WORKING CLASS JUDGES

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INTRODUCTION

In recent years, a steady chorus of dignitaries has decried the low pay of federal judges and suggested that the federal judiciary is on the brink of losing its best and its brightest.[1] The persistent nature of these claims should give us pause. Scott Baker's recent study[2] empirically evaluates these claims by examining the relationship between judicial salaries and the work habits and voting patterns of federal appellate judges. If large pay disparities are indeed eroding the quality of the federal bench, Baker theorizes this likely results in more ideological voting, fewer dissents, longer delays in issuing opinions, and a self-selection of judges who are intent on maximizing their influence within the federal judiciary.[3] To test these hypotheses, Baker undertook the formidable task of assembling the requisite datasets, which he then posted on the Internet for other researchers to use. Along with the ingenuity of his research design, we applaud Baker's industry and transparency. Thanks to his efforts, there is now an empirical literature surrounding the debate over federal judicial pay.

At the end of his inquiry, Baker concludes that higher judicial salaries would have virtually no effect on the performance of federal appellate judges.[4] The purpose of this Reply is to qualify Baker's interpretation of his results, at least with regard to judges located in the "Top Five" legal markets of New York, Chicago, Los Angeles, San Francisco, and Washington, D.C. In his original

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[1] Baker provides a thorough sampling of the various positions on this issue in one of his footnotes so we decline to repeat them here. Scott Baker, *Should We Pay Federal Circuit Judges More?*, 88 B.U. L. REV. 63, 65 n.2 (2008).

[2] *Id.* at 66.

[3] *Id.* at 84-85.

[4] *Id.* at 112.

analysis, Baker relies upon the average law firm partnership compensation, adjusted for years in practice and region, to estimate the forgone income – and hence opportunity costs – of each federal judge. Baker explicitly anticipated the possibility that this variable would understate the opportunity cost in large legal markets; thus, he included a Top Five variable plus an interaction term, which captures the effect of forgone earnings when a judge is located in one of the nation's five largest legal markets.[5] Baker's discussion, however, does not formally address the significance of the interaction term, which requires some additional steps to properly interpret.

Based on our reanalysis of Baker's specifications, it appears that judges in the largest legal markets often behave differently than their smaller market counterparts. Specifically, the lower judicial salaries in Top Five markets strongly correlate with behavior Baker characterizes as "ideological" or "influence-motivated." Conversely, while lower judicial salaries in small markets correlate with longer delays in issuing opinions, the exact opposite effect describes the behavior of judges in Top Five metropolitan areas.

Our brief Reply proceeds as follows. Part I provides our reanalysis of Baker's data. Part II establishes an additional comparative context that allows us to speculate why Top Five legal markets may foster a more intense tradeoff of influence versus remuneration. Indeed, as we note, the real or perceived financial tradeoffs are so enormous – and conspicuous – in Top Five markets that federal judges may feel they have been lumped together with a large, faceless working class. We conclude by suggesting that the debate over judicial salaries is rooted in the more general problem of greater income disparity within the American legal profession.

I. REANALYSIS OF BAKER'S TOP FIVE AND NETCOST INTERACTION VARIABLES

To test his various hypotheses on judicial salaries, Baker regresses a series of measures of judicial performance on a set of variables to see whether those variables statistically correlate with judicial performance. His key covariate, NETCOST, reflects the "lump sum value of [a judge's] lost lifetime earnings."[6] To this, he adds variables for judges' net worth, age, gender, circuit, prior experience, and an indicator variable for whether (=1) or not (=0) each judge came from a Top Five legal market ("TOPFIVE"), defined as New York, Chicago, Los Angeles, San Francisco, or Washington, D.C.[7] Importantly, Baker also includes a multiplicative interaction term ("TOPFIVENETCOST"), defined as TOPFIVE × NETCOST, which "allows for the increase in one unit of net cost to have a different effect on a judge from

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[5] *Id.* at 91.

[6] *Id.* at 89.

