

DIVERSIFYING THE FEDERAL BENCH: PRESIDENTIAL PATTERNS*

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In this study of all federal district court appointments from 1977 through 2004, we examine a variety of possible influences on the selection of women and minorities to the federal bench. We find that women and minorities are more likely to be appointed to relatively large courts and to courts that have relatively few female or minority judges. The pool of eligible candidates also has a substantial and significant influence on the likelihood that a minority judge will be appointed. We find that political factors such as state ideology or the partisan composition of the U.S Senate delegation from the state have little influence. We conclude that presidents take race and gender into consideration when making judicial appointments and are particularly interested in diversifying relatively homogeneous courts; moreover, large courts may offer an opportunity to diversify with relatively few trade-offs in representation of other groups or interests.

The role of diversity in the federal judicial selection process has been debated during each administration since that of President Carter. In his campaign, he pledged not only to recruit judicial candidates based on merit but also to diversify what was at the time an overwhelmingly white and male federal bench (Goldman, 1997). During the administration of George H. W. Bush, Thurgood Marshall acknowledged that race would almost certainly be a factor in the choice of his successor (Wines, 1991). During the 1992 presidential debates, Bill Clinton proclaimed his commitment to diversity and said that his cabinet and other appointments would “look like America.” And certainly we have seen lively speculation about George W. Bush’s potential Supreme Court appointments, focusing on the possible nominations of the first Latino justice in the person of Alberto Gonzales or the first black female justice in the person of Janice Brown.¹

The notion that diversity is politically and substantively important is not new; historically, seats had been reserved for particular regions or religions (Baum, 1998; Scigliano, 1971), revealing that judicial appointments serve the political and policy

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¹ The question of the importance of diversity has received much attention from legal scholars. For instance, writing of a feminist jurisprudence, Sherry (1986:58) argues that men and women have distinctly different worldviews: “While women emphasize connection, subjectivity, and responsibility, men emphasize autonomy, objectivity, and rights.” Ifill (2000) argues that increased racial diversity on the bench would not only provide role models and increase judicial legitimacy, but would also improve decision making by introducing traditionally excluded perspectives.

goals of presidents. Yet despite the attention paid to the importance of racial, ethnic, and gender diversity, the numbers of women and minority judges continue to be much lower than the number of white male judges. To understand more fully why these numbers remain low, we need a systematic assessment of the role diversity plays in judicial selection. We need to learn, for example, whether the lower numbers of women or minorities on the bench reflect the relatively small pools of eligible candidates and whether there are particular institutional and political factors that make it more likely that women and minorities will be nominated to the bench.

The most thorough research on how gender and race matter in the selection process has been carried out at the state supreme court level. That research reveals that existing gender diversity significantly affects the filling of vacancies on state supreme courts (Bratton and Spill, 2002) and that the effect is exacerbated by merit selection systems, although Hurwitz and Lanier (2003) found that the differences in selection systems are abating as time progresses. Less is known, however, about the role of gender and race in federal judicial selection, and there is very little empirical research examining the selection of Latino judges. To date, most of the research regarding gender and racial diversity on the federal bench focuses on judges' decision making once on the bench and has produced mixed findings (e.g., Davis et al., 1993; Gottschall, 1983; Walker and Barrow, 1985).

We add to this literature by focusing on the effect of existing diversity on the selection of women and minority judges rather than on their behavior once on the bench. While it is critical to understand their potential differences in judicial behavior, it is also important to comprehend the factors that influence the likelihood that women and minorities attain these positions of power. Included in this study are political and institutional factors, many of which are not unique to the federal judiciary. This allows us to anticipate that our study will provide findings regarding the role of diversity in judicial selection under any type of appointment system. For example, the federal selection system is similar to both gubernatorial selection and merit selection systems in the key respect that the selectors are well aware of the current composition of the bench. Inclusion of these factors should also allow application of our findings to political appointments of women and minorities more generally.

