Appendix A: SCFJ Rating Procedure

The SCFJ has followed the same basic rating procedure, outlined in the semi-periodical American Bar Association "backgrounder," *The Standing Committee on the Federal Judiciary: What It Is and How It Works* (American Bar Association 2017, 4-7), since it began its regular relationship with the DOJ. First, when a vacancy occurs, the DOJ informs the SCFJ chair of the name(s) under consideration as a replacement. The chair then assigns the investigatory task to the member of the SCFJ representing the judicial circuit that the vacancy is in, with some exceptions if the circuit member is unavailable or overworked. The SCFJ member investigates the potential nominee(s) and prepares an informal report, including a tentative rating of "well qualified," "qualified," or "not qualified."[1] The investigator sends the report to the SCFJ chair, who reviews it and gives the DOJ a summary. If the DOJ decides to move forward with a nominee, it informs the chair, who in turn instructs the investigator to prepare a final report.[2] The chair then circulates the final report to all members of the committee, who vote on the nominee's final qualification rating using majority rule. The majority's rating is the committee's official rating. Since the late-1970s, the SCFJ has reported minority votes, if any. The chair votes only if there is a tie.

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[1] The SCFJ discontinued its "exceptionally well qualified" rating in 1989.
[2] Presidents George W. Bush, Trump, and Biden did not give the SCFJ advanced notice of nominees. Thus, the investigatory process described here began when the president announced the nomination during those administrations.

Appendix B: Data Collection on SCFJ Members and Measuring SCFJ Partisanship

Only four projects of which I am aware attempt to illuminate in any way who the SCFJ members are. Grossman's *Lawyers and Judges* (1965) and Chase's *Federal Judges* (1972) take a general approach, presenting summary tables of background characteristics like age and professional experience of the SCFJ members. These analyses do not note change over time, but they include data on the members up until publication date. Chase notes partisanship, and his study is the only one of the four to do so. Yelnosky (2014) examines committee members from 1999 through 2013, but he focuses on career background to the exclusion of other variables. Slotnick (1983) takes the unusual step for social science work on the SCFJ of naming the members of the 1982-1983 committee, but he goes no further into the individual members than their names.

Because recent studies of SCFJ ratings emphasize partisan and demographic concerns with respect to bias, I collected partisan and demographic data on all SCFJ members who served on the committee from 1953 to 2020. The traits I collected include partisanship, gender, minority status, legal experience, education, religion, and age.

The initial list of committee members' names came from the *Annual Report of the American Bar Association*, 1953 to 2013. With a few exceptions, each of these annual reports lists of members of the SCFJ. The ABA president appoints SCFJ members for staggered three-year terms. A strong norm prevents more than one re-appointment. The SCFJ's website lists the current SCFJ members (American Bar Association 2022). With the names of the committee members in hand, I collected data on each. The data hunt began with the Marquis Biographies Online (Who's Who) database. The database includes "all biographies that have appeared in 24 *Marquis Who's Who* print titles since 1985, plus historical biographies from ... *Who Was Who in*

America volumes 1607-1985" (Marquis 2013). Because they are prominent in their field, many SCFJ members appear in the Who's Who database, which provides self-reported information regarding the member's life dates, education, entrance to the bar, career path, awards won, civic involvement, professional and societal memberships, family, religious affiliation, and partisanship. When this information was present in the Who's Who database for a member, I coded it as the value for the respective variable of interest. This approach is consistent with Chase (1972, 151).

The Who's Who database does not list all SCFJ members, though, and not all members listed have complete biographies. There does not appear to be a time trend in the proportion of listed and unlisted members. Many of the more recent biographies omit partisanship and religious affiliation. In the cases where a member has either no or an incomplete biography, I searched other databases, for example LexisNexis, ProQuest Historical Newspapers, and NewspaperARCHIVE.com, for information regarding the member. Additionally, for contemporary SCFJ members who still practice law, I searched for their online résumés, which provided basic professional background information. If earlier SCFJ members did not list partisanship in their Who's Who biography, I used mentions of partisan activity in the newspaper databases as evidence for their partisanship. I also consulted the self-published autobiography of one former SCFJ member, Ben Robertson Miller (Miller 1973). If I found none, I coded partisanship as "unknown."

