

Improving Diversity on the State Courts: A Report from the Bench

**Research Conducted for the
Lawyers' Committee for Civil Rights Under Law**

**and
The Justice at Stake Campaign**

**by the
Center for Justice, Law and Society
at George Mason University**



Justice at Stake
c a m p a i g n



Substantially written by Linda Merola and Jon Gould at The George Mason University's Center for Justice, Law and Society
Edited by John Brittain, University of the District of Columbia and former Chief Counsel of the Lawyers' Committee for Civil Rights; Kenneth
Chandler at the Lawyers' Committee for Civil Rights and Bert Brandenburg and Deanna Dawson at Justice at Stake

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Background

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

The Justice at Stake Campaign is a nonpartisan campaign that works on behalf of all Americans to keep our courts fair, impartial and independent through research, public education and advocacy.

In 2005, the Lawyers' Committee for Civil Rights Under Law published a report titled *Answering the Call for a More Diverse Judiciary: A Review of State Judicial Selection Models and Their Impact on Diversity*. The report described in detail the selection mechanisms used by various states and concluded that "although many minority communities favor judicial elections over the appointment process, neither of these selection models does an adequate job of promoting minorities to the bench, as the number of judges of color nationwide remains at a low level."¹ The 2005 report also included recommendations for action to help improve the selection systems and increase diversity on the state bench.

These recommendations urged action to increase the pool of minority attorneys and to publicize and broaden selection criteria with the goal of making them more inclusive.² The report called for outreach to raise awareness of the benefits of diversity,³ and it exhorted those involved in the selection process, as well as members of the public, to work for a diversified judiciary.⁴ Finally, and most relevant to present efforts, the report recommended additional studies on the topic of diversity.⁵

The Lawyers' Committee and the Justice at Stake Campaign initiated this project with the goal of expanding upon the findings of the 2005 report through an empirical evaluation of mechanisms designed to advance diversity in the state courts. Researchers from George Mason University's Center for Justice, Law and Society conducted case studies of recent instances in which individuals of color were successfully appointed or elected to the state trial bench.

As a result of this research, The Lawyers' Committee, Justice at Stake, and the Center for Justice, Law and Society at George Mason University co-authored the present report, and developed an action plan geared toward promoting a bench that is diverse in background and experience.

Executive Summary

The Lawyers' Committee and the Justice at Stake Campaign recognize that judicial diversity is essential to helping our judiciary deliver equal justice, restoring the public's faith in the legal system, and to countering perceptions of systemic bias that currently exist.

The Lawyers' Committee and the Justice at Stake Campaign initiated this project in order to provide an empirical evaluation of mechanisms that advance diversity in the state courts. Researchers from George Mason University's Center for Justice, Law and Society conducted case studies of recent instances in which individuals of color were successfully appointed or elected to the state trial bench.

This report offers a snapshot of the experiences of successful minority judges and also presents their recommendations for improving the process by which candidates of color are considered for state judgeships. These findings coalesce around several central points, most of which are felt similarly across the states regardless of the system of judicial selection employed.

Although many findings emerged, the role of personal strategy and adaptation to the politics of the selection process was central to the success of these judges, regardless of the system for selecting judges in their states. While the judges also emphasized the importance of other types of preparation for their positions, in nearly every interview the judges routinely spoke of political considerations and influences. The experiences described by the judges were remarkably similar. Across the board, they emphasized the importance of networking, mentoring, and recruitment.

To a certain extent, these findings are surprising, as they challenge some assumptions about the degree to which selection systems produce different political processes. Judges who came from elective systems were somewhat more explicit about the political nature of the process. Many of the appointed judges discussed political considerations, yet described the process using terms that were less explicitly "political" – such as "strategy," "planning," "getting to know people," "networking" or even "participating."⁶ Nevertheless, their responses suggested that they engaged in similar calculations as those judges who had been elected. For example, while elected judges discussed how they raised money and promoted their candidacies to the public, their appointed counterparts discussed strategies that they used in advertising themselves to the relevant appointment commission. In this way, elected judges detailed a formalized process of networking and campaigning, while appointed judges frequently described an informal one.

