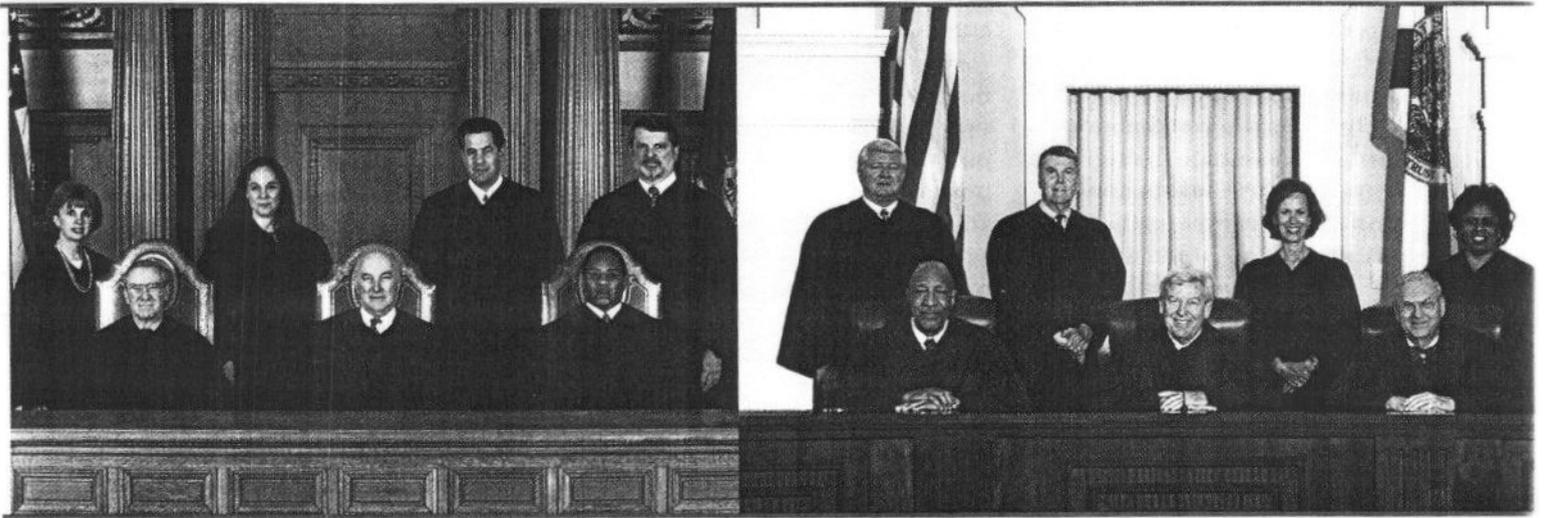


From left: the justices of the Connecticut, Florida,



# THE COMPOSITION OF STATE SUPREME COURTS 2000

By Chris W. Bonneau

**M**uch scholarly work of the last half century has focused on the overall composition of the bench.<sup>1</sup> Most basically, these studies examine which segments of society and the legal profession gain access to state judicial institutions, thereby holding the reins of judicial power. This article contin-

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ues this tradition by describing the composition of the state supreme court bench in the mid-1990s and the year 2000.

There are two primary reasons why

studying the demographic character of the bench is important. First, certain fundamental characteristics of the justices may affect the types of decisions they make. For example, women may behave differently than men, and justices born and raised in the states in which they serve may behave differently than justices drawn from other states. Generally speaking, scholars have documented a linkage between justices' background characteristics and their decisional propensities, though the evidence is mixed about the importance and pervasiveness of this influence.<sup>2</sup>

