | -0.184*** | -0.201 | -0.178 | -0.178 | -0.178 | -0.175 |
| | (0.051) | (0.065) | (0.124) | (0.121) | (0.121) | (0.121) | (0.121) |
| Republican | 0.011 | -0.388** | 0.200 | 0.041 | 0.041 | 0.042 | 0.046 |
| | (0.024) | (0.163) | (0.181) | (0.076) | (0.076) | (0.076) | (0.077) |
| Age | 0.015*** | 0.013*** | 0.012*** | 0.013*** | 0.013*** | 0.013*** | 0.013*** |
| | (0.002) | (0.002) | (0.005) | (0.005) | (0.005) | (0.005) | (0.005) |
| Top 14 Law School | 0.026 | 0.020 | -0.020 | -0.018 | -0.017 | -0.019 | -0.015 |
| | (0.027) | (0.031) | (0.064) | (0.063) | (0.063) | (0.063) | (0.063) |
| Private Law School | 0.029 | 0.015 | 0.023 | 0.022 | 0.022 | 0.023 | 0.024 |
| | (0.024) | (0.028) | (0.060) | (0.060) | (0.061) | (0.061) | (0.061) |
| Law Clerk | 0.087*** | 0.029 | 0.003 | 0.004 | 0.004 | 0.005 | 0.005 |
| | (0.029) | (0.031) | (0.063) | (0.062) | (0.062) | (0.062) | (0.062) |
| Law Professor | -0.021 | -0.000 | 0.041 | 0.040 | 0.040 | 0.032 | 0.037 |
| | (0.050) | (0.052) | (0.109) | (0.100) | (0.100) | (0.104) | (0.101) |
| Private Practice | 0.119*** | 0.105** | 0.060 | 0.073 | 0.073 | 0.072 | 0.071 |
| | (0.041) | (0.044) | (0.076) | (0.075) | (0.075) | (0.075) | (0.076) |
| US Attorney | -0.070* | -0.042 | 0.023 | 0.022 | 0.022 | 0.025 | 0.020 |
| | (0.042) | (0.045) | (0.097) | (0.095) | (0.095) | (0.095) | (0.095) |
| Assistant US Attorney | 0.149*** | 0.125*** | 0.187*** | 0.192*** | 0.193*** | 0.191*** | 0.192*** |
| | (0.031) | (0.033) | (0.062) | (0.060) | (0.060) | (0.061) | (0.060) |
| Justice Department | 0.037 | -0.024 | -0.065 | -0.046 | -0.046 | -0.042 | -0.046 |
| | (0.053) | (0.057) | (0.119) | (0.111) | (0.112) | (0.113) | (0.112) |
| Public Defender | 0.096* | 0.009 | -0.083 | -0.079 | -0.079 | -0.082 | -0.079 |
| | (0.053) | (0.061) | (0.092) | (0.090) | (0.090) | (0.090) | (0.090) |
| Federal Magistrate | 0.200*** | 0.150*** | 0.213*** | 0.220*** | 0.220*** | 0.218*** | 0.222*** |
| | (0.037) | (0.040) | (0.067) | (0.064) | (0.065) | (0.065) | (0.065) |
| Federal Bankruptcy | 0.118 | 0.204** | 0.139 | 0.059 | 0.059 | 0.055 | 0.045 |
| | (0.084) | (0.094) | (0.174) | (0.170) | (0.170) | (0.175) | (0.175) |
| State Judge | 0.052** | 0.031 | 0.046 | 0.045 | 0.045 | 0.045 | 0.045 |
| | (0.025) | (0.026) | (0.058) | (0.057) | (0.058) | (0.058) | (0.058) |
| ABA SCFJ Percent Women(of N) | | | | 0.451* | 0.449* | 0.434 | 0.488* |
| | | | | (0.261) | (0.269) | (0.272) | (0.287) |
| Constant | -0.401*** | 0.018 | -0.091 | 0.060 | 0.059 | 0.029 | 0.039 |
| | (0.104) | (0.239) | (0.361) | (0.346) | (0.353) | (0.363) | (0.357) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1652 | 393 | 393 | 393 | 393 | 393 |
| $R^2$ | 0.0933 | 0.2038 | 0.4301 | 0.4123 | 0.4123 | 0.4127 | 0.4127 |
| $\hat{\sigma}$ | 0.476 | 0.465 | 0.419 | 0.419 | 0.419 | 0.420 | 0.420 |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table A2: OLS regression results using reported percentage of women on the SCFJ. Dependent variable is the probability of receiving a rating of "Exceptionally Well Qualified"/"Well Qualified" Versus "Qualified"/"Not Qualified".

