Latina and Latino Judges: Changing the Complexion of the Bench

Mary Dolores Guerra

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LATINA AND LATINO JUDGES: 
CHANGING THE COMPLEXION OF THE BENCH

Mary Dolores Guerra*

ABSTRACT:

Although having a diverse bench is instrumental to a fair judicial system, the first Mexican American was not appointed to the federal bench until 1961. In that year, President John F. Kennedy appointed Reynaldo G. Garza, to the U.S. federal bench as a district court judge. Judge Garza hoped that by becoming an “effective jurist” he would quell any scrutiny over his appointment and, moreover, “encourage [the] appointment of other qualified Mexican Americans to the federal bench.” Judge Garza was the only Latino appointed to the federal bench until 1979 when President Jimmy Carter appointed several Latinos to the bench, as well as, appointing Judge Garza to the Fifth Circuit Court of Appeals. The Latino community lobbied for and persistently requested that a Latino Supreme Court Justice be appointed for many years. When President Bill Clinton was elected they believed he would appoint a Latino to the highest court. They were, however, sorely disappointed. In 2009, President Barack Obama historically appointed the first Latina to the U.S. Supreme Court, Justice Sonia Sotomayor. A lack of Latina and Latino judges exists at all levels of the judiciary.

This article introduces the reader to Latina and Latino judges, serving at the city, state and federal level. The author had the honor of interviewing eighteen judges, including Hon. Sonia Sotomayor (she was a Second Circuit Court of Appeals judge at the time) and presents the interviews in the first part of the article. In this section, the judges detail their journeys to the bench. The article next details the history of Latina and Latino judges in the U.S. The article also discusses the appointment process to the federal bench and details the importance of having and keeping the “merit system” also known as the “Missouri Plan” to select judges to state court appointments. Ultimately, sharing their stories, the judges demonstrate the importance of having a diverse bench and discuss the necessary steps to increase the presence of Latinas and Latinos on the bench.

* Associate Professor of Law, Arizona Summit Law School. J.D., University of California, Los Angeles (UCLA). I wish to thank the judges for graciously allowing me to interview them as a second year law student. I also thank my research assistants, Crystal Rios, Alejandro Perez, and Eduardo Perez for diligently working on this article.
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By 1961, at the age of forty-five, [Reynaldo G.] Garza had reached a level occupied by few Americans and no other Mexican American. Individuals and groups perceived a Mexican American Federal judge as an interloper, scrutinized Garza’s actions and sought fodder to justify their discriminatory beliefs. This sense of heightened scrutiny concerned, but did not consume, Garza. The new appointee felt that by becoming an effective jurist he would not only pacify detractors but also encourage appointment of other qualified Mexican Americans to the federal bench.


I. JUDGE TAFOYA’S COURTROOM

People in the courtroom rose as Judge Tafoya entered. A plea hearing was on the afternoon docket. A woman, who had acted in the heat of rage, rammed into a stranger’s car. She pled no contest. The judge called the woman and her attorney to the bench. He kindly addressed them. The prosecutor read the charges. The victims had retaliated by smashing the woman’s windshield. Judge Tafoya asked the woman if she had been taunted, and she replied, “No.” The Judge saw the broader picture: he understood that every story has two sides. Before making his decision, he wanted to hear both sides. The Judge accepted the woman’s plea. The Judge required her to pay damages and attend an anger management class. He also required her to return in six months. After the proceeding, she extended an apology to the victims. I had the sense that I had attended a sacred ceremony, one

1. See infra Part V, Judge Matias Tafoya.
where fate is determined. The judge orchestrates the proceeding, and
the prosecutor and defense attorney have their roles. The victim and
defendant face each other. In this case, the defendant owned her erro-
neous behavior. Our Judges engage in these ceremonies several times a
day.

II. INTRODUCTION

The primary objective of this paper is to celebrate and honor
Latina and Latino\textsuperscript{2} Judges. Few individuals in the Latino community
have reached such status. I had the opportunity to interview many
judges. The judges invited me into their chambers and graciously gave
of their time. I thank each of them for sharing their stories. My goal is
to share these success stories with the Latino community in particular
and legal community in general.

In Part III, I will introduce the judges I interviewed. Part IV
details the historical background of Latino Judges, focusing on federal
appointments. Part V discusses Arizona's appointment process and its
first Latino Judge. Part VI details excerpts of the judge's interviews.
Part VII discusses diversity on the bench. Part VIII and IX contain the
Judge's answers to three questions I presented: (1) Is it important to
have diversity on the bench? (2) How have you, as a Latina or Latino,
impacted the bench? (3) How has the bench impacted you? Finally part
X contains the Judge's suggestions to increase the presence of Latinos
on the bench. Writing this paper has been inspiring to me.