When asked to evaluate the system of selection that they had navigated, the great majority of the judges praised their state's system and expressed a lack of confidence in other types of selection mechanisms. Yet, despite this, the concerns that the judges expressed and the problems that they highlighted were remarkably similar across selection mechanisms. Even the recommendations made by the judges were quite comparable. Although circumstances were different across locations, the choice of judicial selection mechanism does not seem to operate systematically to hinder judicial diversity.

Rather, many of the critical issues hindering diversity seem to operate across both types of systems, appointive or elective. Although calling into question some of the ways in which varying selection mechanisms are assumed to produce divergent processes and outcomes, this finding would also seem to provide opportunities to leverage research and advocacy across selection systems to improve the diversity of state courts.

Based on the findings in the report, the Lawyers' Committee and Justice at Stake make several recommendations for future action:

- 1) Boost formal recruitment and mentorship programs for aspiring judges;
- 2) Educate the public about the benefits of additional diversity on the bench, and publicize the accomplishments of judges of color;
- 3) Assist aspiring judges from underrepresented communities in campaign training and fundraising;
- 4) Study the experiences of aspiring judges who were not successful in reaching the bench;
- 5) Study judicial evaluation mechanisms to determine if bias exists;
- 6) Study judicial selection systems in geographic regions where there are few judges of color.

While action has been taken over the years to improve diversity within the state courts, additional efforts are needed so that more judges of color can reach the state bench. The findings detailed here should serve as a call to those who support diversity to undertake the action necessary to implement the measures identified by the research. But, even more, the issue of judicial diversity will require sustained action *and* additional research to ensure that the lessons learned – and the advocacy that follows – are based on a full picture of the process of judicial selection.

Introduction

Democracy requires that the institutions of government reflect the citizens of the nation. In a diverse nation, those who serve in these institutions must also be diverse.⁷ Further, given the duties of the judiciary, it is of particular importance that American legal institutions be open and responsive to all.⁸

It is the business of the courts, after all, to dispense justice fairly and administer the laws equally. It is the branch of government ultimately charged with safeguarding constitutional rights, particularly protecting the rights of vulnerable and disadvantaged minorities against encroachment by the majority. How can the public have confidence and trust in such an institution if it is segregated -- if the communities it is supposed to protect are excluded from its ranks?⁹

In this way, it is crucial that the public sees a judiciary that reflects the diversity of its community.¹⁰ It is also a matter of fundamental fairness that all citizens have the right to participate equally in their government, including the judicial branch.¹¹

Perhaps the most important argument for diversity in the judiciary is that it benefits judicial decision-making.¹² Judges from different backgrounds and a diversity of experiences help to guard against the possibility of narrow decisions. Judges can debate with one another, offering divergent perspectives and educating their colleagues about how their decisions will affect various populations.¹³ A diverse bench also provides new role models for current and future law students and younger members of the bar, who in turn may be encouraged to seek the bench.¹⁴

In 2005, the Lawyers' Committee for Civil Rights Under Law published a report titled *Answering the Call for a More Diverse Judiciary: A Review of State Judicial Selection Models and Their Impact on Diversity*. This report resulted from a hearing sponsored by the Lawyers' Committee and Justice at Stake, which was held at the National Conference of the Coalition of Bar Associations of Color. The hearing provided a forum to bring together members of the legal community to discuss the role that state judicial selection mechanisms play in encouraging or impeding diversity in state judiciaries. The Lawyers' Committee combined the insights of those attending the hearing with additional research on selection mechanisms to produce the report.

The report described in detail the selection mechanisms used by various states and concluded that “although many minority communities favor judicial elections over the appointment process, neither of these selection models does an adequate job of promoting minorities to the bench, as the number of judges of color nationwide remains at a low level.”¹⁵ The 2005 report also included recommendations for action to help improve the selection systems and increase diversity on the state bench.

