Diversity By Other Means: Professional, Educational and Life Diversity of U.S. Appellate Judges

Drew Noble Lanier
Department of Political Science
University of Central Florida
Phillips Hall 302O
Orlando, FL 32816-1356
(407) 823-3753 (voice)
(407) 823-0051 (fax)
drew.lanier@ucf.edu

Mark S. Hurwitz
Department of Political Science
Western Michigan University
3434 Friedmann Hall
Kalamazoo, MI 49008-5346
(269) 387-5372 (voice)
(269) 387-5354 (fax)
mark.hurwitz@wmich.edu

Prepared for presentation at the 2016 Annual Meeting of the Western Political Science Association.
We thank the UCF Political Science Department's Associate Professor Research Grant program for partial funding of this study.

Diversity By Other Means: Professional, Educational and Life Diversity of U.S. Appellate Judges

Drew Noble Lanier
University of Central Florida

Mark S. Hurwitz
Western Michigan University

Abstract

Representation and participation are critical issues within democratic institutions, including the judiciary. While most studies of representative diversity address the critical issues of race or gender, and for good reason, in this paper we diverge from that approach as we examine the diverse nature of pre-bench experience of federal appellate judges. For instance, the current Supreme Court is made up entirely of justices who attended Harvard or Yale. Is this an aberration or part of a trend? What about other professional experiences, such as whether federal judges were law clerks, prosecutors, or otherwise engaged in politics? We employ descriptive data derived from public sources as well as our own survey instrument to study the pre-bench experience of federal judges over time.

Diversity By Other Means: Professional, Educational and Life Diversity of U.S. Appellate Judges

Drew Noble Lanier
University of Central Florida

Mark S. Hurwitz
Western Michigan University

> "I believe that diversity of experience matters. It matters that someone has represented someone other than corporate clients. That they've had real experience with people who can't afford lawyers, that they've had real experience trying to fight for the public interest, that they've had real experience doing something other than representing corporate clients."
>
> **Senator Elizabeth Warren** (D-MA), criticizing President Obama's nominations to the federal courts, even though his appointments have been the most diverse in history from racial and gender perspectives (Ruger 2014).

In the wake of the sudden death of Justice Antonin Scalia, several persons have called on President Obama to nominate someone who is "diverse" (*e.g.*, McGregor 2016). In fact, Scalia was the Court's first justice of Italian-American descent (his family hailed from Sicily). However, that begs the question about what comprises and what does not comprise diversity in a judge's background. Descriptive representation is an important issue within democratic institutions, particularly so for the judiciary that was constitutionally designed to be the least popularly accountable branch of the federal government. Much of the established literature discussing and analyzing the diversity of the federal bench has focused on questions of race and gender, and to some extent religious diversity, as those are perennial cleavages within American politics (*e.g.*, Hero 2007; Fridkin and Kenney 2014). Even when analyzing questions of diversity within the judiciary, analysts have focused on the U.S. Supreme Court as it is the ultimate arbiter of constitutionality within the American judiciary. As we have argued

elsewhere, the question of diversity is not simply limited to questions of race and gender, focusing on group-based identity. The question is far broader than the traditional boundaries of prior scholarship may have demarcated. Thus, we broaden our analysis of diversity to include other salient events in the life course of federal judges. As there are many such significant differences among federal judges, we here expand our view of the set of such events that may impact how federal judges hear and decide cases. Our view examines a multitude of theoretically significant events in a federal judge's life prior to the person reaching the federal trial or appellate bench.

Theoretical Import of Background Characteristics of Federal Justices and Judges

Generally, a judge's socializing experiences may be associated with the development of certain attitudes or a view of the appropriate judicial role (Gibson 1978; Goldman and Sarat 1978; Johnston 1976; Tate and Handberg 1991). Many have attended Ivy League or elite law schools and undergraduate institutions, or both, serving to inculcate in them certain views of the law, its social import and political stances with regard to key groups within the American polity (*e.g.*, Tate 1981; Tate and Handberg 1991). Judges of the federal courts are political veterans, having been involved in politics for much of their professional lives, and thus they have had many socializing experiences over time (Baum 2006). Many of them have served in key governmental positions prior to their nominations, having been governors, prosecutors, attorneys general, senators, and even president (Abraham 2008; Epstein, Segal, Spaeth and Walker 2012; Goldman 1997).[1] Having served in such roles gives them the exposure necessary

1. For instance, William Howard Taft was President from 1909 to 1913 and Chief Justice from 1921 to 1930; as well, he served as U.S. Solicitor General and a federal appeals court judge. Charles Evans Hughes was a presidential candidate in 1916, leaving the Court to challenge Woodrow Wilson's re-election bid (Abraham

to gain the president's attention and the experience to make them more politically astute and viable as a judicial nominee. Indeed, several have been personal friends of the president prior to ascending to the bench (Abraham 2008). Moreover, having serving in such roles may imply that judges who once held such positions carry certain systematic policy views onto the bench as they relate to key policy questions of the day (Lanier 2003; Tate 1981; Tate and Handberg 1991). Because of these experiences, federal judges are keenly aware of the political dynamics that surround the federal courts at various levels and their role within the American political structure. Thus, the varying pre-appointment experiences that judges have gained make more diverse the collections of individuals who serve there.

Education

Beyond demographics, educational backgrounds can be a major socializing experience for persons drawn from across the social strata. Some analysts contend that the longer one undertakes formal academic instruction, the more liberal one becomes (*e.g.*, Wilson, DiIulio and Bose 2011). Tate (1981) sought to operationalize educational experience of Supreme Court justices by dividing their undergraduate and legal educations into "high prestige" and "average prestige" classifications. The socialization process of education has long been considered a key factor influencing federal judges' decision making (*e.g.*, Tate and Handberg 1991). Whether a judge graduated from an Ivy League, an elite or another institution may bear upon that judge's policy views and their view of a judge's role in the governmental structure.

2008). Of course, Franklin Roosevelt would later appoint him to serve as Chief Justice in 1930. Hughes served until his retirement in 1941 because of declining health (Epstein, Segal, Spaeth and Walker 2012).

Tate (1981) differentiated the prestige of a judge's education as a proxy of family status, as it was theorized to be associated with aggregate policy views. Tate and Handberg (1991) more fully specified that relationship and asserted that education is linked to family status which is associated with more liberal views, especially with respect to attitudes toward political minorities in the economics (but not the civil liberties-civil rights) realm. They found, however, that such influences were not significantly related to U.S. Supreme Court decision making in either of the aggregated issue dimensions of economics or civil liberties-civil rights. Notwithstanding, it is important to gauge the educational diversity on the nation's federal courts and, thus, we report and analyze both undergraduate and law school backgrounds of federal appellate judges, both at the intermediate appellate level and the Supreme Court level.

We report these data in Table 1. We categorized a judge's undergraduate and legal education as Ivy League, elite or other. In terms of undergraduate education, we find that for Courts of Appeals judges the majority (58.5%) graduated from non-Ivy League or non-elite institutions, while 21.7 percent attended Ivy League schools. At the Supreme Court level, we also find that non-Ivy League and non-elite graduates was the modal category (38.5%), with 28.9 percent having attended Ivy League colleges and universities. The percentage of non-Ivy League and elite school graduates, however, is far less than the corresponding figure for the intermediate appellate courts. This difference may exist because of the perceived prestige difference in the Courts of Appeals and the Supreme Court with Ivy Leaguers and those justices who graduated from elite schools getting the presidential nod more often. Clearly, because of the educational history of the country, many judges on both types of courts did not earn an undergraduate degree (15.3% Courts of Appeals judges; 23.1% Supreme Court justices).

Similar patterns emerge when one examines the judges' legal education, to wit: most Courts of Appeals judges (51.1%) graduated from non-Ivy League or non-elite institutions, with nearly one-quarter (23.9%) graduating from Ivy League law schools. At the U.S. Supreme Court level, we also find that more than a quarter (25.6%) graduated from Ivy League law schools. Both courts saw a small number of graduates from elite law schools (Court of Appeals 7.4%; Supreme Court 6.8%). A sizable percentage of Supreme Court justices, however, read the law (54.7%) as opposed to undertaking instruction at a formal institution; only 17.6 percent of Court of Appeals judges did. Clearly, there are temporal characteristics to those data. Ward and Weiden (2006) report that only 20 percent of US Supreme Court justices earned a law degree prior to 1898; the rest read the law as was the tradition during that time period. After 1901 (when formal legal education became much more commonplace), Ward and Weiden report that more than 86 percent undertook formal instruction in the law, with only a handful reading the law.

The fact that only 17.6 percent of Courts of Appeals judges read the law (substantially lower than the corresponding figure for Supreme Court justices) as the means of acquiring their legal instruction suggests that the Court of Appeals did not become formalized in their present form until the passage of the Evarts Act in 1891 (*e.g.*, Songer, Sheehan, and Haire 2000). Although federal appellate courts existed prior to that time, the number of judges was comparatively small and, thus, the opportunities to find that such judges read the law is diminished. Moreover, at the U.S. Supreme Court level, many of the most recent justices have been Ivy League graduates (Abraham 2008). In fact, all of the current justices graduated from Ivy League law schools, and many (55.6%) did so at the undergraduate level (Epstein, Segal,

Spaeth and Walker 2012). Thus, with respect to educational questions, there has been less educational diversity among current Supreme Court justices than has been the case historically for that Court. And the Courts of Appeals judges collectively represent greater educational diversity than have the justices of the Supreme Court. Thus, as we found for religious diversity (Hurwitz and Lanier 2015), the Courts of Appeals represent a relatively broader swath of the diverse paths through key socializing experiences, leading to the federal bench.

