

## Bush's court appointments emphasized ideology over diversity

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The judicial appointments of former president George W. Bush suggests that his motivation for appointing nontraditional judges was driven more by ideology and strategy than concerns for diversity, a new analysis shows.

The examination of all the federal judicial appointments over the two terms of the Bush presidency show that while he did make a number of diverse appointments, especially with Hispanics, overall the federal courts did not gain in the number of minority judges during Bush's tenure.

The analysis appears in an article in the current issue of *Judicature* and was written by Jennifer Segal Diascro, an assistant professor in the Department of Government at American University, and Rorie Spill Solberg, an associate professor in the Department of Political Science at Oregon State University.

"The key is to look at the replacement patterns," said Spill Solberg. "Bush did appoint many minorities, but in order to have a gain in diversity, you have to replace more seats with diverse judges than you started with or else it doesn't equate with a diverse bench."

Diascro and Solberg relied on statements from President Bush and members of his administration to determine that ideology played a role in his appointments, and relied on statistical analyses by Carp et al. (published in the same issue of *Judicature*) that reveal that his appointees

to the lower courts were indeed conservative. To assess the relative ideology of Judge Sonia Sotomayor and other women on Obama's short list, Diascro and Solberg utilized the Judicial Common Space scores developed by Lee Epstein and colleagues. The empirical measurements used to assess ideology are all reliable and valid measures employed by political scientists.

According to the article, when compared with all presidents since Jimmy Carter, Bush maintained the status quo in appointing nontraditional judges to the bench. He appointed more men (78 percent overall) than women (22 percent) and more whites (82 percent) than minorities (18 percent), but as Spill Solberg points out, that pattern was true for Bush's predecessors.

When comparing total appointments, Bush appointed more white females (50) than Carter (32), Ronald Reagan (27) or George H.W. Bush (31), but less than Bill Clinton (83). He appointed more Hispanic females (12) than Clinton (5), but fewer African American females (8 compared to 15) than Clinton, so the overall diversity representation is about the same, or in some cases less than during Clinton's presidency.

In particular, Spill Solberg said, African-American judges did not see a significant increase under the Bush administration. "At the end of eight years in office, African Americans held 8.5 percent of the seats on the court of appeals, an increase of only half a percent from the end of the Clinton administration," the study points out.

Spill Solberg said that like Carter, Reagan and George H.W. Bush, George W. Bush often appointed minorities to seats for political gain or for ideological purposes.

"There is a tendency, and we see this across the political spectrum, to use bench appointments to gain clout with certain voters," she said. "The

Bush administration was actively courting the Hispanic vote, so it isn't surprising that he made more appointments of Hispanic judges than African Americans, but it was often also based on judicial philosophy."

In contrast, the study shows that Clinton often stressed diversity and representation over ideology. He often picked moderate and conservative minority and female judges even though they did not necessarily reflect his own political philosophies. Diascro said Democrats have had an easier time appointing a diverse bench that also serves their political and ideological goals as nontraditional candidates tend to come from groups that vote Democratic.

"We suspect that Bush had many Hispanic conservatives from which to choose when filling vacancies on the bench, and he chose to appoint traditional candidates instead," Diascro said. "He cared about diversity, but it was not his first priority."

The study's authors stress that diversity in the federal court system remains important as a way of representing the broad range of experiences of the public that the system is supposed to serve. This is true from a symbolic perspective, lending legitimacy to an otherwise non-democratic branch of government; but it may also be true substantively, said Diascro.

"Personal experiences matter and impact how you view the law," Spill Solberg said. "The experiences of woman may differ from those of a man in the same way that the experiences of a prosecutor may differ from the experiences of other lawyers. It is more complicated as we see with Justice Thomas who brings the experiences of an African American filtered through the lens of a conservative ideology."

Looking ahead, Diascro and Spill Solberg thoughtfully analyze what the judicial legacy of Barack Obama's presidency will be compared to his

predecessors. Their conclusion so far is that Obama will emphasize diversity over ideology like Clinton and that his nomination of Judge Sotomayor to the Supreme Court is a demonstration of this.

"His nominations thus far demonstrate his reluctance to appoint ideologues," the authors write. "This is especially true for Judge Sotomayor, who is not the most liberal choice among the female candidates reportedly on the President's short list."

Source: Oregon State University ([news](#) : [web](#))

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