



Bench Diversity Project: Second Annual Report

The case for diversity is especially compelling for the judiciary. It is the business of the courts, after all, to dispense justice fairly and to 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?

Hon. Edward M. Chen, U.S. District Court, ND California. ¹

Introduction

The Second Bench Diversity Project was a joint effort of the Arizona Supreme Court Commission on Minorities in the Judiciary and the Administrative Offices of the Courts. The Commission is a standing committee of the Arizona Judicial Council. One of the mandates of the Commission on Minorities is to *“enrich the diversity of the judiciary to reflect the communities it serves.”* The Commission seeks comprehensive data to assess the current status of the Arizona judiciary in terms of reflecting the rich diversity of our state’s population.

The Arizona judiciary covers a wide spectrum of courts. Those courts select judicial officers in a variety of ways. At the community level, Arizona has Municipal Courts and Justice Courts. The selection of judges in those courts varies from jurisdiction to jurisdiction. Depending on the particular community, some judicial officers are elected; others are appointed by City and Town Councils or by the presiding judge in that court. All Justices of the Peace are elected. All municipal court judges are appointed -- except Yuma City where judges are elected.

¹ Hon. Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 Calif. L. Rev. 1109, 1117 (2003)

The Superior Court is Arizona’s trial court of general jurisdiction. Cases are presided over by Superior Court Judges and Superior Court Commissioners. Superior Court Judges in Maricopa, Pima, and Pinal Counties are appointed by what we call “merit selection.” In those counties, the Governor appoints Superior Court Judges from a list provided by a Judicial Nominating Commission.² Judges in the remaining counties are elected by direct vote of the people. Commissioners, who also serve as trial judges, are selected locally by the Presiding Judge of that county.

Judges in Appellate Courts are appointed by the Governor from a list provided by a Judicial Nominating Commission. These Courts include the Arizona Court of Appeals Division I and Division II as well as the Arizona Supreme Court.

The Second Bench Diversity Project gathered data in same manner as the 2015 Project through a direct survey of the judges themselves. That way the Project could gather standardized and reliable information relating directly to the Project’s needs. The Project was able to ask for some information not otherwise (or easily) available from public sources.

The Supreme Court Administrative Office of the Court (AOC) was extremely cooperative and agreed to help create and administer the survey. The survey was designed to be a snapshot of the diversity of the Arizona Judiciary. The survey also looked for some correlations that might be useful for future Commission or AOC needs. The Project also used comparative data from several publicly available data sources – the U.S. Census, the State Bar, Arizona’s law schools, public reports from state agencies.

As with any snapshot, the survey has its limitations. The membership of Arizona’s judiciary is not static. Judges enter, and judges leave the judicial system over the course of any given year for a variety of reasons – term expiration, retirement, promotion, and creation of new positions. Thus, the survey represents the diversity of the judiciary at a given point in time only. As would be expected, some data has changed since the survey was taken.³

² Judges appointed by the Governor serve fixed terms. Judges are later subject to a retention election. In a retention election judges face a straight up or down “yes” or “no” vote. There are no opposing candidates. Article VI, Section 42 Arizona Constitution.

³ See, e.g. FN 20 below.

The Project changed several questions from the 2015 survey.⁴ The second survey asked for information about the judicial officers' dockets, whether a judicial officer was in a rural or urban court, slightly different information about the path to judicial selection, and asked for additional diversity information in a more reflective format. The survey was revised and administered by the Administrative Offices of the Courts under the supervision of Deputy Director and Commission member Mike Baumstark and with the help of Court Services Specialist Susan Pickard. Chief Justice Bales approved the survey and encouraged judges to complete it.

The survey was sent by email to all judges of record in the State of Arizona at the end of August 2017. AOC collected and collated responses to ensure anonymity. AOC received 399 valid responses out of 432 verified emails for a return rate of 92.4%.

The comparison data was compiled by Deputy Director Baumstark, Samantha Sanchez, Susan Pickard, and Paul Bennett.

This report consists of the following:

1. Selected results of the survey;
2. Data comparisons of the Arizona judiciary with other relevant populations with analysis;
3. Conclusions and suggestions for further steps.

The Bench Diversity Survey

AOC sent the diversity survey to over 400 Arizona judges at all levels of court – municipal, county, state and appellate. The survey asked about diversity in two ways:

First, the survey used a forced answer format asking respondents to place themselves within the U.S. Department of Labor (USDOL) categories that are also used by the State of Arizona. That question allows for direct comparison with census data and State Bar data which use very similar categories. For the remainder of this report, the USDOL categories will be called “categorical diversity”. Survey takers were asked the following USDOL question:

⁴ Many thanks to law student Samantha Sanchez from the University of Arizona, James E. Rogers College of Law. Ms. Sanchez assisted both in question drafting and in gathering comparative data.

Q1. For diversity purposes, please select the category that most closely describes you. If you are of a mixed background, please select all categories that apply.

White (Not Hispanic or Latino)

Hispanic or Latino

Black or African American

Asian

American Indian/Native Alaskan

Native Hawaiian/Pacific Islander⁵

Two or more races (Not Hispanic or Latino)

Unknown

Decline to Answer

Second, participants were also asked the following questions designed to gather additional diversity information in a more reflective format:

**Q2. Irrespective of the categories in question #1, do you think you add diversity to the Arizona Bench in any other way?"
If so, how?**

The remaining questions relevant to this report were designed for comparison purposes and asked about:

Gender

Level of Judicial Officer

Docket

Age (within 5-year ranges)

Years of practice

Selection Process – e.g. appointed, elected

Position immediately prior to selection

⁵ For analysis purposes, the report combines Asian and Native Hawaiian/Pacific Islander into one category as the numbers are so small.