In the present article, a study of all federal district court appointments from 1977 through 2004, we focus on the factors that influence the selection of women and minorities to the district courts. We include African-Americans and Latinos in this study, but exclude Asian-Americans and Native Americans because there are too few for any reliable analyses or conclusions. We examine the effect of the pool of available candidates on the selection of women and minority judges, paying particular attention to differences in the size of the selection pool across groups. That the pool of available female candidates has generally been much larger than the pools of available African-American or Latino candidates has made it more likely that gender diversity has taken place at a more rapid pace than racial or ethnic diversity. Diversifying on the basis of gender is also easier to accomplish because the pool of

female candidates is likely to be more ideologically diverse than the pool of African-American or Latino candidates.²

We also examine the effect of institutional factors, such as the number of seats on a court and whether the position to be filled is newly created, and political factors, such as the ideology of the state and the partisan makeup of a state's U.S. Senate delegation. Recognizing that patterns of diversification may be unique to particular administrations, we also examine diversification within each presidential administration, beginning with President Carter and extending through the first four years of the administration of George W. Bush. To see whether diversification is most likely to take place on previously all-male and all-white courts, we look at whether presidential administrations take into account existing diversity when making judicial appointments.

Studying appointments to the district courts offers both substantive and practical advantages. First, because these courts serve one state or a portion of one state, they provide us with a good opportunity to study the effect of state-level factors on appointment to the federal bench. Such factors as state ideology have been shown to influence selection to the state high court (e.g., Bratton and Spill, 2002), and it is likely that those factors also influence selection to the federal district court. Moreover, while the senatorial delegation is certainly involved in appointments to the courts of appeals, home-state senators play a larger role when filling vacancies on the district courts. Therefore, by focusing on the district courts rather than the courts of appeal, we can more effectively examine the effect of the home-state senatorial delegation on the appointment of women and minorities to the federal bench. Finally, district courts account for the largest number of judicial appointments in the federal system, so there are simply more courts, judges, and cases for study.

A BASIC PICTURE OF DIVERSITY

Much of the debate regarding diversity has focused on the possibility that female and minority judges come from nontraditional backgrounds and bring different perspectives to the bench (Martin, 1990). Moreover, it is possible that in order to recruit female and minority judges to the bench, administrations must cast a much broader net than has traditionally been common. For instance, differences have been found between male and female state supreme court justices with respect to age, localism, and career patterns (Martin and Pyle, 2002). These factors are prominent in the literature (Goldman, 1966, 1975, 1997; Tate, 1981; and Tate and Handberg, 1991).³

² Demographic profiles of women, Latinos, and African-Americans show that Latinos and African-Americans are generally affiliated with the Democratic Party (see Squire et al., 2004:81-82), while women are more diverse in their party affiliation. Data comprising all state supreme court justices appointed or elected to the bench from 1965 to 2001 reveal the same pattern for women and African-Americans.

³ With the exception of Goldman, 1997, these studies examine the effects of background characteristics on judicial decision-making.

We consider it logical that presidents would consider the same characteristics as they try to pick judges whose votes extend a presidential legacy.

We begin by investigating the presence of the background characteristics among federal district judges. We first present descriptive information regarding the judges' background, including age, type of prior experience, and graduation from an elite law school.⁴ We obtained our data from the Federal Judicial Center, which provides information on all Article III judicial appointments. We report the percentage of judges appointed by each president who possess the various background characteristics of interest (see Tables 1A through 1F), and we then move beyond descriptive analyses to investigate further what factors were influential in the selection of women and minorities to the bench under Presidents Carter through George W. Bush.⁵

On some of these elements, such as age, prosecutorial or judicial experience, and education, differences across groups are evident. The differences vary substantially in size and direction across administrations. Generally, female, African-American, and Hispanic judges are somewhat younger than their white or male counterparts. In terms of experience, female judges are at least as likely, and usually more likely, than male judges to have prior judicial experience. In two administrations, those of Carter and George H. W. Bush, women are substantially less likely to have prosecutorial experience; however, in the other administrations, the percentage of women appointed to the bench with prosecutorial experience is roughly equal to the percentage of men with such experience.

