

**TESTIMONY BEFORE THE SUBCOMMITTEE OF THE COURTS,
INTELLECTUAL PROPERTY AND THE INTERNET**

ON

**“The Importance of a Diverse Federal Judiciary, Part 2: The Selection and
Confirmation Process”**

(July 12, 2021)

Mr. Chairman, Ranking Member Issa, and Members of the Subcommittee, I am honored to have the opportunity to address you today on the important topic of expanding professional and personal diversity in the federal judiciary. My comments will primarily focus on the Judicial Merit Selection Committee process for the Western District of Washington, which I Co-Chaired in 2020.

But I will begin with the context in which our Committee engaged its task. A 2020 study reported that people spending the majority of their career in private practice or as federal prosecutors comprise over 70 percent of the active federal appellate bench.¹ And a recent Cato Institute study found that “the ratio of prosecutors to defense attorneys on the [federal] bench today is almost exactly four to one.”²

Similarly, gender and racial diversity has lagged well behind the composition of our Country. According to Federal Judicial Center statistics, there are 792 active lifetime federal judges.³ Of those judges, 67 percent (529 judges) are men, and 73 percent (582 judges) are white. Only 13 percent (102 judges) are African American. Nine percent (73 judges) are Hispanic. Five percent (39 judges) are Asian American or Pacific Islander, and .004 percent (3 judges) are Native

¹ Maggie Jo Buchanan, Center for American Progress, *The Startling Lack of Professional Diversity Among Federal Judges* (June 17, 2020).

² Clark Nealy, Cato Institute, *Are a Disproportionate Number of Federal Judges Former Government Advocates* (May 27, 2021).

³ Federal Judicial Center, *Biographical Directory of Article III Federal Judges, 1789-present*, <https://www.fjc.gov/history/judges/search/advanced-search> (July 8, 2020).

American.⁴ When examining all sitting lifetime federal judges—including those serving on senior status—the disparity is even greater, as 72% are men and 80% are white.⁵

This lack of professional and personal diversity speaks directly to potential Federal Judicial applicants to say they “Need Not Apply” if they are from under-represented legal backgrounds, women, lawyers of color, or LGBTQ. It also speaks directly to witnesses, litigants, and the community to say, “you are an outsider here.” These realities must be addressed because the range of interests that appear before the federal judiciary are broad. We must truly invite and encourage qualified and historically marginalized potential candidates to the table by saying, “please apply.” By saying “we believe Black, Brown, Native American, Asian American, women, and LGBTQ lawyers also represent the best of our legal profession.” And this year, by saying, “the White House is serious about bringing in professionally diverse, historically underrepresented people to the bench. You should apply.”

Heeding the President’s call, and convened by its Senators, Washington State’s judicial merit selection process was reconfigured in 2020. Washington State has long used a merit selection committee to assist its Senators in vetting and forwarding on federal judicial candidates. Senator Murray and former Senator Slade Gordon convened the first selection committee together over 20 years ago, to which Senators Murray and Cantwell have continued to appoint members to assist them in selection of judicial candidates for ultimate consideration by the White House.

We were convened by the Senators last December to nominate candidates for five judicial vacancies on the Western District Bench—one of the highest overall collections of vacancies in the country. Importantly, Senator Murray, having stewarded this process for many years, made several key changes to the Committee composition, with the intent of increasing the legal expertise and qualifications of Committee members to reflect the broad interests that are represented before the federal bench.

⁴ Some judges identify in more than one racial category, which is why the total number of judges exceeds 792 in these statistics. For example, African American/Hispanic judges would be counted in both categories. *Id.*

⁵ *Id.*

Senator Murray, along with Senator Cantwell, appointed the most professionally and personally diverse Committee to date. Those appointments included: a then US Attorney; a former longtime Federal Defender; an ACLU Executive Director; a youth legal aid attorney; a former US District Court Career Clerk; a Native American law expert and tribal member, and the former President of the National Association of Attorneys General; amongst others. Our youngest member was 33. Black, Latino, Asian, Native American and other racial and ethnic groups were represented. Multiple sexual orientations and gender identities were at the table. The Committee's diversity and expanded legal expertise was central to its ultimate success.