III. THE JUDGES\textsuperscript{3}

1. Hon. Louis A. Araneta, Judge, Maricopa County Superior Court\textsuperscript{4}

Judge Araneta's decision to become a judge was a professional
evolution. Although he did not follow his father in the family tortilla
factory in Tucson, Arizona, he did follow his father's advice to pursue
what he enjoyed—public service. He graduated from Stanford Univer-
sity in 1973 with Honors in History and from Stanford Law School in
1978.

\begin{itemize}
\item[2.] I will use Latina / Latino and Hispanic interchangeably.
\item[3.] I wish to extend an apology to any Latina/o Judge that I did not include. I
interviewed most of the judges in the Spring of 1999. Please see Section XI for a status
update on the judges included in this paper.
\item[4.] Interview with Hon. Louis A. Araneta, Judge, Maricopa County Superior Court, in
Phoenix, AZ (Mar. 17, 1999).
\end{itemize}
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He wanted to work as an advocate for his clients. He practiced criminal law for the Federal Public Defender in the District of Arizona. His first legal mentor, Tom O'Toole, helped him improve his brief writing to the Ninth Circuit Court of Appeals. Staff attorneys David Ochoa and David Heller guided his trial advocacy. He tried many cases from misdemeanors to murders. Judge Araneta also worked in commercial and real estate litigation for two years. Later at the Attorney General's Office, he practiced fair employment litigation. Because he missed criminal trial work, he joined the Maricopa County Public Defender in Phoenix.

Judge Araneta appreciated how judges ruled by weighing the merits of a case. In 1990, he was appointed to be a Superior Court commissioner. He spent three-and-one-half years on the bench as a Court Commissioner. He applied to the Maricopa County Superior Court and received encouragement from Peter Guerrero, Tom Henze and other attorneys, judges and friends. Governor Symington appointed him to the Superior Court in 1993. Judge Araneta enjoys deciding disputes, being a good listener, and making just decisions. Allowing good lawyers to try their cases is important to him.

2. Hon. Silvia R. Arellano, Judge, Maricopa County Superior Court

Judge Arellano received her Bachelor of Arts in Social Work in 1971. She always knew she would attend college because her family instilled in her the value of an education. Working as an employment specialist with the Arizona Attorney General's office in the Civil Rights Division, she conducted investigations and wrote reports, but when it came to handing out meaningful remedies, the lawyers who handled the cases did not consult her. She realized that she was just as capable of doing the work of an attorney. She had never considered being a lawyer; she was perfectly happy being a social worker.

Judge Arellano made the decision to attend law school; the timing was right. She spoke with people who helped her apply to law school, Al Flores and Danny Ortega. She took the Law School Admissions Test ("LSAT"), and did well enough to get into law school at Arizona State University ("ASU"). She did not apply to any other law school; she said perhaps she should have. Judge Arellano stressed one important point, "I've never accomplished anything on my own. Other Hispanics, other women, and mentors were there for me." She graduated from ASU law school in 1978.

5. Interview with Hon. Silvia R. Arellano, Judge, Maricopa County Superior Court, in Phoenix, AZ (Mar. 18, 1999).
Judge Arrellano's decision to apply for a judicial position in 1990 hinged on the fact that a republican Governor was in office and she did not think their politics would be compatible. The position she held was political. At that time she was a Deputy Commissioner for the Department of Real Estate, working for a Democratic Governor. She worked in this capacity for six years and felt she learned all she could in that position.

For Judge Arellano money has never been a motivating factor in seeking a particular position. Her main goal in law school was to have a car that (1) started when she turned the key and (2) had air conditioning for the Phoenix summers. However, she wanted to be in a position where she could make a difference. In 1990, Governor Rose Moffard appointed Judge Arellano to the bench. During her first application, she made the interview list; but she did not make the Governor's short list. In her second attempt, she made the short list and the Governor appointed her.

Judge Gloria Ybarra was the first Latina Judge in Arizona; Judge Arellano learned so much from Judge Ybarra. Judge Arellano is the second Latina to be appointed to the bench in Maricopa County. She stated that applying to the bench is emotionally trying and takes a long a time.

3. **Hon. Anna Marie Baca, Judge, Maricopa County Superior Court**

Judge Baca moved to Phoenix from Los Angeles in the late 1970's. Her husband is a professor at Arizona State University. She completed her education at ASU, receiving her Bachelor of Arts in English with a minor Spanish. She attended ASU, College of Law. Judge Baca did not apply to any other school because her two children had just begun grammar school. While in law school, she interned with the City of Phoenix Prosecutor. There, she gained trial experience. In 1981, she took the Arizona State bar, and in 1982 she took the California bar, passing both.