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Female | -0.019* | -0.033*** | -0.002 | 0.004 | 0.004 | 0.015 | 0.039 |
| | (0.011) | (0.012) | (0.022) | (0.021) | (0.021) | (0.030) | (0.052) |
| ABA SCFJ Female Chair | | | 0.122** | | -0.001 | 0.005 | -0.001 |
| | | | (0.057) | | (0.019) | (0.024) | (0.019) |
| ABA SCFJ Percent Women(of 15) | | | | 0.120 | 0.121 | 0.115 | 0.142 |
| | | | | (0.083) | (0.086) | (0.088) | (0.092) |
| ABA SCFJ Female Chair*Female | | | | | | -0.020 | |
| | | | | | | (0.042) | |
| ABA SCFJ Percent Women(15)*Female | | | | | | | -0.102 |
| | | | | | | | (0.148) |
| African American | -0.059*** | -0.074*** | -0.026 | -0.015 | -0.015 | -0.014 | -0.014 |
| | (0.015) | (0.016) | (0.032) | (0.033) | (0.033) | (0.034) | (0.033) |
| Hispanic | -0.051*** | -0.067*** | -0.093* | -0.085* | -0.085* | -0.085* | -0.083* |
| | (0.019) | (0.025) | (0.051) | (0.049) | (0.049) | (0.049) | (0.049) |
| Republican | 0.006 | -0.129** | 0.071 | 0.015 | 0.015 | 0.016 | 0.018 |
| | (0.009) | (0.056) | (0.061) | (0.026) | (0.026) | (0.026) | (0.026) |
| Age | 0.006*** | 0.005*** | 0.004** | 0.004*** | 0.004*** | 0.005*** | 0.005*** |
| | (0.001) | (0.001) | (0.002) | (0.002) | (0.002) | (0.002) | (0.002) |
| Top 14 Law School | 0.016 | 0.013 | -0.000 | 0.001 | 0.000 | -0.000 | 0.002 |
| | (0.010) | (0.012) | (0.023) | (0.023) | (0.023) | (0.023) | (0.023) |
| Private Law School | 0.007 | 0.004 | 0.011 | 0.010 | 0.010 | 0.011 | 0.011 |
| | (0.009) | (0.010) | (0.021) | (0.021) | (0.021) | (0.021) | (0.021) |
| Law Clerk | 0.031*** | 0.014 | 0.002 | 0.003 | 0.003 | 0.003 | 0.003 |
| | (0.011) | (0.012) | (0.022) | (0.021) | (0.021) | (0.021) | (0.021) |
| Law Professor | -0.006 | -0.001 | 0.014 | 0.014 | 0.014 | 0.011 | 0.012 |
| | (0.019) | (0.020) | (0.038) | (0.035) | (0.035) | (0.036) | (0.035) |
| Private Practice | 0.047*** | 0.039** | 0.019 | 0.024 | 0.024 | 0.024 | 0.023 |
| | (0.015) | (0.016) | (0.030) | (0.030) | (0.030) | (0.030) | (0.030) |
| US Attorney | -0.026 | -0.018 | 0.013 | 0.013 | 0.013 | 0.014 | 0.012 |
| | (0.017) | (0.018) | (0.035) | (0.035) | (0.035) | (0.035) | (0.035) |
| Assistant US Attorney | 0.053*** | 0.042*** | 0.066*** | 0.068*** | 0.068*** | 0.067*** | 0.068*** |
| | (0.011) | (0.012) | (0.022) | (0.021) | (0.021) | (0.021) | (0.021) |
| Justice Department | 0.010 | -0.009 | -0.037 | -0.030 | -0.030 | -0.029 | -0.031 |
| | (0.020) | (0.022) | (0.043) | (0.040) | (0.040) | (0.040) | (0.040) |
| Public Defender | 0.034* | 0.008 | -0.025 | -0.024 | -0.024 | -0.025 | -0.024 |
| | (0.020) | (0.023) | (0.031) | (0.030) | (0.030) | (0.030) | (0.030) |
| Federal Magistrate | 0.064*** | 0.051*** | 0.067*** | 0.068*** | 0.069*** | 0.068*** | 0.070*** |
| | (0.014) | (0.015) | (0.025) | (0.024) | (0.024) | (0.024) | (0.024) |
| Federal Bankruptcy | 0.037 | 0.068** | 0.045 | 0.017 | 0.017 | 0.015 | 0.009 |
| | (0.028) | (0.032) | (0.059) | (0.058) | (0.058) | (0.060) | (0.060) |
| State Judge | 0.018** | 0.008 | 0.010 | 0.011 | 0.011 | 0.011 | 0.011 |
| | (0.009) | (0.010) | (0.020) | (0.020) | (0.020) | (0.020) | (0.020) |
| Constant | 0.142*** | 0.278*** | 0.315** | 0.368*** | 0.369*** | 0.357*** | 0.359*** |
| | (0.040) | (0.078) | (0.126) | (0.122) | (0.124) | (0.127) | (0.125) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1652 | 393 | 393 | 393 | 393 | 393 |
| $R^2$ | 0.0965 | 0.1940 | 0.4315 | 0.4158 | 0.4159 | 0.4164 | 0.4169 |
| $\hat{\sigma}$ | 0.177 | 0.173 | 0.147 | 0.147 | 0.147 | 0.147 | 0.147 |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table A3: OLS regression results. Dependent variable is the continuous probability of receiving a higher rating from the ABA SCFJ.