Education Stratified by Time Period

When we examine these data stratified by time period, we find some interesting results, as we show in Table 2. We begin our analyses at the inception of each court and then choose time divisions based on large-scale changes in educational traditions among the nation's federal appellate judges. As Ward and Weiden (2006) indicate, justices of the Supreme Court largely did not complete formal legal education prior to the beginning of the twentieth century. That trend may apply equally to judges of the Courts of Appeals. Our results show that during the first period (beginning to 1880), in fact, roughly one-fifth (20.9%) of Courts of Appeals judges and approximately one-quarter (23.9%) of Supreme Court justices graduated from Ivy League undergraduate institutions, with somewhat divergent rates of judges from both courts completing their undergraduate training at non-Ivy League or –elite schools (Courts of Appeals judges 30.2%; Supreme Court justices 39.1%); that was the modal category for Supreme Court members. While the modal category for Courts of Appeals judges in that period was to have completed no formal undergraduate training at any type of institution (48.8%), 37.0 percent of Supreme Court justices did so, only two percentage points below the level for the High Court members who completed training at non-Ivy League or –elite schools.

Turning to the rates of legal education in the first period, we find that, as Ward and Weiden (2006) and others report, very few judges completed formal legal education. Among U.S. Courts of Appeals judges, only 2.3 percent completed degrees at Ivy League schools and another 4.7 percent at non-Ivy League or –elite schools. The overwhelming modal category was for these judges to have completed no formal training (93.0%). Supreme Court justices similarly completed formal legal training at very infrequent rates; only 2.2 percent of justices in this period received their law degrees from non-Ivy League or –elite institutions. The modal category was to have no such formal training from any category of school (97.8%).

Examining the relative incidence of appellate judges completing their education during the period from 1881 to 1930, we find that for Circuit Court judges, the modal category for undergraduate training was at non-Ivy League or –elite schools (43.5%), while Supreme Court justices showed equal rates of doing so at such schools or at Ivy League institutions (38.7%, each). Courts of Appeals judges, on the other hand, completed their undergraduate degrees at Ivy League schools 24.3 percent of the time. Approximately similar rates of both types of jurists did so at elite schools (4.3% Courts of Appeals judges; 3.2% Supreme Court justices). However, 27.8 percent of Circuit Court judges had completed no formal undergraduate training, while 19.4 percent of Supreme Court members had not done so.

Examining the comparative rates of legal education during that period, we find that similar patterns as the initial period shows emerge. While the modal category for both courts was for judges on each institution to have completed no formal legal training (51.5% Supreme Court; 56.5% Courts of Appeals), Ivy League law graduates on the Court outpaced those on the Courts of Appeals (25.8% Supreme Court; 17.4% Courts of Appeals). Graduates of elite schools

(3.2% Supreme Court; 5.2% Courts of Appeals) and other schools (19.4% Supreme Court; 20.9% Courts of Appeals) were approximately equal for both court levels. Thus, in the latter part of the nineteenth and the early twentieth centuries, the educational socialization experiences of the judges who were members of the two courts were then beginning to diverge with a slight advantage toward Ivy League graduates among Supreme Court members. Nonetheless, both courts' judges were completing some type of formal training at the undergraduate or the law school levels, or both, at higher rates than in the past, thereby underlining the growing professionalization of the two levels of the appellate bench and a significant socialization experience for judges from those benches.

Turning to the period from 1931 to 1960, Table 2 illustrates that for judges newly appointed to the Circuit Courts, the modal category of undergraduate training was for non-Ivy League or elite graduates (59.4%), which was also the modal category for new Court members (42.1%). However, Ivy League graduates were appointed at a higher rate to the Court (12.8%) than to the Courts of Appeals (12.8%), with elite institutions' graduates also headed to the High Court (10.5%) at a quicker rate than to the intermediate appellate courts (6.8%). Both courts showed equal rates of new members having not completed formal undergraduate training at any type of school (21.1%). In terms of formal legal education, we find that Ivy League graduates were the modal category for new Supreme Court justices (42.1%), while just more than one-quarter of new Circuit Court judges were such alumni (26.3%). Graduates of elite law schools were on par for both courts (9.8% Courts of Appeals; 10.5% Supreme Court). The modal category for legal training for Circuit judges was for other schools (53.4%), far outpacing the similar rate for Supreme Court members (31.6%) in the same period. However, fewer Court of

Appeals judges (10.5%) than Supreme Court justices (15.8%) had completed no formal legal training in the early to mid-twentieth century. Thus, as in the prior period of analysis, newly-appointed members of the Supreme Court were continuing the higher comparative rates of being Ivy League or more prestigious graduates at both the undergraduate and law school levels as compared to the aggregate rates for Court of Appeals nominees for both types of training.

Table 2 also displays the findings for educational diversity for both courts in the next thirty year period (1961 to 1990). For new Courts of Appeals judges, the overwhelming modal category was for them to complete undergraduate degrees at non-Ivy League or –elite institutions (77.0%), while for new Supreme Court justices, the data are bi-modal (with 42.9%), showing that new justices each completing their undergraduate training at elite and other schools at that rate. A substantially lower figure for Courts of Appeals judges (4.8%) did so at elite institutions. However, a slightly higher rate of new Court members (14.3%) were then Ivy League graduates as compared to newly-appointed Circuit Court judges (11.9%). Thus, as time has progressed, those newly-named justices having more prestigious undergraduate records are being appointed at higher relative rates than for new members of the Courts of Appeals, continuing the differentiation *between* the courts but ironically serving to make each court level itself actually less diverse educationally as the dispersion level of each has grown comparatively less over time.

In terms of the diversity of legal education between and within each court for this period, we find that, as before, the modal category for new members of the Court was to be Ivy League graduates (50.0%), with elite school graduates (35.7%) following closely behind them.

Graduates of other schools (14.3%) were a distant third in rank. New appointees to the Courts of Appeals, however, were predominantly graduates of non-Ivy League or –elite schools (60.0%), with Ivy League graduates significantly less represented (30.4%) and graduates of elite law schools a distant third (9.6%) there. For this period, no new appointees to either court had failed to complete a formal legal education for the first time, a significant finding for a key socialization experience in the life course of federal judges. Nonetheless, as observed with regard to undergraduate training during these years, we find that the High Court's overall perceived educational prestige was comparatively higher than that for the Courts of Appeals overall and the divergence in the aggregate educational level was continuing to grow, while the educational diversity within each court level was generally declining.

Turning to the final period analyzed, we find that (as regards undergraduate training), the modal category for Courts of Appeals judges was to have completed their first degree at non-Ivy League or –elite institutions (81.3%), with Ivy League (16.3%) and elite (2.5%) graduates trailing far behind. For Supreme Court justices, however, the dominant modality was Ivy League graduates (71.4%) with elite (14.3%) and other graduates (14.3%) tied for second. Thus, at the undergraduate level, this period of data underscores the growing disparity in the educational socialization of federal appellate judges drawn from the intermediate and the court of last resort levels. Examining the comparative rates of completion of legal education by newly-named members of both courts, Table 2 reports that (as with undergraduate training), Circuit Court judges were most frequently drawn from the ranks of non-Ivy League and –elite graduates (75.0%) with Ivy League (20.7%) and elite graduates (4.3%) representing the second and third rank order members. For the first time ever, newly-appointed members to the Court,

however, were exclusively drawn from Ivy League law schools (100%), once again demonstrating the clear divergence in the pools of individuals from which the president was manifestly drawing to staff the two levels of federal appellate courts. As is clear from the prior analyses, each court level was itself becoming more cohesive in terms of the relative type of education (at the undergraduate and law school levels) across time, but yet becoming more divergent as compared to the other court level. Thus, there is a clear operational difference that the president is employing in choosing whom he will nominate to each of these court types, reflecting the perceived difference in prestige associated with each category of schooling and each court level.

Career Experiences

Judicial Experience

One of the factors that may condition federal judges' behavior is their pre-appointment career experiences. The associations that prior studies have found between a judge's pre-appointment judicial experience and economic decision making are mixed. Johnston (1976, 83) asserts, based in part on research Schmidhauser (1963) conducted, that there is a negative relationship between the two constructs because individuals with such experience would more likely to have been inculcated with the norms of judicial restraint and, thus, would make decisions more closely based upon law and precedent "than upon their perspective of the political, social, and economic needs of the moment." Indeed, Walker, Epstein and Dixon (1988, 385) suggested that the Stone Court may have experienced elevated levels of dissent because many of the justices had "almost no exposure to the 'no dissent' traditions common to appellate tribunals" (*see also* Hendershot *et al.,* 2013; Lanier 2011). That is, their prior career

experiences apparently did not instill the presumed judicial value of deferring to the views of others.[2] The literature on acclimation effects is premised, in part, on differing pre-appointment judicial tenures (*e.g.*, Hurwitz and Stefko 2004; Lanier and Wood 2001; Lanier 2011; Wood et al., 1998). However, Tate and Handberg (1991) found a positive association between judicial experience and economic voting behavior. More recently, Lanier (2003) found that judicial experience is negatively associated with economic liberalism, at least in the short term. Thus, the link between prior judicial experience and federal judge decision making is unclear and, hence, needs further exploration.

Prosecutorial-Judicial Experience

Like judicial experience, a judge's experience as a prosecutor can serve to shape his or her attitudes and policy preferences, especially those relating to criminal procedure and civil liberties. These prosecutorial experiences alternatively may demonstrate that the jurists may hold conservative policy views. These prior career experiences may influence the judge to hold attitudes that are generally not supportive of expanded civil liberties, which may bring the judge into conflict with liberal civil liberties policy preferences. Tate and Handberg (1991) additionally suggest that a judge's prior prosecutorial experience is best modeled as an interaction with any prior judicial experience that he may have. They argue that judicial experience may moderate the much more conservative influence of prior prosecutorial service. Indeed, at the individual level of analysis, they found that there is a negative relationship with

2. On the U.S. Supreme Court, Justices Stone, Frankfurter, Douglas and Rutledge, for example, each had come from academia, where individuals are encouraged to articulate their own theories of the law under the prevailing reward structure. Similarly, Justices Black, Burton and Byrnes joined the Court after serving in the Senate, where spirited debate is promoted (Epstein, Segal, Spaeth and Walker 2012).

civil liberties liberalism, while an index measuring only the justices' prior judicial experiences is not significantly associated with their voting behavior (Tate and Handberg 1991). Justices who have been prosecutors, but have not held judicial office, are theorized to be less liberal than those who have been prosecutors and judges, who are in turn less liberal than those justices who have held neither office (Tate and Handberg 1991). Moreover, Haynie and Tate (1990) also examine the effect of a justice's combined prosecutorial and judicial experience at the institutional level of analysis. They found that the coefficient for this variable is negatively signed and marginally significant. More recently, Lanier (2003) found that an index of prosecutorial and judicial experience is not significantly associated with civil liberties/civil rights decision making. Thus, like judicial experience in the realm of economic decision making, the influence of prior prosecutorial experience is worthy of empirical examination.

