

Racial and Gender Diversity on State Courts

AN AJS STUDY

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Most Americans would agree that racial and gender diversity is an important quality for our nation's courts. Whether judicial diversity is valued because it increases public confidence in the courts, provides decision-making power to formerly disenfranchised populations, or is essential to ensuring equal justice for all, citizens seem to prefer a judiciary that is diverse in its makeup.

There is less agreement regarding how best to achieve judicial diversity. To address this question, staff of the American Judicature Society undertook a project in 2008 to identify the institutional and political circumstances in which minority and women judges are most likely to be selected to state courts. We compiled a dataset that includes all appellate court judges and a ten percent sample of general-jurisdiction trial court judges who were serving in 2008. For each judge, we identified the year of selection, the judge's race/ethnicity, and the judge's gender.

We also included in the dataset a variety of characteristics of the states in which these judges served, the courts on which they sat, and the ideology of those responsible for their selection. We identified the formal selection method for the court on which each judge served, the method by

which the judge was actually selected, the legal qualifications for serving as a judge on that court, and the partisan affiliation of the governor or electorate responsible for selecting the judge.

We begin by providing an overview of the extent of judicial diversity nationwide in 2008 and over time. We then explore whether minority and women judges were more likely to be selected in particular institutional and political contexts.

Judicial Diversity State-by-State and Over Time

Table 1 (page 30) displays the percentages of judges on appellate courts and general-jurisdiction trial courts in each state who were racial or ethnic minorities and who were women. The highest percentage of minority judges, 65.1%, was found in Hawaii. The states with the next highest percentages were Louisiana, New York, and Texas, where minority judges comprised approximately one-fifth of the bench. Interestingly, at the time this data was collected, there were no minority judges serving on appellate or general-jurisdiction trial courts in six states—Maine, Montana, New Hampshire, South Dakota, Vermont, and Wyoming.

The states with the highest percentages of women judges were Florida, Hawaii, Maryland, Massachusetts, Nevada, and Vermont, where approximately one third of judges were women. Contrary to the norm for most states, in five states—Hawaii, Louisiana, Missouri, New York, and Virginia—the percentages of minority judges were higher than the percentages of women judges.

As a number of scholars have documented, the presence of minority and women judges on state courts has increased gradually over time. Figure 1 (page 31) demonstrates this as well, indicating the percentages of minority and women judges in our dataset selected by decade. While only 4.0% of judges chosen in the 1970s and still serving in 2008 were racial or ethnic minorities, 12.6% of judges chosen since 2000 were minorities; and while only 16.0% of judges selected in the 1970s and still serving in 2008 were women, 29.2% of judges selected in the 21st century were women.

Selection Methods and Judicial Diversity

There are six methods through which seats on state courts may be filled—merit selection, gubernatorial appointment, partisan election, nonpartisan election, legislative appointment, and court appointment. The question of whether some methods of selecting judges are more effective than others in diversifying state judiciaries is one that has been of interest to researchers, policy makers, and selection reform advocates for decades. While some studies have found that appointive systems enhance judicial diversity, other studies have reported that elective systems produce more women and minority jurists. At the same time, several studies have found no link whatsoever between selection systems and diversity of the bench.

However, the majority of these studies are based on the court's formal method of selection and do not take into account the method by which judges were actually selected. Analysis of our data reinforces the importance of identifying actual selection methods, as

45% of judges serving in 2008 in states with partisan or nonpartisan elections were initially appointed to their seats.

By determining the method through which judges actually reach the bench, we are able to contribute to the debate over which selection systems produce a more diverse judiciary. Table 2 (page 31) provides a breakdown of the minority and women judges serving on state courts in 2008 and the methods by which they initially attained their seats. The most common selection method for both minority and women members of state courts of last resort was merit selection, with 54.3% and 48.5%, respectively, having been chosen through a merit plan. On intermediate appellate courts, more minority judges attained their seats through merit selection (40.8%) than through any other method, but partisan elections placed slightly more women on these courts (29.3%) than did other selection processes.

For general-jurisdiction trial courts, a plurality of minority judges in our dataset (35.3%) were appointed by the governor without recommendations from a nominating commission, while more women reached the trial court bench via merit selection (30.2%) than through any other selection method. However, as these figures are based on a 10% random sample of trial court judges, we conducted tests to determine whether the differences across selection methods for trial court judges were statistically significant, and they were not.