She worked for a small, general civil practice law firm. She gained experience in taking depositions, writing motions, and attending juvenile court and adult court. She also gained exposure to the business aspect of running an office. She decided to start her own law firm because of her age, she was a Hispanic female, and after a couple of interviews with the bigger firms, she realized that generally in Phoe-
nix, the big law firms did not hire minorities. She and another female attorney practiced in both civil and employment law. She enjoyed her independence, and she was able to select clients. Although Judge Baca enjoyed her freedom, it also was a terrifying time. Luckily she had been exposed to the business side of running a law office.

After about three years on her own, Judge Baca applied for the position of Administrative Law ("Ad Law") Judge with the United States Equal Employment Opportunity Commission ("EEOC"), based in Phoenix. She heard cases mainly from federal employees. She held bench trials. She had a rich learning experience; she conducted hearings and settlement conferences. She then took the position of compliance manager but later returned to a post as an Ad Law Judge.

Gaining a position on the bench in 1994, Judge Baca states that the diversity statement initially made a bigger difference for women then it made a difference on the appointment of Hispanics to the bench. Judge Baca believes being a Hispanic woman helped her get appointed. The commission, which sent the names of potential candidates for judges, had expanded; it had a few Hispanic women on the commission. Governor Fife Symington appointed Judge Baca to the bench. He was enthusiastic about Mexico and Mexicans. She enjoyed her interview with him. Judge Baca thinks that timing made the difference.

4. Hon. Harriet E. Chavez, Commissioner, Maricopa County Superior Court

Commissioner Chavez was raised in Phoenix. She received her Bachelor of Arts degree with distinction in History and a minor in Spanish from the University of Arizona in 1975. She attended the University of Arizona College of Law and received her Juris Doctorate in 1978. In 1991, she was appointed as a commissioner after having worked as an assistant City Prosecutor, for the cities of Mesa and Phoenix. She also worked with the Deputy Maricopa County Attorney office and the Arizona Attorney General’s office.

Commissioner Chavez explained the differences between a commissioner and a Judge. Judges are appointed by the Governor and then are retained by an election every four years. The presiding judge hires the commissioners. Commissioner Chavez is a judicial employee and is subject to termination at will. A commissioner makes 90% of a Super-

8. Ariz. Const. art. 6, § 41 (See Part III of this article).
9. Interview with Commissioner Harriet E. Chavez on March 18, 1999. (Commissioner Chavez is now a Superior Court Judge for Maricopa County).
rior Court Judge’s salary. Commissioners usually handle routine, uncontested matters. At times she has served as a pro-tempore judge to handle the overflow from the Superior Court Judges. She was a City Judge before but decided to apply as a commissioner; her salary remained the same. Commissioner Chavez is very involved with the Hispanic community; she is the current president of Los Abogados, the Arizona Hispanic Bar Association, which focuses on the Hispanic issues of Lawyers and Law students. She has applied for a judgeship but thus far had been unsuccessful at attaining the position. Applying for the position has been a brutal process.

5. Hon. Francisca Cota, Judge, Phoenix, Municipal Court

Judge Cota attended Arizona State University, receiving her Bachelor of Science in Justice Studies in 1979. She received her Juris Doctorate from ASU College of Law in 1985. She was an Associate Judge for the City of Glendale and also a Tax Hearing Officer. As a private practitioner for a few years, she focused on civil litigation in the areas of commercial contracts, personal injury, domestic relations and criminal defense. In 1994, she was appointed as a Judge for the City of Phoenix. Before becoming a judge, she served as a Judge pro-tempore. She is a fellow of the Hispana Leadership Association, an organization that assists women in developing their leadership skills. Her professional memberships include the Arizona Supreme Court, Commission on Minorities, co-chair for the Diversity in the Judiciary Committee. She is also the National Hispanic Bar Association’s Chair for the Judge’s Division. She stated that she feels an urgency—a mission—to increase the number of Latino, minorities and women on the bench. She assisted in the preparation of a workshop for Latinos who are interested in becoming Judges.

Judge Cota explained her formula for success. She shared what she called “Stepping out of the Picture.” First, one has to make a choice, decide what she wants to do. Second, she figures out what steps she will need to take to reach that goal. Third, she stays focused, even if everything else seems to be falling apart. Fourth, she owns her fear and rejection, feels it and does it anyway, stating “This is my fear, my rejection.” To own the fear and rejection one must take these steps; (1) step away; (2) decide what she wants to do with the fear and rejection; (3) realize that all people will face obstacles; and (4) work through the feelings of fear and rejection. Fifth, the person cannot let go of her goal,

10. Interview with Hon. Francisca Cota, Judge, City of Phoenix Municipal Court, in Phoenix, AZ (Apr. 19, 1999).
she must persevere. Finally, and most importantly, the person must never lose her peace, she must stay calm, calmness is power.