In general, Hispanic judges were less likely to have prosecutorial experience, although the findings vary substantially across administrations. In the Reagan, Clinton, and George W. Bush administrations, Hispanic judges were markedly less likely to have prosecutorial experience; in the George H. W. Bush administration, the opposite was true. African-American judges are generally at least as likely—and often more likely—to have both prior judicial *and* prosecutorial experience, and Hispanic judges were more likely to have judicial experience.

The sharpest and most consistent differences are seen in the percentage of appointees with some experience in legal aid or civil-rights/liberties institutions. Female judges, Hispanic judges, and, in particular, African-American judges are much more likely to have such experience. These differences are intriguing, but without more systematic analyses, we cannot be sure how influential background characteris-

⁴ We use Cynthia Cooper's (1990) ranking. Included are University of California at Berkeley, University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, University of Michigan, New York University, University of Pennsylvania, Stanford University, University of Texas, University of California at Los Angeles, University of Virginia, and Yale University.

⁵ The unit of analysis for the descriptive statistics is the judge; therefore, judges who were appointed by one president, but then later assigned to a new court or a newly renamed court during a future administration, were not included under the second president. Judges who were assigned to multiple courts (floaters) were counted only once. In the logistic regression analyses, however, the unit of analysis was actually the assignment. Because judges were sometimes assigned to multiple courts, which could vary in terms of size and existing diversity, all assignments to particular courts were included as separate cases.

tics are on the overall selection process. These differences do suggest that presidents cast a somewhat wider net when appointing female and minority judges to the federal bench.

FACTORS INFLUENCING DIVERSITY ON THE COURTS

What factors are likely to influence the selection of women and racial and ethnic minorities to the federal bench? We examine several possible factors: whether a new seat is being filled, the size of the court, the degree of current diversity on the court, the pool of candidates, and political factors. We begin with certain expectations. First, we anticipate that women and minorities are more likely to be appointed to larger courts or to new seats. Additionally, we anticipate greater diversity in selection when courts are housed in liberal states, when the Senate delegation is more Democratic or liberal, and when one member of the Senate delegation is female. We expect that the presence of a woman (African-American, Hispanic) on the bench will reduce the likelihood that another woman (African-American, Hispanic) will be selected (see Table 2).

In our first set of analyses, we are interested in what leads to appointment of a female judge; in the second set, of an African-American judge; and in our third set, of a Hispanic judge. These analyses provide us with information about the relative effects of each individual factor thought to influence the selection of a judge to the district court given the presence of the other potential influences upon that selection.

New Seats. Presidents generally face competing goals in making appointment choices. They need to take into account numerous elements, including the balance of demographic characteristics of a court to which a nomination is made. New seats likely offer a particular opportunity to presidents who are interested in diversification, without reducing the numbers of other groups. Indeed, Carter achieved a more diverse judiciary in part by filling 117 new trial court judgeships created by Congress in 1978 (Walker and Barrow, 1985). Similarly, prior research indicates that Clinton used new seats as a tool to diversify (Spill and Bratton, 2001). When this type of appointment is available, presidents are more likely to appoint women or minorities.

Size of Court. The size of the court to which an appointment is to be made may have a similar effect. In small courts, vacancies may be infrequent, making it more difficult for a president to satisfy competing goals and interests when appointing to a rare vacancy, because maintaining or increasing diversity is only one such interest. In large courts, on the other hand, vacancies are fairly frequent, and it may be easier to satisfy the goal of increasing diversity without sacrificing other interests such as patronage (Alozie, 1996; Bratton and Spill, 2002; Hurwitz and Lanier, 2003). We thus expect that presidents are more likely to diversify larger courts than smaller ones.

