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# Pathways to the Bench for NACDL Attorneys: Engage & Exchange

May 15, 2024

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# Agenda

- Introduction
- AFJ Building the Bench
- Moderated Discussion
- Closing

# Building the Bench (AFJ)

Goal: To ensure that NACDL members and other webinar attendees are convinced of:

- 1) The compelling **need + opportunity** for more criminal defense attorneys in the judiciary
- 2) **Your ability** to fill this need through awareness, collaboration, and engagement

# Federal judiciary

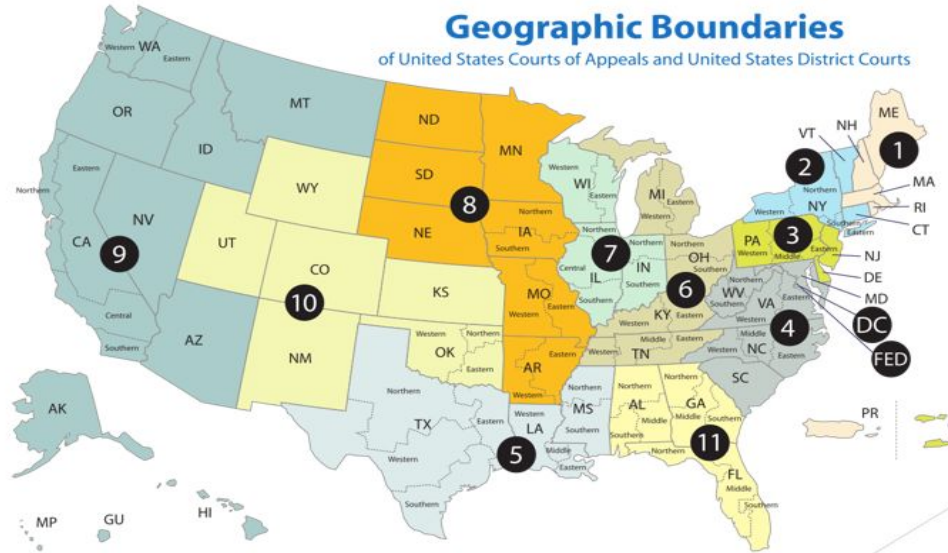
- When all vacancies are filled, our federal courts have 890 Article III judges in total:
  - One Supreme Court with nine justices,
  - 13 circuit courts with 179 judges,
  - 94 district courts with 677 judges and
  - One Court of International Trade with 9 judges
  - One Court of Federal Claims with 16 judges
- ~1700 total federal judges

# Federal judiciary

## Three Tiers of the Federal Courts

### Geographic Boundaries

of United States Courts of Appeals and United States District Courts



# Federal judiciary

- The Supreme Court only hears 100-150 cases a year out of 7,000 appeals
- By contrast, the appellate courts hear approximately 50,000 appeals each year
- District Courts hear approximately 350,000 cases each year
- Nearly 70,000 criminal defendant filings in federal district court in 2023

# State judiciary

- 50 states, 50 systems
  - DC + federal territories (quasi-federal)
- High court goes by different names
  - Supreme Court, Court of Appeals, etc.
- Different methods of appointment and election
- 30,000+ state judges
- Trial Courts and Appellate Courts

# Compelling Need

Judicial diversity = varied professional and demographic backgrounds on the bench.

- 1) Judicial diversity matters (federal and state)
- 1) Judicial diversity, especially for public defenders and criminal defense attorneys in general, is lacking



# Judicial Diversity Matters

Numerous studies/reports produced by AFJ and coalition partners prove what may be common sense:

The professional and demographic backgrounds of judges makes a difference in 1) what they rule, 2) whom they hire, and 3) how their courtroom runs.

# Judicial Diversity Matters (cont'd)

*The Washington Post*  
*Democracy Dies in Darkness*

## Appointing public defenders as judges affects their decisions. Our study shows how.

It is by far more common for judges to have experience as prosecutors. What if politicians changed that?

Perspective by Allison P. Harris and Maya Sen  
March 17, 2022 at 10:17 a.m. EDT



# Judicial Diversity Matters (cont'd)

- The results provide evidence that criminal cases assigned to federal district judges who are former public defenders are less likely to lead to incarceration.
- In addition, for charges proceeding to a trial, assignment to a former public defender results in incarceration sentences that are about 16 months shorter on average.
- Former public defenders' lower likelihood of handing down extremely long sentences—30 years or more—partly drives this result.

