Advocates and researchers have provided ample evidence that there is still work to be done to improve judicial diversity.1 In 2005, a report by The Lawyers’ Committee for Civil Rights under Law found 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% [were] held by judges of color.”2 Generally, democracy requires the institutions of government in a diverse nation be reflective of the public they serve. However, the particular importance of diversity in the judiciary cannot be understated given the specific duties of the courts.

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?3

Thus, it is crucial that the public sees a judiciary reflective of the diversity of its community.4 Additionally, diversity in the judiciary benefits judicial decision making.5 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.6

A study of new judges of color found that factors other than selection mechanism usually determine the ability of diverse candidates to become judges.

New judges speak about the process and its impact on judicial diversity

A study of new judges of color found that factors other than selection mechanism usually determine the ability of diverse candidates to become judges.

For some time, researchers have sought to determine whether a state’s judicial selection process influences...
judicial diversity. Overall, the results have been mixed. Early research concluded that it was more difficult for persons of color to become state judges in appointive systems, arguing that “appointive systems in general, and merit systems in particular, tend[ed] 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.”

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. Those supportive of merit systems have frequently maintained that they produce better-qualified judges and also remove much of the politics found in elective systems from the selection process. More recent research challenges these claims, suggesting instead that differing judicial selection mechanisms do not systematically affect the ability of minorities or women to become judges. Several studies have even argued that a relationship between the choice of selection mechanism and judicial diversity might once have been present, but has now disappeared.

Against this background, we conducted a study of state trial court judges of color to examine the influence of the judicial selection process on diversity. Given the complexity of selection mechanisms used across states and the progression—and sometimes disagreement—of the findings from large quantitative studies, we chose to use a qualitative, case-based approach. This allowed us to examine the overall influence of varying selection mechanisms on diversity and to develop a deeper knowledge of each judge’s experience during the selection process.

Generally, we find that the varying selection mechanisms tend to operate to produce a surprising similarity in the processes, strategies, and experiences of judicial candidates. Rather than a specific selection mechanism, the judges overwhelmingly point to other factors—such as politics, networking, mentorship, and other resources—as determinative of the ability of diverse candidates to become judges. Where a choice of selection mechanism seems to operate to hinder diversity, it is not based upon this structural choice alone, but rather this choice combined with additional, more nuanced factors.

Methodology

We selected a detailed, case-based approach in order to provide a comprehensive picture of those factors and conditions that advance or hinder diversity in the nation’s state trial courts. We began by casting a wide net, choosing judges of color from state trial courts across a range of judicial selection systems. The research focused on state courts of general jurisdiction, where the bulk of judicial business is handled in the U.S., and concentrated on judges initially appointed or elected within the last five years so that the data would be current.

In the end, the research focused on 23 judges across 12 states. Since judges of color still constitute a small minority of state court judges nationwide, the 23 judges represent a significant percentage of judges of color selected in the five years preceding the study. Even more compelling is the fact that—despite being located in states with different selection systems and highly disparate demographics—the judges’ reports of the selection processes were remarkably similar. Of those interviewed, 56 percent were male. 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.

Data on the judges were first assembled from secondary sources, including news stories, bar reports, law reviews, and other publications. The case studies also included interviews with members of the judiciary, bar leaders, journalists, community leaders, and other interested observers and activists, as well as academic and other research to supplement the first-hand data. Each judge was interviewed by the research team, often in person but also by telephone. During the interviews, the judges were asked detailed questions about their backgrounds (experience, involvement in community and bar activities, law school) and decisions to seek a judgeship. They also were asked to provide a detailed description of the processes by which they had achieved their positions, including their supporters, possible opponents, the amount of media coverage surrounding their campaigns or selection, and whether or not the processes were controversial.

Next, the judges evaluated the functioning of the judicial selection systems that they had negotiated and
assessed the impact of their state’s selection system on diversity. Finally, judges were asked to respond to several questions about the impact of their race, ethnicity, and gender on various aspects of the selection process, as well as specific 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 in more detail. The interviews generally ranged from 30 to 90 minutes in length. At the conclusion of each interview, the judges were asked to specify additional individuals who should 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 individuals, many of whom are also judges.