Law Clerkships and Cabinet Service

Similarly, judges who have had experience as law clerks also may have inculcated lessons about judicial role and temperament from the judges for whom they worked. But the literature on the later influence of such clerkships is slim, although there are impressive works on the clerkship process at the U.S. Supreme Court level (Peppers 2006; Ward and Weiden 2006). Ward and Weiden (2006) describe an apprentice form of legal training in which the justices' law clerks learn the law and the process of judging from the ground up, observing their justice and how the justice interacts with other members of the Court. Ultimately, the clerks form a "junior Court," serving to shadow the actual justices and their decision making (Ward and Weiden 2006, 109). Also, Ulmer (1973) found that service in the president's administration is negatively associated with liberalism in the civil liberties/civil rights realm.

Thus, it is an empirical question about the putative influence of each of these prior career experiences on later service on the federal bench.

Career Experiences: Analyses

As noted above, an appellate judge's prior career experiences may indicate some association with the decisional tendencies of that judge once they attain the federal bench. In particular, service as a prosecutor is correlated with decreased liberalism, especially in the aggregated issue dimension of civil liberties and civil rights (*e.g.,* Tate and Handberg 1991). Similarly, prior service as a judge is associated with decreased liberalism in the aggregated issued dimension of economics[3] (Lanier 2003). Examining the data reported in Table 3, we find that large proportions of Courts of Appeals judges and Supreme Court justices had prior judicial experience at some point before their appointment to their respective courts; and, some judges may have served on more than one other court prior to their appointment to the Courts of Appeals or the Supreme Court. More than one-half of Courts of Appeals judges held at least one prior judicial post (54.4%) and nearly two-thirds of Supreme Court justices (65.0%) had such experiences.

Examining the comparative frequency of prior service on either a state or a federal bench, we find that, for Courts of Appeals judges, the modal category of prior court experience was on a federal District Court (43.1%) followed by service on a state court of last resort (20.7%). For Supreme Court justices, however, the dominant category is past service as a U.S.

3. As noted above, Walker, Epstein and Dixon (1988) suggest that lack of prior judicial service may be correlated with a higher propensity to write special opinions, especially for those who came from the U.S. Senate or academia, where individual expression is rewarded (*see also* Songer, Sheehan, and Haire 2000).

Court of Appeals judge (20.6%), followed closely by service on a state court of last resort (18.9%). Service on such tribunals may give the nominating president a clearer view of what decisional tendencies that possible justices may bring to the court if nominated. Abraham (2008) reports that many presidents have examined closely a potential nominee's voting record on lower courts as a cue to the person's voting probabilities.

Service as a prosecutor also may be theoretically important to understanding judicial decision making. Table3 also shows that about one-fifth (20.7%) served as a state prosecutor while about the same proportion (20.2%) served as a prosecutor at the local level within a state. For U.S. Supreme Court justices, more than 16 percent served in one or both capacities. In terms of federal prosecutorial experience, we find that 13.90 percent of Courts of Appeals judges served as U.S. Attorney or in the U.S. Attorney's office, while 11.9 percent of Supreme Court Justices did so. However, 15.4 percent of Supreme Court justices served as Attorney General or within that office, as compared to 8.9 percent of appellate court judges having done so. Also, a much larger share of justices (6.9%) had experience as Solicitor General of the United States or in the Solicitor General's office than for judges on the Courts of Appeals (2.2%). Clearly, working at high levels within the federal government makes one more visible to key selectors (notably Senators and the president and their respective staffs) for appointment to the federal courts.

Furthermore, many political elites, including judges, have held governmental or political office in some capacity prior to their current service. Doing so makes one known to the power structure in the states and/or the federal government. Recommendation by key political figures can make one's nomination more likely than otherwise, especially as the president

rarely knows each person personally whom he nominates to the federal bench (*e.g.*, Abraham 2008). Table 3 shows that nearly 14 percent of Courts of Appeals judges served previously in the state legislature, with former state House members (11.3%) being more frequent than former state Senate members (3.3%). The same trend is found for Supreme Court justices, with prior state House service much more common (29.9%) than prior state Senate service (7.7 %). This is an intriguing finding as state Senates tend to be smaller and usually more prestigious bodies than state House chambers.

Turning to prior congressional service, we find that for Courts of Appeals judges the figures here are comparable between prior House service (3.3%) and prior Senate service (3.2%), but they are lower in magnitude than the corresponding figures for prior state legislative service. In examining the data for Supreme Court justices, we find that justices there served more frequently in the U.S. House (17.1%) and the U.S. Senate (12.8%) than did Courts of Appeals judges, although such rates are far lower than the justices' service in the state chamber. Thus, the route to the U.S. Supreme Court runs more so through state legislatures than the U.S. Congress, perhaps reflecting the key role that state political elites have in suggesting names of potential nominees to the president or in becoming known to federal senators selected from that state.

Service in the executive branch at the state or federal level may be equally important. Table 3 shows that comparatively small percentages (hovering around 2%) of U.S. Courts of Appeals judges served in some capacity as a state or local executive. For the U.S. Supreme Court, however, each percentage is higher, with the modal category being past service as a governor (at the state level, 10.3%) and as a cabinet secretary (at the federal level, 16.2 %). As

noted above, being within the narrow circle of political elites improves one's chances of being known to the president or his advisors or key senators. Indeed, overall, we find that more than 80 percent of federal judges here had some prior governmental experience. For Courts of Appeals judges, 84.4 percent had some prior governmental service at the state or federal level or both, while 85.5 percent of Supreme Court justices did.

As has been theorized about the influence of prior service as prosecutor, a judge's prior service in the military may have some association with decisional tendencies once that person becomes a judge. Justice Stevens, for example, has noted his prior military service, which more broadly may either reflect or shape a judge's policy views.[4] Table 3 shows that 11.5 percent of U.S. Courts of Appeals judges served in the U.S. military prior to their appointment; however, more than one-third (33.6%) of U.S. Supreme Court justices have done so. Beyond military service, one may assess the extent to which justices have had battle experience. Since Justice Stevens' retirement, none have had wartime military experience (Cohen 2012). These comparative findings may be a product, in part, of the generations that have joined these respective courts (and, thus, the historical eras during which they lived) and structural limitations of the U.S. Supreme Court as opposed to those of the U.S. Court of Appeals.

Cross-Time Analyses of Career Experiences

As the above analysis indicates, the pre-bench career experiences of federal appellate judges may likely have some temporal component to them as different generations face

4. For example, *see* Justice Stevens' dissenting opinion in *Texas v. Johnson* (1989). Stevens, during World War II, was a member of the Navy code-breaking team whose work, in part, led to the downing of the plane that was carrying Admiral Yomamoto who was central in the planning of Japan's Pearl Harbor bombing in December 1941 (Rosen 2007). That experience was pivotal in forming Justice Stevens' views on governmental power. Stevens won a Bronze Star for his military service (Abraham 2008; *see also* Stevens 2011).

problems endemic to specific eras and they, thus, may encounter varying opportunities in the life course. Table 4 shows the cross-time analyses of such experiences for judges nominated to the Courts of Appeals and justices to the Supreme Court. We sub-divided the analyses using the same time periods as we have done so far. In the initial period (beginning to 1880), we find that newly-appointed judges to the Circuit Courts had a great variety of experience at the state and federal level. Nearly one-third (30.2%) had some sort of judicial experience prior to the nomination with service on a state intermediate court of appeals leading the way (16.3%). They also had significant prosecutorial experience (39.7% overall), legislative experience (state-level, 44.2%) and state or local executive experience (79.1%). Only 2.3 percent of Circuit Judges had military experience in this period. By comparison, newly-appointed members of the Supreme Court showed that more than two-thirds (67.4%) had some sort of judicial experience, with service on a state court of last resort (21.7%) leading the way for prior service on a bench. Supreme Court justices, like Circuit judges, had significant prosecutorial experience (28.3%), with the majority of it completed at the state level. Further, the state and local roots of the new justices were demonstrated by the fact that large shares had state-level legislative experience (62.3%) but more of them, than High Court justices, had some experience in the Federal cabinet (26.0%). Substantially more new members of the Court had some prior military service (28.3%) as compared to new Courts of Appeals judges.