Executive Summary

Below is a summary of the Project's analysis:

1. **The report makes no assumptions about the 7.6 percent of judges who did not complete the survey. Nor does it make any assumptions about the small number of judges who chose not to answer the specific categorical diversity question.**

Both the current survey and the 2015 survey suggest that the judicial officers who declined to answer are not a random group. For example, more than nine out of ten judges who declined to answer categorical diversity questions in 2015 are male. The 2017 survey had a similar result where 7 out of 9 who declined to answer were male.

Therefore, this report does not attempt to extrapolate anything from the non-answering group. All of the data and conclusions should be assessed as if they contain the prefatory language: ***“For the judges who responded . . .”***

2. **The Arizona State Court Judiciary does not reflect the categorical diversity of the state's population. Whites are significantly over-represented on the bench. Minorities are under-represented.**
3. **At all levels of court, Hispanics are significantly under-represented in the Arizona Judiciary.**
4. **In both Juvenile Courts and Criminal Courts, there are significant disparities between the diversity of Judicial Officers and the populations they serve.**
5. **Outside of categorical diversity, Judicial Officers present many other types of diversity and portray diverse views of the nature of their diversity.**
6. **The diversity of the bench much more closely tracks the diversity of the State Bar than the diversity of the general population.**
7. **Women continue to be underrepresented on the Bench in all Courts except for Superior Court Commissioners where more women than men serve as Judicial Officers.**

- 8. The cohort of women judges tends to be more diverse than the cohort of men judges.**
- 9. Different courts show different diversity. Limited jurisdiction courts tend to be more diverse. Superior Court Commissioners show much greater gender inclusion but are over 90% white.**
- 10. Diversity varies by method of judicial selection.**
- 11. Merit selection of Superior Court Judges produces slightly better diversity outcomes for categorical diversity than selection by local election**
- 12. The cohort of younger judges tends to be more gender diverse than that of older judges. The same does not hold true with categorical diversity.**
- 13. The path to the bench favors those coming from private practice.**

Full Report

I. Introduction

Judicial diversity has long been an Arizona value. The Arizona Constitution and the Code of Judicial Administration formally recognize that judges should reflect the diversity of the communities they serve.⁶ ⁷ The State Constitution specifically mandates that appointed judges reflect the diversity of the state's population. This process, called *merit selection*, requires that diversity be considered not only for the judges themselves but for the committees that recommend nominees to the Governor.⁸

The current version of merit selection was the result of a statewide constitutional referendum in 1992. One of the specific justifications for merit selection was increased diversity. The Secretary of State's voter description for the 1992 referendum states:

Now, 18 years after merit selection was enacted, members of the public, the judiciary, the bar, and the legislature have concluded that improvements need to be made in order to ensure that the judiciary more accurately reflects the diversity of each county's population.⁹

Nearly twenty-five years later, Chief Justice Bales reiterated merit selection's commitment to diversity when he said:

[M]erit selection has resulted in the appointment of competent, impartial judges who are diverse in their personal and professional backgrounds.¹⁰

However, not all of Arizona's judges are chosen by merit selection. Nor is the same mandate for diversity uniform throughout the state.

II. The Survey

The Project's survey provides a first look at assessing how the Arizona Judiciary reflects the population it serves. The survey was sent by email to all judges of record in the State

⁶ Article VI, Section 37, Arizona Constitution "In making the appointment, the governor shall consider the diversity of the state's population"

⁷ Section 1-107, Arizona Code of Judicial Administration

⁸ Article VI, Sections 36, 37, Arizona Constitution

⁹ Voter pamphlet from Secretary of State, October, 1992

¹⁰ Arizona Republic, September 14, 2014

of Arizona in August 2017. AOC collected and collated responses to ensure anonymity. AOC received 399 valid responses out of 432 verified emails for a return rate of 92.4%.

Table 1 shows the distribution of responses by level of court.

Table 1 Judicial Position N=399	Percent
Judge in a Court of Limited Jurisdiction	36.59
Superior Court Judge	34.08
Superior Court Commissioner	13.78
Appellate Judge or Justice	3.76
Full-time Judge Pro Tempore	6
No answer	2.05
Total	100

Throughout the report, we will use tables such as Table 1 above.

The survey information was disseminated to the Project in a collated format that enabled questions to be correlated to other questions. The collated format also protected the confidentiality of participating judges. The Project chose to focus on correlations between diversity and court docket, level of court, gender, and selection process. The format of the categorical diversity question also allowed the Project to compare data with the US Census, the State Bar, and the State’s law schools and some state agencies.

As with any data collection, the survey has its limitations. It is a snapshot of a given point in time. As with any snapshot, the results of the survey may be different than if it were taken a month later. The Arizona’s judiciary is not static. Judges enter, and judges leave the judicial system over the course of any given year for a variety of reasons – term expiration, retirement, promotion, and creation of new positions. Thus, the survey represents the diversity of the judiciary only at the point in which it was given. Nonetheless, given the high response rate and the large number of responders, the survey provides useful information.

This report makes no assumptions about the 7.6 percent of judges who did not complete the survey. Nor does the report make any assumptions about the 11 judges who chose not to answer the categorical diversity question.¹¹ Some of the answers of the latter group

¹¹ We made no assumptions except for a single judge who declined to answer the categorical question but then identified with a category in the open-ended diversity question.

suggest that the choice not to answer is not a random choice. For example, more than 77% of judges who declined to answer categorical diversity questions identified themselves as male.

The survey used a forced answer format asking respondents to place themselves within the U.S. Department of Labor (USDOL) categories that are also used by the State of Arizona. That question allows for direct comparison with census data which uses very similar categories. For the remainder of this report, the USDOL categories will be called categorical diversity. Survey takers were asked the USDOL question:

Q1. For diversity purposes, please select the category that most closely describes you. If you are of a mixed background, please select all categories that apply.