[7] *Id.*

a major market than an increase in one unit of net cost on other judges in the region."[8]

Throughout his article, Baker uses this specification to assess the relationship between judicial pay and performance. In general terms, his model can be written as:

(1)

$$f^{-1}(Performance_i) =$$
$$\beta_0 + \beta_1 NETCOST_i + \beta_2 TOPPFIVE_i +$$
$$\beta_3(TOPFIVE_i \times NETCOST_i) + \mathbf{X}_i\gamma$$

where $\mathbf{X}_i$ denotes the other control variables in the model and $f^{-1}(\cdot)$ denotes the relevant regression function (linear or probit). Note that Equation (1) can be rewritten as:

(2)

$$f^{-1}(Performance_i) =$$
$$\beta_0 + \beta_2 TOPPFIVE_i +$$
$$(\beta_1 + \beta_3 TOPFIVE_i)NETCOST_i + \mathbf{X}_i\gamma$$

For either (1) or (2),

(3)

$$\frac{\partial f^{-1}(Performance)}{\partial NETCOST} = \beta_1 + \beta_3(TOPFIVE).$$

That is, the marginal impact of NETCOST on performance depends on the value of TOPFIVE. Seen in this light, it is sometimes useful to think of (2) as:

(4)

$$f^{-1}(Performance_i) =$$
$$\beta_0 + \beta_2 TOPPFIVE_i + \psi_{1i}NETCOST_i + \mathbf{X}_i\gamma,$$

where $\psi_{1i} = \beta_1 + \beta_3(TOPFIVE)$ can be thought of as a "quasi-coefficient" for the marginal impact of NETCOST on performance.

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[8] *Id.* at 91. The use of multiplicative interaction terms to model conditional relationships among covariates in a regression framework has been known for more than five decades. *See* D.R. Saunders, *Moderator Variables in Prediction*, 16 EDUC. & PSYCHOL. MEASUREMENT 209 (1956).

A key aspect of models with multiplicative interaction terms, then, is the conditional nature of their covariate effects.[9] In particular, in a model such as that in Equation (1), the "direct effects" β_1 and β_2 represent the effect of NETCOST and TOPFIVE on performance *when the value of the other covariate is equal to zero*. To see why this is the case, note that when, for example, TOPFIVE takes on a value of zero, Equation (3) becomes

$$\frac{\partial f^{-1}(Performance)}{\partial NETCOST} = \beta_1.$$

A similar expression could be written for the marginal effect of TOPFIVE on performance when NETCOST is equal to zero.

Substantively, this interpretation suggests that while β_1 provides a reasonable estimate of the effect of NETCOST on performance in non-Top Five markets, the effect of that variable in Top Five markets is equal to $\psi_1 = \beta_1 + \beta_3$. Likewise, if we wish to conduct inference on this quantity, the estimate of its standard error is equal to the square root of:

(5)
$$Var(\psi_1) = Var(\beta_2) + Var(\beta_3) + 2Cov(\beta_1, \beta_3).$$

In Baker's example, NETCOST is a continuous variable, while TOPFIVE is binary. Thus, the coefficient estimate for β_1 denotes the relationship between NETCOST and the respective measure of judicial performance *in non-Top Five markets only* (that is, when TOPFIVE = 0). Similarly, ψ_1 – the sum of β_1 and β_3 – provides the estimate of the relationship between NETCOST and judicial performance for judges from Top Five markets.

Substantively, Baker explores the relationship between the net cost of being a judge and various measures of judicial performance. The general expectation set forth by the "salary matters" theory – and embodied in the position of Chief Justice Roberts,[10] among others[11] – is that:

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[9] For more extensive treatments of multiplicative interactions in regression models, see CINDY D. KAM & ROBERT J. FRANZESE, JR., MODELING AND INTERPRETING INTERACTIVE HYPOTHESES IN REGRESSION ANALYSIS (2007); Robert J. Friedrich, *In Defense of Multiplicative Terms in Multiple Regression Equations*, 26 AM. J. POL. SCI. 797, 797-99 (1982); and Thomas Brambor, William R. Clark & Matt Golder, *Understanding Interaction Models: Improving Empirical Analyses*, 14 POL. ANALYSIS 63, 63-65 (2006).