For contemporary members with missing partisanship, I combined newspaper database searches with searches of their political contributions in the Center for Responsive Politics (CRP) online database, which catalogs political contributions to federal and state candidates since 1990 (Center for Responsive Politics 2023). Most members who contributed did so

uniformly to one party's candidates. The few who contributed in a nominally bipartisan fashion in practice did so much more for one party than the other. I coded the member's partisanship according to the party to that received the predominance of contributions. Again, if I could find absolutely no information on a member's partisanship in any of the databases, I coded it as "unknown."

How I included SCFJ members' partisan attachments in the adjustment model is worth some explanation. The explanation is most important for the "unknown" partisans. As Figure B1 shows, the highest proportion of "unknown" partisans are on the SCFJ in the early years under study. Recent committees still have between 10 and 20 percent unknown partisans.

[FIGURE B1 ABOUT HERE]

Figure B1. *Proportion of Unknown Partisans on the SCFJ over Time.* The figure presents the fraction of SCFJ members per year for whom I could not assign a Republican or Democratic Party identification.

There are at least three ways to deal with the unknowns. First, partisanship could enter the model in three categories: Republican, Democratic, and unknown. Second, I could initially model the unknowns separately, then lump them in with the party, if either, to which they behave more similarly. Third, I could eliminate the unknown partisans from the model. I adopted the second strategy for three reasons.

First, the unknown partisans, rather than behaving like moderates or independents, exhibited the most conservative, i.e., anti-Democratic nominee, rating behavior. Given that most of the unknowns come at the beginning of the SCFJ's involvement in the process, conservative unknowns are expected. Initially, liberal critics saw the SCFJ as a bastion of the legal profession's old-guard conservatism (see Grossman 1965, among other contemporary writings

about the SCFJ). So, the classification of unknowns with identified Republicans makes empirical sense. It in fact pulls the Republican SCFJ members to the right.

Second, the ABA rating adjustment model includes committee-level effects. To include committee-level effects, there needs to be a consistent proportion measurement of the committee's partisanship. Eliminating the unknowns from the model would result in an essentially randomly varying denominator from year to year, which would make across-year comparisons muddled. Including the unknowns separately would keep the denominator consistently the same as the number of seats on the committee. However, unknowns' separate inclusion would introduce over 10 more parameters to estimate in the adjustment model.

Third, the adjustment model's goal is, above all, prediction, not explanation. If its goal were explanation, then the classification of unknown partisans with Republicans would violate best practices for explanatory models. That is, re-classification would bias the results by making "Republicans" seem more conservative than *identified* Republicans are. But, the adjustment model simply predicts the contexts in which nominees get unjustifiably downgraded. Whether the bias against Democratic nominees comes from identified Republicans or unknown partisans is much less important in the prediction endeavor than the explanation one.

Appendix C: Machine Coding Details

Using the "tm" package in R, I identified 19,007 individual blocks speech made by nominees, senators, and others during the hearings. If the SJC considered two or more nominees in the same hearing, I count them as separate hearings, with questions directed to and specific statements about each nominee placed only within the respective hearing. I exclude any discussion of the district court nominees that may have been present at the hearing. I included general statements, such as introductions or procedural matters, during multiple-nominee hearings in all individual nominee's hearings. Examples of general statements include Chairman Orrin Hatch offering the attendees pizza during a long hearing in which the SJC considered three circuit court nominees (Jeffrey Sutton, Deborah Cook, and John Roberts) and organizational statements that did not refer to any particular nominee. I also include in separate hearings addresses to "both" or "all" of the nominees.