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| High ABA Rating (Binary) | | | | | | | |
| Female | -0.216 | -0.505*** | -0.085 | 0.113 | 0.101 | 0.282 | 0.531 |
| | (0.145) | (0.170) | (0.443) | (0.423) | (0.424) | (0.551) | (1.027) |
| ABA SCFJ Female Chair | | | -0.739 | | 0.121 | 0.232 | 0.119 |
| | | | (0.975) | | (0.375) | (0.457) | (0.374) |
| ABA SCFJ Percent Women(of 15) | | | | 2.691* | 2.558 | 2.427 | 2.809* |
| | | | | (1.507) | (1.555) | (1.611) | (1.684) |
| ABA SCFJ Female Chair*Female | | | | | | -0.353 | |
| | | | | | | (0.784) | |
| ABA SCFJ Percent Women(15)*Female | | | | | | | -1.246 |
| | | | | | | | (2.719) |
| African American | -0.695*** | -1.057*** | -0.532 | -0.443 | -0.466 | -0.469 | -0.464 |
| | (0.189) | (0.228) | (0.670) | (0.702) | (0.701) | (0.709) | (0.699) |
| Hispanic | -0.623*** | -0.907*** | -1.233 | -1.036 | -1.042 | -1.030 | -1.002 |
| | (0.232) | (0.299) | (0.802) | (0.742) | (0.745) | (0.750) | (0.762) |
| Republican | 0.044 | 2.310** | 1.164 | 0.224 | 0.218 | 0.240 | 0.248 |
| | (0.106) | (0.972) | (0.975) | (0.487) | (0.487) | (0.488) | (0.490) |
| Age | 0.068*** | 0.063*** | 0.082** | 0.083*** | 0.084*** | 0.087*** | 0.086*** |
| | (0.008) | (0.010) | (0.033) | (0.031) | (0.031) | (0.032) | (0.032) |
| Top 14 Law School | 0.112 | 0.084 | -0.266 | -0.196 | -0.187 | -0.197 | -0.179 |
| | (0.119) | (0.151) | (0.466) | (0.423) | (0.422) | (0.424) | (0.420) |
| Private Law School | 0.129 | 0.068 | 0.018 | 0.125 | 0.115 | 0.109 | 0.134 |
| | (0.108) | (0.136) | (0.422) | (0.413) | (0.418) | (0.417) | (0.419) |
| Law Clerk | 0.389*** | 0.154 | 0.101 | 0.041 | 0.033 | 0.039 | 0.044 |
| | (0.133) | (0.157) | (0.483) | (0.411) | (0.413) | (0.415) | (0.413) |
| Law Professor | -0.097 | -0.007 | 0.351 | 0.428 | 0.448 | 0.402 | 0.418 |
| | (0.220) | (0.261) | (0.774) | (0.755) | (0.751) | (0.767) | (0.750) |
| Private Practice | 0.539*** | 0.524** | 0.345 | 0.405 | 0.397 | 0.368 | 0.391 |
| | (0.189) | (0.223) | (0.524) | (0.500) | (0.502) | (0.502) | (0.503) |
| US Attorney | -0.308* | -0.213 | 0.724 | 0.480 | 0.485 | 0.526 | 0.471 |
| | (0.186) | (0.218) | (0.757) | (0.737) | (0.734) | (0.727) | (0.744) |
| Assistant US Attorney | 0.684*** | 0.647*** | 1.149** | 1.257*** | 1.275*** | 1.270*** | 1.262*** |
| | (0.148) | (0.172) | (0.464) | (0.436) | (0.433) | (0.430) | (0.432) |
| Justice Department | 0.168 | -0.126 | -0.306 | -0.232 | -0.216 | -0.200 | -0.221 |
| | (0.251) | (0.301) | (0.782) | (0.696) | (0.702) | (0.703) | (0.709) |
| Public Defender | 0.435* | 0.045 | -0.592 | -0.622 | -0.622 | -0.652 | -0.640 |
| | (0.246) | (0.300) | (0.629) | (0.634) | (0.629) | (0.633) | (0.628) |
| Federal Magistrate | 0.963*** | 0.866*** | 1.829*** | 1.863*** | 1.877*** | 1.841*** | 1.883*** |
| | (0.203) | (0.237) | (0.566) | (0.552) | (0.560) | (0.567) | (0.554) |
| Federal Bankruptcy | 0.551 | 1.123** | 1.339 | 0.614 | 0.628 | 0.609 | 0.516 |
| | (0.413) | (0.504) | (1.157) | (1.032) | (1.022) | (1.058) | (1.058) |
| State Judge | 0.234** | 0.170 | 0.187 | 0.211 | 0.206 | 0.207 | 0.204 |
| | (0.110) | (0.128) | (0.455) | (0.427) | (0.429) | (0.426) | (0.429) |
| Constant | -4.010*** | -4.311*** | -4.456* | -5.278** | -5.320** | -5.517** | -5.601** |
| | (0.496) | (1.099) | (2.408) | (2.365) | (2.384) | (2.402) | (2.525) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1636 | 277 | 277 | 277 | 277 | 277 |
| $R^2$ | | | | | | | |
| $\hat{\sigma}$ | | | | | | | |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table A4: Logit regression results. Dependent variable is the probability of receiving a rating of "Exceptionally Well Qualified"/"Well Qualified" Versus "Qualified"/"Not Qualified".