6. **Hon. Louis F. Dominguez, Judge, Phoenix Municipal Court**

Judge Dominguez was born in Tolleson, Arizona. When he was in the sixth grade he decided he wanted to be a lawyer. His parents were instrumental in his success. His father had an eight-grade education and his mother attended school to the second grade. His parents encouraged him to study, to go to school and to succeed. Judge Dominguez did not know anyone who was an attorney. He received a scholarship to attend Glendale Community College for two years. He then went to Grand Canyon College. He held two jobs and worked thirty-six hours a week. He earned a major in psychology and a minor in sociology at ASU. He took the LSAT, the score was not the greatest, but his grades were high, the combination allowed him to be accepted at ASU College of Law. The Judge worked full-time during school and lived at home.

Judge Dominguez stated that several factors are important to be a judge: experience as an attorney, judicial demeanor, and being a good listener. He worked as a city prosecutor for ten-and-a-half years. He considers himself to be a good listener. In 1994, three vacancies opened for a City Court Judge. The term was four years. Judge Dominguez chose this court because he felt he would have a greater impact. He knew what to expect, after spending years at the City Court; he thought his chance for success was greater. City Court is the Court of the People. Recognizing what people need to say is important, Judge Dominguez hears the parties out, and tells them the verdict as clear as he possibly can. "People need to know that they had fair proceedings," Judge Dominguez said.

7. **Hon. Irma E. Gonzales, Judge, United States District Court, Southern District Court of California**

Judge Gonzales is one of the few Latina Federal District Judges. She said the contact she had with judges is what helped her decide she wanted to become a judge. She looked up to these judges as mentors, although no judges of color had been appointed to the bench.

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When she graduated from the University of Arizona Law School in 1973, there was only a handful of Latino attorneys, and even less Latina attorneys. Becoming a judge did not enter her mind until much later in her career. Right out of law school she clerked for Federal District Judge Frey. He was a family friend. She felt lucky and honored. The clerkship was a two-year clerkship. While she was a clerk, she learned more about the courtroom, which motivated her to become a litigator. Judge Gonzales worked as an Assistant U.S. Attorney in Tucson, Phoenix, and Los Angeles from 1975-1981. She served as a Judge of the Superior Court in San Diego County from 1991-1992 and as a U.S. Magistrate Judge in the Southern District of California for seven years (1984-1990). In 1992, Judge Gonzales was appointed to the Federal District Court.

Judge Gonzales stated that it is important to try for the moon, to have a goal. She plotted and planned her career. She said that she has been blessed to have had such good mentors. The Judge comes from a successful family. Her mother was a traditional wife, her father a surgeon. All seven children have college and advance degrees. Her father was a motivating factor in her becoming a lawyer, he taught her to pick something to excel in. She spoke with District Judges about applying to the federal bench. Some encouraged her to get experience in a private law firm. She followed their advice and practiced for a couple of years. She realized she needed to learn to promote herself and appear confident, traits that men seem to naturally possess. Judge Gonzales said that Latinos/Latinas had to prove themselves more; they have to be more qualified. She has been told that sometimes Latinos are too kind.

Judge Gonzales encourages Latinos to take advantage of every opportunity that may come his/her way. Sometimes it is hard to recognize the opportunity. She needed the support of groups—Women Lawyers Association, La Raza. Women organized to promote her; she could not have accomplished the goal of the federal bench alone. She sought help; she needed political clout, good clout. She said that people must work hard, build a good reputation, and develop their skills. Judge Gonzales mapped out people she knew in high positions, called them or wrote to them. People would usually help her; either by giving her advice or calling or writing someone they knew on her behalf.
Before Judge De Leon became a judge he applied eight times, gaining an interview seven of those eight times between 1979-1981. He could not get through the committee. During one of the interviews, Judge De Leon was asked if he was going to be a Mexican Judge; he asked the person for clarification. Judge De Leon told the committee member that he was of Mexican descent and that he would serve the United States. Learning that Judge David Ochoa was about to leave due to illness, Judge De Leon realized he had a better chance at being appointed: one “Mexican Judge” off, one Mexican Judge on. One Hispanic judge seemed to be enough. Someone on the committee told him to make sure that no other Hispanic applied; the Judge said, “How am I going to do that?” He got through the committee; Governor Babbit appointed Judge De Leon in 1983.