White (Not Hispanic or Latino)

Hispanic or Latino

Black or African American

Asian

American Indian/Native Alaskan

Native Hawaiian/Pacific Islander¹²

Two or more races (Not Hispanic or Latino)

Unknown

Decline to Answer

Participants were also asked the following questions designed to gather additional diversity information in a more reflective format:

Q2. Irrespective of the categories in question #1, do you think you add diversity to the Arizona Bench in any other way?"

If so, how?

The remaining questions relevant to this report were designed for comparison purposes and asked about:

Gender

Level of Judicial Officer

¹² For analysis purposes, the report combines Asian and Native Hawaiian/Pacific Islander into one category as the numbers are so small.

Docket
Age (within 5-year ranges)
Years of practice
Selection Process – e.g. appointed, elected
Position immediately prior to selection

This report focuses most of its analysis on four correlations with categorical diversity: court docket, level of judicial position, gender, and the method of selection. We compared categorical diversity responses to U.S. Census data for Arizona, to diversity information from the State Bar of Arizona, to diversity information from state agencies, and to diversity information from the State’s law schools. We did a limited comparison of age and diversity and a limited look at the pathway to judicial selection.

III. What does “diversity” mean?

There is no definition of “diversity” in either the Commission’s mandate nor in the Arizona Constitution provisions on judicial diversity. As the Commission on *Minorities* in the Judiciary, we naturally focus our survey on traditional categorical diversity. However, when we use the term diversity, we are often not referring to the same concepts. While the historic federal diversity categories are critically important, they do not address the breadth of diversity that many consider when selecting judges. For example, the judicial nominating commissions also consider political diversity – a category the survey did not address.

The historic racial-ethnic categories also do not necessarily correspond to many judges’ sense of the diversity they feel that they bring to the court. When asked the open-ended diversity question, over 75% of judges answered that they bring diversity to the court in addition to the historic racial-ethnic categories. Their collated responses are shown in Section VII below. Their responses demonstrated many other types of diversity from religion to age to sexual orientation and/or being bilingual, a single parent, or a veteran. Especially with respect to judicial selection, diversity can also mean ideological diversity, geographic diversity, or type of law experience.

Several judges seemed to react negatively to the survey itself and to an implication (to them) that the survey assumes a judge’s background equates with a particular point of view:

This question presupposes that anyone who is lumped into the Caucasian or White category is part of a homogenous, group of block thinkers all from

the same background, education, life experience of heritage. The question itself is offensive.

I am unique by many measures that are not considered by the classifications in the previous question. If I were to list them all here, the survey would no longer be anonymous. While race is a measure of diversity, it is not the only measure. Limiting diversity to only measures of race seems to suggest that people of the same race think and act the same. It also can tend to constrain members of different races to racial stereotypes. (e.g. Because you belong to a certain race, you are supposed to think a certain way.) It ignores the fact that there is a great deal of diversity within racial groups.

Several others chose to express a broader view of diversity:

Diversity is more than skin color. Diversity also consist of life experience, outside expertise and judicial philosophy. These days, I add diversity simply by not being a former prosecutor.

This of course depends on how one defines "diversity". But to the extent diversity means the contribution of unique experiences to the larger understanding of human behavior, then yes, my background, even as a white male, adds diversity to the Arizona Bench.

Everyone is a unique individual with unique experiences and views. Race and gender are merely two of millions of factors that make us diverse.

Still others wanted to emphasize that diversity does not affect an individual judge's fairness and respect for persons before the court:

I insist on equal treatment of all individuals that come to court regardless of race or ethnicity.

I listen to the Defendants and give them the time they require to plead their case. I believe that this is a peoples Court. I treat the people like I would want to be treated.

Does my mere existence on the bench bring diversity - no. Are my decisions the reflection of a sense that we need to recognize and respect that we are

a diverse people - yes. Our decisions need be a constant and unremitting illustration of everyone being treated equally under the law rather than simply reflecting the Orwellian notion that "all pigs are treated equally, just some pigs are treated more equal than others."

The Bench Diversity Project, by no means, suggests that a judge's gender or racial-ethnic background would suggest a particular bias, outcome, or trend in any individual case or type of case.¹³ Nonetheless, categorical diversity remains a paramount concern for the Commission – especially from the point of view of inclusion and legitimacy.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity

Grutter v. Bollinger, 539 U.S. 306, 331-332 (2003).

In a court order issued just a few months ago, Mississippi Federal District Judge Carlton Reeves commented on the diversity of Federal Courts (which is not addressed in this Report):

The Court believes that particular care is necessary in appointing officers of the federal judiciary, an institution that fails to reflect the diversity of the public it serves. Just one in five Article III judges are people of color, and only one in three are women. Since 2017, less than one in ten people appointed as Article III judges have been people of color, and less than one

¹³ One appellate court study suggests that, in terms of decision-making, ideology clearly outweighs categorical diversity in nearly all types of cases – except race and gender discrimination matters. However, the study concludes that:

As long as demographic traits serve as a proxy for diversity of information of or different experiences . . . the representation of women, various racial and ethnic minorities, and other types of diversity such as sexual orientation will likely alter deliberative procedures in a manner that that accommodates a wider range of perspectives. Indeed, the presence of such diversity makes undesirable decisional tendencies of small groups (such as group-think) less likely. In this respect, impartiality on the courts will be strengthened, rather than weakened by the presence of non-traditional judges.

Haire, Susan B. and Moyer, Laura P., *Diversity Matters: Judicial Policy Making the U.S. Court of Appeals*, University of Virginia Press, 2015 at p. 135.

See also, Arizona Court of Appeals Judge Diane Johnsen's study, *Building a Bench: A Close Look at State Appellate Courts Constructed by the Respective Methods of Judicial Selection*, 53 San Diego Law Review, 829, 833, fn 11, 12 (2016).

in four have been women. Bankruptcy and magistrate judges appointed by the judiciary are even less diverse, and people of color are hired for just one in six clerkship positions . . .