[10] *See, e.g.*, Chief Justice John G. Roberts, *2006 Year-End Report on the Federal Judiciary*, 39 THE THIRD BRANCH: NEWSLETTER OF THE FEDERAL COURTS (Admin. Office of the U.S. Courts, Wash. D.C.), Jan. 2007, at 3-4, *available at* http://www.supremecourtus. gov/publicinfo/year-end/2006year-endreport.pdf (reviewing statistics on the reduced number of federal judges from private practice and asserting that "[i]t changes the nature of the federal judiciary when judges are no longer drawn from among the best lawyers in the practicing bar").

Holding all else equal, with a high spread between judicial pay and the next best opportunity, the judiciary will be composed of people who are more partisan, lazier, more driven by prestige, and/or place a high value on public service. These judges will act like it by, for instance, voting more consistently along party lines (the partisan judge), only citing judges from the same political party (the partisan judge), writing opinions more slowly (the lazy judge), or investing more time writing decisions other judges will cite (the prestige conscious judge).[12]

This suggests – and Baker notes – that, all else equal, we should see (a) a positive relationship between liberal voting and NETCOST for Democratic-appointed judges, (b) a negative relationship between liberal voting and NETCOST for Republican-appointed judges, (c) a positive relationship between NETCOST and citation bias, (d) a negative relationship between the authorship of dissenting opinions and NETCOST, (e) a positive relationship between the length of time judges take to author opinions and NETCOST, and (f) a positive relationship between NETCOST and the influence of opinions written by the judge.

The substantive importance of controlling for Top Five legal markets – and of interacting that indicator with NETCOST – is that, as a general matter, the effect of forgone compensation will be greater in markets where lawyers' salaries are higher. Put differently, the extent to which a judge in New York City who foregoes, for example, $100,000 a year in private-sector salary will be partisan, lazy, and so forth is expected to be greater than for a judge who gives up the same amount in Omaha, Nebraska. In model terms, this suggests that the sign of β_3 will be the same as that for β_1, such that $|\psi_1| > |\beta_1|$. But while this specification is appropriate for capturing conditioned relationships of this kind, Baker neglects to discuss in his original article this key difference between the magnitude of NETCOST effects across different types of markets.

Table 1 re-presents Baker's results regarding the interaction of NETCOST and TOPFIVE for those models of the form in Equation (1).[13] In Table 1, β_1 is the estimated relationship between NETCOST and judicial performance in non-Top Five markets, while ψ_1 are estimates of those relationships for judges from Top Five markets.

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[11] *See* Baker, *supra* note 2, at 65 nn.2-5 (collecting public statements from judges, law school deans, the ABA, and corporate counsel on the negative impact of law judicial pay).

[12] *Id.* at 74.

[13] Note that Baker's original analyses present marginal effects for his probit models (that is, $\partial \Pr(Y_i = 1)/\partial X$), while we present coefficient estimates (βs). The practical relevance of this distinction is slight.