Through Judge De Leon’s appointment, the bench as a whole started learning more about Hispanics. One Judge wondered why Hispanics would not cooperate with the judicial process. Judge De Leon explained that due to the mistrust that newer immigrants have with the police force and judicial system in Mexico, they are less likely to assist the justice system in the United States. The judges then better understood the disinterest of Hispanic participation. The Judges ate meals together and shared experiences; they developed sensitivity to each other’s cultures. Judge De Leon still faces discrimination; to some people it doesn’t matter if you have been here all your life. His family has been in the United States for over a hundred years, yet some people treat him as though he just came over the border.

Judge De Leon has mentored judicial applicants. Through mock interviews, he has taught them to be bolder, more assertive. The Judge said that the lawyer members on the commission can be the toughest. At times, in-fighting within the committee exists. He stressed to the applicant, “Brace yourself.”

Judge De Leon believes that becoming a judge is a higher calling for the lawyer. He said that “If you receive the calling, you still need to consider your family.” Judge De Leon added that “if you go to a private law firm you make money and are less likely to leave the firm for a bench position.” Judge De Leon retired in January of 1999.

Judge Mundell crossed many stages in her life that led her to attaining the position on the bench. Her father was very protective; she was not allowed to date while in high school. Realizing that if she could not date then she probably would not get married, and if she did not marry she would need to be responsible for taking care of herself. At an early age Judge Mundell developed a set of criteria for the job that would support her. First, the job had to be a man’s job; she was driven to prove to her dad that she could do a man’s job. Second, the job had to be a caring position, one that would be helpful to the community. Third, she would have to make enough money to support herself. Lastly, the position had to be a prestigious and a respected job.

Through these criteria, Judge Mundell discovered that she would become a lawyer, which meant she had to go to law school. She kept this goal secret for a long time. She attended South Mountain High School, and through the assistance of a teacher, Ms. Avila, she received a tuition and book scholarship to ASU. She received her Bachelor of Arts in Political Science in 1978. She attended ASU College of Law. Judge Talamante and others assisted her to get into law school. Judge Mundell received her Juris Doctorate in 1981.

Judge Mundell worked at Swenson Ice Cream Company for a year as an Associate Counsel, but soon discovered that she did not like corporate law. She worked for a couple of private practitioners, gaining experience in Worker’s Compensation Law and Social Security Law, representing applicants. In 1986 through 1989, Judge Mundell worked as an Administrative Law Judge for the Industrial Commission of Arizona.

When seeking a position as a Superior Court Judge, she applied for a full year. The last two times her name made it to the Governor’s short list. Pete Guerrero, who was on the commission, was behind her and pushed for her. As she became more experienced in the interviews before the commission, she was able to hone her skills and techniques. Plus, the commission repeatedly saw her and also saw her interest and determination in becoming a judge. In 1989-1991, she was a commissioner for the Maricopa County Superior Court and a Judge pro tempore. She loved her position and thought that even if she had not been appointed, she would return to a job she loved.
In 1991 Judge Mundell was appointed to the bench. She stated that when she made it to the bench, it was her time. She considered herself lucky. The opportunity was there and she persevered. She considers herself to be a double minority, a Hispanic and a woman. When Gloria Ybarra stepped down from the bench, Judge Mundell sensed that she was more likely to be appointed. When applying to the bench she found she invested herself and at times took it personally if she was not appointed. She also stated that the process is a brutal one and that during the process she felt worthless to her family. In between the applications, she needed to take time to heal and mend.

She had applied to the Arizona State Supreme Court, but she did not get the position. The balm that soothed her was that she still had her position as a judge, which she loves. She may apply again but not right now.

10. Hon. J. Matias Tafoya, Judge, Phoenix Municipal Court

Judge Tafoya was appointed in 1984. At first it was really rough, he moved for change, not because he’s Latino, but because of the philosophical differences among the judges. Judge Tafoya stressed that education is very important, adding, “People who are not educated can be easily controlled. Our youth need to be educated, and we need to increase the Latino presence in education.” He also encouraged the development of “a fifty-year plan, start in kindergarten, push youth to be in school and eventually the pool will be large enough that Latinos will attend law school. Change takes time.”

11. Hon. David Talamante, Judge, Maricopa County Superior Court

Judge Talamante is the newest member of the bench. He was recently appointed on January 29, 1999. Virginia Herrera was instrumental in his appointment, working diligently on his behalf. Judge Talamante graduated from ASU College of Law in 1978. He joined Los Abogados upon becoming an attorney. He states the group’s influence has grown over the years. In law school his goal was to be in private practice.
practice in a Chicano/Hispanic Law Firm. He worked in Legal Aid. Aaron Kizer and Ronnie Lopez helped him in immeasurable ways. Governor Bruce Babbit appointed him Assistant Real Estate Commissioner. Judge Talamante thinks timing is important, being in the right place at the right time with the right experience. He was later appointed as Registrar of Contractors; his friend Mr. Kizer was leaving the position. Dealing with the legislation process as the Registrar of Contractors tired him and in 1986 he entered private practice with Ortega, Moreno & Talamante, P.C., reaching the goal he had set for himself. He felt lucky and fortunate that he could work with friends. Judge Talamante has enjoyed all of his positions.