The judges who agreed to participate were both extremely supportive of the project and, many times, were exceedingly candid. (Indeed, it is the candor of the judges’ responses that makes the findings so unusual and compelling.) Although many judges agreed to allow their interviews to be “on the record,” this article will not identify the participants by name. This is so primarily because the population from which these participants were selected is small. If those judges who agreed to be interviewed were identified, appropriate confidentiality could not be ensured with respect to the remainder of the judges. Where possible, however, relevant demographic and other details are provided in the discussion that follows.

Selection and politics

Civics classes often teach that the judiciary is to remain insulated from politics, but, time and again, the judges interviewed for this project stressed the role of politics in judicial selection. This was the case regardless of the selection system that the judge had navigated. By politics, the judges meant the full spectrum of political influences, from partisan political activities to formal and informal campaigning, as well as the strategies necessary to navigate processes fraught with organizational and interpersonal politics. Interestingly, the judges were both explicit in their references—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 experiences. In fact, political and strategic considerations were seemingly discussed at greater length than any other theme. Further, these discussions were also surprisingly candid.

This is not to suggest that the judges failed to highlight other aspects of the process or other types of preparation for their positions. Across the board, judges viewed 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 mentioned both political and strategic considerations. Political considerations featured prominently in almost all interviews regardless of the selection system that each judge had navigated. Though it is not surprising that politics might be a factor in success (particularly in elective systems), the frequency and consistency with which these judges spoke of politics was surprising.

Even the judges from appointive systems routinely mentioned political considerations. This was particularly unexpected, as appointive systems are generally thought to help insulate the judicial selection process from politics.15 In fact, previous research has not only suggested that the appointive and elective selection processes themselves differ greatly in what they require of candidates, but even that these systems are so dissimilar that they produce significantly different outcomes in terms of the types of judges selected, their substantive decisions, and even the amount of litigation in a state.16 Further, this research has gone so far as to link differing selection procedures to disparities in judicial salaries and also to varying patterns of interaction among the branches of state government.17 Yet, in the case of the judges who were interviewed for this project, their assessments of these selection processes were remarkably similar across the different types of systems. Time and again, the judges’ spoke of similar political considerations, strategies, preparation, and skills necessary to successfully navigate these processes.

Although all of the judges emphasized these factors during their interviews, judges from partisan elective systems were often unabashedly political. By this, we mean that they were quite candid about the fact that selection is a political process and frequently described the political factors that aided their candidacy in great detail. For example, 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.15

The judges from partisan elective systems also discussed at length how...
they framed their appeal to the voters and routinely spoke of the importance of prior party registration, work on campaigns, hosting fundraisers, and political networking. In addition, money was 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.

In particular, the elective judges felt it was difficult for minority candidates to raise money compared with their white counterparts who had greater business and other networks. In fact, one judge who had first been appointed to his position (in an elective system) candidly stated that he “could not have afforded to run” initially. Instead, this judge had routinely volunteered in community, church, and bar activities in order “to get his face and name known,” a fact that ultimately led to his appointment. 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. In fact, elected judges repeatedly cited campaign money, or, rather, the difficulty of raising it, as a leading issue that discourages minority candidates for judgeships.

In states where the judges faced non-partisan elections, the respondents frequently emphasized similar factors. For example, despite the fact that these judges do not technically affiliate themselves with a political party, they frequently felt that their known party sympathies were influential in their success. In fact, as mentioned ranged from help with fundraising (in elective states) to conducting opposition research in a partisan election or used other types of political consultants.

Surprisingly, the judges in non-elective states also frequently focused on the political factors surrounding their appointment. As an example, with little or no prompting, judges in elective systems described how they promoted their candidacies and backgrounds to voters in much the same manner as typical candidates 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 and to influential members of the community. Judges in appointive systems underscored the fact that they still must think carefully about how they portray themselves and their candidacies.

Further, regardless of the selection system in their states, judges reported that they carefully thought about and managed their public persona. Even appointed judges discussed how they consciously 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. One judge in an appointive system underscored the similarities of politics across selection systems, even saying that an appointed judgeship “is still a political office, so you will always have examples where politics trumps [legal] experience.” In fact, the judicial interviews yielded several similar statements, which came from judges in both elective and non-elective states.