No doubt, some steps have been taken to remove these stains. Still, when given the opportunity, courts should take steps to increase their diversity. Justice is a search for truth. That search will fail if a court does not incorporate a wide array of experiences, facts, and perspectives into its decision-making processes.¹⁴

Moreover, for survey purposes, categorical diversity is measurable and comparable and thus allows us to speak a common language when comparing the judiciary to specific populations.

IV. The Arizona State Court Judiciary does not reflect the categorical diversity of the state’s population. Whites are significantly over-represented on the bench. Minorities are under-represented.

Table 2 below summarizes the categorical diversity of Arizona Judges as compared to the state population and to the diversity of the State Bar.

Table 2 - Diversity Comparisons						
	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More¹⁵
<i>All numbers in this chart are percentages</i>						
State of Arizona ¹ 2017 US Census July Estimate N=7,016,270	54.9	31.4	5	3.7	5.3	2.8
State Bar of Arizona ² As of 5/4/18 N=12,083 68% of the Bar	82.3	7.7	2.4	2.8	1.2	3.2

¹⁴ Security and Exchange Commission v. Adams, 2018 WL 2465763, D.Ct Miss. (2018)

¹⁵For analysis purposes, the report combines Two or more races and Other into one category

Table 2 - Diversity Comparisons

	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More ¹⁵
Judiciary 2017 N=399	76.9	13.3	3.8	2	1.5	1.5
Judiciary 2015 N=412	77.2	11.1	3.4	1.9	1.2	1.5

Although, there are some slight changes in overall percentages from 2015, the changes are minimal. To better illustrate the significance of different percentages, the project uses a ratio that we call a Relative Selection Index or RSI. The RSI assigns a numerical value to the difference between the expected occurrence of judicial selection for a particular group based on population and the actual occurrence. The RSI is computed by dividing the actual percentage by the expected percentage. An RSI of 1.0 would indicate that the actual selection of judges from a population matches the expected percentage. An RSI of greater than 1.0 means that the group is over-represented. An RSI of less than 1.0 means that the group is under-represented.

Table 3 illustrates the RSI comparing the overall judiciary to the population it serves.

Table 3 - RSI Diversity Comparisons

	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More
State of Arizona ¹ 2017 US Census Estimate N=7,016,270	54.9%	31.4%	5%	3.8%	5.3%	2.8%
Judiciary RSI N=399	1.40	.423	.760	.526	.283	.535
Judiciary RSI 2015 N=412	1.38	.361	.708	.513	.226	.555

The RSI indicates that whites are demonstratively over-represented in the overall judiciary and that all other groups are under-represented. The greatest under-representation within

the judiciary occurs with the state’s two largest minority groups: Hispanics and American Indians.

Table 4 breaks down judicial diversity by level of court.

Table 4 - Diversity by Level of Court						
	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
State of Arizona 2017 US Census Estimate N=7,016,270	54.9	31.4	5	3.8	5.3	2.8
Lower Courts N=143	66.4	25.8	4.2	0	1.4	2.8
Superior Court Commissioners N=56	91.1	1.8	7.1	0	0	0
Superior Court Judges N=131	83.3	7.6	2.3	3.8	1.5	1.5
Pro Tem N=27	81.5	11.1	3.7	0	3.7	0

Table 4 shows two trends. First, generally speaking, local community courts are significantly more diverse than the higher courts of record. Second, at all levels of court, whites are over-represented and most other groups are under-represented. Table 5 shows the RSI for each court.

At all levels of court, the RSI for white judges is significantly higher and the RSI for Hispanics is significantly lower. At the time of this survey, the RSI for Hispanic Superior Court Commissioners was nearly zero. At the time of the survey, there was only one Hispanic judge among the 56 locally appointed Commissioners in the entire State of Arizona.

Table 5 shows the RSI values for the respective courts.

Table 5 - RSI Diversity by Level of Court						
	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More
Lower Courts N=142	1.16	.821	.840	.368	.264	1.0
Superior Court Commissioners N=56	1.66	.057	1.42	0	0	0
Superior Court Judges N=131	1.52	.242	.460	1.0	.283	.536
Pro Tem N=22	1.74	0	.920	0	0	0

The RSI shows the anomaly that African Americans are close to proportionally represented on all benches – except for Superior Court Judges. In nearly every other court, the RSI for African-Americans is closer to the expected 1.0 than that for every other minority. Among the Superior Court Judges, the RSI for African Americans is the lowest of any level of court – although higher than that of Hispanics and American Indians on the same bench.

V. At all levels of court, Hispanics are significantly under-represented in the Arizona Judiciary.

According to U.S. Census estimates for 2017, Hispanics or Latinos make up 31.4% of the Arizona population or over two million people.¹⁶ Despite being Arizona’s largest minority, the RSI values for Hispanics is significantly under 1.0 at every level of court no matter how judges are selected.

Perhaps most disturbing is that the RSI values are lowest across the Superior Court bench. The Superior Court is the trial court for all felonies, divorces, child custody disputes and child support. The Superior Court is also the court of general civil and equity jurisdiction throughout the state.

¹⁶ United State Census Bureau at <https://www.census.gov/quickfacts/az>

As seen in Table 6, the RSI for Hispanic judges is extremely low within the Superior Court – especially as compared to the RSI for white judges. The combined RSI for white judges is 1.56 – significantly above the 1.0 expected value. The combined RSI for Hispanic Judges is 0.188 – significantly below the 1.0 value. The RSI for Hispanic Judge is quite low irrespective of whether judges are elected or appointed to the Superior Court (see section XII below).

Table 6 - RSI in Superior Court		
	White	Hispanic
Superior Court Commissioners N=56	1.68	.057
Superior Court Judges N=132	1.51	.242
Combined Superior Court Judicial Officers N=203	1.56	.188

VI. In both Juvenile Courts and Criminal Courts, there are significant disparities between the diversity of Judicial Officers and the populations they serve.