Existing Diversity. Existing diversity on the state high courts has influenced the likelihood that a woman will be selected to that court (Bratton and Spill, 2002); women are much more likely to be selected to otherwise all-male courts than to courts with some gender diversity, however marginal. In the present study, we wish

Table 1 A
Average Age of Judges (at Appointment)

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	46 (29)	51 (174)	48 (28)	50 (175)	48 (14)	50 (189)	50 (203)
Reagan	47 (24)	49 (266)	42 (5)	49 (285)	49 (13)	49 (277)	49 (290)
George H. W. Bush	43 (29)	50 (119)	45 (10)	49 (138)	41 (5)	49 (143)	49 (148)
Clinton	48 (88)	51 (217)	48 (53)	50 (252)	47 (18)	50 (287)	50 (305)
George W. Bush	48 (35)	51 (133)	51 (11)	51 (157)	48 (18)	51 (150)	51 (168)
	47 (205)	50 (909)	48 (108)	50 (1,006)	47 (69)	50 (1,045)	

The total number of judges for each category appointed by each president is listed in parentheses.

Table 1 B
Percentage of Judges with Prior Prosecutorial (Local, State, Federal) Experience

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	17 (29)	37 (174)	32 (28)	34 (175)	36 (14)	34 (189)	34 (203)
Reagan	50 (24)	42 (266)	100 (5)	42 (285)	23 (13)	44 (277)	43 (290)
George H. W. Bush	29 (29)	39 (119)	60 (10)	36 (138)	60 (5)	37 (143)	38 (148)
Clinton	47 (88)	43 (217)	57 (53)	42 (252)	33 (18)	45 (287)	44 (305)
George W. Bush	46 (35)	46 (133)	91 (11)	43 (157)	50 (18)	45 (150)	46 (168)
Total	40 (205)	42 (909)	56 (108)	40 (1,006)	38 (69)	42 (1,045)	

The total number of judges for each category appointed by each president is listed in parentheses.

Table 1 C
Percentage of Judges with Prior Judicial (Local, State, Federal) Experience

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	72 (29)	48 (174)	68 (28)	49 (175)	71 (14)	50 (189)	51 (203)
Reagan	50 (24)	45 (266)	40 (5)	46 (285)	46 (13)	46 (277)	46 (290)
George H.W. Bush	52 (29)	48 (119)	60 (10)	48 (138)	60 (5)	48 (143)	49 (148)
Clinton	58 (88)	49 (217)	64 (53)	49 (252)	50 (18)	52 (287)	52 (305)
George W. Bush	71 (35)	51 (133)	82 (11)	54 (157)	83 (18)	52 (150)	55 (168)
Total	60 (205)	48 (909)	65 (108)	49 (1,006)	64 (69)	49 (1,045)	

The total number of judges for each category appointed by each president is listed in parentheses.

Federal judicial experience consists of either service as U.S. bankruptcy judge or federal magistrate.

Table 1 D
**Percentage of Judges with Experience in Legal Aid Organizations,
 or Civil-Rights/Liberties Organizations**

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	10 (29)	3 (174)	14 (28)	3 (175)	0 (14)	5 (189)	4 (203)
Reagan	4 (24)	5 (266)	0 (5)	5 (285)	15 (13)	5 (277)	5 (290)
George H. W. Bush	14 (29)	3 (119)	10 (10)	5 (138)	20 (5)	5 (143)	5 (148)
Clinton	19 (88)	20 (217)	40 (53)	16 (252)	33 (18)	19 (287)	20 (305)
George W. Bush	11 (35)	5 (133)	27 (11)	5 (157)	11 (18)	6 (150)	7 (168)
Total	14 (205)	8 (909)	27 (109)	7 (1,003)	16 (69)	9 (1,045)	

The total number of judges for each category appointed by each president is listed in parentheses.

