

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 But the number of women in the federal judiciary has stagnated.² It is of critical importance to increase the representation of women on the federal bench.

When women are fairly represented on our federal courts, those courts are more reflective of the diverse population of this nation. When women are fairly represented on the federal bench, women, and men, may have more confidence that the court understands the real-world implications of its rulings. For both, the increased presence of women on the bench improves the quality of justice: women judges can bring an understanding of the impact of the law on the lives of women and girls to the bench, and enrich courts' understanding of how best to realize the intended purpose and effect of the law that the courts are charged with applying. For example, one recent study demonstrated that male federal appellate court judges are less likely to rule against plaintiffs bringing claims of sex discrimination, if a female judge is on the panel.³

But to obtain true gender diversity, 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, still only one-third of the members of that Court. Only four of the 112 Justices ever to serve on the highest court in the land have been women.
- Fifty-one of the 163 active judges currently sitting on the thirteen federal courts of appeal are female (31.3%).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 (9%), who is the only woman *ever* to have been appointed to that court.
 - Women are also vastly underrepresented on the Tenth Circuit (where they make up about 18 % of judges), the Third Circuit (about 21%) and the Fourth Circuit (21%).
- Approximately 29% of active United States district (or trial) court judges are women.⁵
- For women of color, the numbers are even smaller.
 - There are 58 women of color serving as active federal judges across the country, including 32 African-American women, 20 Hispanic women, and six Asian-

American women. There are no Native American women among the over 750 active federal judges across the country.⁶

- There are only nine women of color on the U.S. courts of appeals. Four 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
- If currently pending judicial nominees are confirmed, the number of women in the federal judiciary would increase.
 - Of President Obama's 113 judicial nominees to date (including his nominees to the Supreme Court), 51 are women.⁸ Twenty-four of these nominees have been women of color (twelve African-American women, eight 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, Eleventh and Federal Circuits as well as on a number of district courts.
 - With the confirmation of the nineteen currently pending female nominees, women's representation on a number of other circuits will improve – including the District of Columbia Circuit (percentage of women would increase to 40%), Second Circuit (an increase to 33%), the Sixth Circuit (a further increase to 58%), and the Seventh Circuit (an increase to 45%).

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, to improve access to, and the quality of, justice for all Americans.

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 Administrative Office of the U.S. Courts, Third Branch Online Newsletter (October 2010), Federal Bench Gender Snapshot: Gender of All Federal Judges 1998-2009 (showing that the total number of women in the federal judiciary hovered around 500 in 2007, 2008, and 2009), *available at* http://www.uscourts.gov/News/TheThirdBranch/10-10-01/Federal_Bench_Gender_Snapshot.aspx.

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>.

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> (thirty-two women have been confirmed out of sixty-two total confirmations).