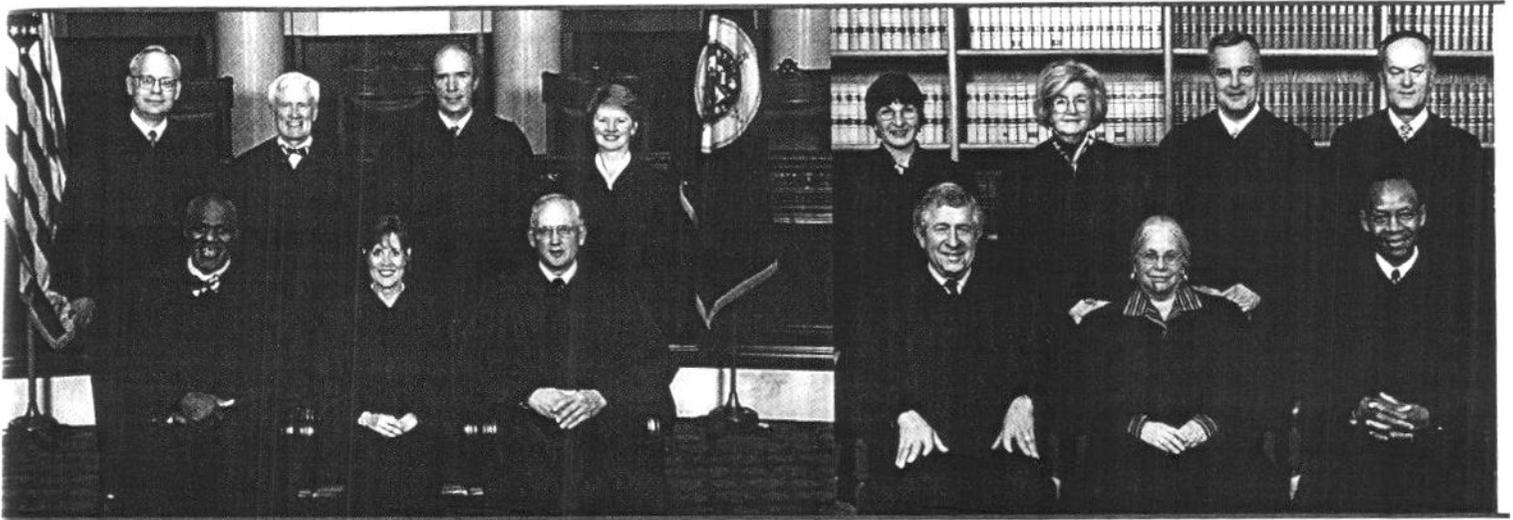
However, there is a second, and more important, reason to examine the composition of courts. As Slotnick argues, critical issues of democratic theory are implicated in

I would like to thank Elizabeth Misowski for her assistance in gathering the data used in this paper as part of her undergraduate honors project at Michigan State University. Additional data gathering assistance was provided by Avanna Burroughs and Aaron Orkin. I would also like to thank Melinda Gann Hall for all of her guidance and assistance on this project, and Wendy Martinek, Kerry Monaco, Kirk Randazzo, Kimberly Smiddy, and Rebecca Tothoro for helpful comments. All errors remain the responsibility of the author.

1. See, e.g., Canon, *The Impact of Formal Selection Process on the Characteristics of Justices*, *Reconsidered*, 61 *AM. AND SOC. REV.* 579-593 (1972); Flango and Ducat, *What Difference Does Method of Judicial Selection Make? Selection Procedures in State Courts of Last Resort*, 5 *J. ST. SYS. J.* 25-44 (1979); Slotnick, *Review Essay on Judicial Recruitment and Selection*, 13 *J. ST. SYS. J.* 109-124 (1988); Ghick and Emmert, *Stability and change: characteristics of state supreme court justices*, 70 *JUDICATURE* 107-112 (1986); Alozic, *Black Representation on State Judiciaries*, 69 *SOC. SCI. Q.* 979-986 (1988); Alozic, *Distribution of Women and Minority Justices: The Effects of Judicial Selection Methods*, 71 *SOC. SCI. Q.* 315-325 (1990).

2. See, e.g., Flango and Ducat, *supra* note 1; Late, *Personal Attributes: Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978*, 75 *Am.*

**Minnesota, and New Jersey Supreme Courts.**



While the state supreme court bench still does not “look like America,” it looks more like America than it did 20 years ago.

the broader recruitment debate. Specifically, judicial selection speaks to the key concepts of representation, access, and participation.<sup>3</sup>

More than 13 years ago, in a semi-

POL. SCI. REV. 355-367 (1981); Tate and Handberg, *Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-88*, 35 AM. J. POL. SCI. 460-480 (1991); Ulmer, *Are Social Background Models Time-Bound*, 80 AM. POL. SCI. REV. 957-967 (1986).