Table 1 E
Percentage of Judges from Top-15 Law Schools

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	38 (29)	35 (174)	35 (28)	35 (175)	21 (14)	37 (189)	35 (203)
Reagan	33 (24)	33 (266)	40 (5)	33 (285)	31 (13)	33 (277)	33 (290)
George H. W. Bush	34 (29)	34 (119)	30 (10)	35 (138)	40 (5)	34 (143)	34 (148)
Clinton	38 (88)	39 (217)	32 (53)	40 (252)	50 (18)	38 (287)	39 (305)
George W. Bush	34 (35)	27 (133)	18 (11)	29 (157)	61 (18)	25 (150)	29 (168)
Total	36 (205)	34 (909)	32 (108)	35 (1,006)	42 (69)	34 (1,045)	

The total number of judges for each category appointed by each president is listed in parentheses.

Table 1F
Percentage of Nontraditional Judges

	Female Judges	Male Judges	Black Judges	Non-Black Judges	Asian-American Judges	Hispanic Judges	Non-Hispanic Judges	All Judges
Carter	14 (29)	86 (174)	14 (28)	85 (174)	1 (2)	7 (14)	93 (188)	203
Reagan	8 (24)	92 (245)	2 (6)	97 (284)	<1 (2)	4 (13)	95.5 (277)	290
George H.W. Bush	19.5 (29)	80.5 (103)	7 (0)	93 (138)	0 (0)	4 (6)	96 (142)	148
Clinton	29 (88)	71 (141)	17 (53)	92 (252)	1 (4)	6 (18)	94 (287)	305
George W. Bush	21 (35)	79 (133)	7 (11)	93 (157)	<1 (1)	7 (18)	93 (150)	168

The total number of judges for each category appointed by each president is listed in parentheses.

Table 2
Hypothesized Effect of Each Variable on the
Likelihood of Selecting a Nontraditional Judge

Variable	Hypothesized Effect
Number of seats on court	Positive
New seat	Positive
Number of women (African-American/ Hispanic) currently on court	Negative
% of judges that are female (African- American/Hispanic) in state	Positive
Citizen ideology (liberalism)	Positive
At least one U.S. senator is female (only included in first model)	Positive
Partisanship of Senate delegation: # of Democrats	Positive for Democratic presidents; neutral for Republican presidents
Liberal Senate delegation: DW nominate	Positive

to see whether once there is more than a token number of women or minorities on a federal district court, selection becomes more of a sex-blind and color-blind process. To account for this phenomenon, we classify courts with vacancies by the number of women, African-Americans, and Hispanics in active service on that bench.

Pool of Candidates. Discrimination takes place not only in the selection of government officials, but also at an earlier stage in which individuals can gain the resources and knowledge to enter political positions (Welch, 1978). Prior research regarding the influence of the size of the pool of female judges or lawyers on the selection of women to state supreme courts has produced mixed results. Alozie (1996) and Bratton and Spill (2002) found little effect of the selection pool on the likelihood that a woman would be selected to serve on the state supreme court. Hurwitz and Lanier (2003), however, found that the percentage of female lawyers was generally significantly associated with the number of women serving on state appellate courts. Little research exists regarding the effect of the size of the pool of minority judges or lawyers on the selection of a minority judge. The pool of candidates may be more important, however, with respect to the selection of minority candidates to the courts, in part because in some states that pool of candidates is extremely small. We use a measure of the number of women, African-American, and Hispanic lawyers in each state, drawn from the decennial census closest to the year of appointment, as a proxy for the pool of qualified female and minority candidates and anticipate that the larger the pool of legal talent, the greater the likelihood that a woman (or minority) will be selected.