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Female | -0.047 | -0.096*** | -0.008 | -0.058* | 0.002 | 0.044 | -0.010 |
| | (0.032) | (0.034) | (0.064) | (0.033) | (0.062) | (0.089) | (0.081) |
| ABA SCFJ Female Chair | | | 0.372** | | 0.029 | 0.054 | 0.030 |
| | | | (0.172) | | (0.054) | (0.070) | (0.055) |
| Critical Mass | | | | -0.045 | 0.041 | 0.045 | 0.037 |
| | | | | (0.040) | (0.095) | (0.095) | (0.097) |
| ABA SCFJ Female Chair*Female | | | | | | -0.077 | |
| | | | | | | (0.121) | |
| Critical Mass*Female | | | | | | | 0.027 |
| | | | | | | | (0.112) |
| African American | -0.155*** | -0.205*** | -0.083 | -0.174*** | -0.059 | -0.057 | -0.058 |
| | (0.042) | (0.045) | (0.092) | (0.044) | (0.098) | (0.099) | (0.098) |
| Hispanic | -0.141*** | -0.184*** | -0.201 | -0.154** | -0.167 | -0.167 | -0.168 |
| | (0.051) | (0.065) | (0.124) | (0.060) | (0.121) | (0.121) | (0.121) |
| Republican | 0.011 | -0.388** | 0.200 | 0.025 | 0.072 | 0.066 | 0.067 |
| | (0.024) | (0.163) | (0.181) | (0.025) | (0.108) | (0.109) | (0.110) |
| Age | 0.015*** | 0.013*** | 0.012*** | 0.015*** | 0.013*** | 0.013*** | 0.013** |
| | (0.002) | (0.002) | (0.005) | (0.002) | (0.005) | (0.005) | (0.005) |
| Top 14 Law School | 0.026 | 0.020 | -0.020 | 0.003 | -0.014 | -0.017 | -0.014 |
| | (0.027) | (0.031) | (0.064) | (0.030) | (0.063) | (0.064) | (0.064) |
| Private Law School | 0.029 | 0.015 | 0.023 | 0.009 | 0.023 | 0.024 | 0.022 |
| | (0.024) | (0.028) | (0.060) | (0.027) | (0.061) | (0.061) | (0.061) |
| Law Clerk | 0.087*** | 0.029 | 0.003 | 0.089*** | 0.003 | 0.004 | 0.003 |
| | (0.029) | (0.031) | (0.063) | (0.029) | (0.063) | (0.063) | (0.063) |
| Law Professor | -0.021 | -0.000 | 0.041 | -0.021 | 0.027 | 0.016 | 0.025 |
| | (0.050) | (0.052) | (0.109) | (0.050) | (0.101) | (0.104) | (0.101) |
| Private Practice | 0.119*** | 0.105** | 0.060 | 0.112*** | 0.059 | 0.059 | 0.060 |