3. Slotnick, *Review Essay on Judicial Recruitment and Selection*, *supra* n. 1.

4. Glick and Emmert, *Stability and change*, *supra* n.1.

5. Alozie, *Black Representation on State Judiciaries*, *supra* n.1; Alozie, *Distribution of Women and Minority Justices*, *supra* n.1; Henry, Koslow, Soffer, and Furey, *THE SUCCESS OF WOMEN AND MINORITIES IN ACHIEVING JUDICIAL OFFICE: THE SELECTION PROCESS* (New York: The Fund for Modern Courts, 1985); Martin, *Women on the federal bench: A comparative profile*, 65 JUDICATURE 306-313 (1982); Martin, *Judicial selection: A comparison of the Reagan and Carter administrations*, 71 JUDICATURE 136-142 (1987).

nal article, Henry Glick and Craig Emmert examined and discussed the characteristics of state supreme court justices serving in 1980-1981.<sup>4</sup> They assessed such important features as the race, gender, and legal experience of these justices, and generally described the state high court bench as Protestant and Democratic, with local ties and some previous judicial experience.

While these descriptions were critically important in understanding judicial recruitment and in forming the foundation for empirical work using these characteristics, the data on which Glick and Emmert based their studies are now 20 years old. Needless to say, much has changed in the legal profession in the past two decades. For example, substantially

greater numbers of minorities and women have attended and graduated from law school and women and racial minorities make up an increasingly higher proportion of the bench.<sup>5</sup> Have these changes been reflected in the composition of state supreme courts? Are contemporary state supreme courts broadly representative of the populations they serve?

**Who sits?**

Data were collected on the background characteristics of justices serving on the states' highest courts as of January 1, 1994, and May 1, 2000. These data were obtained from various published sources, the worldwide web, and telephone conversations with court administrators. Over-

all, there were 333 justices who served on state supreme courts in 1994 and 341 in 2000.

These data on the contemporary state supreme court bench are compared with data reported earlier by Glick and Emmert, and, whenever possible, with figures reported by Canon, who described justices sitting from 1961 to 1968.<sup>6</sup> These comparisons allow the assessment of change over a 35-year period in the composition of state supreme courts.

**Gender, race and religion.** Table 1 demonstrates that the percentage of female justices has increased substantially from 1980 to 2000, even though the proportion still falls substantially short of being representative of the population. Indeed, in 2000, fully one-fourth of state supreme court justices were female, compared with just 3.1 percent in 1980-1981 and 15.6 percent in 1994. In absolute numbers, whereas 10 women served during the years 1980-1981, 88 were serving in May, 2000.

A similar increase is seen in the representation of racial minorities on the state high court bench. In 2000, 11.6 percent of the justices were non-white, compared with 0.6 percent reported by Glick and Emmert and 8.7 percent in 1994. Once again in absolute numbers, while only two African-American justices were on the bench in 1980-1981, 25 served in 2000.

While it was eminently sensible to group justices into "white" and "non-white" at the time of the Glick and Emmert article given the virtual absence of any minorities on the bench, this simple dichotomy can now be expanded. In 2000, 88.4 percent of the justices were white, 7.6 percent were African American, 2.1 percent were Hispanic, 1.8 percent were Asian American, and none were Native American. The bench in 2000 was more diverse than the bench in 1994, when 90.8 percent of the justices were white, 6.4 percent African American, 1.4 percent Hispanic, and 1.4 percent Asian American. Thus, while Glick and Emmert were led to conclude that, "[T]he

**Table 1: Selected background characteristics of state supreme court justices**

	1961-1968 <sup>1</sup>	1980-1981 <sup>2</sup>	1994	2000
<b>Gender and race</b>				
Female	NDA <sup>3</sup>	3.1%	15.6%	25.8%
Non-white	NDA	0.6%	8.7%	11.6%
<b>Religion</b>				
High status Protestant <sup>4</sup>	38.8%	29.9%	20.7%	20.1%
Low status Protestant	41.5%	30.3%	41.4%	40.8%
Catholic	16.1%	23.9%	26.3%	26.3%
Jewish	3.6%	11.6%	4.0%	6.2%
Other religion	NDA	4.2%	7.6%	6.7%
<b>Localism</b>				
In-state birth	74.6%	78.1%	68.2%	65.7%
In-state law degree	64.6%	69.0%	62.5%	60.5%
<b>Education</b>				
Elite law degree	NDA	16.2%	26.2%	24.5%
<b>Political party</b>				
Democratic Party affiliation	57.4%	67.0%	64.3%	51.8%
<b>Experience</b>				
Former prosecutor	51.5%	21.5%	30.9%	33.1%
Former elected official <sup>5</sup>	19.3%	20.2%	20.6%	15.0%
Previous judicial experience	57.8%	62.9%	67.1%	71.9%

1. Taken from Glick and Emmert, *Stability and change: characteristics of state supreme court justices*, 70 JUDICATURE 107-112 (1986). Originally reported in Canon, *The Impact of Formal Selection Process on the Characteristics of Justices—Reconsidered*, 6 LAW AND SOC'Y REV. 579-593 (1972).