Moreover, prior partisan political activity was universally regarded as helpful in attaining a judgeship across selection systems. The benefits mentioned ranged from help with raising money (in elective states) to conducting opposition research in a partisan election or used other types of political consultants.

In this way, many of the observations about political campaigns from other research seemed to apply to elective judicial campaigns. 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 political consultants.

Surprisingly, the judges in non-elective states also frequently focused on the political factors surrounding their appointment. As an example, with little or no prompting, judges in elective systems described how they promoted their candidacies and backgrounds to voters in much the same manner as typical candidates 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 and to influential members of the community. Judges in appointive systems underscored the fact that they still must think carefully about how they portray themselves and their candidacies.

Prior partisan political activity was universally regarded as helpful in attaining a judgeship across selection systems.

that appointed judges sometimes seemed less willing to label their behavior as explicitly political. In a few instances, some appointed judges even maintained that they were not particularly politically savvy. Despite this, even these judges discussed political considerations and the political climate nearly as frequently as their counterparts from elective systems. While they did not discuss political parties quite as frequently, these judges did sometimes mention partisan considerations, such as their party affiliations, the electoral strength of the political parties in their states, or even the manner in which these judges’ selection strategies fit within the larger partisan climate.

Perhaps judges from appointive systems are more cautious in admitting to political expertise. That is, it may be less acceptable to acknowledge the requirements of politics as openly in an appointive system, and in fact, appointed judges tended to use other terms to describe their political activities. Nevertheless, the judges’ comments routinely reflected the same concern with “strategy,” “planning,” “getting to know people,” “networking” and even “participating” in politics that the most seasoned political operative would recommend. Further, these activities were on a larger scale and were more deliberate—closer to a true “campaign”—than the networking that takes place in many professions. In short, elected judges detailed a formalized and intentional process of networking and campaigning. Appointed judges frequently described an unofficial process of networking and campaigning, but the process was no less purposeful and it was often no smaller in scope or planning.

Despite this, the distinction between involvement in official and unofficial political processes may not be insignificant, particularly when considering the impact that involvement in each may have upon the manner in which a judge views his or her future role and connection with partisan politics. However, our findings do seem to suggest that recently selected judicial candidates of color may have experienced similar processes, made similar calculations and utilized similar skill sets across selection systems. These judges described the influence of politics on judicial selection in such similar terms that the stark distinction contemplated by some previous research may require a more nuanced evaluation.

**Importance of elected officials**

That so many of the judges described the selection process in political terms is unusual, since much of the public remains largely unaware of those who serve on the state courts. To the extent that these processes are political, then, 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 regardless of the selection mechanism in place in the state. 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 in other states.17 Many of the judges 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.”

Some judges said that the active support of a chief justice, group of legislators, or local party leaders can make a difference in diversifying state courts. Bar associations and members of the public may also increase pressure on elected officials and prioritize the issue of diversity. Since members of the public rarely know a great deal about those who serve on the state judiciary, the judges felt that increased efforts at voter and public education would reinforce the efforts of elected officials supportive of diversity.

In places where a supportive governor is in office, many of the judges expressed a positive outlook about the future of diversity and the general climate within the state. Several even credited particular governors with inspiring changes in beliefs about the importance of diversity. One judge reported that the efforts of the governor and others had led to a “real cultural shift” in that there is now “strong support within [her] state for increasing the diversity of the bench.” Frequently, judges in states with supportive elected officials felt as if their race, ethnicity, or gender had been an asset in helping them to secure their positions. One judge stated that he had been in the “right place at the right time for the governor’s desire to promote diversity on the bench.” These judges expressed a good deal of pride in their states and were quite hopeful about the future of diversity.

**Assessing selection mechanisms**

Overwhelmingly, the judges extolled the selection system that each had successfully navigated. Judges who had been elected expressed support for elective systems. They liked the ability to “make their case” to the voters and expressed concern that appointive systems would translate into decreased diversity on the bench. They feared that commissions would wield too much power and that prejudice would block the selection of diverse candidates. In addition, these judges worried that the appointment would be more strongly related to “who you know” than to individual qualifications.