| | (0.041) | (0.044) | (0.076) | (0.043) | (0.077) | (0.076) | (0.077) |
| US Attorney | -0.070* | -0.042 | 0.023 | -0.072* | 0.023 | 0.029 | 0.024 |
| | (0.042) | (0.045) | (0.097) | (0.043) | (0.097) | (0.097) | (0.097) |
| Assistant US Attorney | 0.149*** | 0.125*** | 0.187*** | 0.143*** | 0.184*** | 0.181*** | 0.184*** |
| | (0.031) | (0.033) | (0.062) | (0.033) | (0.059) | (0.060) | (0.059) |
| Justice Department | 0.037 | -0.024 | -0.065 | 0.002 | -0.056 | -0.050 | -0.054 |
| | (0.053) | (0.057) | (0.119) | (0.057) | (0.111) | (0.112) | (0.112) |
| Public Defender | 0.096* | 0.009 | -0.083 | 0.069 | -0.077 | -0.082 | -0.077 |
| | (0.053) | (0.061) | (0.092) | (0.057) | (0.091) | (0.090) | (0.091) |
| Federal Magistrate | 0.200*** | 0.150*** | 0.213*** | 0.187*** | 0.225*** | 0.222*** | 0.224*** |
| | (0.037) | (0.040) | (0.067) | (0.039) | (0.065) | (0.065) | (0.065) |
| Federal Bankruptcy | 0.118 | 0.204** | 0.139 | 0.127 | 0.052 | 0.044 | 0.052 |
| | (0.084) | (0.094) | (0.174) | (0.092) | (0.175) | (0.181) | (0.174) |
| State Judge | 0.052** | 0.031 | 0.046 | 0.028 | 0.040 | 0.041 | 0.040 |
| | (0.025) | (0.026) | (0.058) | (0.025) | (0.058) | (0.058) | (0.058) |
| Constant | -0.401*** | 0.018 | -0.091 | -0.867*** | 0.210 | 0.155 | 0.210 |
| | (0.104) | (0.239) | (0.361) | (0.129) | (0.355) | (0.369) | (0.355) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1652 | 393 | 1748 | 393 | 393 | 393 |
| $R^2$ | 0.0933 | 0.2038 | 0.4301 | 0.1587 | 0.4069 | 0.4078 | 0.4070 |
| $\hat{\sigma}$ | 0.476 | 0.465 | 0.419 | 0.472 | 0.421 | 0.422 | 0.422 |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table A5: OLS regression results using a dummy variable for female critical mass on the SCFJ in place of the percentage of women. Dependent variable is the probability of receiving a rating of "Exceptionally Well Qualified"/"Well Qualified" Versus "Qualified"/"Not Qualified".