In mid-1996, his friends encouraged him to apply for a judgeship. The small number of Latino Judges on the bench also persuaded Judge Talamante to apply to the bench. He applied five times before he was appointed. He says applying took time and effort. Judge Talamante did not find the process frustrating. For Judge Talamante, the process was interesting; he received good criticism and each time learned a little bit more. Calling his friends, asking them to call a commissioner on his behalf, was the hardest part of the process. He did not want to impose on his friends. Judge Talamante practiced in mock interviews with judges and other helpful individuals. He received good feedback and the mock interviews increased his confidence. Judge Talamante stated that he had the support he needed to get appointed to the bench. People were there for him and he had the recommendation of Los Abogados.

12. Hon. Maria Del Mar Verdin, Commissioner, Maricopa County Superior Court

Commissioner Verdin's family is from Spain. When Franco came to power, the Commissioner's family fled to Costa Rica, where she was born. The Commissioner sees her parents as courageous individuals. Although her father is an educated man, his plan to become a professor evaporated once they left Spain. Her family moved to New York. Her mother, Maria Louisa, is Commissioner Verdin's hero. Although her mother spoke no English, she received her GED, went to college, and graduated with a 4.0 GPA. Her mother also received her Master's Degree in Education and teaches today. Early on, Commissioner Verdin witnessed discrimination, as her father did not receive the respect he deserved and instead was treated poorly due to his lim-
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itted English skills. When he arrived in the United States he did not speak English.

Commissioner Verdin attended college in West Virginia. In 1986, she attended the University of Arizona College of Law. After she graduated in 1989, she moved to Phoenix although she did not have a job. Eventually she worked for a sole practitioner. Later she worked for local attorneys on a contractual basis; she gained experience in the criminal law area and witnessed the human side of the law.

Working in Juvenile Court as a public defender was a fulfilling experience. She remembers those days as some of the best of her career. Commissioner Verdin represented children who were in trouble. In this venue, the law needed to be balanced with mercy, according to Commissioner Verdin. She represented vicious rapists and murderers; the system had to work for everyone. She said she was hired primarily because she spoke Spanish, as she worked with children who spoke Spanish. She saw firsthand how the lack of parental supervision and responsibility affects our society. She found her work meaningful because she believes each child has a fundamental right to be treated with respect and the government had to prove its case.

Commissioner Verdin later worked for the Attorney General’s Office in the Child Welfare Department. Through Child Protective Services she learned that children need to identify, to bond, so that they can be successful. When children lose the ability to bond they may become psychopaths. One of Commissioner Verdin’s goals was to rehabilitate families. Children who were older or who were minorities did not get adopted, yet sometimes they were treated just as badly in a placement home. She became frustrated by the lack of resources for families. The office tended to do the minimum that it had to do under the law. The department was overworked and underfunded.

In 1995, she decided to apply for a position as a commissioner. One of the major obstacles that she faced was her young age; people did not take her seriously and did not respect her because of it. She had to convince people that she was qualified. She was very confident in what she did, knowing that she could make decisions in the juvenile court arena. Judge Meyers appointed her as a commissioner after her first try.

Commissioner Verdin is deeply indebted to her mentors. She calls them her guardian angels. Judge Barbara Mundell, Judge Cecil Patterson, and Judge Linda Scott would call her into their chambers to tell her what she did right, or what she might do better. She was impressed that they would take the time to assist her. She recalls that Judge Barbara Mundell told her, “Do what you enjoy and the money
will come to you.” Commissioner Verdin is grateful that she had people who helped without being asked, individuals who encouraged her, stating, “You are good enough and capable enough.”

Commissioner Verdin works in both the juvenile court and domestic relations. She considers herself pretty lucky to be able to come to work and love it. She does not know too many people who can say, “I want to go to work early and leave late.” She remembers telling the hiring committee, “Because I’m younger looking, the children are more likely to identify with me.” Additionally, being Hispanic gives her a cultural sensitivity that others may not have. She will tell a young defendant, “Mijo, si quieres pegar el grito, don’t use a gun.”