With respect to the next period (1881 to 1930), Table 4 demonstrates that a comparatively larger share of Circuit Judges had experience on some federal court, with District Court service leading the way (46.1%). Also, overall more than two-thirds of new Circuit Judges (67.8%) had some sort of judicial experience prior to being nominated to that bench, a figure

more than double the corresponding rate in the initial period of analysis. New Supreme Court justices, by contrast, maintained their overall rate of pre-appointment judicial service but they, interestingly, had relatively more experience at the state level than the federal level. Former judges on a state court of last resort were most common among new Court members (29.1%). In terms of prosecutorial experience, we find that Courts of Appeals judges outpaced Supreme Court justices (40.9% versus 25.8%). Circuit judges had comparatively more such experience at the state level (30.4%) than the federal level (17.4%). Supreme Court justices, on the other hand, were comparatively more experienced with respect to federal prosecutorial experience (19.4%) than were Circuit judges (17.4%). Both types of judges had experience in the legislative arena, with service in the state legislature being more frequent relatively for both types of judges (Courts of Appeals=25.2%; Supreme Court=38.7%) than service at the federal level (Courts of Appeals=12.2%; Supreme Court=29.0%). The state and local origins of Courts of Appeals judges are prominent in the comparison of the rate of such judges who had experience as a state or local executive (91.3%) as compared to that for Supreme Court justices (9.7%). The national-level origins of Court members, however, begin to appear in this period as more than one-fifth of such judges (22.6%) had served previously in the federal cabinet as compared to only 4.3 percent of Circuit judges who had done so earlier in their careers. Moreover, nearly one-fifth of Supreme Court justices (19.4%) had earlier served in the military as compared to only 7.8 percent of Courts of Appeals judges in this period. As well, more justices had previously worked as law professors (29.0%) than Circuit judges (19.1%), during a period when there were few formal law schools operating.

In the period from 1931 to 1960, encompassing many highly salient political events, we find that judges from both types of courts demonstrated comparatively high rates of prior judicial service, with Circuit judges having more such experience on federal courts collectively (43.6%, U.S. District Courts) than state courts as compared Supreme Court justices (31.6%). However, Supreme Court justices were then beginning to be drawn from the pool of sitting federal Circuit judges (31.6%) as compared to those persons who previously served on state-level courts (highest rate, former trial court judges=21.0%). For the first time, no Supreme Court justices newly-appointed had previously served on a U.S. District Court. However, the aggregate rates of judges who had previous judicial experience for each declined but Circuit Judges overall had higher rates for such service than did justices of the Supreme Court (Courts of Appeals=59.4%; Supreme Court=52.6%). Comparatively more Circuit Judges, as well, had prosecutorial experience (49.6%) in this period than did new appointees to the Court (47.4%). Courts of Appeals judges had more such experience at the state level (31.6%) than they did at the federal level (26.3%), although the figures for Supreme Court justices were relatively the same (state level=21.1%; federal level=26.3%). While Circuit judges served previously in some role as a state or local executive (84.2%), Supreme Court justices served comparatively more at the federal level (47.3%). Perhaps coincident to the period of analysis, nearly two-thirds of Supreme Court justices (63.2%) were military veterans while only 12 percent of new Circuit judges were. Approximately one-fifth of new members to each court

were former law professors (Courts of Appeals=18.0%; Supreme Court=21.1%), continuing the trend initiated in the immediately prior analytical period (1881 to 1930).[5]

Across the succeeding thirty-year period (1961 to 1990), we find that the rate of new Circuit judges who had previous experience on the federal trial bench remained relatively stable, but the percentage of new Supreme Court justices who had experience on the federal Court of Appeals bench increased to 50 percent (up from 31.6% in the prior analytical period). Generally, each set of judges had comparatively more experience on some state bench than in that prior period, too, although the average tenure there for both sets of judges was somewhat shorter in the latter period (Courts of Appeals judges=2.15 years versus 2.57 years; Supreme Court justices=1.21 years versus 1.79 years). The overall rate of both types of judges having some sort of previous judicial experience remained relatively consistent across the two periods, both hovering just above 55 percent (Courts of Appeals judges=56.7%; Supreme Court justices=57.1%). The share of new judges on both courts who had some previous experience in a prosecutor's office declined in the latter period as compared to its immediate predecessor. Whereas 49.6 percent of Circuit judges had served as state or federal prosecutors in the 1931 to 1960 period, only 41.5 percent had done so in the next period. A much more significant decline occurred for Supreme Court justices (decreasing from 47.4% to 14.3% for both state and federal prosecutorial experiences). As the Table shows, the individual percentages for state and federal level experience were similar for Courts of Appeals judges and Supreme Court justices themselves, whereas in prior periods we find that Circuit Judges tended to have more

5. That prior career experience and previous service in a legislature may create motivational patterns in new judges making them perhaps less attuned to the norms of a court emphasizing unanimity as opposed to voicing individual views in separate opinions (*e.g.*, Hendershot et al. 2013; Hurwitz and Lanier 2004).

experience, relatively, at the state level, while new justices tended to have more federal experience. These divergent patterns may portend a different career path for the two sets of judges and the attendant political networks that persons traveling those routes may develop on their way to the federal bench.

Examining the comparative rates of Circuit judges and Supreme Court justices who had prior experience as a state or local executive or in some federal cabinet post, we find that the figures for Courts of Appeals judges remained relatively stable (84.2% had served in some capacity as a state or local executive and approximately 7% had served at the federal level). The corresponding service rates for Supreme Court justices, however, both declined. While more than one-quarter (26.3%) had served as a state or local executive, none had done so in the latter period; while nearly one-half (47.3%) had served in some role in the federal cabinet, slightly more than one-quarter (28.5%) did so in the latter period of analysis. These discrepant trends may indicate an implicit narrowing of only the pool of individuals from which the president will choose new justices for the Court, such that the president will accord less weight to individuals with such backgrounds and perhaps greater credence to those having other types of experience, such as service on state court of last resort or a federal court of appeals. Overall, large shares of newly-appointed judges to both courts had some previous governmental experience (79.3% Courts of Appeals; 78.6% Supreme Court), although those rates each declined somewhat as compared to the period from 1931 to 1960.

Continuing the trend noted for that prior period, we find that Supreme Court justices have demonstrated higher comparative rates of military service than have Circuit Judges. In this latter period, we find that one-half (50.0%) of new Court members had previously served in

the military while only 17.0 percent of Circuit judges had done so, an increase from their rate of 12 percent observed in the prior period. The Supreme Court figure, however, represented a decline of 13.2 percent. These results reflect, of course, influences arising from the World War II, Korea and Vietnam eras. Nonetheless, it is interesting that Supreme Court justices, to this point in the history of the judiciary, represent a relatively larger share of veterans than do Circuit judges in the aggregate. Such differences may impact the kinds of cases that the Court hears and the decision of the Court on the merits, because of the associated ideological differences that may arise due to those differing sometimes life-changing events in the life course (*e.g.*, Hurwitz and Lanier 2012; Stevens 2011; Tate 1981; Tate and Handberg 1991). Because of the structural limitations on the case selection process and decisional environment for the Circuit Courts, however, such differences may be less impactful on decision-making (Songer, Sheehan, and Haire 2000).

In the period from 1961 to 1990, the percentage of Circuit judges who had previously served as law professors increased to nearly one-quarter (24.8%), while the corresponding rate for Supreme Court justices decline to 14.3 percent (down from 21.1%). Law clerkships are a key socializing experience for judges (Ward and Weiden 2006) and that influence is apparent in our results. The rates of judges of both courts having such experience have generally increased across our period of analysis. In this period, while only 6.7 percent of Circuit judges had completed clerkships, more than one-third (35.7%) of new Court members had done so. These findings, too, may reflect the qualitatively different pathways that judges trod to the federal bench, indicating different political circles leading to membership on the two types of courts. Mentorship and grooming of individuals can certainly ease the way to their joining the federal

judiciary and both of these types of experience may in fact lead political elites to that goal as such experiences may open up political networks that individuals not having experiences do not share. While it is true that these experiences are not a necessary or a sufficient condition for nomination to the federal appellate bench, generally understood, they may nonetheless propel certain individuals who possessed the comparatively rarified credentials initially to join the law professorate or serve as a law clerk, especially for a federal judge.

In the final period of analysis (1990 to present), we find that many of the patterns in pre-bench career experiences previously discussed continue here. While Circuit judges continued to possess some state-level judicial experience (with the modal type being service on an intermediate court of appeals), new appointees to the Court had not previously served on any level of the state bench. The rates of Circuit Court judges serving previously on a federal bench increased in this latter period, with 60 percent possessing District Court experience and nearly 8 percent having served as a federal magistrate, up from 43.3 percent and 1.1 percent, respectively. By contrast, new justices had predominately been drawn from the ranks of former Circuit judges (83.4%) and less than one-fifth (16.7%) former District Court jurists. More than double the rate of Supreme Court justices had some sort of judicial experience (85.7%) than did Courts of Appeals judges (41.7%). Of course, Supreme Court justices may have had previously served on both lower federal benches but the corresponding figure for District Court service should be higher, in that case. Thus, it appears that the route to the Supreme Court is not through the District Court bench, initially, but to the Courts of Appeals as a weigh station in route to the High Court.

Reporting the relative rates of prosecutorial and legislative experience for both types of judges, Table 4 shows that new Circuit judges split their prosecutorial experience relatively evenly between the state and federal levels (state=14.8%; federal=21.7%). Among new Supreme Court justices having some prosecutorial experience, however, all of them acquired their experience at the federal level. Overall, both types of judges had comparatively similar rates of such service (Courts of Appeals=28.7%; Supreme Court=28.6%). Only 2.6 percent of Courts of Appeals judges had previously served in the state legislature; none had done so in the U.S. Congress. No Supreme Court justice had such experience at either level in this final period of analysis. Considering executive experience at the state or local level, we find that Circuit judges far outpaced Supreme Court justices in having such experience at the state level (Courts of Appeals=27.0%; Supreme Court=0%). At the federal level, however, the reverse is true: Supreme Court justices had a substantially higher rate of such service (Courts of Appeals=3.5%; Supreme Court=57.1%), suggesting once again that the career path for Courts of Appeals judges is through state-level positions while that for new members appointed to the Court is through federal-level positions, especially in the cabinet and sub-cabinet roles.