2. Taken from Glick and Emmert, *supra* n. 1.

3. No data available.

4. High status Protestant denominations include Episcopalian, Congregationalist, Presbyterian, and Unitarian. These are the same categories used both by Canon, *supra* n. 1 and Glick and Emmert, *supra* n. 1.

5. Canon, *supra* n. 1, and Glick and Emmert, *supra* n. 1, code for whether the justice is a former legislator; I code for whether the justice has held any previous elected office.

representation of women and non-whites on state supreme courts still is basically token representation,<sup>7</sup> there is now reason to be a little more optimistic. Clearly, women and racial minorities are still not represented relative to their numbers in the general population, but it is equally obvious that their numbers have risen substantially since the early 1980s and mid-1990s.

Regarding religion, there is roughly the same percentage of Catholics on the courts now as found by Glick and Emmert (26.3 percent versus 23.9 percent). However, the percentage of Jews on state supreme courts has declined precipitously, from 11.6 percent to 6.2 percent. In-

deed, the percentage of Jewish justices sitting in 2000 is only slightly higher than it was from 1961-1968. Overall, the state high court bench has become somewhat more religiously homogeneous in recent years.

**Localism.** Interestingly, states are apparently no longer as strongly committed to recruiting justices from the states' native populations to serve on state supreme courts as in the past. Whereas Canon found that 74.6 percent of justices were born in the state in which they were serving, and

6. Canon, *supra* n. 1.

7. Glick and Emmert, *Stability and change*, *supra* n. 1, at 109.

Glick and Emmert report that number at 78.1 percent, only 65.7 percent of the justices in 2000 were born in the state in which they are serving. This is still a majority, to be sure, but this reduction of more than 12 percent indicates a trend away from localism. That is, one does not need to be a native daughter or son to serve on the state high court bench. Perhaps this is a reflection of a more mobile society. Considering that fewer people work and live in the same state in which they were born (as census figures clearly document), it should not be surprising that state supreme court justices exhibit this same trend.

The number of justices who received a law degree at an in-state institution also has decreased over time. The percentage of justices serving as of May, 2000 who received an in-state law degree was 60.5 percent, compared with 69.0 percent for those justices serving during 1980-1981. This is not surprising and consistent with the finding above regarding in-state birth. Just as fewer justices are serving in the state in which they were born, fewer justices are receiving their law degrees from in-state institutions.

**Education.** Whether a justice received her or his law degree from

an "elite" law school is also shown in Table 1.<sup>8</sup> Fully 24.5 percent of justices received their law degree from an "elite" law school, up from the 16.2 percent found by Glick and Emmert, but down slightly from the 26.2 percent in 1994.<sup>9</sup> Thus, one is led to conclude that because all justices have received their bachelor's degree (which was not the case in 1980-1981) and at least one law de-

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## Justices serving in both 1994 and 2000 are more highly educated.

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gree, and because more justices have been educated at prestigious law schools, justices serving in both 1994 and 2000 are more highly educated, on average, than justices serving during the 1980-1981 period.

**Political party affiliation.** Table 1 shows that 51.8 percent of the justices were affiliated with the Democratic Party in 2000. While this is still a majority of state supreme court justices it is down from the 67.0 percent level of the 1980-1981 justices and from 64.3 percent in 1994. Clearly, Democrats on state supreme courts are declining, and the decline from 1994 to 2000 is quite precipitous. Otherwise, 46.2 percent of the justices were affiliated with the Republican Party and 2.0 percent were independents or had no political party affiliation.<sup>10</sup>

**Political and legal experience.** Three variables of interest related to the political and legal experience of justices are reported: whether they formerly served as a prosecutor, whether they previously held elected office, and whether they had previous judicial experience prior to serving on the state supreme court.