Commissioner Verdin is a role model for the girls of her Girl Scout troop; many of the girls want to become lawyers. She tells them to finish their education and get a degree in their own name. She teaches them that they need to be self-sufficent and equal in a relationship, explaining the importance of finding satisfying and meaningful work. “Depending on others is a good thing, but first learn to depend on yourself,” she tells her young listeners. Encouraging a child to attend school is a valuable lesson because when a child believes that she will attend college, she is less likely to drop out of high school.

Not only is Commissioner Verdin committed to her work, but she is also committed to the Latino Community. She believes she has a moral responsibility to contribute to the community, not just to write a check, but to be involved personally. In serving the needs of the community, she believes she also is serving the needs of the Latino Community.

13. Hon. Stephen Villarreal, Judge, Pima County Superior Court

The interview with Judge Villarreal focused on his appointment to the bench. Judge Villarreal received his Bachelor of Arts Degree in Sociology in 1972 from the University of Arizona. He graduated from the University of Arizona College of Law in 1975. After working in at the Tucson City Attorney’s Office as a prosecutor for a short period, he worked as an Assistant Public Defender for the Pima County Public Defender’s Office for a couple of years. In 1980, he began working as a private practitioner with Gonzales and Villarreal, P.C. In 1997, he became a solo practitioner.

20. Translation: “If you want to make noise. . . .”
21. Interview with Hon. Stephen Villarreal, Judge, Pima County Superior Court (Apr. 5, 1999).
Judge Villarreal described the merit selection process, which I will detail later in this piece. He pointed out that politics play a large part in whether one is appointed or not. Whether one is a Democrat or a Republican is of utmost importance. The committee looks beyond what one did within the legal community; being involved in the community at large is also important. The committee identifies whether one has the right judicial demeanor. Merit is important for the first cut but, if one is selected for an interview with the Governor, then politics become paramount. Next, getting people to lobby for the applicant is hard work. Individuals are asked to contact committee members and the Governor, as applicants are not allowed to contact these individuals. Judge Villarreal had to shut down his practice throughout the application process. Judge Villarreal recalls this time to be a very intense period. He tried twice for the Trial Court position and once for the Court of Appeals. The Judge describes the process as brutal, stating, "You put yourself out there and people can say whatever they want about you.” Sometimes it felt like he had been setting himself up for rejection, public rejection. The application process can beat one down, one's ego and one's self-esteem (much like law school first semester grades).

After not being appointed the first time, Judge Villarreal took some time to re-reassess his situation. Even though there were several openings, he felt he needed the time. He reapplied in May 1998. He was appointed August 24, 1998. These were the most grueling three months of his life. I asked him what he did differently. He said he took a methodical approach to contacting the committee members. The first time he only concentrated on the lawyers and wrote off the non-lawyers; he did not make an effort because he did not think he had access to them. The next time, he created a grid of all the committee members. He came up with someone who might have access to each committee member and who would put in a good word for him. As for the committee, he realized that after the interview he received good feedback; he sensed he had momentum that he did not have the first time. The committee knew of him; he was not a non-entity. They had to take notice of him, take him seriously; he became someone who they respected. He recalled that he had problems with one of the committee members; they had butted heads while they were both practicing. Judge Villarreal contacted someone who went to him personally and spoke on the Judge’s behalf. The committee member needed the Judge to acknowledge him.

The Judge stressed that one needs to know who the players are and what the dynamics are within the committee. The applicant needs
to know who the leaders are, who is connected to the Governor. This part can be difficult, especially with someone who is not a member of the applicant’s political party. Judge Villarreal said, “But you do it legally and ethically. You have to want it bad enough. You have to set your ego aside. If you really want it bad enough you may have to kiss some butt. If you aren’t willing, whether you do it or not, then don’t apply.”

Unfortunately, the Judge said that Hispanics are not connected to the lines of power yet. One may not think politics are relevant to him or her. Judge Villareal believes that one needs to have the contacts if the applicant realistically wants to be appointed.