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Female | -0.047 | -0.096*** | -0.008 | -0.067** | 0.010 | 0.036 | 0.026 |
| | (0.032) | (0.034) | (0.064) | (0.033) | (0.062) | (0.089) | (0.067) |
| ABA SCFJ Female Chair | | | 0.372** | | -0.021 | -0.004 | -0.021 |
| | | | (0.172) | | (0.060) | (0.077) | (0.060) |
| Female Majority | | | | -0.090*** | 0.115 | 0.110 | 0.133 |
| | | | | (0.030) | (0.083) | (0.084) | (0.089) |
| ABA SCFJ Female Chair*Female | | | | | | -0.049 | |
| | | | | | | (0.123) | |
| Female Majority*Female | | | | | | | -0.085 |
| | | | | | | | (0.146) |
| African American | -0.155*** | -0.205*** | -0.083 | -0.177*** | -0.048 | -0.048 | -0.046 |
| | (0.042) | (0.045) | (0.092) | (0.044) | (0.097) | (0.098) | (0.098) |
| Hispanic | -0.141*** | -0.184*** | -0.201 | -0.164*** | -0.172 | -0.172 | -0.169 |
| | (0.051) | (0.065) | (0.124) | (0.061) | (0.121) | (0.121) | (0.121) |
| Republican | 0.011 | -0.388** | 0.200 | 0.016 | 0.088 | 0.087 | 0.092 |
| | (0.024) | (0.163) | (0.181) | (0.025) | (0.065) | (0.065) | (0.065) |
| Age | 0.015*** | 0.013*** | 0.012*** | 0.014*** | 0.013*** | 0.013*** | 0.013*** |
| | (0.002) | (0.002) | (0.005) | (0.002) | (0.005) | (0.005) | (0.005) |
| Top 14 Law School | 0.026 | 0.020 | -0.020 | 0.007 | -0.017 | -0.019 | -0.014 |
| | (0.027) | (0.031) | (0.064) | (0.030) | (0.063) | (0.064) | (0.063) |
| Private Law School | 0.029 | 0.015 | 0.023 | 0.008 | 0.023 | 0.024 | 0.025 |
| | (0.024) | (0.028) | (0.060) | (0.027) | (0.061) | (0.061) | (0.061) |
| Law Clerk | 0.087*** | 0.029 | 0.003 | 0.079*** | 0.007 | 0.007 | 0.009 |
| | (0.029) | (0.031) | (0.063) | (0.030) | (0.062) | (0.062) | (0.062) |
| Law Professor | -0.021 | -0.000 | 0.041 | -0.020 | 0.037 | 0.030 | 0.032 |
| | (0.050) | (0.052) | (0.109) | (0.050) | (0.101) | (0.104) | (0.101) |
| Private Practice | 0.119*** | 0.105** | 0.060 | 0.112*** | 0.070 | 0.069 | 0.068 |
| | (0.041) | (0.044) | (0.076) | (0.043) | (0.076) | (0.076) | (0.076) |
| US Attorney | -0.070* | -0.042 | 0.023 | -0.068 | 0.019 | 0.022 | 0.019 |
| | (0.042) | (0.045) | (0.097) | (0.042) | (0.095) | (0.095) | (0.095) |
| Assistant US Attorney | 0.149*** | 0.125*** | 0.187*** | 0.137*** | 0.191*** | 0.189*** | 0.189*** |
| | (0.031) | (0.033) | (0.062) | (0.033) | (0.060) | (0.061) | (0.060) |
| Justice Department | 0.037 | -0.024 | -0.065 | -0.006 | -0.047 | -0.044 | -0.046 |
| | (0.053) | (0.057) | (0.119) | (0.057) | (0.112) | (0.113) | (0.112) |
| Public Defender | 0.096* | 0.009 | -0.083 | 0.062 | -0.079 | -0.082 | -0.081 |
| | (0.053) | (0.061) | (0.092) | (0.057) | (0.091) | (0.091) | (0.090) |
| Federal Magistrate | 0.200*** | 0.150*** | 0.213*** | 0.182*** | 0.216*** | 0.215*** | 0.219*** |
| | (0.037) | (0.040) | (0.067) | (0.039) | (0.064) | (0.064) | (0.064) |
| Federal Bankruptcy | 0.118 | 0.204** | 0.139 | 0.133 | 0.043 | 0.039 | 0.032 |
| | (0.084) | (0.094) | (0.174) | (0.091) | (0.178) | (0.182) | (0.180) |
| State Judge | 0.052** | 0.031 | 0.046 | 0.030 | 0.041 | 0.041 | 0.041 |
| | (0.025) | (0.026) | (0.058) | (0.025) | (0.058) | (0.058) | (0.058) |
| Constant | -0.401*** | 0.018 | -0.091 | -0.773*** | 0.213 | 0.180 | 0.203 |
| | (0.104) | (0.239) | (0.361) | (0.131) | (0.350) | (0.364) | (0.352) |
| Year Dummies | No | Yes | Yes | No | No | No | No |
| District Dummies | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Observations | 1749 | 1652 | 393 | 1748 | 393 | 393 | 393 |
| $R^2$ | 0.0933 | 0.2038 | 0.4301 | 0.1622 | 0.4109 | 0.4113 | 0.4116 |
| $\hat{\sigma}$ | 0.476 | 0.465 | 0.419 | 0.471 | 0.420 | 0.421 | 0.420 |

