

# American Bar Association Young Lawyers Division The Young Lawyer

## Diversity: A Look at the Federal Judiciary

*By Shawna J. Wilson*

The federal judiciary consists of judges from Article III courts (the U.S. Supreme Court, courts of appeals, district courts, and bankruptcy courts) and Article I courts (U.S. Court of Military Appeals, U.S. Tax Court, and U.S. Court of Veterans' Appeals). With the recent confirmation of Justice Sonia Sotomayor to the U.S. Supreme Court has come renewed discussion of diversity on the federal bench.

According to the Federal Judicial Center's History Office, only one-quarter of Article III judges are female, and only 1 percent identify themselves as Asian Americans. When comparing these percentages to the U.S. Census Bureau projections of the U.S. population for 2008, the federal judiciary appears to not accurately reflect American society as women constitute 50 percent of the U.S. population and Asian Americans constitute almost 5 percent of the population.

But race is only one component of diversity. The range of professional backgrounds of federal judges also is limited. According to a recent report by Russell Wheeler of The Brookings Institution, only 36 percent of President George W. Bush's district court judge appointees were from private practice, and only 13 percent were from the public sector (e.g., government attorneys and public defenders). Law professors have not fared very well in the federal appointment process, except during the Carter and Reagan administrations where they made up 14 percent and 13 percent of the appointees, respectively.

There are several factors that contribute to the current composition of the federal judiciary. One of the biggest factors is life tenure, as new judges are only appointed when current judges take senior status, resign, retire, or die. Lifetime appointment of judges has slowed diversifying the federal judiciary, but it is not an insurmountable obstacle. For example, President George W. Bush nominated seventy-one women who were confirmed to the federal judiciary, and President Bill Clinton nominated 106 women who were confirmed. These numbers dwarf the numbers attributed to the previous two presidents: collectively, President George H. W. Bush and President Ronald Reagan nominated sixty-six women who were confirmed to the federal judiciary.

Another factor that impacts the composition of the federal judiciary is the selection process of judges. While the White House devotes significant time and resources to selecting a Supreme Court justice, it looks for outside help in nominating individuals to district courts and courts of appeals. The selection process varies throughout the United States. A significant number of states use judicial nominating commissions, and some states rely solely on U.S. senators to compile a list of potential candidates to forward to the White House. The judicial selection process affects diversity because the process of judicial selection is not always clear. For example, there can be varied differences in qualities or qualifications the commissions look for in judges, state qualifications, and how applications are assessed by commissioners.

Many commentators believe that diversity in the federal judiciary is essential because it currently does not reflect our nation's demographics. Others voice strong concern about the appropriateness of looking at the race or gender of potential federal judges because they believe that the only real test for fitness to serve on the bench is knowledge of the law and ability to fairly interpret it. There is a view that is broader: The core value of our American legal system is "truth and justice for all." What can you do as a young lawyer to help make the federal judiciary more diverse? The answer is simple: become aware and become involved.

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- Find out if your state uses federal judicial nominating commissions, and, if so, learn how you can become involved in the process;
- Write to your U.S. senator if you support an individual who is nominated to a district court in your state or a court of appeals in your state's circuit;
- Attend a circuit judicial conference in your region, which is a meeting of prosecutors, attorneys, and judges to discuss pressing legal issues; and
- Continue to be involved in professional associations.

### **Next Steps**

ABA Commission on Racial and Ethnic Diversity in the Profession's *2009 Minority Counsel Program*—Oct. 28–30 in San Francisco. [www.abanet.org/minorities/mcp/](http://www.abanet.org/minorities/mcp/)

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