In terms of prior prosecutorial experience, 33.1 percent of the justices

serving on state supreme courts in 2000 previously served as prosecutors at some point in their legal careers. While this number is down considerably from the 57.8 percent reported in Canon, it is up from the 21.5 percent reported by Glick and Emmert and the 30.9 percent in 1994. Thus, while Glick and Emmert's observation that, "[S]erving as prosecutor is no longer the major career path to the state supreme court"<sup>11</sup> remains accurate today, these data indicate that serving as a prosecutor is still a career path taken by a sizeable proportion of state supreme court justices.

Both Canon and Glick and Emmert coded whether a justice previously served as a state legislator and found that approximately one of every five state supreme court justices served in this capacity. This study considers whether a state supreme court justice has held any elected office prior to serving on the court in order to measure prior elective experience more accurately. While one might expect this change to lead to an increase in the number of justices coded as having prior elected experience, this does not prove to be the case. Indeed, only 15.0 percent of the justices serving in 2000 had held any previous elected office. This is down slightly from the 20.2 percent reported by Glick and Emmert as well as the 20.6 percent in 1994, and this number would be even lower if only prior state legislative experience was included, as was done by both Canon and Glick and Emmert.

Finally, 71.9 percent of the justices had previous judicial experience prior to serving on the state supreme court. This is up from the 62.9 percent reported by Glick and Emmert and the 67.1 percent in 1994. While there have been dramatic changes in terms of diversity and education, surprisingly the state supreme court is the first judicial post for about 30 percent of all the justices who were sitting in May, 2000.

8. The following law schools were classified as "elite": University of California—Berkeley, University of California—Los Angeles, University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, University of Michigan, University of Minnesota, New York University, Northwestern University, University of Pennsylvania, University of Southern California, Stanford University, Vanderbilt University, University of Virginia, and Yale University. This classification is taken from Brisbin and Kilwein, "State Supreme Court Justices: Jan. 1970 to Jan. 1994" (Morgantown, WV: West Virginia University, 1994).

9. Glick and Emmert refer to "prestigious" law schools, although it is unclear what law schools are considered "prestigious," with the exception of the Ivy League Schools.

10. Information on partisan affiliation was not available for all justices. Thus, there are data on party affiliation for only 303 of the 341 (88.9 percent) justices in the dataset.

11. Glick and Emmert, *Stability and change*, *supra* n.1, at 111.

Table 2: Selected background characteristics of state supreme court justices by state, 2000