As before, Supreme Court justices led Courts of Appeals judges in terms of prior military service (Courts of Appeals=1.7%; Supreme Court=14.3%) and they did so with respect to the rates of those with earlier service as a law professor (Courts of Appeals=10.4%; Supreme Court=28.6%). There was a great gap in their comparative rates, as well, for previous service as a law clerk (Courts of Appeals=11.3%; Supreme Court=71.4%), once again suggesting that the paths to the two benches are divergent and nuanced. These qualitative differences, dynamic over time, may lead to varying interactions and political networks of individuals who may have

differential influence on the presidential appointment process to both benches. It may also lead some individuals over others to be groomed to attain one specific bench as opposed to another. Mentorship and fostering of ambition by key individuals of persons eligible for federal judicial posts encouraging aspiring judges to seek a particular judicial position thus appear to be material considerations carefully guiding them along a choreographed career path leading to a specific level of the federal bench. Those persons who have therefore encouraged potential judicial nominees can then become advocates at critical points in the nomination process for those very same individuals whom they have long cultivated. One of those defining elements in this careful sequence of events is the post that potential nominees hold at the often unpredictable times that a vacancy in the federal judiciary occurs; potential judicial nominees are, thereby, poised to strike just as the call for suggested replacements to fill that spot arises as if the choice were preordained.

Appointment Characteristics

One of the key questions in the recruitment and nurturing of political elites is the specific pathway they take to governmental positions. In addition to the background experiences that Courts of Appeals judges and Supreme Court justices possess, we examined the position that such judges held at the time that they joined their respective court. Such positions are illustrative of the politics of judicial nomination as they suggest that certain routes are more successful than others. Table 5 provides comparative data for these positions for judges of both courts for the overall time period of our analyses. For Courts of Appeals judges, the primary feeder route is as a U.S. District Court judge (38.8%), implying that such judges attain positions on the appellate bench more frequently because they have been through the

federal nomination previously and have some record of decision making in a judicial body. Service at the state court level, however, does not appear to be a systematic route that Courts of Appeals judges took to the appellate bench. Being in private practice is the second most common route to that bench (26%), perhaps because of the political network that lawyers, especially at prominent law firms, can create that can lead to the president's nomination. Clearly, such networks would include sitting federal judges, U.S. senators and other political elites in addition to key figures in the campaigns of the president and other elected officials.

For members of the Supreme Court, the primary route to the High Court is prior service on the U.S. Court of Appeals (20.7%), likely because of the same reasons that undergird the success of District Court judges attaining the Circuit bench. However, much like the appellate court judges, those attorneys in private practice fared equally well (20.7%). Service in the president's cabinet or in sub-cabinet position led 11.2 percent of justices to the U.S. Supreme Court bench. Such persons may have previously served as a judge or in some other governmental position, of course. In terms of the current Supreme Court, all but one of the justices (Justice Kagan) were serving on U.S. Courts of Appeals when they joined the Court.[6] Kagan, of course, was then serving as U.S. Solicitor General and one of the few recent nominees who had no prior judicial experience[7] (Epstein, Segal, Spaeth and Walker 2012). Of all Supreme

6. Chief Justice Roberts and Justices Scalia, Ginsburg and Thomas were serving on the U.S. Court of Appeals for the District of Columbia Circuit. Justice Breyer was serving on the U.S. Court of Appeals for the First Circuit, Justice Kennedy on the U.S. Court of Appeals for the Ninth Circuit, Justice Alito on the U.S. Court of Appeals for the Third Circuit and Justice Sotomayor on the U.S. Court of Appeals for the Second Circuit (Epstein, Segal, Spaeth and Walker 2012).

7. Kagan had served as law clerk to Judge Abner Mikva of the U.S. Court of Appeals for the District of Columbia Circuit and then for Supreme Court Justice Thurgood Marshall, but we do not define this as judicial service *per se* (Epstein, Segal, Spaeth and Walker 2012). Kagan is the exception to the current trend for the president to nominate to the Court only persons having some prior judicial experience.

Court justices, 42.2 percent were serving in some judicial post (federal or state) at the time that they were nominated to the Court. Of course, the influence of judicial experience in bringing someone to the Court of Appeals or Supreme Court may be a function of time and era.

When the president nominates a federal judge, especially one at the appellate level, concerns about the policy views of the judge are, in part, influential on the nomination decision (*e.g.*, Abraham 2008; Tate and Handberg 1991). Presidents are well aware of the longer average tenure that federal judges have as opposed to the Constitutional limitation imposed on presidents. Thus, the policy legacy of the president's nominees is a question swirling around nominations to the federal bench (Lindquist, Yalof, and Clark 2000). Accordingly, presidents may seek to nominate persons to the federal bench who are young enough to have a comparatively longer tenure on that bench prior to retirement or leaving but yet old enough to have amassed the requisite experience. Table 4 reports the average age at appointment for Courts of Appeals judges and U.S. Supreme Court justices. On average, a Courts of Appeals judge is 52.6 years at appointment; for the Supreme Court, the average is 53.6, nearly identical to the appellate court mean at the time of appointment. By this time in one's career, a judge has gained a long list of experiences and created a political network, both of which are key to attaining a federal court nomination. Interestingly, Supreme Court justices are not significantly older on average at appointment than are Courts of Appeals judges, suggesting that there is no bias against comparatively younger judges being considered for the High Court.

Departing the Courts

At the end of the career cycle, we find that Court of Appeals judges depart that tribunal on average at 66.7 years. For Supreme Court justices, the mean age at departure (through

whatever means) is slightly older at 69.2 years. Thus, Courts of Appeals judges remain on that court for approximately 14 years on average, while Supreme Court justices' mean tenure is about 16 years. Despite the difference in prestige of the two courts and the fact that there is no other court to which to gain a promotion if one is a sitting Supreme Court justice, the two types of judges do not appear to differ substantially in mean age at appointment or at departure. Certainly, the history of each of these courts is important as the Congress has enacted statutes that may, in part, influence a judge's decision to leave the bench. One of these was the Judiciary Act of 1869 which allowed federal judges to retire at full pay at age 70 if they had attained at least ten years of service; (Epstein, Segal, Spaeth and Walker 2012). Then, in 1937, additional benefits were enacted for retiring judges.[8] This led, in part, many Supreme Court justices to retire, including at the time Justices Sutherland and Van Devanter, two of the vaunted Four Horsemen of the Apocalypse who battled President Franklin Delano Roosevelt over government power generally and the New Deal specifically (*see* Abraham 2008; Pritchett 1948). After 1937, a significantly lower percentage of judges died while on the bench than prior to that date (Epstein, Segal, Spaeth and Walker 2012; Ward 2003; Wood, Keith, Lanier, and Ogundele 2000). The minimum retirement age was reduced to 65 in 1954 (Epstein, Segal, Spaeth and Walker 2012; Ward 2003). Thus, in more contemporary eras, the mean departure age for federal judges may be lower than in past decades.

8. In short, the 1937 Retirement act allowed for justices to take "senior status" upon retirement as opposed to officially resigning their seats, allowing the Chief Justice to call them back into service temporarily if needed. Judges who were "retired," as opposed to those who had "resigned," could not have their judicial pensions reduced as per Article I, section 1. Congress had previously cut in half the pensions of those judges who had resigned but not retired (Ward 2003).

Cross-Time Analysis of Appointment Characteristics

Cross-time analyses of the characteristics of federal judges at the time of their respective appointments are illustrative of the politics surrounding that ascension and their nomination to either the federal Courts of Appeals or the Supreme Court. Examining the initial period of analysis (beginning to 1880), Table 6 shows the modal position held at appointment for Circuit Court judges (41.9%) was to have been in private practice when nominated. That was true as well for Supreme Court justices (32.6%). Trial court positions were the second-most frequent position held with 16.3 percent of Circuit judges serving as a U.S. District Court judge at that time, but 15.2% of Supreme Court justices were serving as a state or local trial judge then. Because the legal profession was very much locally oriented and locally regulated, the locus of power was at the trial level and in private practice. Thus, these findings comport with historical practice and the then-dominant power centers in the legal community.[9] By the second period of analysis (1881 to 1930), we find that the modal position at appointment for Courts of Appeals nominees is on a U.S. District Court (42.6%) with those in private practice in a distant second place (13.9%). For U.S. Supreme Court justices, however, the modal route then was still through private practice (22.6%) with service on a Circuit Court being a close secondary route (19.4%); previously only 4.3% of Supreme Court justices were serving on a Circuit Court at the time of their appointment, largely due to the highly limited number of such positions across those decades (Epstein, Segal, Spaeth and Walker 2012; Songer, Sheehan and Haire 2000).

9. Most lawyers of this day read the law in a local attorney's office and, after a time, they were admitted to the local bar. Entry into the legal profession was, therefore, a highly idiosyncratic process early in the nation's history. Only much later did state bar associations begin to form and, thus, begin to systematize training and set the entry qualifications for the legal profession (Neubauer and Meinhold 2013; Ward and Weiden 2006).

From 1931 to 1960, Table 6 shows that the dominant pathway to the Circuit bench was through the U.S. District Courts (38.3%) with more than one-fifth of new Circuit nominees serving in private practice at the time of their appointment (21.1%). Thus, the center of gravity of the selection pool for federal appellate judges was beginning to shift away from practicing attorneys towards those who were already members of the federal judiciary. The decline in selecting practicing attorneys for the federal judiciary is reflected, as well, in the fact that no new members of the Court (0%) were in private practice at appointment (continuing a declining trend in that rate since the beginning of the Court). However, 15.8 percent were serving as the Attorney General or in the Attorney General's office at the time of nomination, 15.8 percent were serving in the U.S. Senate and 21.1 percent were sitting members of a U.S. Court of Appeals. These changes reflect a tradition in other countries whereby those who seek to enter the judiciary follow a separate career track from those who seek to practice law full-time (*e.g.*, Volcansek 1992; Volcansek and Lafon 1988).