Legal Qualifications and Judicial Diversity
Constitutional and statutory provisions define who is eligible to serve as a judge, and there is significant variation across,

and to a lesser extent within, states in these legal qualifications. The most common judicial qualifications relate to age, extent of legal experience, and residency, and we explore the relationship between these requirements and the racial and gender makeup of the bench. Table 3 (page 32) displays the percentages of minority, women, and all judges who served on courts with these requirements.

Some states have minimum age requirements for judicial eligibility ranging from 25 to 35 years of age. As shown in Table 3, the age qualification may have disadvantaged women in attaining high court seats.

While 34.7% of all judges served on courts of last resort in states with a minimum age requirement, only 28.2% of women judges served on such courts. An age qualification may have differentially affected minorities as well, though the disparities are small. Compared to all judges who served on state appellate courts with an age qualification,

a smaller percentage of minority judges served on courts of last resort (31.4% vs. 34.7%) but a larger percentage of minority judges (30.0% vs. 26.1%) served on intermediate appellate courts.

In all states, judges of appellate courts and major trial courts are required either explicitly or implicitly to have a law degree. Some states go further and require judges to have been licensed to practice law, to be a member of the state bar, or to have served as a judge on another court for a minimum number of years. According to our analysis, legal-experience qualifications benefitted minority attorneys. While 58.5% of high court judges nationwide served in states that require a minimum number of years of legal experience, 68.6% of minority high court judges served in such states. And

while 65.9% of general-jurisdiction trial court judges served on courts with such an experience requirement, 80.4% of minority trial court judges served on these courts.



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Judges may be selected statewide or from within a judicial circuit or district, and within a single state, the geographic basis for selection may vary both across and within levels of courts. Statewide selection appears to have enhanced prospects for women but limited opportunities for minorities. While 80.3% of judges of courts of last resort were selected on a statewide basis, a slightly higher percentage of women judges (83.5%) and a slightly lower percentage of minority judges (77.1%) were so selected.

Politics and Judicial Diversity

In addition to the legal requirements that dictate who may become a judge, the political environment at the time of appointment or election may influence the types of candidates who are likely to be selected. We examine whether governors and electorates of a particular

political party were more likely to select diverse judges.

Sixty-one percent of judges serving in 2008 were initially appointed to their seats by the governor, with or without input from a judicial nominating commission. Nationwide, Democratic governors appointed slightly higher percentages of minority (14.7%) and women (27.9%) judges than did Republican governors (11.0% and 23.6%, respectively). The largest discrepancies between Democratic and Republican governors are found for minorities on courts of last resort (17.4% vs. 8.8%) and women on intermediate appellate courts (31.2% vs. 23.3%).

Thirty-three percent of judges serving in 2008 were initially chosen in partisan or nonpartisan elections. We discovered some differences in the election of minority and women judges between states with Democratic-

majority and Republican-majority electorates. Higher percentages of women judges were selected for appellate courts in Democrat-dominated states than in Republican-dominated states (42.9% and 44.9% vs. 27.8% and 32.5%). The reverse is true for general-jurisdiction trial courts, but the differences are statistically insignificant. For minority judges, a higher percentage was elected to intermediate appellate courts in states with a Democratic majority than in those with a Republican majority (16.3% vs. 11.0%).

Enhancing Judicial Diversity

This study has provided some valuable insights into characteristics of judicial selection systems that may enhance the diversity of the bench. First, minorities and women fared very well in states that used merit selection. Approximately half of all minority and women judges