Standard errors in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table A6: OLS regression results using a dummy variable for female majority on the SCFJ in place of the percentage of women. Dependent variable is the probability of receiving a rating of "Exceptionally Well Qualified"/"Well Qualified" Versus "Qualified"/"Not Qualified".

# References


ABA (American Bar Association). 2009. "Standing Committee on the Federal Judiciary: What It Is and How it Works." *ABA*, Chicago. https://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal_judiciary09.authcheckdam.pdf

Boyd, Christina L. 2016. "Representation on the Courts? The Effects of Trial Judges Sex and Race." *Political Research Quarterly* 69 (December): 788-799.

Bratton, Kathleen A. 2005. "Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures." *Politics and Gender* 1 (1): 97-125.

Childs, Sarah, and Lena Krook Mona. 2008. "Critical mass theory and womens political representation." *Political Studies* 56 (3): 725-36.

Glynn, Adam N. and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Womens Issues?" *American Journal of Political Science* 59 (January): 37-54.

Grossman, Guy, Oren Gazal-Ayal, Samuel D. Pimentel, and Jeremy M. Weinstein. 2016. "Descriptive Representation and Judicial Outcomes in Multiethnic Societies." *American Journal of Political Science* 60 (January): 44- 69.

Haire, Susan Brodie. 2001. "Rating the Ratings of the American Bar Association Standing Committee on Federal Judiciary." *The Justice System Journal* 22 (1): 1-17. http://www.jstor.org/stable/27977046.

Hannagan, Rebecca J., and Christopher W. Larimer. 2010. "Does Gender Composition Affect Group Decision Outcomes? Evidence From a Laboratory Experiment." *Political Behavior* 32 (1): 51-67.

Huddy, Leonie and Nayda Terkildsen. 1993b. "Gender stereotypes and the perception of

male and female candidates." *American Journal of Political Science* pp. 119147.

Kanthak, Kristin, and George A. Krause. 2012. *The Diversity Paradox: Political Parties, Legislatures, and the Organizational Foundations of Representation in America.* New York: Oxford University Press.

Karpowitz, Christopher F., Tali Mendelberg, and Lee Shaker. 2012. "Gender inequality in deliberative participation." *The American Political Science Review* 106 (3): 533-47.

Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57 (January): 167- 183.

Koenig, Dustin. 2012. "Bias in the Bar: ABA Ratings and Federal Judicial Nominees from 1976-2000." *Judicature* 95(4): 188-95.

Lindgren, J. T. 2001. "Examining the American Bar Association's Ratings of Nominees to the US Courts of Appeals for Political Bias, 1989-2000." *Public Law and Legal Theory Paper* no. 37, School of Law, Northwestern University.

Lott, John R., Jr. 2001. "The American Bar Association, Judicial Ratings, and Political Bias." *Journal of Law and Politics* 17:41.

Mendelberg, Tali, Christopher F. Karpowitz, and Nicholas Goedert. 2014. "Does Descriptive Representation Facilitate Womens Distinctive Voice? How Gender Composition and Decision Rules Affect Deliberation." *American Journal of Political Science* 58 (2): 291-306.

Moyer, Laura P and Susan B. Haire. 2015. "Trailblazers and Those That Followed: Personal Experiences, Gender, and Judicial Empathy." *Law and Society Review* 49 (September): 665-689.

Schiller, Jacob, Kristin Kanthak, Minsu Jang, Steven Huang, Max Peterson, and David McCoy. 2018. "'Gender Sterotypes' 25 Years Later: A Replication of Huddy and Terkildsen." Paper presented at the 2018 Annual Midwest Political Science Association Con-

ference. Chicago, April 2018.

Sen, Maya. 2014a. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates." *Journal of Law and Courts* 2 (Spring): 33- 65.

Sen, Maya. 2014b. "Minority Judicial Candidates Have Changed: The ABA Ratings Gap Has Not." *Judicature* 98 (July-August): 46-53.

Smelcer, Susan Navarro, Amy Steigerwalt, and Richard L. Vining, Jr. 2012. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65 (December): 827-840.

Yelnosky, Michael. 2014. "Who Rates Prospective Federal Judges for the American Bar Associaiton." *Roger Williams UL Rev.* 19: 91.