Examining the period from 1961 to 1990, many of the same trends that we observed for each court's judges continued. Table 6 shows that, once again, a large share of new nominees to the Courts of Appeals were sitting District Court judges at the time of their appointment (42.6%), followed by those who were actively practicing attorneys. The modal position at time of appointment for new Supreme Court members was, as before, on the U.S. Courts of Appeals (42.9%), followed by those who were serving in some capacity in the Attorney General's office or were in private practice (both 14.3%). In the final period of analysis (1990 to present), we find that more than one-third of new appointees to the Circuit Courts (35.7%) were sitting U.S. District Court judges and 28.7 percent were in private practice. Thus, the route to the Circuit

bench appears to lie more so through the U.S. District Courts followed closely by service in private practice. The route to the U.S. Supreme Court, however, appears to take a different path. In this final period, Table 6 shows that the highly dominant position at time of appointment was as a Court of Appeals judge (85.7%) with service in the Solicitor General's office a very distant second (14.3%).[10] Hence, the routes are unique and thus the operational selection pools that the president apparently uses are specific to the bench on which an appointment will occur. Once again, careful counsel and mentorship for aspirants to the federal bench is key so that they can be positioned strategically to gain the attention of the president or his advisers.

Analyzing the mean age at appointment and departure for both sets of judges, we find that there appear to trends for both courts for the president to appoint somewhat younger judges now than in the past. In the initial period of analysis, Circuit judges were on average 45.60 years old. Their mean aggregate age then increased to 55.44 years in the period from 1931 to 1960 and that number has decreased to 51.60 in the present period. Similarly, over time, the mean appointment age for new Supreme Court justices has most recently declined. Although the initial mean appointment age for new Court member was 50.43 years, that figure reached its apogee (57.13) in the 1888 to 1930 period and then declined to 54.47 in the following period, the latter likely reflecting President Roosevelt's appointment of several supporters of the New Deal, including Hugo Black. The mean age increased but only slightly in the 1961 to 1990 period (54.93 years) and then declined to 52.86 for the most current period. The overall trend toward the president's appointing comparatively younger judges likely

10. The one justice who was serving in this latter role was Justice Kagan, who in fact was the Solicitor General.

reflects large scale changes in the structure of the legal profession (as noted above) and perhaps a more conscious purpose by the president to appoint judges to the federal appellate bench who will carry forward his policy legacy for years to come (Lindquist, Yalof, and Clark 2000).

Indeed, the mean departure age for both sets of judges speaks to this possibility. Examining that average for Circuit judges, we find that their mean departure age has increased across the overall period of analysis. Initially (beginning to 1880), we find that the average age was 53.98 years, which then increased to its maximum of 68.86 years in the period from 1931 to 1960. In the most recent period (1991 to present), the mean departure age was 64.58, a decrease from the immediately prior period (66.95 years) but nonetheless an increase from the initial average. Ward (2003) and Wood et al. (2000) review key provisions affecting federal judicial retirement enacted in this period that may explain this finding. Thereafter, we find that the mean departure age declined to 64.58 in the final period examined. For Supreme Court justices, Table 6 shows that there has been an increase in the mean age at departure. Initially, that age was 53.98 years. It then increased essentially consistently across the period of analysis to achieve its maximum point in the 1961 to 1990 period (74.25 years). None of the justices appointed in the 1990 to present cohort have yet retired or otherwise departed the Court. Thus, it remains an unaddressed empirical question if the mean age will continue to increase, decline or remain more or less steady.[11] Overall, however, the federal courts are both moving in the direction toward longer periods of service in the aggregate.

11. Given the current ages of the sitting Supreme Court justices and their current overall health, the mean departure age likely will increase (*see* Epstein, Segal, Spaeth and Walker 2012; Liptak 2013). For example, Justice Ginsburg, despite several health complications, has "vowed" to remain on the Court for at least several

Survey of Current U.S. Courts of Appeals Judges

In addition to the data we obtained for this study from public sources, we fielded a mail survey to sitting U.S. Courts of Appeals judges. We inquired about many of their key career characteristics and other relevant information. Table 7 shows our findings. The Table reports that, with respect to the Circuit judges' undergraduate education, the dominant modal category was non-Ivy League institutions (76.5%) with less than one-fifth (17.5%) completing their schooling at Ivy League colleges and universities. Examining the judges' legal education, we find similar results. The modal category was non-Ivy League or –elite schools (62.5%) with Ivy League graduates a distant second ranking (26.9%) and then elite graduates (10.7%). These findings comport with the cross-time findings reported in Table 2 above.

Examining the career experiences of the Circuit judges whom we surveyed, more than three-quarters of them (78.9%) had some judicial experience at some level prior to joining that bench and a substantial percentage (42.4%) had some sort of political experience (that is, service in the executive or legislative branches) at the state, local or federal levels. Nearly one third (33.1%) had previously served as a law clerk. The same percentage had prior to their appointment worked as a law professor. These latter two results are substantially higher than the corresponding figures for Circuit judges reported in the last period of analysis reflected in the cross-time findings (*see* Table 4). Moreover, only 7.8 percent of the judges from whom we directly gathered data had served in some capacity in the military. Yet, a large share (90.1%)

more years (Collins 2015; Liptak 2013; *see also* Senior 2013). She is currently 81 years old and the oldest justice on the Court.

had worked in private practice. These two findings, as well, represent higher rates than the corresponding figures shown previously in the last cohort in the cross-time analysis.

CONCLUSION

We have reviewed the descriptive background data for U.S. Courts of Appeals judges beginning in 1801 and for U.S. Supreme Court justices across the Court's history. We find that, overall, Courts of Appeals judges have been drawn largely from non-elite schools more recently and with far fewer having read the law as opposed to the justices of the Supreme Court, although there is a clear trend towards the president's selecting Ivy League graduates for the Supreme Court and non-Ivy League or elite school graduates for the Courts of Appeals. This difference may reflect the institutionalization of the Courts of Appeals in the late 19th century when formal law schools were beginning to be established systematically.

The paths that each set of judges took to their respective benches shared some similarities but differed in other respects, too. First, judges on each court generally had at least some level of prior judicial experience, with members of the Supreme Court more frequently having such backgrounds. Each group of judges also had experience serving as prosecutors, whether at the state or federal level, with state-level experience being comparatively more frequent. They each served in the federal or state legislatures and, to a lesser extent, in the state or local executive branches. Supreme Court justices, in particular, had comparatively much more frequent experience in the federal cabinet (as a secretary or some sub-cabinet post). Judges on both courts had high rates of governmental service, suggesting that a key indicator of whether someone will be nominated to the federal bench is whether they are made known, through some mechanism, to the circle of policy makers who are influential on

such selection decisions (*e.g.*, the president, key senators, and their respective aides), which can lead them to a position where they can best gain access to the U.S. Courts of Appeals or the U.S. Supreme Court.

Thus, the backgrounds of federal judges are important not only concerning who attains positions on the federal courts but also concerning the ultimate decisions that such courts make. As the nation has changed demographically, so too have the pools from which judges are drawn (Hurwitz and Lanier 2003; Hurwitz and Lanier 2008). As the country has changed over time, the complexion of the courts has moved to reflect those large-scale social movements but clearly at a pace limited by the structural considerations of each institution. Thus, there is a complex interplay of structural, demographic, social and temporal forces affecting the aggregate backgrounds of judges of the federal judiciary, which can only be better understood by further careful, but rigorous, study.

REFERENCES

Abraham, Henry J. 2008. *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Bush II*. Lanham, MD: Rowman & Littlefield.

Baum, Lawrence. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior.* Princeton, NJ: Princeton University Press.

Collins, Gail. 2015. "The Unsinkable R.B.G.: Ruth Bader Ginsburg Has No Interest in Retiring." *The New York Times*. February 20.

Epstein, Lee, Jeffrey A. Segal, Harold J. Spaeth and Thomas G. Walker. 2012. *The Supreme Court Compendium: Data, Decisions, and Developments*. 5th ed. Washington, DC: Congressional Quarterly Press.

Fridkin, Kim L., and Patrick J. Kenney. 2014. *The Changing Face of Representation: The Gender of U.S. Senators and Constituent Communications.* Ann Arbor, MI: University of Michigan Press.

Gibson, James L. 1978. "Judges' Role Orientations, Attitudes and Decisions: An Interactive Model." *American Political Science Review* 71: 911-24.

Goldman, Sheldon. 1997. *Picking Federal Judges: Lower Court Selection from Roosevelt to Reagan*. New Haven: Yale University Press.

Goldman, Sheldon and Austin Sarat. 1978. *American Court Systems: Readings in Judicial Process and Behavior*. San Francisco: W.H. Freeman.

Haynie, Stacia L., and C. Neal Tate. 1990. "Institutional Liberalism in the United States Supreme Court, 1916-1988: An Explanation of Economics and Civil Rights and Liberties Cases." Paper presented at the annual meeting of the American Political Science Association, San Francisco, California.

Hendershot, Marc, Mark S. Hurwitz, Drew Noble Lanier, and Richard Pacelle. 2013. "Dissensual Decision Making: Revisiting the Demise of Consensual Norms within the U.S. Supreme Court." *Political Research Quarterly* 66 (June): 467-81

Hero, Rodney E. 2007. *Racial Diversity and Social Capital: Equality and Community in America*. New York: Cambridge Univ. Press.

Hurwitz, Mark S., and Drew Noble Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts." *State Politics and Policy Quarterly* 3(4):329-52.

Hurwitz, Mark S., and Drew Noble Lanier. 2004. "I Respectfully Dissent: Consensus, Agendas, and Policy-Making on the U.S. Supreme Court, 1888-1999." *Review of Policy Research* 21(3): 429-45.

Hurwitz, Mark S., and Drew Noble Lanier. 2008. **"**Diversity in the State and Federal Appellate Courts: Change and Continuity Across 20 Years." *The Justice System Journal* 29(1): 47-70.

Hurwitz, Mark S., and Drew Noble Lanier. 2015. "The Pew and the Bench: The Changing Religious Affiliations of Federal Judges Since 1789." Paper presented at the annual meeting of the Southern Political Science Association, New Orleans, LA.