Those judges selected within an appointive system consistently held the opposite view. They praised the appointive model as merit-based and fairer. In their view, elective systems raise problems for candidates of color, since they can allow voter stereotypes and racism to play a role in selections. Appointed judges worried that elections would tilt the playing field against minority candidates because other candidates could raise

funds more easily. In addition, they feared that elected judges would be too tied to politics and that connections would trump qualifications. A very small number of judges suggested minor changes to their current systems, such as longer terms for appointed judges or the abolition of primaries in elective states. Yet, even so, the judges overwhelmingly supported their state’s current selection system and favored the current selection mechanism as beneficial to diversity.

In addition to general questions about the selection processes in their states, the judges were asked detailed questions about how the selection process operated in their particular cases. For example, each judge was encouraged to speak about his or her supporters, opposition, and the extent of media coverage. Judges seemed uncharacteristically hesitant to discuss their opposition. For example, when they did answer questions about their opposition, they tended to name specific opponents and would not discuss any organized forces that opposed them. Frequently, the judges even asserted that no one (other than a named opponent in an elective state) had actively objected to their selection. The fact that the judges were hesitant to discuss these topics may suggest a concern with politics, in that answers could have resulted in politically charged assessments of local politics.

**Media coverage**

On the whole, the judges reported minimal media coverage of their selection regardless of the mechanism, a finding also confirmed by the secondary research conducted for each case study. Many of the judges from the non-elective states said they experienced no media coverage at all. Judges in partisan elective states received the highest amount of coverage in our study, with endorsements from newspapers and other coverage of the election. However, even in these instances, media coverage was generally quite sparse. The small number of exceptions seemed to occur in the coverage of highly contested races or ones in which a scandal erupted.

In most cases, the few stories that were written about the judges largely detailed their qualifications in a cursory manner, much like a short biography. Media coverage also sometimes highlighted the judges’ minority status, particularly if a judge was the first member of a racial or ethnic group to attain the position, despite the fact that the judges frequently pointed out that they did not run on their minority status alone.

Many of the judges expressed gratitude that comparatively little media coverage was devoted to their selection. Some spoke of fighting the perception that they would not be tough on crime or would make excessive allowances for members of their own minority group. One judge acknowledged that there is a certain amount of pressure attendant to being the first member of a minority group to be selected. As a result, he preferred to “fly below the radar.” By this he meant that he just wished to do his job to the best of his ability without the fanfare of media coverage and to demonstrate the benefits of appointing a diverse judiciary through his actions. The few notable exceptions to this were judges in partisan elective states, some of whom hoped to garner additional media coverage in order to aid their election bids. Indeed, several of these candidates had actively supplemented the coverage devoted to their campaigns by producing web commercials and campaign websites.

**Planning, networking, strategy**

During the interviews, the judges were also asked to describe in detail the actions that they had taken to prepare for the selection process so that these preparations could be compared across selection systems. Almost universally, they described a prolonged process and highlighted the great amount of preparation necessary to be successful. Many of the judges were not successful on their first try.

Regardless of the selection system in place, the judges frequently felt that their selection hinged on advanced planning. One reported that he had been focused on becoming a judge for 17 years before he had attained his position. He said that he “kept the judgeship in mind during his entire professional career as a prosecutor.” According to the judges, if a candidate possesses clearly defined goals or convictions about the way in which she will ultimately handle the job, she can make a strong case to a nominating commission or to the public in an election.

A majority of judges pursued an active strategy of networking, endorsements/references, and “retail politicking.” Even in states without elections, these interviewees said that judges must engage in a good amount of networking in order to be successful. Many of the judges became involved in and utilized social, professional, religious, and service-oriented networks to do so and to let others know that they wished to become a judge. While the networking process is discussed in greater detail below, it is an important point to emphasize here, as well. As an example, one judge mentioned that she planned her campaign by speaking with a lot of local attorneys “about which district to run in” and, in this way, “[she identified] an incumbent judge who many of those lawyers wanted ousted.”

All candidates must network and develop a public persona, often through community service and bar activities. However, in an elective system, each judge must also plan her official campaign, and several, in fact, served as their own de facto campaign managers. One judge mentioned that she initially gathered five “well-connected” female friends who were also attorneys to help organize her campaign. This judge reported that she got a big boost once another well-connected local woman agreed to serve as a campaign official for her. For fundraising, this judge drew on people she knew from past service on local boards and commissions and those—such as women’s groups—
that supported the election of a female judge.