State	Min. race	Fem. gen.	Dem. Party	Local birth	Local JD	Elite JD	Avg. age	Pros. exp.	Elect exp.	Jud. exp.
AL	22.2	11.1	55.6	87.5	66.7	0.0	60.4	33.3	44.4	66.7
AK	0.0	20.0	75.0	0.0	0.0	80.0	55.8	40.0	0.0	60.0
AZ	0.0	20.0	40.0	0.0	60.0	20.0	61.0	0.0	0.0	60.0
AR	14.3	14.3	85.7	60.0	85.7	14.3	58.6	57.1	42.9	71.4
CA	42.9	42.9	14.3	42.9	71.4	57.1	62.9	28.6	0.0	100.0
CO	14.3	42.9	71.4	50.0	42.9	42.9	52.9	28.6	0.0	71.4
CT	14.3	28.6	75.0	83.3	57.1	42.9	56.7	28.6	0.0	85.7
DE	0.0	20.0	60.0	75.0	0.0	60.0	65.8	0.0	20.0	60.0
FL	28.6	28.6	100.0	28.6	42.9	0.0	59.3	42.9	0.0	57.1
GA	28.6	28.6	100.0	57.1	100.0	0.0	56.7	14.3	14.3	85.7
HI	75.0	25.0	100.0	75.0	0.0	75.0	53.8	50.0	0.0	75.0
ID	0.0	40.0	60.0	60.0	60.0	40.0	56.8	60.0	20.0	80.0
IL	14.3	14.3	50.0	85.7	57.1	28.6	67.7	42.9	28.6	100.0
IN	20.0	0.0	60.0	75.0	60.0	40.0	55.6	20.0	0.0	40.0
IA	0.0	25.0	12.5	75.0	87.5	0.0	60.8	25.0	0.0	87.5
KS	0.0	14.3	50.0	71.4	85.7	14.3	66.4	28.6	14.3	100.0
KY	0.0	14.3	83.3	100.0	85.7	0.0	57.0	14.3	0.0	85.7
LA	12.5	37.5	75.0	100.0	100.0	0.0	60.7	50.0	12.5	87.5
ME	0.0	28.6	25.0	100.0	42.9	28.6	59.0	28.6	14.3	71.4
MD	14.3	14.3	100.0	57.1	57.1	0.0	62.6	14.3	0.0	71.4
MA	20.0	42.9	33.3	80.0	57.1	85.7	60.6	42.9	0.0	71.4
MI	14.3	42.9	20.0	50.0	42.9	14.3	56.0	57.1	0.0	100.0
MN	14.3	28.6	14.3	80.0	100.0	100.0	54.1	28.6	14.3	42.9
MS	22.2	22.2	44.4	100.0	88.9	0.0	55.7	33.3	55.6	66.7
MO	14.3	14.3	28.6	50.0	42.9	28.6	51.6	14.3	28.6	57.1
MT	0.0	14.3	33.3	28.6	42.9	14.3	60.3	42.9	14.3	14.3
NE	0.0	14.3	100.0	85.7	71.4	14.3	54.9	28.6	0.0	57.1
NV	0.0	42.9	66.7	25.0	0.0	33.3	60.0	57.1	57.1	85.7
NH	0.0	20.0	40.0	33.3	0.0	60.0	60.0	20.0	0.0	60.0
NJ	14.3	42.9	42.9	71.4	28.6	57.1	59.0	28.6	14.3	42.9
NM	60.0	40.0	100.0	80.0	20.0	40.0	60.0	20.0	0.0	100.0
NY	28.6	28.9	42.9	85.7	57.1	71.4	61.3	28.6	14.3	85.7
NC	14.3	14.3	42.9	83.3	100.0	0.0	56.4	28.6	28.6	71.4
ND	0.0	40.0	0.0	100.0	60.0	20.0	53.8	0.0	0.0	20.0
OH	0.0	42.9	28.6	66.7	85.7	0.0	60.2	42.9	28.6	85.7
OK (Civ.)	0.0	11.1	55.6	66.7	88.9	0.0	63.4	66.7	0.0	88.9
OK (Cri.)	0.0	20.0	40.0	66.7	100.0	0.0	58.8	40.0	0.0	60.0
OR	0.0	14.3	57.1	33.3	42.9	28.6	60.9	42.9	42.9	85.7
PA	0.0	14.3	42.9	83.3	42.9	42.9	60.0	57.1	0.0	85.7
RI	0.0	40.0	0.0	80.0	0.0	60.0	63.2	20.0	40.0	60.0
SC	20.0	20.0	NDA*	80.0	80.0	20.0	62.2	0.0	100.0	80.0
SD	0.0	0.0	0.0	75.0	100.0	0.0	58.4	80.0	0.0	80.0
TN	20.0	20.0	60.0	40.0	40.0	20.0	61.6	0.0	0.0	100.0
TX (Civ.)	11.1	33.3	0.0	62.5	55.6	33.3	48.3	0.0	11.1	22.2
TX (Cri.)	0.0	33.3	22.2	33.3	55.6	0.0	53.6	66.7	0.0	44.4
UT	0.0	20.0	40.0	66.7	60.0	40.0	58.4	0.0	20.0	100.0
VT	0.0	40.0	80.0	20.0	0.0	0.0	55.4	40.0	0.0	60.0
VA	14.3	42.9	NDA	75.0	42.9	28.6	59.1	14.3	0.0	71.4
WA	28.6	33.3	75.0	75.0	88.9	0.0	57.7	33.3	11.1	77.8
WV	0.0	20.0	80.0	100.0	80.0	0.0	57.8	60.0	20.0	80.0
WI	0.0	42.9	40.0	71.4	71.4	0.0	57.4	28.6	42.9	57.1
WY	0.0	0.0	60.0	20.0	100.0	0.0	62.0	60.0	0.0	20.0

\* No data available

Min. race = Percentage of minorities on the bench

Fem. gen. = Percentage of women on the bench

Dem. Party = Percentage of Democrats on the bench

Local birth = Percentage of justices who were born in the state in which they are serving

Local JD = Percentage of justices who earned their law degree in the state in which they are serving

Elite JD = Percentage of justices who attained their law degree from an elite law school