Hurwitz, Mark S. and Joseph V. Stefko. 2004. Acclimation and Attitudes: 'Newcomer' Justices and Precedent Conformance on the Supreme Court." *Political Research Quarterly* 57(1): 121-130.

Johnston, Richard E. 1976. "Supreme Court Voting Behavior: A Comparison of the Warren and Burger Courts." In *Cases in American Politics*, ed. Robert L. Peabody. New York: Praeger.

Lanier, Drew Noble. 2003. *Of Time and Judicial Behavior: Time Series Analyses of United States Supreme Court Agenda-Setting and Decision-Making, 1888-1997*. Selinsgrove, PA: Susquehanna University Press.

Lanier, Drew Noble. 2011. "Acclimation Effects and the Chief Justice: The Influence of Tenure on the Decisional Behavior of the Court's Leader, 1888-2007." *American Politics Research* 39 (July): 682-723.

Lanier, Drew Noble and Sandra L. Wood. 2001. "Moving On Up: Institutional Position, Politics and the Chief Justice." *The American Review of Politics* 22(Spring):93-127

Lindquist, Stefanie, David A. Yalof, and John Clark. 2000. "The Impact of Presidential Appointments to the U.S. Supreme Court: Cohesive and Divisive Voting within Presidential Blocs." *Political Research Quarterly* 53 (4): 795-814.

Liptak, Adam. 2013. "Court is 'One of Most Activist,' Ginsburg says, Vowing to Stay." *The New York Times*. Aug. 24.

McGregor, Ruth. 2016. "Diversity in President's SCOTUS Pick." http://www.azcentral.com/story/opinion/op-ed/2016/02/26/supreme-court-nomination-diversity/80859310/ (last accessed 03/07/2016).

Nagel, Stuart. 1974. "Multiple Correlation of Judicial Backgrounds and Decisions." *Florida State University Law Review* 55: 843-50.

Neubauer, David W., and Stephen S. Meinhold. 2013. *Judicial Process: Law, Courts, and Politics in the United States*. 6th ed. Belmont, CA: Thomson/Wadsworth.

Peppers, Todd C. 2006. *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*. Stanford: Stanford University Press.

Pritchett, C. Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947*. New York: MacMillian.

Rosen, Jeffrey. 2007. "The Dissenter, John Paul Stevens." *The New York Times*, September 23.

Ruger, Todd. 2014. "Obama Criticized for Nominating Mostly Corporate Lawyers." *The National Law Journal,* February 10.

Schmidhauser, John. 1963. *Constitutional Law in the Political Process*. Chicago: Rand McNally.

Senior, Jennifer. 2013. "In Conversation: Antonin Scalia." *The New York Times*. Oct. 6 (*New York Times Magazine*).

Songer, Donald R., Reginald S. Sheehan, and Susan B. Haire. 2000. *Continuity and Change on the U.S. Courts of Appeals*. Ann Arbor: University of Michigan Press.

Stevens, John Paul. 2011. *Five Chiefs: A Supreme Court Memoir*. New York: Little Brown and Company.

Tate, C. Neal. 1981. "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978. *American Political Science Review* 75: 355-67.

Tate, C. Neal, and Roger Handberg. 1991. "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-1988." *American Journal of Political Science* 35: 460-80.

Texas v. Johnson. 1989. 491 U.S. 397.

Ulmer, S. Sidney. 1973. "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956 Terms." *American Journal of Political Science* 17: 622-30.

Volcansek, Mary L., ed. 1992. *Judicial Politics and Policy-Making in Western Europe*. Portland, OR: Frank Cass.

Volcansek, Mary L., and Jaquelin Lucienne Lafon. 1988. *Judicial Selection: The Cross Evolution of French and American Practices*. Westport, CT: Greenwood.

Walker, Thomas G., Lee Epstein, and William J. Dixon. 1988. "On the Mysterious Demise of Consensual Norms in the United States Supreme Court." *The Journal of Politics* 50: 361-89.

Ward, Artemus. 2003. *Deciding to Leave: The Politics of Retirement from the U.S. Supreme Court*. Albany: State University of New York Press.

Ward, Artemus and David L. Weiden. 2006. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. New York: New York University Press.

Wilson, James Q., John J. DiIulio and Meena Bose. 2011. *American Government: Institutions and Policies*. 10th ed. Boston: Wadsworth.

Wood, Sandra L., Linda Camp Keith, Drew Noble Lanier, and Ayo Ogundele. 1998a. "'Acclimation Effects' for Supreme Court Justices: A Cross-Validation, 1888-1940." *American Journal of Political Science* 42(April): 690-97.

Wood, Sandra L., Linda Camp Keith, Drew Noble Lanier, and Ayo Ogundele. 2000. "Opinion Assignment and the Chief Justice: 1888-1940." *Social Science Quarterly* 81 (September): 798-809.

TABLE 1. EDUCATIONAL DIVERSITY AMONG U.S. COURTS OF APPEALS JUDGES (1801-2001) AND U.S. SUPREME COURT JUSTICES (1789-2010)

Education Level	**U.S. Courts of Appeals**	**U.S. Supreme Court**
Undergraduate Education[1]		
Ivy League	21.7	29.9
Elite	4.5	8.5
Non-Ivy/-Elite	58.5	38.5
None	15.3	23.1
N	641	117
Legal Education[2]		
Ivy League	23.9	25.6
Elite	7.4	6.8
Non-Ivy/-Elite	51.1	12.9
Read the Law	17.6	54.7
N	677	117

[1]For undergraduate education, "Ivy League" is defined as a judge obtaining an undergraduate degree from Princeton, Harvard, Yale, Columbia, University of Pennsylvania, Cornell, Brown and Dartmouth. "Elite" schools are Chicago, Stanford, Michigan, University of California at Berkeley and MIT. "Non-Ivy League/Elite" undergraduate institutions are any other college or university. If a judge attended more than one undergraduate institution, we opted for the highest category at which they earned a degree. If they did not obtain a degree even though they may have attended a college or university for some time, their education is classified as "none."

[2]For legal education, "Ivy League" is defined as a judge obtaining a law degree from Harvard, Yale, Columbia, University of Pennsylvania or Cornell. "Elite" institutions are Chicago, Stanford, Michigan, and the University of California at Berkeley. "Non-Ivy League/Elite" law schools are any other college or university. If a judge attended more than one law school, we opted for the highest category at which they earned a degree. If they did not obtain a degree even though they may have attended a law school for some time, they are not classified as graduating from such an institution. For example, John Marshall was schooled at home for his undergraduate training and attended what is now known as William and Mary Law School but did not earn a formal academic degree there (Abraham 2008; Epstein, Segal, Spaeth and Walker 2012). Many judges prior to 1900 read the law with a local attorney and did not attend or graduate from a formal law school as is the contemporary tradition (Ward and Weiden 2006).

TABLE 2. EDUCATIONAL DIVERSITY AMONG U.S. COURTS OF APPEALS JUDGES (1801-2001), AND U.S. SUPREME COURT JUSTICES (1789-2010), BY TIME PERIOD

	UNDERGRADUATE EDUCATION		LEGAL EDUCATION	
Time Period	**U.S. Courts of Appeals**	**U.S. Supreme Court**	**U.S. Courts of Appeals**	**U.S. Supreme Court**
Beginning-1880				
Ivy League	20.9	23.9	2.3	0.0
Elite	0.0	0.0	0.0	0.0
Non-Ivy/-Elite	30.2	39.1	4.7	2.2
None	48.8	37.0	93.0	97.8
1881-1930				
Ivy League	24.3	38.7	17.4	25.8
Elite	4.3	3.2	5.2	3.2
Non-Ivy/-Elite	43.5	38.7	20.9	19.4
None	27.8	19.4	56.5	51.6
1931-1960				
Ivy League	12.8	26.3	26.3	42.1
Elite	6.8	10.5	9.8	10.5
Non-Ivy/-Elite	59.4	42.1	53.4	31.6
None	21.1	21.1	10.5	15.8
1961-1990				
Ivy League	11.9	14.3	30.4	50.0
Elite	4.8	42.9	9.6	35.7
Non-Ivy/-Elite	77.0	42.9	60.0	14.3
None	6.3	0.0	0.0	0.0
1991-Present				
Ivy League	16.3	71.4	20.7	100
Elite	2.5	14.3	4.3	0.0
Non-Ivy/-Elite	81.3	14.3	75.0	0.0
None	0.0	0.0	0.0	0.0

Sources: For the U.S. Courts of Appeals, data are drawn from Zuk et. al (2009a, 2009b). For the U.S. Supreme Court, data are drawn from Epstein, Segal, Spaeth and Walker (2012).

Explanatory Note: Table entries are percentages of judges newly-appointed and confirmed to each respective court for each period having the noted educational background. Of course, those judges appointed during earlier eras may still populate each bench during later years.

TABLE 3. PRE-BENCH CAREERS AND EXPERIENCES OF FEDERAL COURTS OF APPEALS JUDGES (1801-2001) AND SUPREME COURT JUSTICES (1789-2010)

Career/Experience[1]	U.S. Courts of Appeals	U.S. Supreme Court
State Judiciary		
State Court of Last Resort	11.50	18.9
State Lower Court	20.70	3.5
Local/Municipal Court	9.80	4.3
Average State/Local Court service (years)	8.98	7.18
Federal Judiciary		
Federal District Court	43.10	8.6
Federal Magistrate	2.67	0.0
Federal Court of Appeals/Circuit Court	—	20.6
Average Federal Court Service (years)	9.14	4.88
Any Judicial Experience	54.80	65.0
State Prosecutorial Experience		
State Prosecutor	20.70	16.3
District/County/City Attorney	20.20	16.2
Federal Prosecutorial Experience		
U.S. Attorney/U.S. Attorney's Office	13.90	11.90
Attorney General/AG Office	8.90	15.4
Solicitor General/SG Office	2.17	6.90
State Legislature		
State House	11.30	29.9
State Senate	3.30	7.7
Federal Legislature		
U.S. House	3.30	17.1
U.S. Senate	3.20	12.8
State/Local Executive		
Governor	2.20	10.3
Mayor	2.50	5.1
City Council	2.30	3.4
Federal Cabinet		
Cabinet Secretary	1.70	16.2
Sub-Cabinet	5.20	14.5
Any Government Experience	84.40	85.5
Law Professors (full-time)	20.70	16.4
Military Service	10.9	33.6
Law Clerkships	4.67	9.4
Private Practice	92.80	96.6

[1]Figures are percentages of U.S. Courts of Appeals judges and Supreme Court justices having such experiences prior to being appointed to the respective bench, with the exception of averages, which are the mean number of years of service in that capacity.

