

The State of Diversity in New York's Judiciary

By Rolando T. Acosta



This article is part of *New York Law: A View From the Bench*, a special section in the [May issue of the NYSBA Journal](#) edited by Court of Appeals Associate Judge Michael J. Garcia. Read Judge Garcia's introduction to the section [here](#).

My colleagues have expertly captured the significance of New York law and recounted our state's storied progression to legal prominence. They rightfully recognize the remarkable history of our jurisprudence, and the role of New York law, and New York judges, at the forefront of some of the most substantial issues and emerging legal questions facing our nation. But that history has, for the most part, fallen short of accurately or adequately reflecting one of the most unique and powerful facets of our legal community – and the public we serve.

Any meaningful view of New York law from the bench requires an honest discussion of *who* is on that bench – the composition of the judiciary empowered to interpret and apply New York law. Diversity and inclusion are not just abstract concepts that warrant lip service in the legal profession; they are at the heart of promoting justice and respect

for democratic institutions and the rule of law. It is, therefore, difficult to overstate the importance of ensuring that our judiciary reflects the makeup of the citizenry.

For one thing, diversity on the bench lends credibility to a justice system that underrepresented groups, such as women and people of color, have historically viewed with suspicion and distrust. It is tremendously important for citizens to see themselves reflected in the judges who serve them, because “[a] diverse judiciary engenders confidence that courts – the last bastion of justice – have the requisite moral authority to dispense justice to all.”¹ As former Chief Judge Judith Kaye put it, “a diverse bench gives the public a feeling of inclusion in the justice system, willing to place its trust and faith in it, not alienated from it.”² NYSBA President Henry M. Greenberg has echoed that sentiment, noting that “[i]f the judiciary doesn’t change [along with demographic changes], we risk undermining the public’s confidence in our justice system and respect for the rule of law.”³ I wholeheartedly agree.

In addition to strengthening public trust in our institutions, a diverse judiciary improves the adjudicative process, as the presence of jurists of various backgrounds “can introduce traditionally excluded perspectives and values into judicial decision-making.”⁴ In other words, “judicial diversity brings a variety of experiences and views to the bench, which . . . trickles down to the [legal and] factual decisions that [judges] make and ultimately to the quality of justice that we dispense.”⁵ At bottom, diversity on the bench not only legitimizes the third branch of government in the eyes of its citizens, it also brings us closer to achieving true, impartial justice in every case.

So, how is New York doing? By way of illustration, when I became a lawyer in the early 1980s, there were very few judges in New York who looked like me. A photograph I keep in my chambers depicts all the Latino judges in our state in 1985; there are only 13 judges in that photograph. Now, nearly 35 years later, there are approximately 90 Latino judges in New York.

This is progress, but it is not enough – for Latinos or for other underrepresented groups. Though New York is one of the most diverse states in the country, as of December 2014 our state ranked 24th in judicial representativeness with respect to ethnic and racial diversity and 14th with respect to the proportion of women on the bench.⁶ At present, according to statistics collected by the New York State Unified Court System’s Office of Court Administration, Latinos represent nearly 20% of the population in New York but only 7% of the judiciary (of the more than 1,270 judges, there are 90 Latinos). Similarly, African Americans make up approximately 18% of the state’s population but only 13.7% of its judges, and Asians make up 9% of the population but only 2.7% of judges. Women make up 51% of the population but only 41% of judges, and LGBT people make up only 4.3% of the judiciary. By contrast, Caucasians make up approximately 55% of the state population, yet Caucasian judges make up 76.3% of New York’s judiciary.

Upstate, the numbers are startling. Among Supreme Court Justices outside New York City, for example, only 29% are women, 6.5% are African American, 1.4% are Latino,

and zero are Asian. By contrast, 91% are Caucasian. Additionally, 100% of Surrogate's Court judges outside New York City are Caucasian, and 75% are men.