Avg. age = Average age at time of accession to the high court bench

Pros. exp = Percentage of justices who had prosecutorial experience prior to ascending to the high court bench

Elect exp. = Percentage of justices who previously held elected office prior to ascending to the high court bench

Jud. exp. = Percentage of justices who had judicial experience before ascending to the high court bench

## Comparing diversity

As can be seen from Table 2, states vary considerably in the diversity of their bench. In May, 2000, 26 of the 52 state high courts of last resort had no racial minorities serving on them, while in Hawaii 3 out of its 4 justices were racial minorities.<sup>12</sup> Women were represented on 49 of the courts, and even approached a majority in nine states—California, Colorado, Massachusetts, Michigan, Nevada, New Jersey, Ohio, Virginia, and Wisconsin.<sup>13</sup>

In terms of partisan affiliation, Democratic representation on the courts ranged from zero to 100 percent. The same is true for justices born in the state in which they are serving. Two states—Alaska and Arizona—had no justices serving who were born in-state. In contrast, six states—Kentucky, Louisiana, Maine, Mississippi, North Dakota, and West Virginia—had courts that were composed entirely of natives. Not surprisingly, this pattern holds for in-state law degrees as well: some state high courts are composed of justices who received their degrees entirely out of state, while others are staffed by justices who attained their law degrees entirely in-state. Regarding elite law degrees, the range is also from zero to 100.0 percent, with all but 19 states having at least one justice who achieved her law degree from an elite law school.

The staffing of the high court bench by prior prosecutors also varies widely by state. Indeed, there is even variance within state. For ex-

ample, none of the justices on the Texas Supreme Court, which deals only with civil cases, had prior prosecutorial experience. In contrast, 66.7 percent of the justices on the Texas Court of Criminal Appeals had prosecutorial experience. In Oklahoma, this pattern is reversed:

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## In May, 2000 women were represented on 49 of the state high courts

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66.7 percent of the justices on the Supreme Court were previously prosecutors, while only 40.0 percent of the justices on the court of criminal appeals had previous prosecutorial experience.

Justices who previously held elected office are better represented on some courts than others. In one-half (26) of the 52 state courts of last resort, there were no judges who previously held elected office. However, in South Carolina, every justice on the court previously served in elected capacity, and more than one-half of the justices in Mississippi and Nevada also were previously elected officials. Finally, in terms of judicial experience, while there were no states composed entirely of justices with no previous judicial experience, only 14.3 percent of the Montana justices had such prior experience, while all of the justices in seven states—California, Illinois, Kansas, Michigan, New Mexico, Tennessee, and Utah—were previously judges.

Table 2 clearly demonstrates that there are substantial variations in the composition of state supreme court benches. This wide variation is something to be explained in future work.

## A representative bench?

The modern state supreme court bench is more diverse than ever before. With more women and minorities graduating from law school, there is no reason to expect this trend of increasing diversity to stall in the near future. As Alozie states,

“[I]ncreases in [the African-American] share of justiceships will come from increasing blacks’ share of state lawyer populations, the pool from which state justices are selected.”<sup>14</sup> In terms of localism, state supreme court justices are less likely to have been born in the state in which they are presiding than previously reported. Additionally, the percentage of jus-

trices who received a law degree in the state in which they are judging also has decreased. Finally, more justices have prosecutorial experience as well as previous judicial experience than in 1980-1981. Thus, there is some evidence of a more “professional” judiciary, although, as noted before, almost 30 percent of the justices have not previously served on a court before their accession to the state supreme court.

Generally speaking, and as should be expected, the state high court bench is changing with the population. As more women and minorities join the legal profession, their numbers on state supreme courts increase, although the data also show wide variation between states. While the bench still does not “look like America,” it looks more like America than it did 20 years ago. Further, the data show the bench in some states is more representative than the bench in other states. Assuming these trends continue, this should be a source of optimism for those who argue for the necessity of a representative bench. ¶

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12. While there are five justices on the Hawaii Supreme Court, there was an unfilled vacancy as of May 1, 2000. Thus, there were only four justices on the court at this time.

13. At one time, 4 of the 7 justices on the Minnesota Supreme Court were women. This is the only time women have constituted a majority on a state high court bench.

14. Alozie, *Black Representation on State Judiciaries*, *supra* n.1, at 985.