TABLE 4. PRE-BENCH CAREERS AND PROFESSIONAL EXPERIENCES AMONG U.S. COURTS OF APPEALS JUDGES (1801-2001), AND U.S. SUPREME COURT JUSTICES (1789-2010), BY TIME PERIOD

	Beginning-1880		*1881-1930*		*1931-1960*		*1961-1990*		*1991-Present*	
Career/Experience	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**
State Judiciary										
Court of Last Resort	7.0	21.7	9.1	29.1	7.2	10.5	8.1	18.6	5.2	0.0
Inter. Court of Appeals	16.3	2.2	17.6	0.0	18.3	10.5	18.9	3.3	17.4	0.0
Trial Court	7.0	10.8	8.7	25.8	7.2	21.0	7.8	31.2	6.1	0.0
Avg. Service (years)	0.86	5.22	2.60	4.13	2.57	1.79	2.15	1.21	4.94	0.0
Federal Judiciary										
Circuit Court	—	2.2	—	22.6	—	31.6	—	50.0	—	83.4
District Court	14.0	6.5	46.1	12.9	43.6	0.0	43.3	0.0	60.0[1]	16.7
Magistrate	0.0	0.0	0.0	0.0	0.0	0.0	1.1	0.0	7.7	0.0
Avg. Service (years)	1.49	0.65	4.47	3.0	4.44	1.32	3.44	3.64	5.42	9.0
Any Judicial Experience	30.2	67.4	67.8	67.7	59.4	52.6	56.7	57.1	41.7	85.7
Prosecutorial Experience										
State Level	14.0	26.1	30.4	6.5	31.6	21.1	24.4	7.1	14.8	0.0
Federal Level	9.3	4.3	17.4	19.4	26.3	26.3	21.9	7.1	21.7	28.6
Any Prosecutorial Exp.	39.7	28.3	40.9	25.8	49.6	47.4	41.5	14.3	28.7	28.6
Legislative Experience										
State Level	44.2	62.3	25.2	38.7	9.8	10.5	37.5	7.1	2.6	0.0
Federal Level	14.0	46.6	12.2	29.0	6.0	26.4	3.3	0.0	0.0	0.0
State/Local Executive	79.1	30.4	91.3	9.7	84.2	26.3	84.2	0.0	27.0	0.0
Federal Cabinet	4.7	26.0	4.3	22.6	6.8	47.3	7.4	28.5	3.5	57.1
Any Government Exp.	76.7	89.1	88.7	80.6	86.5	84.2	79.3	78.6	66.1	100
Military Service	2.30	28.3	7.8	19.4	12.0	63.2	17.0	50.0	1.70	14.3
Law Professors (FT)	0.0	4.3	19.1	29.0	18.0	21.1	24.8	14.3	10.4	28.6
Law Clerkships	0.0	0.0	0.0	3.2	0.8	0.0	6.7	35.7	11.3	71.4
Private Practice	81.4	95.7	92.2	100	93.2	100	94.4	100	60.0[1]	71.4

Sources: For the U.S. Courts of Appeals, data are drawn from Zuk et. al (2009a, 2009b). For the U.S. Supreme Court, data are drawn from Epstein, Segal, Spaeth and Walker (2012).

Explanatory Note: Table entries are percentages of judges newly-appointed and confirmed to each respective court for each period having the noted professional background. Of course, those judges appointed during earlier eras may still populate each bench during later years.

[1]The Zuk et al. (2009b) data for the period after 1990 have 70 cases missing for the variable indicating if a Court of Appeals judge previously served as a U.S. District Court judge. Including those missing cases in the calculation shows that 23.5% of judges who served in that post prior to their nomination to the Circuit Courts. Those data also list 76 cases as having missing data for the variable indicating prior service as a U.S. Magistrate. The overall percentage including the missing data is 2.6%. For those Circuit Judges who were in private practice at some time prior to their appointment, the data are missing for 41 cases. Excluding the cases for which that variable is missing, then 93.2% of Circuit Judges appointed in this latter time period had some experience in private practice.

TABLE 5. POSITIONS HELD AT TIME OF APPOINTMENT AND MEAN AGE AT APPOINTMENT AND DEPARTURE OF FEDERAL COURTS OF APPEALS JUDGES (1801-2001) AND SUPREME COURT JUSTICES (1789-2010)

Characteristic	**U.S. Courts of Appeals**	**U.S. Supreme Court**
Position Held At Appointment[1]		
U.S. District Judge	38.80	4.30
U.S. Court of Appeals Judge	—	20.70
State Court of Last Resort Judge	6.20	10.30
Lower State Court Judge	5.00	0.90
Local/Municipal/State Trial Judge	1.30	6.00
U.S. Cabinet/Sub-Cabinet	2.70	11.20
The U.S. Attorney	1.50	0.0
Law Professor	5.20	1.70
U.S. Senator	1.50	6.00
Private Practice	26.00	20.7
Mean Age at Appointment (years)	52.55	53.55
Mean Age at Departure (years)	66.67	69.15

[1]Numbers are percentages of judges who held that position when nominated to the respective court. Column figures do not total to 100 percent as a number of positions that the judges held at appointment are not reported here as they were very infrequent comparatively across the sample. Only the most common positions are reported.

TABLE 6. POSITIONS HELD AT TIME OF APPOINTMENT AND MEAN AGE AT APPOINTMENT AND DEPARTURE FOR FEDERAL COURTS OF APPEALS JUDGES (1801-2001) AND SUPREME COURT JUSTICES (1789-2010), OVER TIME

	Beginning-1880		*1881-1930*		*1931-1960*		*1961-1990*		*1991-Present*	
Characteristic	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**	**Courts of Appeals**	**Supreme Court**
Position Held At Appointment[1]										
U.S. District Judge	16.3	4.3	42.6	9.7	38.3	0.0	42.6	0.0	35.7	0.0
U.S. Court of Appeals Judge	—	4.3	—	19.4	—	21.1	—	42.9	—	85.7
State Court of Last Resort Judge	7.0	13.0	7.8	12.9	6.8	10.5	4.4	0.0	7.8	0.0
Lower State Court Judge	2.3	0.0	3.5	0.0	3.0	0.0	5.9	7.1	7.8	0.0
Local, etc. Trial Judge	7.0	15.2	1.7	0.0	2.3	0.0	0.0	0.0	0.9	0.0
U.S. Cabinet/Sub-Cabinet	2.3	8.7	5.2	3.2	3.8	5.3	3.1	7.1	5.2	0.0
The Solicitor General/Office	0.0	0.0	2.6	0.0	1.6	5.3	0.0	7.1	0.0	14.3
The Attorney General/Office	0.0	0.0	0.9	12.9	0.0	15.8	0.4	14.3	0.0	0.0
The U.S. Attorney	0.0	0.0	0.9	0.0	3.0	0.0	0.4	0.0	3.5	0.0
Law Professor	0.0	0.0	1.7	3.2	3.8	5.3	7.8	0.0	6.1	0.0
U.S. Senator	2.3	6.5	5.2	3.2	2.3	15.8	0.0	0.0	0.0	0.0
Private Practice	41.9	32.6	13.9	22.6	21.1	0.0	30.0	14.3	28.7	0.0
Mean Age—Appointment (years)	45.60	50.43	53.94	57.13	55.44	54.47	51.97	54.93	51.60	52.86
Mean Age—Departure (years)	53.98	66.67	68.57	70.68	68.86	69.42	66.95	74.25	64.58	—

Sources: For the U.S. Courts of Appeals, data are drawn from Zuk et. al (2009a, 2009b). For the U.S. Supreme Court, data are drawn from Epstein, Segal, Spaeth and Walker (2012).

[1]Table entries are percentages of judges newly-appointed and confirmed to each respective court for each period who held that position when nominated to that court. Of course, those judges appointed during earlier eras may still populate each bench during later years. Column figures do not total to 100 percent as a number of positions that the judges held at appointment are not reported here as they were very infrequent comparatively across the sample. Only the most common positions are reported.

TABLE 7. SURVEY RESULTS OF EDUCATIONAL DIVERSITY AND PRIOR CAREER AND PROFESSIONAL EXPERIENCES FOR ACTIVE AND SENIOR STATUS U.S. COURTS OF APPEALS JUDGES (1970-2013)

Education Level	**U.S. Courts of Appeals**
Undergraduate Education	
Ivy League	17.5
Elite and Non-Ivy/-Elite	76.5
N	384
Legal Education	
Ivy League	26.9
Elite	10.7
Non-Ivy/-Elite	62.5
N	384
Career/Experience	
Judicial Experience	78.9
Political Experience	42.4
Law Clerk Service	33.1
Academic Experience	33.1
Military Service	7.8
Private Practice	90.1

Sources: Data gathered by the authors via a mailed survey to all sitting Courts of Appeals judges, both Active and those on Senior Status. Data were supplemented by reference to demographic data available through the Federal Judicial Center.

Explanatory Notes: Table entries are percentages of all sitting Courts of Appeals judges, beginning in 1970. Column entries do not sum to 100 percent as only the most common characteristics are listed. We continue to use the operational definition of each level of undergraduate and legal education as employed previously in this paper.