Table 1. Estimates of β_1 and ψ_1

Model	E($\cdot$)	β_1	ψ_1
Voting – Democratic Appointees (Table 4 - probit)			
Model 1 (Full Sample)	+	0.003	0.024
		(0.023)	(0.057)
Model 2 (Subsample w/ NETWORTH)	+	0.012	0.318[*]
		(0.034)	(0.180)
Voting – Republican Appointees (Table 5 - probit)			
Model 1 (Full Sample)	-	0.010	-0.072[*]
		(0.022)	(0.042)
Model 2 (Subsample w/ NETWORTH)	-	0.029	-0.098
		(0.030)	(0.061)
Citation Bias Analysis (Table 7, Model 1 - OLS)	+	-0.001	-0.011
		(0.005)	(0.009)
Dissents Analysis (Table 8 - probit)			
Model 1 (Full Sample)	-	-0.097[**]	-0.018
		(0.030)	(0.058)
Model 2 (Subsample w/ NETWORTH)	-	-0.199[**]	-0.057
		(0.048)	(0.079)
Speed of Disposition (Table 9 - OLS)			
Model 1 (Full Sample)	+	0.699	-12.1
		(3.01)	(5.62)
Model 2 (Subsample w/ NETWORTH)	+	6.67	-12.7
		(4.14)	(8.97)
Extra-Circuit Citations: Total Influence (Table 10, Model 1 - OLS)	+	–	–
Extra-Circuit Citations: Avg. Influence (Table 11, Model 1 - OLS)	+	0.039[*]	0.065[*]
		(0.022)	(0.036)

Note: Cell entries are coefficient estimates, as indicated; numbers in parentheses are robust standard errors. E($\cdot$) denotes the expected sign of the coefficient for NETCOST under the "salary matters" hypothesis. One asterisk indicates significance at 5%, two asterisks indicate significance at 1% (one-tailed). Data to replicate the results in Table 10 were unavailable.

Several interesting results are apparent from this reanalysis. First, note that in all four models of voting, the effects of NETCOST are larger in magnitude – and consistently in the expected direction – in Top Five legal markets, and two of those four attain conventional levels of statistical significance.[14]   The opposite is true for the dissents analysis model, where we find strongly significant effects in non-Top Five markets, but the absence of such effects in Top Five markets where judges relinquish proportionally more salary in exchange for a seat on the bench. Interestingly, the results from the speed of deposition model run counter to the expectations derived from the "salary matters" theory: the large, negative estimates of ψ_1 in those models indicate that, at least in Top Five markets, judges who forego higher salaries actually

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[14] Additionally, the effect in Model 2 of Table 5 is significant at 6%.

complete their work more quickly than those whose opportunity costs are lower. Finally, note that the estimate of ψ_1 in the opinion influence model is nearly twice as large as that for β_1, a finding that supports the notion that the tendency for judges to be "influence-motivated" as a function of low judicial salaries is, again, exacerbated in markets where opportunity costs are higher.

Taken together, these reinterpretations of Baker's findings paint a somewhat different picture than his original analysis suggests. In our analysis, the nature of the market in which each judge lives and works is of central importance. In markets where the opportunity costs of judging are relatively high, lower judicial salaries more strongly correlate with behavior Baker characterizes as "ideological" and "influence-motivated." Conversely, in markets where the relative costs of a judgeship are low, low salaries correlate with judicial "laziness" more prominently. Put in somewhat different terms, judges in Top Five legal markets appear willing to trade pecuniary benefits for some measure of legal or policy influence, while those outside the Top Five view the tradeoff as one between higher pay and greater leisure.

In many respects, these findings are unsurprising. It is well understood, for example, that the markets comprising the Top Five are the loci of greatest influence in the legal and policy communities.[15] Given that judges, and lawyers more generally, select various markets according to their tastes for particular characteristics of those markets – including salary, professional advancement, potential career options – the existence of an influence-remuneration tradeoff in Top Five markets, and of a corresponding leisure-remuneration tradeoff outside those markets, is consistent with more general patterns of career choice in the legal profession.

II.   MAKING ENDS MEET IN A TOP FIVE LEGAL MARKET

To assess the potential effects of low judicial salaries, Baker needed to operationalize a measure of a federal appellate judge's salary versus "her next best employment opportunity."[16] Baker calculates his metric for forgone earnings (the NETCOST variable) using law firm partnership data supplied by the Altman Weil Survey of Law Firms Economics, which is published annually by one of the leading law firm consulting companies.[17] Baker correctly notes the limitations of the national partnership profitability figures

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[15] *See* William M. Landes, Lawrence Lessig & Michael E. Solimine, *Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges*, 27 J. OF LEGAL STUD. 271, 304 (1998) (noting that the Seventh, First, Second, and Eighth circuits contain the most influential judges, as measured by citation analysis); Barton Beebe, *An Empirical Study of U.S. Copyright Fair Use Opinions, 1978-2005*, 156 U. PA. L. REV. 549, 566-68 (2008) (describing the Second and Ninth Circuits as the most influential circuits in the development of the fair use doctrine).