At the Committee's first official meeting, we heard directly from Senator Murray's staff who clearly expressed the Senator's strong commitment to bringing a diversity of professional experience and background to the federal bench—a shared priority with the Biden Administration. We also discussed the December 22, 2020, letter from then White House Counsel-Designate, Dana Remus. Remus wrote, "President-elect Biden is eager to nominate individuals who reflect the best of America, and who look like America."⁶ She added:

"With respect to U.S. District Court positions, we are particularly focused on nominating individuals whose legal experiences have been historically underrepresented on the federal bench, including those who are public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life."⁷

The Committee's composition reflected the diversity of legal and life experience that the Biden Administration and Senator Murray requested in our candidates. The importance of this point cannot be understated. Meeting the directive to address historical underrepresentation required innovation in our approach. Innovation is often driven by diversity. In this context, the Committee's own diversity and innovative recruiting tactics were essential to attracting diverse applicants, reflective of our community.

We knew that the Committee members, with their broad connections to the Seattle and Tacoma, Washington legal community, made it generally more likely that professionally diverse

⁶ Madison Adler, Bloomberg Law, *Biden Seeks Democratic Senator Input to Move Judges Quickly* (Dec. 30, 2020).

⁷ *Id.*

and historically underrepresented applicants would apply. But that representational diversity was, and still is, not enough. We also encouraged the membership to highlight the application process within their professional and personal networks, and to directly reach out to qualified applicants that might otherwise be hesitant to apply. We also publicized the vacancy announcement through expanded channels, including the Western District chapter of the Federal Bar Association, local minority bar associations, affinity bar associations, and local media outlets. Amplifying the Vacancy Announcement was simplified by the Committee members' deep community connections, including with the Loren Miller Bar Association (Past-President); the Latino Bar Association (Past-President); QLaw/LGBTQ Bar Association of Washington (current co-chair of Judicial Evaluation Committee); Asian Bar Association of Washington; and others. Said otherwise, the Committee's diversity created efficiencies in recruiting qualified, diverse candidates with professional backgrounds that have long been underrepresented on the bench.

The result of those recruiting efforts was the largest and most diverse applicant pool since the Committee's inception. We received more than 75 applications that truly represented Washington's legal and broader community. All of the legal and life experiences requested by the Administration, and represented by the Committee Membership, were present in the applicant pool.

The Committee then met over the course of approximately eight weeks and deliberated until we reached consensus on a slate of nominees. The outcome was the most professionally diverse recommendations for the Western District Bench in the Committee's history. Those candidates included civil rights attorneys, public defenders, former Western District Court Clerks, a Native law expert, a sitting Federal Magistrate-Judge, and former Assistant U.S. Attorneys. Within that professional diversity, historically underrepresented racial groups were present. Our nominees include those that self-identify as Native American, Asian American, and Black. They also included those that self-identify as LGBTQ, and those who self-identify as having a disability. It is notable that the U.S. District Court for the Western District of Washington has never had a Native American or Asian American lifetime federal judge, considering that there are 29 federally recognized tribes in Washington state, and that Washington state is home to one of the largest AAPI populations in the country.

And this very week, the Senate Judiciary Committee will vote on three of our outstanding nominees: Lauren King, a citizen of the Muscogee Nation and who would be Washington's first Native American federal judge and a tribal law expert; Tana Lin, a civil rights attorney and former public defender who would be Washington state's first Asian American federal judge; and Judge David Estudillo, a current Superior Court Judge in Grant County, a rural area of Washington state that is home to farming and agricultural communities. This cohort of outstanding nominees "look like America" and will play a key role in creating a Western District Bench that reflects and engenders trust in its community.