State Liberalism. State liberalism has been shown to influence the selection of women to state judiciaries (Bratton and Spill, 2002). The connection to the federal judiciary is less apparent, but it is likely that in states with more-liberal populations, senators forwarding suggestions for nominations are more likely to advocate diversity in judicial selections. We therefore take into account the liberalism of a state's mass public; to gauge it, we employ measures of citizen ideology developed by Berry et al. (1998) and used by other scholars (see Brace, Langer, and Hall, 2000; Bratton and Spill, 2002; Hurwitz and Lanier, 2003). We expect that presidents are more likely to diversify benches in more liberal states. Of course, many states are divided into multiple judicial districts and this arguably raises difficulties when state-level measures are used; however, as discussed below, these measures do distinguish between states and allow an initial test of the effects of such characteristics.

Composition of Senate Delegation. It is also possible that senators who are liberal or Democrats are more likely to give higher priority to diversity, as Democrats have been traditionally associated with more aggressively pursuing diversity in a variety of contexts. The norm of senatorial courtesy provides all senators with some influence over nominations regardless of party affiliation. Additionally, Democratic "home-state" senators during Democratic administrations will have a more pronounced influence on the selection of judges because the goal of diversity may have the support of both the administration and the delegation, while during Republican administrations, the influence of Democratic delegations will be significantly weakened. We take into account the partisanship of the Senate delegation—the number of Democrats in the delegation at the time this judicial appointment is made—and perform separate analyses across presidents, so that we can examine whether Democratic home-state senators are more influential under Democratic presidents. Because more liberal delegations may push harder for diversity in nominations to courts within their state, we also include a control for the ideology of the Senate delegation.⁶ Finally, we control for whether the U.S. Senate delegation from that state includes a female senator, because we expect that a female senator would be likely to prod the administration to mirror the diversity in the Senate delegation when making judicial appointments to her state.⁷

⁶ We use DW-nominate scores (see Poole and Rosenthal, 2000) to measure the ideology of the delegation. These scores are the dynamic version of the w-nominate scores. Briefly, these scores compute ideology scores for members of the House and Senate that are comparable across Congresses with some constraints (see <http://voteview.uh.edu/page2a.htm>). These scores are more nuanced than a simple notation of the partisanship of each senator, as they take into account voting and the major cleavages in each party system to produce the final score for each session. We average scores across all senators who served in a particular session, and the score for each session is used for each year in a session.

⁷ To control for the political success of women and African-Americans in attaining office, we included a control variable, which measured the percentage of the state house which was female (or African-American). These control variables did not significantly increase the likelihood that a woman or African-American would be selected to the federal bench in that state, so they were eliminated from the final analyses.

RESULTS

What do our analyses reveal? Overall, it is clear that large courts tend to be more diverse⁸ (see Table 3). The size of the court plays the largest role in the gains made by women and African-Americans across administrations; the effect is strong, but not as central, for Hispanics.

This suggests that it is politically easier to appoint a woman, an African-American, or a Hispanic to a single seat on a larger court. This may be because the proportion of women and minorities stays below a certain threshold or because larger courts are more likely to have other vacancies that can be used to satisfy other political goals. Prior anecdotal evidence strongly suggested that new seats were vehicles for Carter's diversification of the bench (Goldman, 1997), and our results suggest that new seats are sometimes associated with increased diversity, but the magnitude of the relationship is not statistically significant.

Existing diversity, measured as the number of women (or African-Americans) currently serving on that court when the vacancy was filled, also has a fairly consistent and significant effect for women and African-Americans. In the Carter and Clinton administrations, the likelihood of selecting a woman is, as expected, negatively and significantly associated with the number of women already serving on the court. (In other analyses not presented here, similar findings result when we treat existing diversity as present or not, rather than as the number of non-traditional judges on the court.) Existing gender diversity is significantly and negatively associated with the likelihood that a female judge would be appointed in the Clinton and Bush administrations; existing racial diversity is significantly and negatively associated with the likelihood that an African-American judge would be appointed in the Carter and Clinton administrations.