Juvenile Courts consist of two main dockets both of which make decisions for children: Delinquency and Child Welfare cases. We obtained information about the racial-ethnic composition of the children whose cases are before the courts. Delinquency information is kept by the Administrative Offices of the Courts. Child welfare information is kept by the Arizona Department of Child Safety. We compared data to judges sitting in Juvenile Court only. Some municipal judges hear juvenile cases in misdemeanor offenses such driving violations. Since we were unable to obtain a categorical breakdown of those juveniles, we limited the analysis to Juvenile Court.

Table 7 illustrates the comparison of the population of children in Juvenile Court to the diversity of the judges deciding their cases.

Table 7 - Juvenile Court Trial Judges¹⁷						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Judges with Juvenile Docket	80.1	5.2	5.2	1.75	3.5	1.75
Juveniles Petitioned for Delinquency	38.8	37.2	14.8	<1	6.9	<1
Children in Foster Care As of 9/30/17 N=15,840 ¹⁸	33.9	34.7	15.8	1.1	7.9	n/a

As can be seen from the RSI in Table 8, the disparities between Juvenile Court judges and the population they serve are even more dramatic than comparison of Juvenile Court judges to the general population. Kids of color are statistically unlikely to appear before judges who look like them.

Table 8 - Juvenile Court Trial Judges RSI						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
General Population	1.48	.168	1.04	.460	.660	.625
Juveniles Petitioned for Delinquency	2.06	.139	.351	0	.507	0
Children in Foster Care As of 9/30/17 N=15,840 ¹⁹	2.36	.150	.329	1.59	.443	n/a

¹⁷ Excluding limited jurisdiction judges

¹⁸ See Arizona Department of Child Safety, Semi-Annual Child Welfare Report, September 2017. The numbers have changed slightly since last September. However, the September, 2017 data reflects the docket as it existed at the time of the judicial survey.

¹⁹ See Arizona Department of Child Safety, Semi-Annual Child Welfare Report, September 2017. The numbers have changed slightly since last September. However, the September 2017 data reflects the docket as it existed at the time of the judicial survey.

A similar, but not quite as large, disparity is seen from criminal justice data. One caveat, the criminal justice data is taken from arrest statistics compiled by the Arizona Department of Public Safety. Not all arrestees appear before a judge. However, since most courts do not keep separate racial-ethnic data for criminal defendants, this was the best available comparison. The Project was also able to obtain information on adult probationers from the Administrative Offices of the Courts. Not all criminal defendants receive probation. Considering those caveats, Tables 9 and 10 below show that the judicial disparities for criminal defendants are also larger than those for the general population.

Table 9 - Criminal Trial Judges

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Judges with Criminal Docket	75.1	17.9	3.2	1.4	.09	1.4
Persons Arrested for Crimes ¹	49.6	29.1	12.6	0.8	7.8	<1
Adults on Probation	48.1	32.2	12.2	<1	5.2	n/a

Table 10 - RSI Criminal Trial Judges

	White	Hispanic	Black/AA	Asian	Native American	Two or More
Judges with Criminal Docket	1.36	.512	.640	.378	.170	.5
Persons Arrested for Crimes ²⁰	1.51	.615	.254	.216	.115	n/a
Adults on Probation	1.56	.556	.262	n/a	.173	n/a

²⁰ *Crime in Arizona 2017*, Arizona Department of Public Safety, p. 70 (2017).

VII. Outside of categorical diversity, Judicial Officers present many other types of diversity and portray diverse views of the nature of their diversity.

The survey asked Judicial Officers to answer an open-ended diversity question in two parts. First, the survey asked whether Judicial Officers felt they brought diversity to the bench outside of the traditional categories. In a yes or no format, 75% answered yes. Second, the survey asked: “If so, how?”

Table 11 shows the distribution of answers by category. Some judges answered this question with more than one category (e.g. elderly female). So, the list includes more responses than persons responding.²¹

General Life experience not specified	35
Gender	32
Socio-economic	28
Religion	17
Rural	15
prior work experience/education	14
a particular life experience (other than military) – e.g. single parent, immigrant, cancer survivor	11
Sexual Orientation	10
Age	10
country of family origin	10
diversity of a close family member	9
Disability	8
bi-lingual	8
Former military or military family	7
personal geographic roots	6

²¹ Under the category of lessons learned, the sequence of the survey question somewhat skewed the responses. The open-ended question came immediately after the categorical question but before the question about gender. Thus, it is entirely understandable that a sizeable number of judges answered that they brought gender diversity to the court. Likely, if the open-ended question came after the gender question, there would have been a different set of responses.

Table 11 -- How Judges feel they bring diversity to the court other than racial-ethnic categories.

first in family graduate school, attend college, become a lawyer,	6
political party	2

Two things, among others, stand out. First, many women judicial officers feel that their gender brings an added perspective to the bench. Second, many judges consider life experience – whether growing up poor or working class, military or even the type of law practiced before selection – as an identifiable and important form of diversity.

For those disheartened by the U.S. Supreme Court selection process, it is worth noting that only two state judicial officers mentioned political party and no judges mentioned any particular ideology as adding to the diversity of the bench. For a complete list of answers, see Appendix A.

VIII. The diversity of the bench much more closely tracks the diversity of the State Bar than the diversity of the general population.

Compared to the State Bar, the diversity of judges is closer to the population of lawyers than to the State’s population. Selection of white judges slightly under-represents the overall proportion of white lawyers. The same applies to Native American judges. The proportion of Hispanics and African Americans in the judiciary actually exceeds their proportions within the community of licensed lawyers – although not the community at large. Asians and persons of two or more races are under-represented.