Another judge said that he benefited from prior fundraising that he had performed for other candidates. When this judge was ready to run himself, he was able to call on those candidates and their supporters to help raise money for his campaign. It is clear from the comments of the judges that they utilized their existing social, professional, and service-oriented connections to provide support for their campaigns.

Even more importantly, judges needed to have these connections in place well before they considered a judgeship. One judge described this process as “creating networks” in advance of a planned candidacy. While judges from appointive systems do not have to run a formal campaign of the type described above, the appointive judges emphasized the same networking process as crucial for any judicial candidate.

Indeed, as a follow-up to this line of questioning, the judges were asked how confident they were of becoming a judge when they initially sought a judgeship. Most answered that they were fairly certain of success. In many cases, the judges said that they had possessed this confidence both early in their careers and also during the process. Even though many anticipated that the process would be a long one or even found it necessary to navigate the selection process more than once, they felt confident that they would eventually be able to attain the goal.

However, judges from partisan elective states and those who were also the first of their race and/or gender to make it to the bench in their local area fundamentally questioned their ability to win election. Indeed, these judges recalled their doubts even while expressing confidence in their preparation, qualifications, and abilities. Frequently, judges described these geographical areas as “traditional,” “conservative,” or lacking in population diversity, and called them inhospitable to minority candidates.

In stark contrast, judges from appointive systems—even if they were the first of their race or gender to be selected for their position—did not highlight the demographics of their region in this manner and expressed early confidence in their ability to attain their positions. This finding seems to contradict the longstanding argument that appointive systems protect the status quo and maintain elite control over judicial selection.18

As discussed above, early research seemed to confirm this idea and provided evidence that the number of judges of color in appointive systems differed from those in elective systems.19 More recent research has suggested that this difference seems to have disappeared over time as commissions and others charged with making appointments have become more supportive of diversity.20

The judges interviewed for this project confirmed that change. Indeed, many of the judges from appointive systems said that diversity had become a priority in their states and that, as a result, they faced a more hospitable climate for consideration and selection. In this way, the key difference found among judges in this study is not between judges from elective states and those from appointive systems. Rather, it is between partisan elective systems where few or no judges of color have been elected previously and other kinds of systems (appointive systems, elective systems, and even appointive systems where few judges of color have been selected). Where judges were among the first minority candidates to run for partisan election, they said that they had doubts about their ability to win. By contrast, virtually all other judges interviewed were confident of their eventual appointment or election. Considering that this research was directed to successful judicial candidates, the problem may be even more profound for judicial candidates as a whole.

Experience and service

It is not surprising that previous professional experience was universally regarded as important. In the interviews, judges underscored their professional experience, both in describing their substantive preparedness for the job and also as proof that they had developed the qualities necessary to be a good judge. Once again, this was the case regardless of the selection mechanism used by their states.

Former prosecutors emphasized prosecutorial experience as particularly useful. Although this was the case across selection systems, judges serving in elective states tended to spend more time discussing this experience. This might reflect the greater ease with which the public understands the role of the prosecutor and how it might enhance a judge’s qualifications. In both types of selection systems, judges with alternative experiences were more explicit in their explanation of the ways in which their background helped prepare them to be a judge. Often, the judges with other types of experience said that they had to work harder to prove that they were qualified.

This is not to say, of course, that other types of professional experience are unhelpful to candidates when they apply to become a judge or campaign for a judicial post. In fact, many of the judges felt that these alternative professional experiences had, in the end, made their applications stronger than they otherwise would have been, as the judges could “sell” their candidacy as bringing unique perspectives or qualifications that were lacking on the existing bench (in addition to the requisite courtroom and trial experience, of course). However, the judges who had not been prosecutors stressed that their other experiences would be helpful, and that candidates with these experiences would be successful, only if they possessed a clear vision of the benefits that their selection would bring to the bench and a clear strategy for positioning themselves. This was the

18. See Hurwitz & Lanier, supra n. 7, at 50; Lawyers’ Committee, supra n. 1, at 14.
19. See Hurwitz & Lanier, Women and Minorities, supra n. 7, at 50; Hurwitz & Lanier, Women and Minorities, supra n. 10, at 91.
20. See Hurwitz & Lanier, supra n. 7, at 66; Alozie, supra n. 10, at 110-126; Hurwitz & Lanier, Women and Minorities, supra n. 10, at 91.
case regardless of the selection mechanism operating in the state.