TABLE 1: Racial and Gender Diversity on State Courts

State	Minority Judges	Women Judges	State	Minority Judges	Women Judges	State	Minority Judges	Women Judges
Alabama	7.4%	12.3%	Louisiana	20.6%	20.2%	Ohio	3.4%	23.1%
Alaska	2.1%	16.7%	Maine	0.0%	20.8%	Oklahoma	6.9%	18.8%
Arizona	11.9%	26.9%	Maryland	18.3%	31.3%	Oregon	0.5%	24.7%
Arkansas	10.2%	13.9%	Massachusetts	10.5%	34.2%	Pennsylvania	8.1%	27.2%
California	10.6%	28.2%	Michigan	15.2%	17.2%	Rhode Island	7.4%	29.6%
Colorado	10.5%	26.8%	Minnesota	6.1%	26.2%	South Carolina	6.7%	13.3%
Connecticut	15.2%	27.9%	Mississippi	15.7%	15.7%	South Dakota	0.0%	20.5%
Delaware	6.9%	17.2%	Missouri	16.4%	10.2%	Tennessee	6.0%	18.5%
Florida	10.5%	33.5%	Montana	0.0%	22.0%	Texas	19.8%	29.8%
Georgia	12.3%	16.8%	Nebraska	1.5%	13.2%	Utah	9.8%	17.1%
Hawaii	65.1%	34.9%	Nevada	8.5%	32.4%	Vermont	0.0%	31.8%
Idaho	2.1%	14.6%	New Hampshire	0.0%	25.9%	Virginia	10.9%	9.7%
Illinois	15.2%	22.3%	New Jersey	14.3%	25.0%	Washington	3.2%	28.6%
Indiana	6.9%	15.7%	New Mexico	16.2%	17.2%	West Virginia	2.8%	5.6%
Iowa	3.8%	13.6%	New York	20.5%	20.0%	Wisconsin	4.9%	15.9%
Kansas	2.7%	8.2%	North Carolina	14.5%	16.2%	Wyoming	0.0%	19.2%
Kentucky	0.6%	27.5%	North Dakota	2.1%	21.3%			

Note: Data on minority judges is based on the ABA's *Directory of Minority Judges of the United States*, 4th ed. (2008). Data on women judges was compiled by AJS; data for appellate courts was collected in 2008 and for general-jurisdiction trial courts in 2006. For a breakdown by court in each state, see *Judicial Selection in the States: Diversity of the Bench*, at http://www.judicialselection.us/judicial_selection/bench_diversity/index.cfm?state=.

on courts of last resort in 2008, and at least one-fourth of minority and women judges on lower courts, reached the bench through a merit selection process.

The legal requirements that define the pool of eligible judicial candidates affected prospects for minorities and women as well. Minorities were much more likely to obtain positions on courts of last resort and trial courts in states that require a minimum number of years of legal experience, while women were less successful in attaining high court seats in states with a minimum age qualification. Selection on a statewide basis differentially impacted minorities and women who served on courts of last resort. More women judges than average were selected from a statewide pool of candidates, while more minority judges than the norm were chosen from a geographic division within the state.

Gubernatorial and electoral politics were also important determinants of judicial opportunities for minorities and women, with diverse candidates enjoying greater success in Democratic regimes. Democratic governors were more likely than Republican governors to appoint

minorities and women to the courts. Similarly, Democrat-dominated states showed a stronger tendency than did Republican-dominated states to elect women to appellate courts and minorities to intermediate courts of appeal.

These findings paint a fairly clear picture of the context in which racial and gender diversification of state high courts is most likely, and they provide guidance for state policymakers who wish to enhance judicial diversity.