Table 12 compares the State judiciary to the population of the State Bar of Arizona at the time of the survey by percentage of populations:

Table 12 - Diversity Comparisons

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
State of Arizona	54.9	31.4	5	3.7	5.3	2.8
State Bar of Arizona 5/4/18 N=12,083 68% of the Bar	82.3	7.7	2.4	2.8	1.2	3.2
Judiciary 2015 N=414	77.2	11.1	3.4	1.9	1.2	1.5
Judiciary 2017 N=399	76.9	13.3	3.8	2	1.5	1.5

Table 13 shows the comparison with Superior Court judges.

Table 13 - Comparisons to State Bar

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
State Bar of Arizona	82.3	7.7	2.4	2.8	1.2	3.2
Overall Judiciary	76.9	13.3	3.8	2	1.5	1.5
Overall appointed	81.3	8.3	4.4	1.3	.06	1.0
Overall elected	77.7	2.5	16	2.3	0	1.2
Appointed Superior Court Judges	79.6	8.8	1.8	3.5	1.8	1.8
Elected Superior Court Judges	95	0	5	0	0	0

A look at RSI compared to the State Bar shows numbers more consistently approaching the expected value of 1.0. The numbers also show that several minorities are actually over-represented in a few categories as compared to the Bar as a whole. The data suggests that the available pool is significant when considering judicial diversity. As the

State Bar is not representative of the categorical diversity of the State’s population, the judiciary drawn from that pool is less likely to be representative.

Table 14 compares the State Bar RSI to the State Bar of Arizona.

Table 14 - RSI Comparison to State Bar						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
Overall Judiciary	.935	1.72	1.58	.714	1.2	.468
Overall appointed	.987	1.08	1.83	.464	.50	.313
Overall elected	.944	.325	6.66	.821	0	.375
Appointed Superior Judges	.967	1.15	.75	1.25	1.50	.563
Elected Superior Court Judges	1.16	0	1.88	0	0	0

For most courts, the judiciary is chosen from the pool of licensed lawyers. The population of lawyers does not reflect the community at large. The pool of candidates does not reflect the community as well. There are visible differences for some groups depending on the selection process as discussed more fully in Section XII.

However, a real challenge may be to increase the diversity of those eligible for selection. Data from lower courts support that challenge. Courts where judicial officers do not need a law degree show a higher level of diversity. A look at Table 10 supports the proposition for Courts of Limited Jurisdiction that a pool that includes non-lawyers can result in higher diversity.

IX. Women continue to be underrepresented on the Bench in all Courts except for Superior Court Commissioners where more women than men serve as Judicial Officers.

There were very few women on the federal bench until Jimmy Carter became our president, and he looked around at the federal judiciary and said to himself, “They all look like me, but that’s not how the great United States looks. So, I want our court system to reflect the talent and the knowledge of all the people of this great United States and not just some of

them.” So, he determined to put members of minority groups and women on the bench in numbers. ... The first time I ever thought of being a judge was when Jimmy Carter announced to the world that he wanted to change the complexion of the U.S. judiciary, which he did.

Hon. Ruth Bader Ginsberg in a public talk at Duke Law School, 2015²²

Table 15 shows gender diversity across the judiciary. Similar to categorical diversity, gender diversity more closely reflects the make-up of the State Bar than that of the general population. As in the 2015 survey, there is more gender diversity in the lower courts than among Superior Court Judges.

As in the 2015 survey, locally appointed Superior Court Commissioners show a reverse trend. In the 2017 survey, women Commissioners outnumbered men Commissioners by nearly two to one. That number represents a significant gain in women Commissioners from the previous two years. Women Commissioners outnumbered men in the 2015 survey by 60.8% to 39.2%.

Table 15 - Judges by Gender			
	Male	Female	Other
<i>All numbers in this chart are percentages</i>			
State Bar	63.8	35.4	unk
Judiciary Overall	58.7	40.8	.5
Lower Courts	57.5	42.5	
Pro Tem	66.6	33.3	
Commissioners	33.9	66.1	
Superior Court Judges	67.6	32.5	1.5

The publication, *The American Bench*, studied gender of Arizona Superior Court judges over time.²³ The data suggests some slight improvement in gender equality over the last decade in the appointment of Superior Court Judges.

²² As reported in the Huffington Post, July 30, 2015.

²³ *The American Bench: Judges of the Nation*, 15th Edition, 2006

Table 16 - Gender of Superior Court Judges over eleven years

	2006	2015	2017
	Source: The American Bench	Source: Survey	Source: Administrative Offices of the Courts

All numbers in this chart are percentages

Male	72.7	69.2	67.6
Female	27.3	30.8	32.5
Other			1.5

X. The cohort of women judges tends to be more diverse than the cohort of men judges.

Table 17 - Judiciary by Gender

	White	Hispanic	Black/AA	Asian	Native American	Two or More
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All numbers in this chart are percentages

Overall	77.25	11.10	3.4	2	1.2	1.5
Female	74.3	15.8	3.9	1.9	1.9	1.9
Male	82.9	9	3.3	2	.4	.2

XI. Different courts show different diversity. Limited jurisdiction courts tend to be more diverse. Superior Court Commissioners show much greater gender inclusion but are over 90% white.

Table 4, shows that courts of limited jurisdiction again show more diversity than in higher courts.

Table 4 - Diversity by Level of Court

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
State of Arizona 2017 US Census Estimate N=7,016,270	54.9	31.4	5	3.8	5.3	2.8
Lower Courts N=143	66.4	25.8	4.2	0	1.4	2.8
Superior Court Commissioners N=56	91.1	1.8	7.1	0	0	0
Superior Court Judges N=131	83.3	7.6	2.3	3.8	1.5	1.5
Pro Tem N=27	81.5	11.1	3.7	0	3.7	0

Table 18 shows that the greater gender diversity in courts of limited jurisdiction holds whether or not Judicial Officers are elected or appointed. However, there is significantly less categorical diversity in courts of limited jurisdiction when Presiding Judges make appointments as opposed to City and Town Council appointments. That observation is discussed further in section XII below. Also, note that not all courts of limited jurisdiction require judicial officers to be lawyers. This creates a different selection pool from courts that are limited to members of the State Bar. The broader selection pool may account for some of the greater diversity than in other courts.

