

Judicial Representation

(Demography, diversity, world-view, shared (or commensurate) experience)

What is it?

All federal judges are appointed by the President, with advice and consent from the Senate, to serve life terms. Customarily, Presidents appoint judges with whom they have ideological agreement. Given this selection process, questions arise: Are the judges a diverse group? Whose world-view do they share? Whose experiences do they embody? How do these factors affect their performance?

The American Bar Association's annual report—"[A Profile of the Legal Profession](#)"—examines judicial diversity in the federal courts and tracks appointments across presidents. In 2023, there were 1,423 sitting Article III federal judges in the US.¹ The federal bench remained overwhelmingly male (68 percent) and white (76 percent). In 2022, there were 59 Black women (4 percent) among Article III judges.²

As of October 1, 2023, the federal judicial system demographics were:

- **US Supreme Court:** 9 justices (5 men, 4 women; 6 white, 2 Black, 1 Hispanic)
- **US Courts of Appeals:** 299 judges (202 men, 97 women; 229 white, 31 Black, 20 Hispanic, 16 Asian American, 3 mixed race or ethnicity or other)
- **US District Courts:** 1,097 judges (750 men, 347 women; 825 white; 130 Black; 83 Hispanic; 34 Asian American; 4 Native American; 21 mixed race or ethnicity or other)

Other factors give rise to the question: Even if the court becomes more diverse in terms of gender, race, or ethnicity, if everybody shares similar backgrounds, can they fairly make decisions for all of us, that we can believe are good decisions? Other similarities:

- **Legal education.** Current US Supreme Court Justices are graduates of top-tier law schools—four each from Yale and Harvard, and one from Notre Dame. One-year federal judicial clerkships (awarded to just 3.4 percent of law school graduates) are often steppingstones to influential judicial careers, and alumni of top law programs have an edge in competing for them. Seven of nine US Supreme Court Justices had one or more clerkships with federal district courts and appeals courts; four Justices clerked with SCOTUS itself. In contrast, federal judges

¹ [American Bar Association, Profile of the Legal Profession](#), Nov 18, 2024.

² [American Bar Association, Profile of the Legal Profession, 2022](#). Obviously, final appointments by the Biden Administration are not included in these counts.

throughout the 13 regional federal courts have graduated from a wider range of 141 tier 1 and tier 2 law schools (see [chart](#)).

- **Prior legal experience.** The typical Justice has served as a prosecutor or other courtroom advocate for government.³ The current exception is Justice Ketanji Brown Jackson, the first Justice since Thurgood Marshall with criminal defense experience.
- **Socioeconomics.** Every US Supreme Court Justice appointed since 1970 has had some connection to a highly ranked law school where legal studies are extremely expensive. Then, once confirmed, federal judges have incomes near the top of the income distribution. In 2022: **Chief Justice** \$286,700, **Associate Justice** \$274,200, **Appeals Court Judge** \$236,900, **District Judge** \$223,400. According to the US Census Bureau, only 12 percent of U.S. households earn over \$200,000 annually.

History

The Federal Judicial Center keeps historical data on federal court biographical and demographic information. The [Center's interactive charts and tables](#) can be used to learn the race, ethnic, and gender composition of the federal courts for any given year since 1789. According to the Center's reports, the racial composition of the federal bench has changed gradually over the past four decades. In 1980, 91 percent of all federal judges were white; in 2023, 76 percent were white.⁴ The gender balance has changed more substantially. In 1980, 5 percent of all federal judges were women, in 2023, 32 percent.⁵

Discussion

Some argue that the role of federal Justices and judges is akin to that of umpires in a baseball game: They simply “call balls and strikes” as they apply the law to the facts that come before them (a view advanced by Chief Justice John Roberts during his 2005 confirmation hearing). For many who hold this view, lack of diversity on the federal bench is not a problem that requires a solution, because knowledge of and fidelity to the law trump all other qualifications.

In contrast, some agree with Justice Sonya Sotomayor, who argued that “personal experiences affect the facts that judges choose to see.” For those who hold this view, diversity on the federal bench is essential, because it is a matter of fairness for the accused and those seeking remedies, and for just outcomes under the law. A [growing body of research](#) demonstrates the value of diversity on the bench. Such studies focus

³ [Are a Disproportionate Number of Federal Judges Former Government Advocates? | Cato Institute](#) (5/27/2021 update); [Professional Diversity Is Essential for the Supreme Court to Enforce the Constitution | Cato at Liberty Blog](#) (3/21/2022).

⁴ The Supreme Court's first Black Justice (Thurgood Marshall) was appointed in 1967, the second (Clarence Thomas) in 1991, the third (Ketanji Brown Jackson) in 2022.

⁵ The first female Supreme Court Justice, Sandra Day O'Connor, was appointed in 1981, followed by Ruth Bader Ginsburg in 1993, Sonia Sotomayor in 2009, Elena Kagan in 2010, and Amy Coney Barrett in 2020.

on heightened court legitimacy, richer jurisprudence, unacknowledged gender bias, implicit racial bias, sentencing disparities, and employment discrimination.

More diverse judges may identify and reduce sentencing disparities⁶ due to implicit or explicit bias. The US Sentencing Commission, in its “[2023 Demographic Differences in Federal Sentencing Report](#)” (the fifth such report, issued every five years), analyzes all sentences imposed by federal judges for drug trafficking, firearms, economic crimes against 22 variables—race, ethnicity, gender, age, education, immigration, and previous offences, among other factors. The Commission concluded: sentencing differences continued to exist across demographic groups when examining all sentences imposed during the five-year study period (fiscal years 2017-2021). Such disparities were observed across demographic groups—among males and females:

- Black males received sentences 13.4 percent longer, and Hispanic males received sentences 11.2 percent longer than white males
- Hispanic females received sentences 27.8 percent longer than white females, while females of other races received sentences 10.0 percent shorter.

[Allison Harris](#), who studies judicial diversity in state courts, notes that the impact of racial diversity in the judiciary is not limited to the effects of individual judges’ identities on their own decision making. Instead, she argues that the presence of Black judges may change their peers’ behavior and increase the likelihood of court’s providing more similar sentences to defendants across racial groups. This peer impact also was documented in the Supreme Court. Justice Sandra Day O’Connor, not generally considered a liberal, wrote of her own experiences being influenced by Justice Thurgood Marshall.⁷

Principles to Consider

LWVUS positions on the Congress and the Presidency, the other two branches of government, pay little attention to specific policy solutions; instead, they focus on principles. Those principles were designed for evaluating future policy proposals and ensure a durable foundation for advocacy. Principles related to diversity among judges include:

<ul style="list-style-type: none">● Representativeness● Effectiveness● Decisionmaking capability	<ul style="list-style-type: none">● Fairness/Impartiality● Legitimacy
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⁶ The practice of imposing sentences of differing lengths despite similar behaviors/offenses.

⁷ Sandra Day O’Connor, [Thurgood Marshall: The Influence of a Raconteur](#)

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