

THE STATE OF OUR COURTS

PART 1 OF 3: DIVERSITY ON THE BENCH

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Introduction

While much attention is often paid to the makeup of the Supreme Court and the justices' impact on our country, the vast majority of federal cases have their final decisions issued by the U.S. District Courts and U.S. Courts of Appeals. The judges who sit on these courts have a huge impact on the lives of the everyday Americans who turn to the federal judiciary for justice.

The below, the first in a series of three, is designed to help illuminate trends concerning the makeup of the lower courts by focusing on the powerful Courts of Appeals, which issue decisions that set policy and law for broad swaths of the country.

Current Appointments by Professional Diversity

Traditionally, the model of the "typical" judge has been a man—almost always white—who came from private practice at a corporate law-focused law firm or from a career as a federal prosecutor. Only very recently, and overwhelmingly under the Biden administration, has this trend begun to change, bringing lawyers with experience in public interest work into the federal judiciary.

These improvements are critical. By looking outside of large, corporate-focused law firms to public defense attorneys and civil rights litigators, lawmakers diversify the type of expertise that shapes American law by incorporating the perspectives of judges who have experience representing ordinary Americans and their rights onto the bench.

Of the current, active judges on the 13 circuits that make up the Courts of Appeals, approximately 8 percent have experience in public defense work.

President Biden appointed the vast majority of these individuals to the appellate courts, meaning even this relatively small percent represents a very recent sea change for professional diversity on the bench. President Obama appointed the rest of the individuals who worked as public defenders.

In addition, there are a small number of appellate judges who worked in non-profit, civil rights-focused law. As with those with public defense experience, the majority of these individuals were appointed by President Biden. The judges who fall into this category worked at institutions that include the American Civil Liberties Union, the Brennan Center for Justice, the Center for Reproductive Rights, and NAACP Legal Defense and Educational Fund.

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Current Appointments by Gender and Racial Diversity

The public deserves a judiciary that reflects the diversity of American society. A diverse judiciary has long been recognized as improving both judicial decision-making and public trust in the courts.

To summarize: Approximately 40 percent of active circuit court judges are women and a third of circuit court judges are people of color. Women of color only make up slightly over 15 percent of the bench.

In regard to trends in diversity overall, Democratic presidents nominated the vast majority of women and people of color who currently sit on the bench. For example, almost 70 percent of women, over 80 percent of people of color, and all but three of the women of color were appointed by Democrats.

This emphasis on diversity has been accelerated in recent years. There would be far fewer women serving as circuit court judges, for example, if Biden hadn't prioritized selecting women as over 70 percent of his nominees. Even then, however, significant work awaits in order to ensure the number of women on the bench reflects women's share of the population as a whole.

Conclusion

Despite the dramatic improvements to diversity on the bench that has been realized in recent years, in particular due to President Biden's appointments, much work remains. It will be critical for current and future presidents and senators to continue to prioritize working to ensure a wide range of expertise and life experience exists on the bench throughout the country in order to deliver a judiciary that truly serves the American people.

All data, unless otherwise noted, is pulled from the Federal Judicial Center, Biographical Directory of Article III Federal Judges, 1789-present, available at <https://www.fjc.gov/history/judges/search/advanced-search>.