Similarly, existing racial diversity is significantly and negatively related to the likelihood of selection of an African-American judge in the Carter and Clinton administrations. In other words, women (or African-Americans) are generally more likely to be appointed to all-male (or all-white) courts. These findings are similar to our findings regarding state supreme court seats (Bratton and Spill, 2002). It seems that political pressure on both presidents and governors makes them particularly likely to take gender and race into consideration in making judicial appointments if a particular court lacks diversity.

The existing pool of African-American and Hispanic lawyers is positively related to the likelihood of selecting a black or Hispanic judge, but the pool of female candidates is inconsequential for the selection of women. In the Carter and Clinton administrations, the size of the available pool significantly contributed to the likelihood of an African-American obtaining a seat on the bench. Similarly, the existing pool of Hispanic judges is often a powerful predictor of the likelihood that a Hispanic

⁸ Analyses were performed using logistic regression. The results and discussion of the proper use of that method are available from the authors.

Table 3
Influences on Diversity in Federal Courts

	Women	African-Americans	Hispanics
Number of seats on court	Carter Reagan George H. W. Bush Clinton <i>George W. Bush</i>	Carter Reagan <i>George H. W. Bush</i> Clinton George W. Bush	<i>Carter</i> <i>Reagan</i> George H. W. Bush Clinton <i>George W. Bush</i>
New seat	<i>Carter</i>	<i>Reagan</i> <i>Clinton</i>	<i>Carter</i> <i>Reagan</i> <i>Clinton</i> <i>George W. Bush</i>
Number of women (African-Americans/Hispanics) currently on court	Carter <i>Reagan</i> <i>George H. W. Bush</i> Clinton <i>George W. Bush</i>	Carter <i>Reagan</i> <i>George H. W. Bush</i> Clinton George W. Bush	<i>Carter</i> <i>George H. W. Bush</i>
% of lawyers that are female (African-American/Hispanic) in state		Carter Reagan <i>George H. W. Bush</i> <i>Clinton</i> <i>George W. Bush</i>	Carter <i>Reagan</i> George H. W. Bush Clinton George W. Bush
Citizen ideology (liberalism) ¹	Carter <i>Reagan</i> <i>George H.W. Bush</i>	<i>Carter</i> <i>George H.W. Bush</i>	Carter <i>Reagan</i>
At least one U.S. senator is female ²	Reagan <i>George H. W. Bush</i> <i>Clinton</i>	Not included	Not included
DW nominate: Conservatism	<i>Reagan</i>	<i>Carter</i> <i>Reagan</i> <i>Clinton</i> George W. Bush	
Partisanship of Senate delegation: # of Democrats	<i>Carter</i> <i>Reagan</i> <i>George H. W. Bush</i> <i>Clinton</i> <i>George W. Bush</i>	<i>Carter</i> <i>George H.W. Bush</i> <i>George W. Bush</i>	<i>Carter</i> <i>Reagan</i> <i>George H. W. Bush</i> <i>George W. Bush</i>

Bold: Significant at the .05 level, one-tailed test, in expected direction

Italics: In expected direction, but not significant at the .05 level

The complete results from the maximum likelihood estimation are available from the authors.

¹ Not available for Clinton and George W. Bush administrations.

² Not included for Carter administration; not enough variance (too few appointments made in states with at least one female senator).

judge will be selected; the effect was statistically significant for the Carter, George H. W. Bush, Clinton, and George W. Bush administrations. This suggests that the existing pool of candidates may be most likely to have an effect on selection when that pool is very small.

When we performed the analysis for states with only one district and pooled appointments from all administrations, the results are quite consistent with the foregoing results. There are two significant effects across the three analyses. First, for each group, having a member of that group already on the court depresses the likelihood that a member of that group will be appointed to an existing vacancy. Second, women and minority judges are more likely to be appointed to vacancies on larger courts. The existing pool of lawyers in the state does not make a difference in the likelihood that a woman will be selected to the district court but does strongly influence the likelihood that an African-American or Hispanic judge will be selected.