The judges also mentioned prior judicial service as useful—for example, when candidates had previously served as a magistrate or in a court of limited jurisdiction. Not surprisingly, interviewees said that this experience helped to position them for a more prestigious judicial post. Interestingly, their comments appear consistent with some prior research showing that women and minorities are first diverted to municipal judge-ships over courts of general jurisdiction. 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. However, more recent research provides evidence that—

the better letters come from influential members of the community who appear to be writing unprompted, so the judge “told lots of people in her [law] office that she wanted to be a judge,” mentioned it to “older, skilled judges before whom she appeared” and also discussed her goal with “other lawyers in the community, including a group of women lawyers.”

Most of the judges similarly praised the usefulness of specialty bar associations, especially women’s bar associations and those related to particular racial or ethnic communities. These bar associations provided the same type of networking and leadership benefits as the wider bar associations, but they were additionally viewed as necessary constituencies for candidates with a shared race, gender, or ethnicity. In fact, one judge attributed his election to his “ability to bring together his constituencies,” beginning with those in the African-American bar association. Some of the judges mentioned as cautionary tales unsuccessful judicial candidacies and the problems inherent in failing to mobilize these bar associations and/or the members of the relevant communities. Several judges also mentioned that it is helpful for a judicial candidate to become involved in and to appeal to other ethnic and racial communities in addition to their own. Their implicit message was that candidates of color had to reach out to other minorities to generate additional support. Volunteer activities within the racial and ethnic community and bar associations can become exceedingly important in “majority-minority” areas. In some cases, judicial slots have come to be viewed as “belonging” to members of a particular group, according to those judges who had experienced this. One judge reported that he was discouraged from running for a particular position because his country-specific background was not the same as the background of those for which the position was informally reserved. This was the case even though both ethnicities belonged to the same larger racial group.

Regardless of location, the judges frequently and explicitly equated community service with the demonstration of necessary leadership skills, although many also mentioned that such service provides opportunities for networking and building a coalition of community support. One judge recommended that “everyone should give of himself to the community” because when a judgship comes along, the individual is viewed not as “a carpet bagger but [as] an established member of the community who is wanted and encouraged for the position.” A judge who achieved his position by gubernatorial appointment mentioned that the governor had even “polled community groups about him before the appointment.” While it was very important in all systems, judges in elective systems described community service as crucial to their success. Further, some elective judges particularly highlighted their affiliation with religious organizations. One judge mentioned that religious involvement had aided him because he was known at a number of churches” where he had previously spoken, and “had acted as their attorney and represented them as well.” However, the judges who highlighted religious activities were located in elective states, not commission states.

**Judges praised the usefulness of specialty bar associations, especially those related to particular racial or ethnic communities**

---

23. That is, communities in which racial or ethnic minorities form a majority of the population.

www.ajs.org JUDICATURE 191
racial or ethnic community from which the judge hailed or from the larger community. Mentors are, of course, important for all judicial candidates. However, in the case of minority candidates—especially those who were the first from their communities to seek a judgeship—these advisors were described as instrumental in explaining the workings of the selection process, helping potential candidates to network, assessing the timing for their candidacies, and developing a successful strategy for selection. In fact, these mentors often played a significant role in encouraging and recruiting judicial candidates.

These contacts were equally important in both appointive and elective systems. Mentors helped to provide formal endorsements in elective states and informal endorsements and support in other states. Additionally, in commission states, mentors were particularly helpful to judicial applicants because they could write letters of support to the commission members. Since the commissions are often comprised significantly of members of the bar, whose members in turn rate their peers for the bench, it is not surprising that developing a visible professional relationship with an experienced lawyer or judge would benefit applicants for the bench. In comparison, in elective states, the judges said that mentors aided greatly with fundraising (particularly political contacts and contacts with big law firms). While the interviewees spoke of the significance of many different types of contacts (as detailed previously), they consistently underscored the importance of identifying one or a small number of specific individuals to act as mentors.

