



## **Biden's first 11 federal judge nominees highlight a highly nuanced diversity**

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This week, President Joe Biden proposed 11 nominees for vacant federal judgeships. They are a diverse and exceptionally qualified group that includes trailblazers like the first Muslim federal judge, the first female Asian American judge for the district court in the District of Columbia and the first woman of color for the federal district court in Maryland — if they are all confirmed. All told, nine of the nominees are women. Many of them, while well-credentialed, are relatively young.

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There is tremendous value in having a diverse bench. It reinforces the significance we place on inclusivity and fairness in our society and makes plain that diversity brings with it highly qualified and committed public servants. It also strengthens the decision-making process, with people from different professional backgrounds bringing different perspectives and insights into the judiciary with them.

But this group is also unique in another way: Four of them have experience in public defender's offices. You might be surprised that a former prosecutor would laud experience as a public defender as a critical qualification for a federal judgeship, but it is.

Although I have never personally appeared before a federal judge who was a former public defender, I did have the fortune to appear, frequently, before a federal judge who was a former civil rights lawyer and the first African American judge on the federal bench in Alabama, U.W. Clemon. Clemon was the first person who ever discussed sentencing disparities between crack and powder cocaine with me — disparities too often based on race, not justice. And he raised the problem long before it became widely understood (and was ultimately addressed in stages during the Bush and Obama administrations).

The justice system benefits when it has judges who can perceive and address inequity with their colleagues on the bench and advocate for policies, processes and changes where necessary. A diversity of backgrounds makes this much more likely.

Moreover, confidence in the courts is reinforced when they reflect the communities they serve instead of a narrow, homogenous slice of the population. Judges can't enforce their decisions with a show of force. The rule-of-law system only works if it maintains the trust and respect of the public.

That confidence can be earned in different ways. One way is by demonstrating empathy. Federal public defenders not only represent defendants in criminal cases, giving them that important perspective, they work for clients who are indigent and often unable to afford the basic necessities of life. These lawyers understand, in ways that prosecutors and lawyers who come from private practice may never fully appreciate, the impact any contact with the criminal justice system can have on individuals and their families.

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Under President Barack Obama, more than 40 percent of judicial appointees were former prosecutors. Fewer than 15 percent had experience as public defenders. By 2019, the Cato Institute concluded the ratio of former prosecutors to former criminal defense attorneys (including public defenders) on the federal bench was 4 to 1. When it came to federal appellate judges, only around 1 percent had spent most of their careers doing public defense work or in legal aid.

Those numbers grew worse during the Trump administration, when 234 judges were confirmed to the federal bench. As of August, only three of them had ever worked as public defenders.

In 2017, Justice Ruth Bader Ginsburg was asked in a BBC interview about the numbers of women on the federal bench. She responded, "I was the second woman on the Supreme Court, and when Justice O'Connor left, I was all alone. Now I have two colleagues, Justice Sonia Sotomayor and Justice Elena Kagan. People ask me, 'But when do you think there will be enough?' I say, well, when there are nine! And people are aghast. We've had nine men for most of the country's history and no one thought that ... there was anything wrong with that."

Now we have a president who is willing to see something wrong with an absence of diversity, in a highly nuanced way. It's important that he is committed to putting a Black woman on the Supreme Court and important that his commitment to diversity among judges is expansive. Our courts will be the better for it. And these early nominees are a good first step.

We are living through a remarkable time where our country may finally be ready for the justice system's long overdue reckoning. The discussions about the need to reform the justice system are happening now, as they should, and have largely centered on policing, prosecutions and prisons.

But we should also ensure that our federal judiciary is diverse in ways that make it best suited to serve our increasingly diverse communities and fulfill a renewed commitment to advancing equality and ending systemic racism. In Biden's first appointments, we see not only racial, religious, ethnic and gender diversity but a commitment to professional diversity that will further these goals. With 73 open judgeships, including the 11 Biden has just announced his intent to fill, there's a lot of opportunity. Let's hope he'll be as quick and determined to fill these seats as the last administration was.