I then collapsed all a person's speech during a hearing into one observation, which resulted in 1,095 total person-hearings. Note that this includes opening statements by senators and nominees, as well as presentation statements offered by sponsors of the nominee. Because the focus of the analysis is senatorial speech, I exclude all non-senators, except for non-senators making presentation statements. Presentation statements are traditionally senatorial behavior, so these non-senators effectively acted as senators. This left 926 senators speaking in 156 hearings. Finally, I excluded one hearing, Fifth Circuit nominee Michael Wallace's 2006 session, because he was the only nominee to receive a "not qualified" ABA rating. Thus, senators spent much of his hearing mentioning qualifications, especially the ABA's role in rating nominees. The inclusion of this outlier would bias the results of the analysis, so I exclude it for the same reason Collins and Ringhand (2013, 280) do not analyze the Anita Hill portion of Clarence Thomas's

Supreme Court confirmation hearing. The final data for analysis included 919 senator-hearings in 155 total hearings. After removing common English stopwords (e.g., the, on, in, a, here, etc.), there were 11,207 terms uttered in all hearings. The 919 hearing-senators spoke a total of 213,550 words.

Appendix D: Summary Statistics for Word Choice Dependent and Independent Variables

Variable	Mean	Standard Deviation	Range
Dependent Variable			
Qualifications Words	8.20	9.22	0-78
Nominee-Specific Factors			
Ideological Distance	0.41	0.40	0-1.37
Raw ABA Rating	3.83	1.41	1-5
Adjusted ABA Rating	0.14	1.08	-2.24-3.23
Years as Federal Judge	3.13	5.70	0-22
Years as State Judge	3.19	6.02	0-30
Years in Private Practice	10.82	8.71	0-35
Years as Government Attorney	4.35	4.72	0-23
Top 14 Law School	0.52	0.50	0, 1
Law Professor	0.33	0.47	0, 1
Federal Clerk	0.40	0.49	0, 1
Political Experience	0.25	0.43	0, 1
Opposition Home State Senator	0.55	0.50	0, 1
Non-White	0.24	0.43	0, 1
Female	0.28	0.45	0, 1
Age	50.89	6.46	38-69
Contextual Factors			
Presidential Election Year	0.14	0.35	0, 1
Divided Government	0.38	0.49	0, 1
Panel Balance	0.12	0.08	0-0.33
DC Circuit Nominee	0.11	0.31	0, 1
Federal Circuit Nominee	0.04	0.20	0, 1
Control Variables			
Majority Party	0.54	0.50	0, 1
Presenter	0.30	0.46	0, 1
Chair of Hearing	0.17	0.37	0, 1
Log of Total Words	5.08	1.06	0-7.19
Second Hearing	0.12	0.32	0, 1

Table D1. *Summary Statistics for Dependent and Independent Variables.* The table reports the mean, standard deviation, and range of the dependent and independent variables.

Appendix E: Regression Table for Word Choice Models

	I Raw ABA	II Adj. ABA	III Proxy Ind.
Nominee-Specific Factors			
Ideological Distance	-0.86** (0.22)	-0.55** (0.07)	-0.34 (0.24)
Raw ABA Rating	-0.02 (0.02)	---	---
Adjusted ABA Rating	---	-0.02 (0.04)	---
Ideological Distance * Raw ABA Rating	0.08 (0.05)	---	---
Ideological Distance * Adjusted ABA Rating	---	0.14* (0.06)	---
Federal Judge (Years)	---	---	-0.02* (0.01)
Ideological Distance * Federal Judge (Years)	---	---	0.01 (0.01)
State Judge (Years)	---	---	-0.01 (0.01)
Ideological Distance * State Judge (Years)	---	---	0.00 (0.01)
Private Practice (Years)	---	---	-0.01 (0.01)
Ideological Distance * Private Practice (Years)	---	---	-0.01 (0.01)
Government Attorney (Years)	---	---	0.01 (0.01)
Ideological Distance * Government Attorney (Years)	---	---	-0.02 (0.011)
Law Professor	---	---	0.06 (0.08)
Ideological Distance * Law Professor	---	---	-0.28* (0.13)
Federal Clerk	---	---	0.22** (0.08)
Ideological Distance * Federal Clerk	---	---	0.04 (0.13)
Top 14 Law School	---	---	-0.04 (0.08)
Ideological Distance * Top 14 Law School	---	---	0.20 (0.12)
Political Experience	---	---	0.02 (0.01)