These recommendations urged action to increase the pool of minority attorneys and to publicize and broaden selection criteria with the goal of making them more inclusive.¹⁶ The report called for outreach to raise awareness of the benefits of diversity,¹⁷ and it exhorted those involved in the selection process, as well as members of the public, to work for a diversified judiciary.¹⁸ Finally, and most relevant to present efforts, the report recommended additional studies on the topic of diversity.¹⁹

The Lawyers’ Committee and the Justice at Stake Campaign initiated this project with the goal of expanding upon the findings of the 2005 report. The current project is designed to provide an empirical evaluation of mechanisms that advance diversity in the state courts. Working with the Lawyers’ Committee, researchers from George Mason University’s Center for Justice, Law and Society conducted case studies of recent instances in which individuals of color were successfully appointed or elected to the state trial bench.

After reviewing bar and media reports of the judges’ success, researchers conducted personal interviews with bar leaders, politicians, and interested observers and activists, as well as with the judges themselves. State-level judges were selected for these interviews, both because their numbers dwarf the federal judiciary and because they are selected under a variety of systems. Interviews were conducted in a semi-structured format to allow the judges ample flexibility to emphasize those factors they believed most crucial to their experiences and selection. In addition, judges who had attained their positions since 2004 were selected, allowing a systematic evaluation and comparison of the experiences of the most recently-selected group of state judges.

The following sections of this report describe the interviews and other components of the project in greater detail. A first part briefly examines previous studies on judicial selection mechanisms and their effect upon judicial diversity. The second section explains the methods utilized by the interviewers and the types of questions that were asked of the judges. The third part presents the insights derived from the secondary research and interviews. Finally, the report closes with conclusions and recommendations for action to increase judicial diversity.

The Impact of Selection Mechanisms on Judicial Diversity

Advocates and researchers have provided ample evidence that there is still much work to be done in the area of judicial diversity.²⁰ In 2004, it was found that:

Judges of color make up 10.3% of the state supreme court and intermediate appellate court judges, 9.8% of general jurisdiction trial court judges, and 7.1% of limited jurisdiction court judges. Of the 30,059 authorized state judgeships . . . , judges of color make up approximately 8%. Intergroup comparisons show that African Americans constitute the largest group of judges of color on the state bench. African Americans make up 4.4% of the state court bench, followed by 3.0% Latina/o representation on the state bench, 0.6% Asian/Pacific Islander representation, and a negligible American Indian presence.²¹

The Lawyers' Committee report from 2005 confirmed these statistics, reporting that "of the 11,344 authorized judgeships for the general jurisdiction, appellate, and trial courts within the United States, merely 1,144 or 10.1% are held by judges of color."²²

For some time, researchers have focused on the question of whether or not a state's choice of judicial selection mechanism impacts judicial diversity. There are five general models for how states select their judges: "executive [gubernatorial] appointment, commission or 'merit' selection, legislative selection, and nonpartisan and partisan election."²³ Nevertheless, many states use hybrids of these systems, a fact which results in numerous, unique selection systems in various states.²⁴ In addition, some states utilize multiple selection systems for various levels of their judicial systems.²⁵ The use of so many systems results in a tremendous amount of complexity in judicial selection mechanisms across and within states. This degree of complexity has also made researching the question of whether or not selection mechanisms impact judicial diversity more difficult.

In fact, much of the research in the area of judicial diversity offers contradictory conclusions or unclear recommendations for action. Early research seems to have concluded that it was more difficult for persons of color to become state judges where appointive systems were in place, arguing that "appointive systems in general, and merit systems in particular, tend to favor a prior status quo by perpetuating the dominance of traditional elites in the judiciary, thus decreasing opportunities for political minorities who may not have conventional legal backgrounds or experience."²⁶

Although persons of color have traditionally faced other barriers within elective systems of judicial selection, it was thought that these systems at least allowed for the possibility of change through competitive elections.²⁷ However, those supportive of merit systems have argued that they produce better-qualified judges and also remove much of the politics found in elective systems from the selection process.²⁸