Some of the judges reported that they actively sought out their mentors long before taking their first action to apply for or run to become a judge. When asked about advice to future candidates, the judges repeatedly advised prospective candidates to find mentors, because it was imperative to “let people know that you want to know that you want to be a judge.” Coupled with the early research that each candidate compiled before considering a judgeship, their efforts to associate themselves with mentors suggest that there may be a pool of ambitious, prepared minority candidates who could be identified for recruitment.

Support for diversity

At the close of each interview, the judges were asked to assess the support for judicial diversity in their states and communities. They were queried about stereotypes, racism, and the degree of controversy attached to their selection. On the whole, only a few judges reported their selection as controversial, with the controversies unrelated to the judges’ race, ethnicity, or gender. For example, one judge said that his election had been controversial, but then explained that the controversy was generated by media coverage of a possible attempt by another candidate to influence the election with money. Nonetheless, media coverage of the election increased. It is important to note that all of the judges who said that the process was controversial were located in partisan elective states.

Although all of the judges agreed that more work must be done to diversify the courts, many also reported that the climate in their states is generally encouraging of diversity. The majority of interviewees felt that their race, ethnicity, or gender had been an asset in helping them to secure their positions. The few interviews that provided exceptions to this theme were, again, those judges who represented the first of their ethnicity, race, or gender to be selected for that position and who were also located in partisan elective states. This was not the case for pioneering judges in other types of systems.

Similarly, when asked if they felt that they were held to an unfair standard or subjected to discrimination during the process, judges from non-e elective systems said that they did not. The same was true for judges from elective systems located within major metropolitan areas. However, elected judges from less urban locales were much more likely to report that discrimination had been present during their selection experience. All of the elected judges from less urban locales were also the first of their race, ethnicity, or gender to be elected as a judge.

Despite the fact that most judges reported a climate supportive of diversity, a number of respondents expressed concern about a different kind of prejudice—that related to the ratings systems used to evaluate judges on the bench. Rather than representing true effectiveness, several judges thought that these measures reflected a jurist’s personal popularity or his or her ability to network within the bar. One judge asserted that the ratings were “drawn from such a small percentage of the bar, that it was basically a farce. It was eye opening because it was a popularity contest.” As such, some judges were concerned that these systems provide avenues for lawyers to express implicit biases against female judges and judges of color. Judges who are rated unfairly may lose their seats in the next round of elections or in a retention election. There has been some evidence of these problems in past research, but additional studies are needed to assess the scope of the problem and to make recommendations.

Conclusion

To reinforce democratic values and strengthen the public’s confidence in the justice system, it is crucial that the judiciary reflect the diversity of the citizenry and that judges have the background to appreciate the circumstances of those who appear before them. Action has been taken over the years to diversify the state courts, but additional efforts are needed so that more judges of color can reach the state bench. The present research offers a snapshot of the recent experi-

ences of successful minority judges and also provides an assessment of how these experiences differed across varying selection systems. These findings coalesce around several central points, including the political and strategic nature of the selection process, the importance of the candidate’s experience, networking, and planning, and the need for recruitment and mentoring.

According to the judges, most of these issues operate similarly across the states regardless of the system of judicial selection, although, of course, the facts of each appointment are unique. Indeed, rather than focusing on selection mechanisms, this research suggests that other factors, such as support for diversity in the state’s leadership, may influence the overall diversity found in the state’s trial courts. In the small number of cases where the choice of a partisan elective process seemed to hinder diversity, this effect appears to occur in combination with other specific characteristics, such as the location of a judgeship and the lack of any history of judicial diversity. Apart from these findings, the study may target and inform future research by highlighting specific hypotheses based on the experiences of the judges interviewed for this project, rather than attempting to examine selection systems generally.

LINDA M. MEROLA
is assistant professor of Administration of Justice and a faculty member in the Center for Justice, Law and Society at George Mason University. (lmerola@gmu.edu)

JON B. GOULD
is associate professor of Administration of Justice and director of the Center for Justice, Law and Society at George Mason University. (jbgould@gmu.edu)