Political factors appear to have relatively weak effects. During the Reagan administration, women are more likely to be appointed in states that have a female U.S. senator than in those with two male senators. However, liberal senatorial delegations do not generally increase the likelihood that a woman, African-American, or Hispanic judge will be selected. Female and minority judges appear to be more likely to be appointed to the district court in states with Democratic U.S. Senate delegations, but the magnitude of these effects is so consistently small across both Republican and Democratic administrations that no conclusions can be drawn. Of course, home-state senators may prioritize a variety of goals other than diversity for each vacancy; moreover, senators that value diversity may exert influence even if they are not from the home state. Similarly, citizen ideology within each state has little effect; citizen ideology does not have a significant effect on the likelihood of appointing a female, African-American, or Hispanic judge. Thus, we see little overall systematic influence of our identified political factors.

CONCLUSIONS

Our first conclusion from these findings is that the most important factors that predict the likelihood of appointment of a female or minority judge to a court vacancy are the size of the court and the extent of diversity on that court. The size-of-court factor is particularly interesting. The significant effect of the number of seats on the court does not simply capture the higher turnover that is associated with large courts; the results suggest instead that it is easier to diversify large courts in part perhaps because the trade-offs with representation of other groups are not as substantial as they are on smaller courts. Put simply, large courts offer the opportunity to diversify without substantially reducing the representation of other groups or interests on those courts.

The second important factor, existing diversity on the court, appears to have a consistently negative effect on the likelihood of appointing African-Americans and women to the federal district courts. Presidential administrations appear to consider

the existing diversity within an institution when making appointments and show a particular interest in diversifying otherwise homogeneous courts. Once a modicum of female or racial diversity is achieved, any interest in diversifying wanes.

One clearly powerful influence on the likelihood that a minority judge will be appointed is the size of the pool of those eligible. This may be particularly important with respect to the appointment of Hispanic judges; indeed, the size of the eligibility pool emerged as the single most important factor in the appointment of Hispanic judges. According to the 2000 census, only 4.5 percent of the nation's judges and somewhat over 3 percent of the nation's lawyers were Hispanic. By comparison, African-Americans made up almost 9 percent of the nation's judges and almost 4 percent of the nation's lawyers. This is not surprising, given that individuals embarking on judicial careers today likely graduated from law school in the 1970s and 1980s when relatively few African-Americans and even fewer Hispanics were enrolled there. For racial and ethnic minorities—and for Hispanics in particular—one of the keys to increasing representation on the court is increasing representation in law schools.

As the number of Hispanic lawyers has been increasing throughout the nation since Carter's time, we expect to see the numbers of Hispanics on the bench increase as well. This trend may be further accelerated by presidents using their appointment power to appeal to this growing constituency. For example, George W. Bush appointed roughly the same number of Latino judges in his first four years as Bill Clinton did across both of his four-year terms. Our study suggests that initially, given that the absence of existing diversity leads to greater diversification, Hispanics will be more likely to obtain appointments to courts currently without Hispanic representation. This will be particularly likely in larger courts, located where the Hispanic population is concentrated. Afterward, it is likely that the effect of existing diversity found for women and African-American appointees will manifest for Hispanics, making it less likely that a Hispanic will be appointed to a court that has at least one other Hispanic already serving. This may be particularly true for small courts. However, if the study of the appointment of women to state high courts is any guide (Bratton and Spill, 2002), the number of Hispanics on the federal bench should steadily increase.

It is clear from the present study that the federal system of appointments works like the merit and appointment processes at the state level. We find significant differences between nontraditional judges and their counterparts in terms of many background characteristics, a finding that mirrors that by Martin and Pyle (2002) for state supreme court justices. While the federal bench also is clearly becoming increasingly diverse, state-level factors and court-specific factors influence the appointment process at both levels. It is clear that the size of the court matters, that presidents take into account the existing composition of the court, and that the pool of eligible candidates is a powerful influence on the selection of minority judges. **jsj**

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