During recent years, however, it appears as if a consensus has begun to emerge within the research.²⁹ The most recent research has disputed the idea that disparate selection mechanisms produce differing outcomes for diversity. Rather, this work claims that differing judicial selection mechanisms do not systematically affect the ability of minorities or women to become judges.³⁰ Several studies have even argued that distinctions in judicial diversity based upon the type of selection mechanism were once present, but have now disappeared with the passage of time.³¹

Yet, even while consensus has more recently emerged – that the choice of selection mechanism does not negatively impact diversity – some unanswered questions remain that may require continued study of selection mechanisms. For example, the research has provided some evidence that judges of color and female judges may lose their interim (appointed) seats once they are subjected to elections.³² To best explore this issue, further research might survey former judges who have not retained their positions in appointive systems.

On a positive note, research has also shown that diversity is “not a zero-sum game,” meaning that increases in the number of judges of color do not appear to hurt the chances for appointments of women and vice versa.³³ In addition, early research tended to suggest that women and minorities were more likely to be appointed to less prestigious courts or as limited-jurisdiction or magistrate judges.³⁴ However, more recent research provides evidence that – while the judiciary still needs to become much more diverse – the tendency to appoint women and minorities to less prestigious courts has reversed itself somewhat.³⁵

Along with selection mechanisms, researchers have also studied a variety of other factors that may influence overall diversity in a state. For example, diversity studies have nearly universally endorsed the idea that a governor supportive of diversity can greatly improve the climate in the state in favor of diversity.³⁶ In addition, many sources mention that diversity within the judiciary is limited to the number of qualified minority and female candidates who are both attorneys and possess the requisite experience to become judges. In this manner, researchers have frequently

suggested that the size of the pool of eligible attorneys greatly affects diversity.³⁷ Of course, the true impact of this consideration would vary from state to state with differences in demographics. While increasing the pool of candidates always aids in recruitment, many have also argued that “[t]he pat answer that there are just too few minority and women attorneys to fill judicial openings does not appear to match the facts in most states.”³⁸

Certainly, solutions are still needed in order to increase judicial diversity. While some agreement has been reached in the research – that judicial selection mechanisms do not seem to systematically impact diversity today – a significant number of unanswered questions still remain as described above. Although the research has seemingly resolved some questions, actual levels of diversity in the judiciary remain low. Additional research focused upon emerging questions and combining meticulous primary data collection with rigorous methods is needed. In the next section, the methods used in the current project will be examined in greater detail.

The Current Project

The current project is designed to provide an empirical evaluation of mechanisms that advance diversity in the state courts. Working with the Lawyers' Committee, researchers from George Mason University's Center for Justice, Law and Society conducted case studies of recent instances in which individuals of color were successfully appointed or elected to the state trial bench.

State-level judges were selected for these interviews, both because their numbers dwarf the federal judiciary and because they are selected under a variety of systems. Interviews were conducted in a semi-structured format to allow the judges ample flexibility to emphasize those factors they believed most crucial to their experiences and selection. In addition, judges who had attained their positions since 2004 were selected, allowing a systematic evaluation and comparison of the experiences of the most recently-selected group of state judges.

It was a lengthy process to identify the appropriate pool of judges, for there was no single source that compiled such information nationwide at the time this project began. As a report from the Brennan Center for Justice recently noted, more detailed record keeping – both regarding successful and unsuccessful candidates for the judiciary – would be quite helpful in furthering judicial diversity research.³⁹ In this case, the collection of information was complicated further by the fact that there is relatively little media or other coverage devoted to the judicial selection process in most areas. The implications of this for research and public education are discussed in greater depth later in this report.

Initial data on the judges was assembled from secondary sources, including news stories, bar reports, law reviews, and other publications. In the end, the research focused on 23 judges across 12 states. Regretfully, judges of color still constitute a small minority of state court judges nationwide, so the 23 judges interviewed for this project represent a significant percentage of the total. Of those interviewed, 56 percent were male, while 44 percent were female. Further, 56 percent were African-Americans, 31 percent were Latino(a)s, and 13 percent were Asian/Pacific Islanders. The judges came from all regions of the United States and from states with varying demographics. In addition to the judges, researchers also spoke with lawyers, journalists, bar leaders, community activists, and fellow judges to get a full picture of the process of appointment.