[16] Baker, *supra* note 2, at 78.

[17] *See generally* ALTMAN WEIL PRODUCTIONS, INC., THE SURVEY OF LAW FIRM ECONOMICS (2005).

published annually in *The American Lawyer* magazine, which fails to capture important regional differences in opportunity cost.[18]   Of course, these limitations also cut in the other direction: if federal judges are truly drawn from "the Nation's very best lawyers,"[19] it is likely that average compensation figures for regional law firm partnerships understate the potential lost earnings, particularly in the nation's largest and most lucrative legal markets. Baker resolves this data limitation by specifying models that include variables for Top Five legal markets and a possible NETCOST/TOPFIVE interaction effect.

The impact of large market law firms, both in the public discourse and in Baker's specifications, becomes more apparent as we wade into some relevant comparative data. For example, Figure 1 summarizes the relative pay of three highly coveted legal jobs: federal circuit judge, chief legal officer (CLO) at a major corporation, and partner at an Am Law 50 law firm. Between 1983 and 2003, the pay disparity between federal circuit court judges and Am Law 50 partners grew from a multiple of four to a multiple of 6.5. No doubt, the continued heady profits of major corporate law firms have further exacerbated the judicial pay gap.[20]

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[18] *See* Baker, *supra* note 2, at 110 & nn.142-43.

[19] Chief Justice John G. Roberts, *2005 Year-End Report on the Federal Judiciary*, 38 THE THIRD BRANCH: NEWSLETTER OF THE FEDERAL COURTS (Admin. Office of the U.S. Courts, Wash. D.C.), Jan. 2006, at 3, *available at* http://www.supremecourtus.gov/ publicinfo/year-end/2005year-endreport.pdf.

[20] *See, e.g.*, Aric Press & John O'Connor, *Lessons of the Am Law 100*, AM. LAW., May 2007, at 127 (reporting that in 2006, profits per partner in the Am Law 100 were up 13.4 percent, with "the average among firms headquartered in New York, an astonishing $2.05 million").

Figure 1

Pay Comparison of US Circuit Judges, Chief Legal Officers, and Am Law 50 Partners
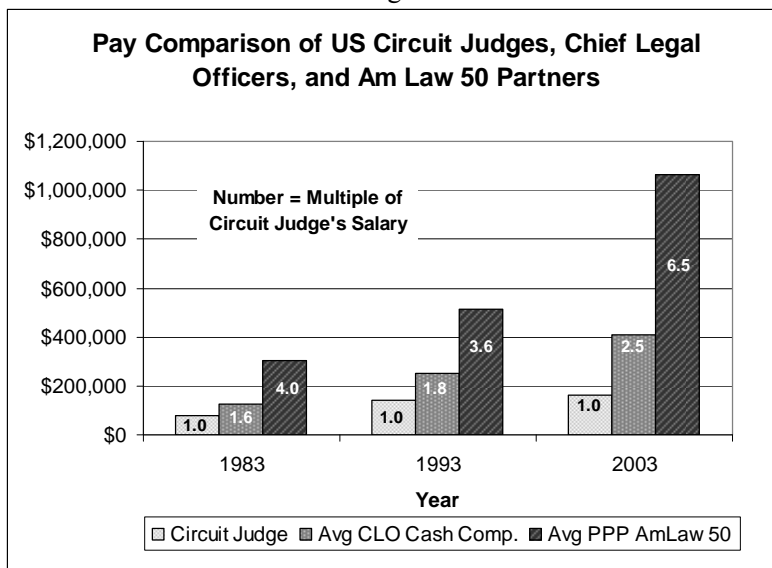
Similarly, corporate general counsels have also prospered relative to federal appellate judges. Illustrating the attractiveness of this career choice was the surprise 2006 resignation of Judge Michael Luttig, a prominent jurist on the Fourth Circuit who left the federal bench to take the top legal job at Boeing Corporation.[21] According to news reports, Luttig's decision was spurred by the "financial lure of the Boeing job" and the impending costs of college education for his two children.[22] Although Luttig, who earned $171,800 as a federal judge, declined to discuss his Boeing compensation package, the annual salary and bonus of his counterpart at rival aerospace firm Lockheed Martin Corporation was over $1.6 million in 2005.[23] Further, it is noteworthy that Luttig resided in the metropolitan Washington, D.C. area before he joined Chicago-based Boeing. His frame of reference is likely to be a Top Five legal market.