In courts to which judges are appointed rather than elected, some historically underrepresented groups fare better, while others do not. At the Court of Appeals (a court of only seven judges), 43% are women, 29% are Latino, 14% are African American, zero are Asian, and 57% are Caucasian. At the Court of Claims (which has 83 Judges), 35% are women, 7% are African American, 8% are Latino, 2% are Asian, and 82% are Caucasian. The Appellate Division is slightly more reflective of the population in New York than the trial courts, but is still not fairly representative of the population it serves. Of the 53 Appellate Division Justices, 27 are women (51%), six are Latino (11%), eight are African American (15%), two are Asian (3.8%), and 37 are Caucasian (70%). Despite recent progress in this regard, it is not uncommon to have appeals decided by all-white panels of appellate judges (particularly in the Third and Fourth Departments, where there are still no Latino or Asian Justices) – something we would never tolerate on state juries, especially in our more diverse parts of the state, like Albany, Buffalo and Rochester.

Simply put, despite significant progress, our great state still does not have a fairly representative, sufficiently diverse court system. Or, as the NYSBA noted in 2014, “New York State has one of the most diverse populations in the United States, but the rich multiracial, multi-cultural tapestry of New York’s people is not adequately reflected in its judiciary.”^z Unfortunately, that description of our state still holds true today.

What can we do about this?

First, Chief Judge Janet DiFiore’s court-consolidation proposal, which I have openly endorsed, would be a tremendous stepping stone towards greater judicial diversity. That proposal would not only make the courts more navigable for everyday New Yorkers – many of whom are underrepresented minorities and poor litigants who attempt to navigate the justice system without an attorney – but would also enlarge the pool from which Appellate Division judges are appointed, creating an opportunity to further diversify the appellate bench. While Governor Cuomo has a solid track record of appointing diverse judges, his successors should be similarly encouraged – by, for instance, a clear policy statement in the consolidation proposal’s preamble that unequivocally recognizes the value of diversity, and a biennial reporting requirement or other mechanism to increase accountability for achieving the goal of increasing diversity in the courts.⁸

Beyond that, all of us – judges, attorneys, and legal scholars – should seek out ways to further judicial diversity in New York. We should expand and promote educational opportunities to increase awareness on relevant issues – implicit bias, for instance – in order to ensure fairness and impartiality in our justice system. We should improve outreach efforts to women and minority bar associations in order to explain the judicial vetting process. And we should consider creating a statewide Commissioner or Ombudsman of Judicial Diversity.

We have made measurable progress towards greater diversity, but there is much more work to be done. If we continue supporting measures – like the Chief Judge’s court-consolidation proposal – to ensure our “gorgeous mosaic” is fairly represented, we will improve the quality of judicial decision-making while enhancing the legitimacy of the third branch of government in the eyes of everyday New Yorkers. The pursuit of justice demands it.

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1. Rolando Acosta, *Justice’s “Gorgeous Mosaic,”* NYLJ, Nov. 14, 2005, at 4 (hereinafter *Justice’s “Gorgeous Mosaic”*).
2. Archibald R. Murray, Judith S. Kaye, et al., *The Road to the Judiciary: Navigating the Judicial Selection Process*, 57 Alb. L Rev. 973, 975 (1994).
3. *Court Consolidation: Joint Hearing Before the New York Senate and Assembly Standing Committees on the Judiciary* (Nov. 13, 2019) (hereinafter *Court Consolidation Hearing*) (statement of Henry M. Greenberg, President, New York State Bar Association).
4. Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 Wash & Lee L Rev. 405, 410 (2000).
5. *Justice’s “Gorgeous Mosaic,” supra.*
6. Tracey E. George and Albert H. Yoon, American Constitution Society, *The Gavel Gap: Who Sits in Judgment on State Courts?* 21, 24.
7. New York State Bar Association, *Judicial Diversity: A Work in Progress* 3 (2014).
8. Shortly after the publication of my article proposing a diversity reporting requirement (see *Court Consolidation, supra*), Senators Brad Hoylman and Luis R. Sepúlveda introduced a bill that would codify a similar requirement (S.7703).