# Judicial Diversity Matters (cont'd)

- “In cases where race, gender, and religion are at issue, a judge’s identity can have a significant impact on how cases are decided.”
- “Studies on federal appellate courts have found that **having at least one [woman]** on an appellate court panel significantly increases the likelihood that male judges will find for plaintiffs in **cases involving sexual harassment and discrimination**, while **having at least one Black judge** on a panel increases the likelihood that non-Black judges will find for plaintiffs claiming **violations of the Voting Rights Act** and in affirmative action cases.”
  - *Building a More Inclusive Judiciary, Center for American Progress*

# Judicial Diversity Matters (cont'd)

- This report finds that just seven Supreme Court decisions have caused economic harm to at least 74 million people since 2011, including workers, renters, consumers, and low-income people without health insurance.
- Report provides numerous examples of cases where judges with economic justice/labor backgrounds ruled for the worker, where fellow judges in the same cases from corporate backgrounds ruled for the employer
  - *Economic Justice, Judges, and the Law*, Alliance for Justice

# Judicial Diversity is Lacking

## State Supreme Courts:

- Nearly 2 out of every 5 justices on State Supreme Courts carry prosecutorial backgrounds.
- 1 out of 10 carries a background as a public defender.
- Out of 345 justices nationwide, not even 25 carry a background in civil rights, and barely 3% of state supreme court justices have backgrounds in civil rights outside of government practice.
- Demographically, it's the rare state supreme court that has a justice who comes from the Hispanic, Asian, or from a Native American community.

# Pathways to the State Bench

- 1) Partisan election
  - North Carolina
- 2) Nonpartisan election
  - Georgia, Oregon
- 3) Legislative election
  - Virginia, South Carolina
- 4) Gubernatorial appointment
  - California, interims
- 5) Selection committee/assisted appointment
  - Missouri

# Getting through the nomination (federal)

- White House
- Home state senators (blue slips)
- In-state commissions



# Getting through the confirmation (federal)

- FBI vetting
- Senate Judiciary Committee
- Full Senate vote

# Success is possible

## Biden nominates Worcester attorney Brian Murphy to be federal judge in Massachusetts



**Marco Cartolano**

Worcester Telegram & Gazette

Published 7:26 p.m. ET March 20, 2024 | Updated 9:06 a.m. ET March 22, 2024



President Joe Biden announced Wednesday that he has selected Brian E. Murphy, a Worcester-based criminal defense attorney, as judge of the United States District Court for the District of Massachusetts.

Born in Columbia, Maryland, Murphy



## White House nominates Anne Hwang as federal judge for central district of California

The White House has nominated Los Angeles County Superior Court Judge Anne Hwang to serve on the United States District Court for the Central District of California. Judge Hwang, who has served as a Superior Court judge since 2019, previously worked as a Deputy Federal Public Defender in the Office of the Federal Public Defender for the Central District of California from 2006 to 2018.



Judge Hwang graduated from Cornell University in 1997, received her J.D. from the University of Southern California Law School in

**Rich Federico:** Federico, a Kansas federal public defender was confirmed to the 10th U.S. Circuit Court of Appeals, marking Biden's second appointment to the Denver-based court. The bipartisan vote of 61-29 on Dec. 11, backed by support from both of Kansas' Republican senators, contributes to a record number of circuit court judges with public defender backgrounds appointed by Biden, marked the administration's effort to diversify the federal bench traditionally led by former prosecutors and large law firm attorneys. According to the progressive advocacy group Alliance for Justice, an additional 36 of Biden's confirmed judicial nominees had previous roles as public defenders.

NEWS

## Senate Confirms Federal Public Defender to Tenth Circuit Seat

The Senate on Monday confirmed federal public defender Richard Federico to a seat on the U.S. Court of Appeals for the Tenth Circuit that has been vacant for more than two years.

December 12, 2023 at 12:11 PM

🕒 2 minute read



# Success is possible

- Biden administration
  - **40 confirmed public defenders** – highest percentage of any administration in history (out of 194 total confirmations)
    - Various nominees with criminal defense experience waiting to be confirmed
  - First Supreme Court Justice with public defender experience (Ketanji Brown Jackson)
- Trump (5) Obama (41)

# Filling the need for judicial diversity

- Important links and contacts
  - AFJ Judge Interest Form ([afj.org/judgeinterest](https://afj.org/judgeinterest))
    - Goal is for each and every lawyer interested in becoming a judge, who would bring any level of diversity to the bench, to fill this out.
  - My contact: [vasu.abhiraman@afj.org](mailto:vasu.abhiraman@afj.org)
  - BtB home page:  
<https://afj.org/why-courts-matter/building-the-bench/>
  - State courts hub: <https://afj.org/statecourts/>

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# Moderated Discussion + Questions?