Having selected the judges for study, researchers again turned to secondary sources to gain background information on the judges and to understand the legal and political climates of their communities. After the interviews were completed, researchers integrated this secondary information with the interview reports to build a comprehensive case study for each judge.

During the interviews, each judge was asked detailed questions on a variety of topics.⁴⁰ The judges responded to questions related to their background (experience, involvement in community and bar activities, law school), as well as their decision to seek a judgeship. In addition, the judges were asked to evaluate what they believed their likelihood of success might be at the time they originally made the decision to try to become a judge.

Then, the judges were asked to describe in depth the process by which they had achieved their position, including their supporters, possible opponents, the amount of media coverage surrounding their campaign or selection and whether or not the process was controversial for any reason. In addition, the judges were asked to evaluate the functioning of the judicial selection system that they had negotiated. The judges were also asked to describe any problems with the performance of the selection mechanism and to assess the impact of the selection system on diversity. Further, the judges were requested to recommend any changes that should be made to their state's current selection mechanism, particularly those that could improve diversity on the bench. Finally, judges were asked to respond to several questions about the impact of their race, ethnicity and gender on the selection process, and they were asked a list of targeted questions related to fundraising for elections, interim appointments and recruitment efforts.

Although these questions were asked of each judge, efforts were made to focus on the topics that the individual judge deemed important and to explore these topics in more depth, rather than confining each interview to a strict question-and-answer format. The interviews ranged from 30 to 90 minutes in length.

At the conclusion of each interview, the judges were asked to specify additional individuals who should also be interviewed in order to understand either the functioning of the judicial selection process in that state or particular aspects of the individual judge's experience. As a result of these suggestions and also of further secondary research, supplementary interviews were conducted with a variety of additional individuals. Many of these individuals are also judges. During these supplementary interviews, each interviewee was asked both to respond to specific questions about the experience of the judge who provided the referral, as well as to provide any general insights that he or she might possess on the topics detailed above.

During the course of this research, interviewees universally advocated for additional diversity research and strongly supported increased diversity on the bench. That said, participation in the research required a time commitment that some potential interviewees were unable to make. This was likely the result of a combination of the large number of commitments of those who were interviewed, as well as the potential sensitivity of the topics of diversity and the selection process.

Yet, despite these initial difficulties, the judges who agreed to participate were both extremely supportive of the project and, many times, were exceedingly candid in their responses. For this reason, each judge was offered several options with respect to confidentiality. First, a judge could choose whether or not to allow the use of his or her interview data in this project's final published report or to keep the answers confidential. For those who agreed to allow the use of their answers in this report, these judges were also given the choice of whether or not to be identified by name as a participant or even quoted.

Although many judges agreed to allow their interviews to be "on the record," this report will not identify the participants by name. This is done primarily because the population from which these participants were selected is very small. If those judges who agreed to be interviewed were identified in this report, appropriate confidentiality could not be ensured with respect to the remainder of the judges. Where possible, however, relevant demographic and other details will be provided in the discussion that follows.

As a percentage of minority judges on state benches, the number of judges interviewed for this project is significant. It is unfortunate that few judges of color have been appointed or elected to state courts of general jurisdiction during the last five years, but the research accounted for many of them. Even more compelling, however, is the fact that many of the judges gave similar accounts in the interviews. Despite being located in states with different selection systems and highly disparate demographics, their reports of the selection processes were remarkably similar. The issues raised by the judges in this sample and the recommendations provided were also highly comparable. The fact that the similarities were so striking allows additional confidence in the results of this research.

