

WOMEN IN THE FEDERAL JUDICIARY: STILL A LONG WAY TO GO

Over the past three decades, an increasing number of women have joined the legal profession. In recent years, law schools have seen the number of female students increase, so that they now make up nearly half of all law students.¹ In 2009, one-third of lawyers were women.² When women are fairly represented on our federal courts, those courts are more reflective of the diverse population of this nation and may give women, and men, a greater sense that their lives and needs, and those of their family, are understood by the courts hearing their claims. In addition, the quality of justice is improved for both men and women when the bench is more representative. One recent study demonstrated that male federal appellate court judges are more likely to see aspects of the law differently, particularly regarding claims of sex discrimination, if a female judge is on the panel.³

But to obtain all of the benefits of diversifying the bench, the number of women in the federal judiciary, including the Supreme Court, must be increased.

- Upon the confirmation of Associate Justice Elena Kagan, the Supreme Court counts three women among its nine Justices for the first time in history. Only four women have *ever* served on the highest court in the land.
- Forty-nine of the 160 active judges currently sitting on the thirteen federal courts of appeal are female (30.6%).⁴ When broken down by circuit, women's representation on several of these individual courts is even lower than on the courts of appeals overall:
 - The Eighth Circuit has only one female judge among its eleven members, who is the only woman *ever* to have been appointed to that court.

¹ American Bar Association Section of Legal Education and Admissions to the Bar, "Enrollment and Degrees Awarded, 2008-2009 Academic Year," (stating that 46.9% of law students overall are women) *available at* www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf.

² Department of Labor, Bureau of Labor Statistics, "Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity" 2009 (stating that 32.4% of lawyers are women), *available at* <http://www.bls.gov/cps/cpsaat11.pdf>.

³ Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 389 (2010), *available at* <http://epstein.law.northwestern.edu/research/genderjudging.pdf>. See also Vicki Kramer, Alison Konrad, & Sumru Erkut, Executive Summary at 2, *Critical Mass on Corporate Boards: Why Three or More women Enhance Governance*, Wellesley Centers for Women, 2006 (finding that once three or more women serve on a corporate board, "women are no longer seen as outsiders and are able to influence the content and process of board discussions more substantially"); Sarah Childs & Mona Lee Krook, *Critical Mass Theory and Women's Political Representation*, 56 POL. STUD. 732 (2008) (when the percentage of women in legislatures surpasses a minimum – generally 30% -- women are able to introduce and pass more bills on women's issues).

⁴ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov>. See also A Snapshot of Women in the Judiciary, Alliance for Justice, *available at* <http://afj.org/check-the-facts/women-in-the-judiciary-2010.pdf>.

- Women are also vastly underrepresented on the Tenth Circuit (where they make up about 20 percent of judges), the Third Circuit (about 21 percent) and the Fourth Circuit (23 percent).
- Approximately 28 percent of active United States district (or trial) court judges are women.⁵
- For women of color, the numbers are even smaller.
 - There are 52 women of color serving as active federal judges across the country, including 30 African-American women, 17 Hispanic women, and five Asian-American women. There are no Native American women.⁶
 - There are only eight women of color on the U.S. courts of appeals. Three of those women sit on the Ninth Circuit Court of Appeals, two sit on the DC Circuit, and one woman of color sits on each of the First, Fourth and Seventh Circuits. Therefore, there are eight federal courts of appeals without a single active minority woman judge.⁷
- There are signs that the number of women in the federal judiciary may soon increase.
 - Of President Obama's 87 judicial nominees to date (including his nominees to the Supreme Court), 40 are women.⁸ Seventeen of these nominees have been women of color (eight African-American women, five Hispanic women, and four Asian-American women).
 - Fifty-two percent of President Obama's confirmed nominees have been women.⁹ This has increased the number of women on the First, Fourth, Sixth and Eleventh Circuits as well as on a number of district courts.
 - If the eighteen remaining female nominees are confirmed, women's representation on a number of other circuits will improve -- including the Second Circuit (percentage of women will increase to 36 percent), the Seventh Circuit (an increase to 45 percent), the Ninth Circuit (an increase to 38 percent), and the Federal Circuit (an increase to 40 percent).

⁵ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov> (168 of 591 active district court judges are female).

⁶ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov>.

⁷ *See id.*

⁸ NWLC calculations were based on the nomination information found on the U.S. Senate Judiciary's Website, *available at* <http://judiciary.senate.gov/nominations/111thCongressJudicialNominations/Materials111thCongress.cfm>.

⁹ Judicial Nominations and Confirmations: 111th Congress, *available at* <http://judiciary.senate.gov/nominations/111thCongress.cfm> (twenty-two women have been confirmed out of forty-two total confirmations).

It is critical to increase the representation of women on the federal bench, to ensure that the courts reflect the diversity of the population and, increasingly, the legal profession, to bring an understanding of the impact of the law on the lives of women and girls to the bench, and to enrich courts' understanding of how best to realize the intended purpose and effect of the law that the courts are charged with applying. By the nominations he has made to date, President Obama has taken the first step in increasing the representation of women, including women of color, on the federal bench. Now it is up to the Senate to do its part.