FIGURE 1: Diversification of State Courts over Time

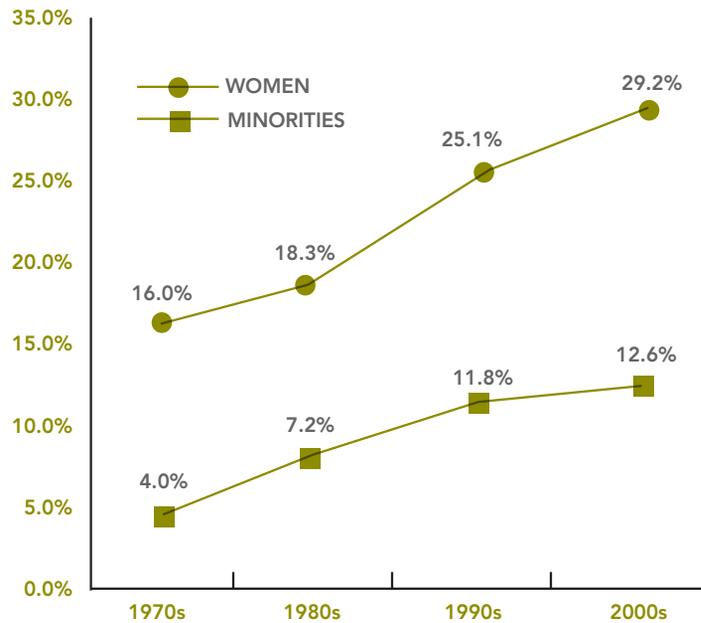


TABLE 2: Selection Methods and Diversity on State Courts

	Courts of Last Resort	Intermediate Appellate Courts	General-Jurisdiction Trial Courts	Total
Racial/Ethnic Minorities				
Merit Selection	54.3% (19)	40.8% (49)	25.5% (26)	36.6% (94)
Gubernatorial Appointment	31.4% (11)	22.5% (27)	35.3% (36)	28.8% (74)
Partisan Election	11.4% (4)	25.0% (30)	27.5% (28)	24.1% (62)
Nonpartisan Election	2.9% (1)	3.3% (4)	8.8% (9)	5.4% (14)
Legislative Appointment	—	0.8% (1)	2.0% (2)	1.2% (3)
Court Appointment	—	7.5% (9)	1.0% (1)	3.9% (10)
Total	10.3% (35)	12.6% (120)	11.1% (102)	11.6% (257)
Women				
Merit Selection	48.5% (50)	27.5% (77)	30.2% (60)	32.1% (187)
Gubernatorial Appointment	17.5% (18)	28.6% (80)	28.1% (56)	26.5% (154)
Partisan Election	19.4% (20)	29.3% (82)	24.1% (48)	25.8% (150)
Nonpartisan Election	10.7% (11)	6.1% (17)	12.1% (24)	8.9% (52)
Legislative Appointment	1.9% (2)	1.4% (4)	2.0% (4)	1.7% (10)
Court Appointment	1.9% (2)	7.1% (20)	3.5% (7)	5.0% (29)
Total	30.3% (103)	29.4% (280)	21.6% (199)	26.2% (582)

TABLE 3: Legal Qualifications and Diversity on State Courts

	Courts of Last Resort	Intermediate Appellate Courts	General-Jurisdiction Trial Courts
Minimum Age:			
Minorities	31.4% (11)	30.0% (36)	24.5% (25)
Women	28.2% (29)	25.7% (72)	20.6% (41)
Total	34.7% (118)	26.1% (248)	20.1% (185)
Minimum Years of Legal Experience:			
Minorities	68.6% (24)	75.0% (90)	80.4% (82)
Women	56.3% (58)	73.6% (206)	64.3% (128)
Total	58.5% (199)	74.8% (712)	65.9% (608)
Statewide Selection:			
Minorities	77.1% (27)	35.8% (43)	2.9% (3)
Women	83.5% (86)	34.6% (97)	7.0% (14)
Total	80.3% (273)	35.1% (334)	5.0% (46)

TABLE 4: Politics and Diversity on State Courts

	Courts of Last Resort	Intermediate Appellate Courts	General-Jurisdiction Trial Courts	Total
Racial/Ethnic Minorities				
Appointed by Democratic Governors	17.4% (20)	16.2% (40)	11.1% (21)	14.7% (81)
Appointed by Republican Governors	8.8% (10)	10.5% (36)	12.2% (41)	11.0% (87)
Women				
Appointed by Democratic Governors	31.3% (36)	31.2% (77)	21.7% (41)	27.9% (154)
Appointed by Republican Governors	28.3% (32)	23.3% (80)	22.3% (75)	23.6% (187)
Racial/Ethnic Minorities				
Elected in Majority-Democratic States	4.8% (1)	16.3% (8)	9.7% (9)	11.0% (18)
Elected in Majority-Republican States	5.1% (4)	11.0% (26)	10.8% (28)	10.1% (58)
Women				
Elected in Majority-Democratic States	42.9% (9)	44.9% (22)	18.3% (17)	29.4% (48)
Elected in Majority-Republican States	27.8% (22)	32.5% (77)	21.2% (55)	26.7% (154)

Minority and women judges may have been more successful in merit selection systems because it is possible to structure these systems to prioritize diversity. Several merit-plan states have legal provisions that call for those who select members of judicial nominating commissions to consider the diversity of the jurisdiction in making their selections, and encourage commission members to take diversity into account in considering potential nominees. These measures are likely to be effective, as research has

shown that more diverse nominating commissions attract more diverse applicants and select more diverse nominees. Governors can emphasize diversity in making their appointments as well.

Most of the legal qualifications we examined differentially affected minorities and women, so altering these requirements would be unproductive. However, it may be instructive to identify and compare the career paths that these judges followed to the bench. Perhaps these age, experience, and residency qualifica-

tions capture differences in the educational and professional backgrounds of minorities and women who aspire to judicial office.

The ideal environment for diversifying lower courts has not been as well defined as it has for courts of last resort. This question merits additional research to identify factors that might improve chances for minorities and women to serve on these courts, as well as to ascertain the reasons we see these differences across levels of courts. ■