Discussion of Findings from the Judicial Interviews

The Selection Process and Politics

The courts are designed to be less susceptible to politics than the other branches, but judges interviewed for this project routinely stressed the role of various kinds of politics in judicial selection. By politics, they meant a variety of influences, from partisan political activities to the strategies necessary to navigate processes fraught with interpersonal politics. Interestingly, the judges were both explicit in their answers – such as in response to questions about the political aspects of the process – and also expressed these influences implicitly by the factors that they chose to emphasize in answering broader questions about their views. In fact, political and strategic considerations were seemingly discussed at greater length than any other theme within these interviews. In addition, discussions of politics were also surprisingly candid.

This is not to suggest that the judges failed to highlight other factors and types of preparation for their positions. Across the board, judges viewed these additional factors – such as the development of a judicial temperament and substantive preparation – as important. However, when asked specifically about the factors in their background or experience that they thought most influenced their ability to attain their positions, nearly all of the judges mentioned factors that indicated an essentially political process.

This trend was particularly marked with judges who had successfully navigated partisan elective systems. In fact, these judges were often unabashedly political. They were candid about the fact that selection is a political process and frequently described the political factors that aided their candidacy in great detail. One judge from a partisan elective system openly admitted that he was not the “most experienced” at the time of his initial interim appointment and that he “leapfrogged ahead of someone with more experience” due to his political experience and relationships.⁴¹

These judges discussed at length how they framed their appeal to the voters during their interviews. In addition, prior party registration, working on campaigns, hosting fundraisers and political networking all constituted important activities in elective states. One judge stated that he “was so active in the state and across the country, that he knew the ins and outs of a campaign.”⁴² He had “been involved in a number of local campaigns, and so [a campaign] was not a new adventure for [him] and [he] was well aware of the sacrifices.”⁴³ Money was also described as crucially important in elective states. Many of the judges emphasized that candidates of color are frequently disadvantaged by their inability to raise large amounts of

campaign funds. Some spoke of being limited to a smaller network of supporters and said it was difficult at times to broaden their appeal for fundraising.

Judges in non-elective states also mentioned political factors; however, some judges discussed them more explicitly than others. For example, one appointed judge stated that “it is important to get yourself out there in order to be a judge, because after all this is a political appointment. People who want to be judges need to work politics locally through whatever connections that they have.”⁴⁴ This quotation came from an appointed judge who would ultimately be required to stand for non-partisan retention election, but who had, at the time of the interview, not participated in an election. He also candidly revealed that since “[a judgeship] is a political appointment, no one is really here strictly on their merits. A political process is not always about picking who is the most qualified. Politics are a big piece of it. And, being a good judge is not always the same thing as being a good attorney.”⁴⁵

However, this judge also stated that he believes that the process “tries very hard to look at the person’s qualifications, though.”⁴⁶ When asked about his view of the functioning of his state’s selection system, he answered that he was supportive of it and felt that it functioned effectively, but he said that judicial terms needed to be longer in between retention elections in order to preserve a greater degree of judicial independence from politics. Another judge from a non-partisan election state claimed that politics had not played a large role in his selection process when asked about this directly. At the same time, he acknowledged that “indirectly, all of [his] supporters were political. They pulled the levers for [him].”⁴⁷

Although judges from appointive systems were sometimes explicitly political in this manner, a larger percentage of these interviewees would be more accurately described as implicitly political. They did not speak of voter rolls or campaign fundraising – and, in a few cases, they even maintained that they were not politically involved or savvy – but many of their comments reflected the same concern with “strategy,” “planning,” “getting to know people,” “networking” or even “participating” that the most seasoned political operative would recommend.⁴⁸

Judges from appointive systems seemed particularly eager to downplay the explicit, political aspects of their experience and of the process. Perhaps this tendency results from the culture present within an appointive system and the understandable desire to prioritize other factors over politics when discussing a topic as important as diversity in the judiciary. It can be said that the appointive process seemed to remove overt politics from the interview discussion to a substantial degree, as these judges did not discuss political parties or political climate as frequently as did

judges from elective systems. They also did not discuss the views of the public and the relationship between judging and the larger community in the way that the judges from elective systems did. Presumably, this resulted from the fact that the motivation to ponder how to “sell” their qualifications to the public is removed when there is not an election to win.