Table 18 - Limited Jurisdiction Courts by method of selection

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Courts of Limited Jurisdiction	66.4	25.8	4.2	0	1.4	2.8
Appointment by City or Town Council	59.2	30.3	6.6	0	0	3.9
Appointment by Presiding Judge	87.5	12.5	0	0	0	0
Elected	69.5	22	1.7	0	3.4	1.7

As seen in Table 15 above, Commissioners are disproportionately female. Despite the greater number of female Commissioners, Table 19 shows that Commissioners remain disproportionately white as compared to any other diversity category of judicial officers. The greater number of women does not seem to promote Commissioner categorical diversity.

Table 19 - Commissioners

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Female	89.2	0	10.8	0	0	0
Male	94.4	5.6	0	0	0	0
Overall	91.2	1.8	7.1	0	0	0

XII. Diversity varies by method of judicial selection.

Table 20 shows the diversity for trial court judges by election and appointment. Overall trial court diversity differs by the method of selection. The total numbers for trial judges are somewhat more diverse for elected over appointed judicial officers. However, there are noticeable differences between elected judicial officers in courts of limited jurisdiction and elected Superior Court judges.

Table 20 - Trial Court Diversity

	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Overall trial court judiciary	81.2	11	3.9	1.4	1.4	1.6
Overall trial court appointed	81.7	9.5	4.2	1.8	1	1.8
Overall trial court elected	76.9	16.7	2.6	0	2.6	1.3
Appointed Superior Court	80.7	7.4	2.2	3.7	1.5	1.5
Elected Superior Court	95	0	5	0	0	0
Superior Court Commissioners	91.2	1.8	7.1	0	0	0
Overall Limited Jurisdiction Court	64.5	25.5	4.3	0	2.8	2.8
Appointed Ltd Jurisdiction Court	61.7	28.4	6.2	0	0	3.7
Elected Ltd Jurisdiction Court	70.7	22.4	1.7	0	3.4	1.7

There are also noticeable differences between appointments by a presiding judge and appointments by a city or town council for the courts of limited jurisdiction.

Table 21 shows the greater disparities for presiding judge appointments.

Table 21 - Local Appointment by Presiding Judge						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Overall Judiciary	76.9	13.3	3.8	2	1.5	1.5
Court of Limited Jurisdiction	100	0	0	0	0	0
Judge Pro Tem	81.5	11.1	3.7	3.7	0	0
Commissioners	91.1	1.8	7.1	0	0	0

The data for local appointments by a Presiding Judges remains puzzling. Local appointments by a Presiding Judge present an opportunity for both the flexibility and the continuity of appointments that might be expected to enhance diversity. As discussed in Section IX and X, local appointment of commissioners has established gender equality but created rather extreme disparity in categorical diversity.

Presiding Judge appointments in courts of limited jurisdiction are a sharp contrast to appointments for nearly identical positions by a City or Town Council. In Councils, appointment matters are presumably discussed and debated. Within that group dynamic the results are quite different. Council appointments are significantly more diverse than any other type of judicial selection in this survey.

Table 22 illustrates the appointments in courts of limited jurisdiction.

Table 22 - Courts of limited jurisdiction						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
Overall	64.5	25.5	4.3	0	2.8	2.8
Appointed by Presiding Judge N=5	100	0	0	0	0	0
Selected by City or Town Council N=78	59.2	30.2	6.6	0	0	3.9

While it is difficult to draw conclusions from the very small number of local presiding judge appointments, the data from this survey suggests that further study is warranted to see why presiding judges have such a poor track record for appointing categorically diverse judicial officers.

XIII. Merit selection of Superior Court Judges produces slightly better diversity outcomes for categorical diversity than selection by local election.

Merit selection of judges has resulted in slightly better diversity than in counties in which judges are elected. Table 23 compares the diversity percentages for merit selection and election of Superior Court Judges.

Table 23 - Diversity of Superior Court Judges						
	White	Hispanic	Black/AA	Asian	Native American	Two or More
<i>All numbers in this chart are percentages</i>						
% Appointed Judges	83.2	7.6	2.3	3.8	1.5	1.5
% Elected	95	0	5	0	0	0

As stated in the previous report, there are some systemic reasons why greater diversity may be more likely under the merit selection system. First, under merit selection, the Nominating Commissions and the Governor are constitutionally required to consider diversity. In an election county, while the voters are free to consider whatever they want, there is no similar mandate.

Second, both the merit selection Nominating Commissions and the Governor can consider diversity within the context of a series of appointments over time. Both the Governor and Commission are free to compare current applicants to recent appointments. They each have the ability to look back to recent past appointments and choose the next applicant based on considerations of diversity or balance. For example, the governor might choose an attorney with a family law background when the last three selections had criminal law credentials. Similarly, the governor could choose diversity from among the categorical groups.

The electorate has no such option. In election counties, voters choose judges by judicial divisions. The voter may choose one candidate only in each division rather than select from a group of candidates or have a second or third choice later in the year.

The election process limits diversity choice in one other way. In the 2018 Arizona Superior Court elections in November, there will be 29 Superior Court Judge races. However, only 3 will be contested. All the others are uncontested; the candidate is running unopposed. Of those 29 races, there were two contested primaries. The electorate had no diversity choice in uncontested elections.

XIV. The cohort of younger judges tends to be more gender diverse than that of older judges. The same does not hold true with categorical diversity.

Table 24 shows judicial officers by age. Women outnumber men among judges under 54 years old. At age 55 and up, there are more men than women. The break is fairly sharp as it jumps from more women than men to nearly a two to one ratio of men to women.