Ideological Distance * Political Experience	---	---	-0.32*
			(0.15)
Opposition Home State Senator	0.16*	0.16*	0.15*
	(0.07)	(0.07)	(0.06)
Non-White Nominee	-0.05	-0.05	-0.01
	(0.06)	(0.06)	(0.05)
Female Nominee	-0.07	-0.08	-0.04
	(0.06)	(0.06)	(0.05)
Nominee Age	-0.17**	-0.20**	0.11*
	(0.05)	(0.05)	(0.05)
Square of Nominee Age	0.002**	0.001**	0.001**
	(0.00)	(0.00)	(0.00)
Contextual Factors			
Presidential Election Year	-0.01	-0.01	0.02
	(0.10)	(0.10)	(0.08)
Divided Government	-0.12	-0.11	-0.07
	(0.10)	(0.10)	(0.08)
Panel Balance	0.42	0.32	0.51
	(0.49)	(0.51)	(0.43)
Divided Government * Panel Balance	-0.75	-0.75	-0.94
	(0.63)	(0.64)	(0.59)
DC Circuit Nominee	-0.02	-0.00	-0.11
	(0.08)	(0.08)	(0.08)
Federal Circuit Nominee	0.05	0.05	0.08
	(0.12)	(0.13)	(0.12)
Control Variables			
Majority Party	-0.02	-0.02	-0.05
	(0.05)	(0.05)	(0.05)
Presenter	0.66**	0.67**	0.66**
	(0.06)	(0.06)	(0.06)
Chair of Hearing	-0.13	-0.13	-0.13
	(0.07)	(0.07)	(0.07)
Second Hearing	-0.07	-0.05	-0.02
	(0.06)	(0.06)	(0.05)
Log of Total Words	1.17**	1.17**	1.17**
	(0.04)	(0.04)	(0.04)
Constant	0.47	1.12	-1.77*
	(1.17)	(1.25)	(1.24)
N	919	919	919
Log-pseudolikelihood	-2380.63	-2378.53	-2349.44
AIC	4803.26	4799.07	4768.89
BIC	4904.55	4900.36	4937.70

Notes: *: p<0.05 **: p<0.01 (all two-tailed) Standard errors clustered on hearing date.

Table E1. Negative Binomial Models of Senatorial Qualifications-Related Words. Dependent variable is the number of qualifications-related words used by a senator while discussing and questioning a nominee.

References for Supporting Appendices

American Bar Association. 2017. "Standing Committee on the Federal Judiciary: What It Is and How It Works." Online at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf.

American Bar Association. 2022. "Members—Standing Committee on the Federal Judiciary." Online at http://www.americanbar.org/groups/committees/federal_judiciary/about_us/members.html.

Chase, Harold. 1972. *Federal Judges: The Appointing Process*. Minneapolis: University of Minnesota Press.

Center for Responsive Politics. 2023. "Donor Lookup." Online at https://www.opensecrets.org/donor-lookup.

Collins, Paul, and Lori Ringhand. 2013. *Supreme Court Confirmation Hearings and Constitutional Change*. New York: Cambridge University Press.

Grossman, Joel. 1965. *Lawyers and Judges: The ABA and the Politics of Judicial Selection*. New York: Wiley.

Marquis. 2013. "Marquis Biographies Online: Product Description." http://www.marquiswhoswho.com/online-database/product-description. Marquis Who's Who LLC.

Martinek, Wendy, Mark Kemper, and Steven Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998." *Journal of Politics* 64(2): 337-361.

Miller, Ben. 1973. *Memoirs of a Southern Lawyer*. Baton Rouge, LA: Self-published.

Slotnick, Elliot. 1983. "The ABA Standing Committee on Federal Judiciary: A Contemporary Assessment – Part 1." *Judicature* 66(8): 349-362.

Yelnosky, Michael. 2014. "Who Rates Prospective Federal Judges for the American Bar Association?" *Roger Williams Law Review* 19: 91-105.