Drawing upon the same Altman Weil data used by Baker, Figure 2 tells a much more prosaic story about the remuneration of typical law firm partners. The chart converts the income of senior law firm partners (in their 25th to 29th year of practice) and chief legal officers into a common scale that permits comparisons of relative pay over time, including benchmarking against the consumer price index (CPI).
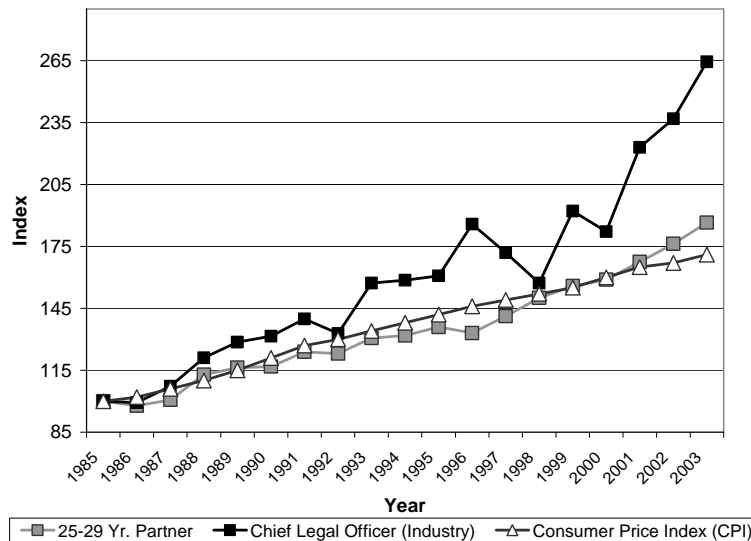
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[21] *See* Jerry Markon, *Appeals Court Judge Leaves Life Appointment for Boeing*, WASH. POST, May 11, 2006, at A11.

[22] *Id.*

[23] *Id.*

Figure 2

**Trend Comparison of Median Compensation,
25-29 Year Partners and Chief Legal Officers**

Source: Generated from data in Altman Weil, Inc., 2004 Survey of Law Firm Economics

Using 1985 as the base year, the income of senior law firm partners (index of 187) beats inflation (index of 171) over the next eighteen years but substantially trails the income of CLOs (index of 265). Yet, during this same time period, federal circuit court judges actually fare better than the median law firm partner in his 25th to 29th year. From 1985 to 2003, the salary of a U.S. Circuit Court Judge increased from $80,400[24] to $164,000,[25] which results in an index of 204.[26] By contrast, the income of the median law firm partner in her 25th to 29th year increased from $156,368 to $291,682, which produces a corresponding index of 187.

As the above figures suggest, the "problem" of judicial pay really hinges on the reference group. Moreover, the comparison based on reference group is probably most acute in large legal markets, where federal appellate judges likely perceive themselves to be at least the intellectual equals of the region's most elite corporate practitioners, but on a government pay scale, and in a real estate market that makes them feel all too working class.

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[24] *See* THE LAWYER'S ALMANAC 759-65 (1986).

[25] *See* NAT'L CTR. FOR STATE COURTS, SURVEY OF JUDICIAL SALARIES 10 (Apr. 1, 2003), *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/judicial&CISOPTR=126.