Table 24 - Judges by age and gender

	Male	Female
Age Ranges	<i>The numbers below are percentages</i>	
30-39	42.9	57.1
40-44	48.8	51.2
45-49	47	53
50-54	47	53
55-59	64	36
60-64	62.8	37.2
65-69	68.6	31.4
70 +	80	15

Table 25 shows categorical diversity by age of judicial officer. Except for the very few judicial officers under the age of 39, there is little diversity outside of the 55 to 59 and 65-69 age groups. Most Hispanic judges are in the older age groupings – except for those who are 54-59 years old.

Table 25 - Judges by age and race / ethnicity

	White	Hispanic	Black/AA	Asian	Native American	Two or More
Age Ranges	<i>The numbers below are percentages</i>					
30-39 (n=6)	50	50	0	0	0	0
40-44 (n=20)	89.5	5.2	5.2	0	0	0
45-49 (n=43)	86	4.6	7	0	2.3	0
50-54 (n=66)	84.3	4.7	4.7	4.7	0	1.6
55-59 (n=75)	68.5	21.9	2.7	4.1	2.7	0
60-64 (n=105)	82.5	11.6	3.8	1.9	0	0
65-69	75.8	18.2	6.1	0	0	0
70 +	80	15	0	0	0	5

XV. The path to the bench favors those coming from private practice.

Table 26 shows the most recent prior position for Judicial Officers. Except for courts of limited jurisdiction, private practice is the largest pipeline to the judiciary at all other levels of court. The second largest cohort is split between prosecutors – who have much more impact in the lower courts – and candidates with prior judicial experience. At the appellate and pro tem levels, prior judicial experience seems to matter the most – after private practice.

Table 26 - Judges prior to Selection

	Private Practice	Prosecutor	Public Defender	Judicial Officer	Other Government	Other
<i>All numbers in this chart are percentages</i>						
Court of Limited Jurisdiction	16.8	29	0.6	16.8	5.8	24.5
Pro Tem	33	4.2	33	33	4.2	25
Commissioner	52.8	17	9.4	9.4	11.3	1.8
Superior Court	43.6	16.5	3.8	18	12.8	.5
Appellate Court	40	20	0	33	.67	Other

XVI. Conclusions and next steps

1. The survey has taught us that two years can show some changes, but most have not been dramatically different. That said, we have more data than any other state to our knowledge and data helps inform decision-making.
2. Without diminishing the importance of traditional diversity categories, Arizona judges have a very broad sense of diversity and bring many perspectives to the bench. Politics and partisanship were not among the ways in which judges feel that they bring diversity to their work.
3. Repeating a conclusion from the previous study, the data suggests that one way to increase diversity is to increase the diversity of the pool of potential applicants. The most obvious way to increase the pool is to increase the diversity of the State Bar.

We need to study ways in which the State Bar can be more reflective of the community it serves.

One interesting observation is that the three Arizona Law Schools continue to have more diverse student bodies than lawyers within State Bar.

Table 27 shows diversity of each law school as reported to the American Bar Association.

Table 27 - Arizona Law Schools²⁴

	White	Hispanic	Black/AA	Asian	Native American	Two or More	Non-Resident Aliens
<i>All numbers in this chart are percentages</i>							
U of A	57.4	15.4	3.3	5.3	7.4	11.9	9.5
ASU	70.6	14	3.2	5.4	1.9	4.4	2

The two state law schools remain under a Constitutional prohibition from considering categorical diversity in both admissions and in hiring.

“This state **shall not** grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.”²⁵

The Constitutional prohibition directly contradicts the Constitutional diversity mandate for selection of judges. Apparently, the State wants a diverse judiciary but makes it more difficult to have a diverse pipeline to the pool of potential candidates through its State law schools

One positive note is that both State law schools are working on pipeline programs to increase diversity. University of Arizona’s undergraduate law degree hopes to result in increased diverse applications to law schools in the state. The undergraduate

²⁴ As disclosed on the law schools’ websites. Note that the law schools have an additional category identifying foreign students

²⁵ Arizona Constitution, Article 2, Section 36 A

degree program has nearly 600 students. Less than one-half of the undergraduate law students are white (45%) and more than 35% are Hispanic. There is also some hope that the new availability of the GRE test in lieu of the LSAT may promote diversity as it is a more accessible entrance exam.²⁶

ASU Sandra Day O'Connor School of Law has a more targeted, if smaller, pipeline program with its *Creating a Critical Legal Program*. It is hoped that students in that undergraduate program and the research learned from them will help pipeline efforts now and in the future.

In any event, we need to further study and implement actions designed to increase the diversity of the Bar if we want to increase the diversity of the judiciary.

4. Increasing the potential pool is only one step. The anomaly of the lack of racial-ethnic diversity for commissioners and all local appointments from a presiding judge needs to be better understood. We need to understand why presiding judges choose white persons at a greater rate than any other selection process

Similarly, we need to study the lack of African-American Judges in the Superior Court. Why are there so few African-Americans in Superior Court but not in the other courts? Again, is there something in the process that we should try to understand? .

5. We still need to gather information about the people who choose nominees – especially Nominating Committees and Selection Advisory Boards. The current survey did not address those people.
6. We need to understand the pool from which judges are selected. Are there other barriers to racial-ethnic diversity? Some have suggested that the bar passage score is too high (Arizona's requires a higher score than many states who use the same exam). Others point to the salary structure of the judiciary as being too low to attract quality candidates. Does the political process discourage persons from applying for judgeships?

²⁶ *Without LSAT Requirement, U. of Arizona Trains Nontraditional Law Students*, Law.com, October 10, 2016 at http://www.law.com/sites/almstaff/2016/10/10/without-lsat-requirement-u-of-arizona-trains-nontraditional-law-students/?cmp=share_email&slreturn=20170209183622