



## **Inside Democrats' quest to nominate judges who break the ex-prosecutor mold**

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As part of the historically quick work to put his judicial nominees on the bench, President Joe Biden is on a mission to pick judges whose professional backgrounds break the mold of the ex-prosecutor and corporate law veterans who currently dominate the federal judiciary.

But it's not a task that the President can accomplish on his own. Instead, he is relying on senators to broaden the pool of potential nominees they bring to the White House.

Biden's emphasis on nominating more ex-public defenders (12 total make up his 32 nominees), as well as civil rights attorneys (four out of the 32) and labor lawyers, is a product of a years-long campaign to rethink who can be judges.

That has meant adjustments to the pipeline through which potential nominees travel. Some senators have changed their recommendation procedures, and with the commitment to bringing in different types of lawyers into the judicial nomination process, they have seen a record number of judicial applicants for the vacancies in their states.

"It takes a lot of work to find these candidates and encourage them to apply and support them through the process," said Chris Kang, who worked on judicial nominations in the Obama White House and now is chief counsel of the progressive legal group Demand Justice. "If senators aren't willing to put in the effort, it's not going to happen on its own."

Quality, not just quantity has been Democrats' refrain as they've embarked on this overhaul of the judiciary. After President Donald Trump was able to put 234 judges on the federal bench -- an achievement secured in part by Senate Republicans' refusal to confirm some Obama nominees at the end of his term -- Democrats have a lot of catch-up to do if they want to counter Trump's

influence. By confirming judges who have much more varied professional backgrounds, they say they will leave an imprint on the judiciary that will extend beyond just the number of judges Biden can ultimately appoint.

They say that Americans will have more trust in the judiciary if the judiciary looks more like them. The nominations of lawyers from the immigrant, labor and voting rights communities are exciting those constituencies, after Democrats had historically been accused of not making the judiciary enough of a priority.

A senior White House official stressed that there were no litmus tests for Biden's nominees. "Our goal in this is not to making any particular constituency or any groups happy. I think our work is making a number of people happy, but it's because we share the same goal," the official said. "We need the development of our law to reflect the perspectives across the profession." On Wednesday, two nominees with experience as public defenders -- Omar Williams and Michael Nachmanoff, who have been named, respectively, for district courts in Connecticut and Virginia -- will be among the nominees testifying in front of the Senate Judiciary Committee. The committee will also consider in the coming days the nominations of two other ex-public defenders --- Jia Cobb and Sarah Merriam, for respective courts in Washington, DC, and Connecticut -- as well as the nomination of Myrna Perez, a leading voting rights attorney who has been nominated for a federal appeals court.

### **Retooling selection commissions**

Presidents, particularly when it comes to filling district court vacancies, depend on senators to recommend candidates for courts in their states. Those recommendation procedures -- which for some senators, include advisory commissions to screen applicants -- have come under scrutiny from court reformers who have been critical of the overwhelming number of former prosecutors and corporate lawyers on the bench.

According to a [2020 report by the left-leaning People's Policy Project](#), prosecutors were likewise overrepresented on the public selection commissions used then by 19 Democratic senators (another 18 Democrats at the time did not publicize who sat on their selection commissions, while the rest the caucus used more informal processes to select potential judicial nominees). It's no surprise that the bias towards prosecutors in the selection process has historically carried over the bench. Former prosecutors outnumber former defense attorneys four-to-one, [according to a study by the libertarian Cato Institute](#).

After the Biden transition team made clear his administration would want more professional diversity among his judicial nominees, some senators took additional steps to make the mandate a reality.

How Washington's Democratic Sens. Patty Murray and Maria Cantwell retooled their selection commission has been held up as the model for other senators to consider.

The senators named to their selection commission this year a half-dozen new members including a tribal attorney, a former public defender and multiple attorneys with civil rights experience. So

far, the judicial nominees to emerge from that process include Tana Lin, former public defender and Lauren King, a Native American attorney with deep experience in tribal law.

"Senator Murray is really someone the rest of the caucus can hopefully look to," Daniel Goldberg, the legal director of Alliance for Justice, told CNN. Her recommendations, Goldberg said, "demonstrate that she took seriously the need to broaden the pool."

The selection commission put together by Sens. Michael Bennet and John Hickenlooper of Colorado has also earned plaudits from progressive advocates for its makeup of attorneys with experience in immigration, Native American and environmental law (a shift from the previous iteration of Bennet's selection commission, which, according to the People's Policy Project report, was stacked with corporate lawyers and prosecutors).

The federal nominations commission set up by Georgia Sens. Raphael Warnock and Jon Ossoff - both new to the Senate -- include several civil rights attorneys, as well as lawyers with criminal defense and immigration law experience.

It is up to each senator whether they want to set up a commission -- and make its members public -- to pool recommendations or to find names in-house.

The Senate Judiciary Committee staff offers advice and resources on the pros and cons of each route, and in those conversations this year, the committee emphasized the focus on professional diversity, a Democratic committee aide told CNN.

"Certain steps have been taken within the screening committee processes in various states, to make sure that the pipeline of potential nominees includes more individuals drawn from the ranks of public defenders, civil rights lawyers, immigration lawyers, etc.," the aide said. "I think it really is an across-the-board understanding on the part of Senate Democrats that this rebalancing is important."

### **'A signal to the legal community'**

The push for more professional diversity in the judiciary has been in the making for years. It has been the focus of several outside groups, and some Democrats, like Massachusetts Sen. Elizabeth Warren, have long been outspoken about it as well.

A December letter to Democratic senators from soon-to-be White House counsel Dana Remus was still a notable marker for the movement. In it, the incoming Biden administration made clear that it wanted to focus on nominating those with legal experiences that had been "historically underrepresented on the federal bench," including "public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life."

The letter served as a critical recruiting tool, said Lena Zwarenstejn, senior director of the Fair Courts Campaign at the Leadership Conference for Civil Rights.

"Really having it be a uniform call to the entire community I think is really, really helpful," Zwarenstejn told CNN, "not only to shake up how senators may be thinking about this but also

to signal to the legal community, the full breadth of it: 'You are welcome, you should put yourself out there.'"

Senators and the advisory committees they partner with have sought to get that message to professional circles not usually associated with the path to the bench. In Washington, that meant the diverse group of selection commission members could tap into their varied professional networks, according to the testimony that the commission's co-chair, Ian Warner, gave the House at a hearing on judicial diversity this month.

"The result of those recruiting efforts was the largest and most diverse applicant pool since the Committee's inception," Warner told the House. "We received more than 75 applications that truly represented Washington's legal and broader community."

The commission that California Sen. Alex Padilla set up includes a person focused on "outreach to ensure diversity within the applicant pool," his office told CNN.

In Michigan, one judicial position being filled under this administration received more applications than ever in recent memory, according to Sen. Debbie Stabenow's office, which touted outreach she and her fellow Michigan Democrat, Sen. Gary Peters did with more than 60 special purpose bar associations.

Democratic Sen. Dianne Feinstein's selection commission has also reviewed a record number of 300 applicants for the court vacancies in California, according to her office.

"There have been outside groups that have been working on this, senators have been really welcoming of it. So it hasn't been hard to convince folks that this is an important shift to make," the senior White House official told CNN. "A big piece of it was getting the message out to various members of profession: 'if you're public defender, if you're a civil rights lawyer, maybe that wasn't the traditional path, but we need you on the bench.'"