[26] The index is generated to compare changes in relative pay – for example, to see if increases in pay have kept pace with inflation. It is calculated by multiplying the 2003 salary by 100 and then dividing by the 1985 salary [($164,000 x 100)/$80,400 = 204].

According to the 2006 Altman Weil Survey of Law Firm Economics, the average compensation of a law firm equity partner in 2004 was $353,033,[27] with regional differences that range from $287,828 in the Mountain region[28] to $440,082 in the South Atlantic region. For the ninety-four Am Law 200 law firms headquartered in non-Top Five markets, the average profits for equity partner climbs substantially to $634,420.[29] Yet, for the 106 Am Law 200 law firms headquartered in metropolitan Chicago, Los Angeles, New York, San Francisco, and Washington, D.C., the average profits per partner is a stratospheric $1.16 million.[30] Further, within this elite bar there is a pecking order based on relative profitability (the Am Law 100 and 200)[31] and prestige (Vault).[32] For 2005, the 90th percentile profits per partner of an Am Law 200 firm headquartered in a Top Five market is $2 million per year,[33] versus $935,000 for a non-Top Five market[34] and $588,666 for the Altman Weil sample.[35] In Omaha, the salary disparity between a law firm partner and a federal judge is likely to be a factor of two. But in New York City or Washington, D.C., it could easily be a tenfold gap.

A more accurate estimate of the true opportunity cost of a federal judgeship in a major market can arguably be distilled from the large number of lawyers who leave government service each year for large law firm practice. In a dataset of 8,485 lawyers who lateraled into a partnership position at an Am Law 200 firm between 2000 and 2005, 148 were formerly employed with the

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[27] *See* Altman Weil, *supra* note 17, at 166.

[28] In the Altman Weil Survey of Law Firm Economics, the Mountain region includes Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

[29] These calculations were made from data provided by the Law Firms Working Group, which has a special licensing agreement with ALM Research, Inc. The $634,420 figure is a weighted average based on the number of equity partners in each firm.

[30] These calculations were made from data provided by the Law Firms Working Group, which has a special licensing agreement with ALM Research, Inc.

[31] The American Lawyer publishes its annual tables for law firm finances in the July (the Am Law 100) and August (Am Law) issues of the magazine.

[32] *See, e.g.*, BRIAN DALTON ET AL., VAULT GUIDE TO THE TOP 100 LAW FIRMS, 2006 EDITION 15 (2005) (ranking the nation's 100 most prestigious law firms based on a survey of over 15,000 law firm associates at 156 major law firms); William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087, 1096-99 (2007) (book review) (reviewing data on large law firm working conditions and observing a strong positive correlation between profits and prestige and a strong negative correlation between firm profits and associate satisfaction).

[33] These calculations were made from data provided by the Law Firms Working Group, which has a special licensing agreement with ALM Research, Inc.

[34] These calculations were made from data provided by the Law Firms Working Group, which has a special licensing agreement with ALM Research, Inc.

[35] *See* Altman Weil, *supra* note 17, at 167.

Office of the U.S. Attorneys or another division of the Department of Justice.[36] Presumably, the legal talent and ability of federal appellate judges is at least on par with career prosecutors or DOJ civil attorneys. Table 2 summarizes average profits per partner of firms joined by AUSA or DOJ lawyers versus the average profits per partner of firms joined by all other lateral partners during the 2000 to 2005 time period. The figures are separated by office joined in Top Five versus non-Top Five markets.