However, despite all of these observations, the appointed judges described an essentially political and strategic process of networking and informal campaigning. Their responses suggest that they engaged in similar types of calculations as did the elective judges. With little or no prompting, judges in elective systems described how they promoted their candidacy and background to the voters in much the same manner as a typical candidate for any (non-judicial) elective office would. Appointed judges, by comparison, used similar language to describe how they made their case to the nominating commission or to influential members of the community. When asked for his advice to prospective candidates, one judge stated simply, “Learn what the appointing authority cares about.”⁴⁹ Judges in appointive systems underscored the fact that they still must think carefully about how they portray themselves and their candidacies.

Thus, prior political activity was universally regarded as being very helpful. It was emphasized more overtly and made more central in the discussion of the judges from elective states, perhaps. However, it was acknowledged to be helpful under all systems. The benefits mentioned ranged from help with raising money (in elective states) to raising the judge's profile (in all states). The judges viewed prior political activity as a prerequisite to demonstrating leadership skills. Political activity was also crucial in recruiting individuals to write letters of support to nominating commissions and also to endorse the judges' candidacies during elections.

In this way, many of the observations about political campaigns from other research seem to apply. For example, many of the judges who participated in elections produced commercials, websites and/or online advertisements to aid their campaigns. A few of the judges mentioned that they hired someone to conduct opposition research in a partisan election or used other types of consultants. Regardless of the selection system in their states, judges reported that they carefully thought about and managed their public persona. They highlighted aspects of their experience – such as involvement with charities or being a longstanding member of the community – with the explicit goal of portraying themselves as attractive to the public, elites, commission members and elected officials. In addition, as a judge in an appointive system underscored, a judgeship “is still a political office, so you will always have examples where politics trumps [legal] experience.”⁵⁰ In fact, the judicial interviews yielded several examples of similar statements, which came from judges in both elective and non-elective states.⁵¹

Like political candidates everywhere, many of the elected judges stressed the importance of fundraising for electoral success. In particular, the judges felt it was difficult for minority candidates to raise money compared with their white counterparts who had greater business and other networks, and that this disparity disadvantaged judges of color. In fact, one judge who had first been appointed stated that he “could not have afforded to run.”⁵² However, he had routinely volunteered in community, church and bar activities in order “to get his face and name known,” a fact which ultimately led to his appointment.⁵³

Another judge emphasized this point more starkly. As she explained, “the system needs to change. There is too much power in the political process with the parties and political brokers. Money controls in my state. This process disadvantages minority judges.”⁵⁴ Another judge said that it helped to have practiced law as a member of a large firm because he could tap into those connections in order to increase his fundraising potential.⁵⁵ Other judges attributed their ability to raise money to their success at networking and finding mentors. Yet, this success was clearly the exception. In fact, elected judges frequently cited campaign money, or, rather, the difficulty of raising it, as a leading issue that discourages minority candidates for judgeships.

The Importance of Elected Officials in Supporting Diversity

That many of the judges described the selection process in political terms is unusual, since so much of the public is largely unaware of those who serve on the state courts. To the extent, then, that these processes are political, they depend on the involvement and support of political “elites” – elected officials, bar leaders, and in some cases sitting judges. Indeed, time and again, the judges reiterated in the interviews that a diverse judiciary depends on the active support of political leaders. Interviewees most often cited the role of governors in pushing an agenda of diversification, both in states where the governor possesses the power to make judicial appointments and/or interim appointments and also in other areas.⁵⁶ Many of the judges also specifically mentioned the power to make interim appointments as crucial. One judge described an interim appointment as “a back door that allows candidates to show their merits without a politically charged election.”⁵⁷

Some judges also said that the active support of a chief justice, group of legislators, or local party leaders can make a difference in diversifying state government, and especially its courts. Bar associations and members of the public may also increase pressure on elected officials and make the issue of diversity a priority. Since members of the public rarely know a great deal about