Table 2. Lateral Partners by Type, Profits of Firm Joined, and Market

Type of Lateral	Non-Top Five Market			Top Five Market		
	Mean PPP	Std Deviation	Valid N	Mean PPP	Std Deviation	Valid N
AUSA or DOJ	$668,382	$218,475	N=34	$937,632	$451,366	N=114
Other Lateral Lawyers	$607,250	$242,807	N=2871	$747,137	$318,447	N=5466

Obviously, when leaving government service, AUSA and DOJ attorneys tend to garner a substantial price premium over other lateral partners, especially in Top Five legal markets. Using an independent sample t-test, the higher average income – of $61,132 – received by the government attorneys in the non-Top Five markets approaches statistical significance.[37] Yet, the higher average income – of $190,495 – for AUSA and DOJ lawyers in the Top Five markets is statistically significant at a very high level.[38] These statistics suggest that a federal judge's forgone earnings, particularly in a Top Five market, may be lower than Baker's original estimates.

CONCLUSION

In many respects, the acrimony over low judicial pay is rooted in the more general problem of income stratification within the legal profession as a whole. For example, in the famous 1975 *Chicago Lawyers I* study, social scientists at the American Bar Foundation conducted detailed interviews with a random sample of 777 lawyers in Chicago and surrounding Cook County.[39] In 1995, the researchers replicated their study with another random sample (*Chicago*

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[36] The lateral dataset was compiled by ALM Research, Inc. from news releases. In turn, the Law Firms Working Group added in variables related to profits per partner. For a detailed discussion of this dataset, including its broader application to mobility trends within law firms, see Marc Galanter & William D. Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. (forthcoming 2008).

[37] We calculated $p = .072$, indicating statistical significance at 7.2% (one-tailed).

[38] We calculated $p < .001$, indicating statistical significance at <0.1% (one-tailed).

[39] *See* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 9 (1982).

Lawyers II).[40]   One of the most striking changes in the intervening twenty years was the change in relative income among different segments of the bar. After adjusting for inflation, the average income of lawyers in Chicago's largest firms had increased dramatically from $144,985 in 1975 to $271,706 in 1995.[41]   In contrast, the incomes in all other practice settings, with the exception of in-house counsel, remained flat or declined.[42]   Solo practitioners fared the worse, with median income, in constant 1995 dollars, declining from $99,159 to $55,000.[43]   During this two-decade period, the number of solo lawyers working a second job increased from two to thirty-two percent.[44] Unfortunately, there is ample evidence that this pattern of income stratification is shared by much of the United States workforce.[45]

An important consideration in any judicial salary reform effort is its potential impact on American income disparity in general and, more specifically, the problematic salary stratification already existing in the legal profession.   The stratification is particularly problematic in Top Five legal markets and, as this Reply has demonstrated, the effects of judicial salary reform will likely be unique in these markets.   Admittedly, raising judicial salaries may benefit recruitment and retention.   Prices are dynamic, however, and firms may respond to any such change by raising salaries for top-level attorneys.   Thus, raising compensation levels for federal judges may actually have problematic consequences.   First, our findings suggest that such firm responses will be disproportionately concentrated in large markets, resulting in continued stratification of legal compensation in those markets.   Second, firms, perhaps in order to implement such a response, may increase the already substantial costs of legal services.   To this end, it is important to consider the indirect impacts – and possible unintended consequences – of judicial compensation reform.

Amidst broad systemic changes and problems with income stratification in the United States and the legal profession, as well as concerns about the quality of the federal bench, a difficult two-fold policy question arises: (1) Is the high cost of living and low relative pay of federal judges in large markets fostering a self-selection dynamic – e.g., influence motivation – that undermines judicial decision making; and (2), if so, will raising judicial salaries mitigate that problem – and/or potentially create others – particularly if the underlying stratification dynamic continues apace?   These are important empirical questions that we cannot hope to answer in a short reply essay.   Yet, the clarity

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[40] *See* JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW STRUCTURE OF THE BAR 9-28 (2005) (explaining prior research and its comparison to 1995 data).

[41] *Id.* at 163.

[42] *Id.* at 160.

[43] *Id.* at 163.

[44] *Id.* at 164.

[45] *See generally* ROBERT H. FRANK & PHILIP J. COOK, THE WINNER-TAKE-ALL SOCIETY (1995).

of these questions is a testament to the quality and rigor of Professor Baker's study. We commend him on a job well done.