14. Hon. Bernardo P. Velasco, Judge, Pima County Superior Court

Judge Velasco grew up in the mining town of Hayden, Arizona. His father wanted him to become a geologist. Becoming a geologist, however, was not what he wanted to do with his life. Growing up in Hayden, Judge Velasco noticed that the County Attorney came to town every so often and thought he might like to have his job; he thought about becoming a lawyer. Early on in law school he knew he wanted to become a judge. His father wanted him to run for County Attorney. But Judge Velasco figured becoming a judge would take him out of politics and out of his dad’s career path. Being a judge involves seeing both sides to everything. When he became a lawyer, he was careful about the choices he made; he worked hard and did a good job. As a defense attorney, when he won a case he made a point not to gloat over the victory. He wanted to sound reasonable and he built a good reputation. He had good friends who got him through the committee and through to the Governor. He became a judge in 1985. He had been a U.S. Magistrate for the District of Arizona part-time from 1982-1985. Judge Velasco received his Bachelor of Science in Government Service/Public Administration in 1971 from the University of Arizona. He graduated from the University of Arizona College of Law in 1974.
Ms. Ybarra currently is the Lead Counselor for the Attorney General’s Civil Rights Department. She attended St. Mary’s College in Indiana and is a Harvard Law School graduate, receiving her Juris Doctor in 1979. She planned to become a lawyer to get elected to office. However, she re-thought the idea after a close friend went through the political process and she realized that running for office would be difficult on family members. She remembers how judges intrigued her. When she became a lawyer only one Hispanic judge, Val Cordova, had been appointed to the federal bench, as well as only one to the Maricopa County Superior Court, David Ochoa. Ms. Ybarra worked at a private law firm for a time and then became a prosecutor for the U.S. Attorney. While practicing with the U.S. Attorney’s office she met Judge Cordova and sought his advice and mentoring. She appeared before Judge Cordova many times.

The first time Ms. Ybarra applied to the Superior Court bench, she had been practicing for the minimum five years needed. She was eight-and-a-half months pregnant. No other women had applied while pregnant. The commission had no female lawyers and only one Latina, Rosie Lopez. One of Ms. Ybarra’s neighbors was on the commission. Ms. Ybarra told her neighbor that she was applying to the bench and the neighbor looked disappointed and stated, “Oh, too bad we just filled the Hispanic slot.” Judge De Leon had been appointed recently. Ms. Ybarra thought, “Who decided how many Hispanic judges could be on the bench at one time?” Within a two-year period, she applied five to six times, and received an interview all but one time. Sometimes she was asked bizarre, illegal questions. According to Ms. Ybarra, it was a very interesting time. Becoming a judge was a way to combine the interest she had for the trial courtroom and for politics. She liked to help people with their decisions; being a judge was a good use of her abilities. On October 18, 1985, Ms. Ybarra was the first Latina appointed as a Maricopa County Superior Court Judge.

Six years later she made the decision to leave the bench. Her son needed her. Ms. Ybarra thought she could quietly step down from the bench, but her departure made the local headlines. She knew this decision would be hard, not only on her but also on others, especially female judges. There are no sabbaticals for judges. A judge can be granted a leave but not a long-term leave. She knew women would be
broad brushed\textsuperscript{24} about her decision. She is currently trying to get back on the bench, but the feedback that she receives is that she was not committed to the job, as otherwise she would not have left.

While on the bench she was asked to do many extra activities on top of her regular workload because she was the first Latina, but she met the extra demands. Other judges chose only to do their work and stay out of the community. However, her commitment to her role as a judge was questioned because she was so involved with the community. Ms. Ybarra did her job well and stayed connected to the community. She did not ask for help, and no help was offered. Thinking back, she should have said "no" more often.

16. Hon. Frank R. Zapata, Judge, United States District Court of Arizona\textsuperscript{25}

Judge Zapata is one of the two Federal Judges I interviewed. Reaching this level as a judge is a very high honor, but as a Latino, the honor is deeper. He received his Bachelor of Arts Degree in English from the University of Arizona in 1966. In 1973, he received his Juris Doctorate from the University of Arizona College of Law. Judge Zapata was a trial lawyer for the Federal Public Defender for ten years. He worked two to three thousand cases in Federal Court. The cases varied from illegal entry to murder. He has tried one hundred to one hundred and fifty jury trials and has appeared at least twenty-five times in the Court of Appeals. He believes his experience helped prepare him to be a Federal trial judge. He was at the Federal Courthouse nearly every day of his career.

Judge Zapata did not give much thought to becoming a judge; he had applied for a state judgeship in 1986, but did not get appointed. He served as a U.S. Magistrate for two years before being appointed as Federal District Judge in 1996 by President Clinton. Judge Zapata primarily tries criminal cases, and at times civil cases, but mostly large-scale drug cases, alien smuggling, and illegal re-entry with aggravated felonies. Becoming a judge was a shift within the same system for Judge Zapata. He believes everyone in the system is important. He is not in awe of being a judge. He knows that he has a powerful job, "but you do what needs to get done, to get to justice."

Judge Zapata shared his judicial application process with me. I discuss the process in more detail below. Representative Ed Pastor

\textsuperscript{24}. Judge Ybarra's decision would likely negatively impact women in general.

\textsuperscript{25}. Interview with Hon. Frank R. Zapata, Judge, United States District Court of Arizona, in Tucson, Ari. (Apr. 5, 1999).
wrote a letter of interest on behalf of Judge Zapata. Rep. Pastor consulted with Arizona senators, Senator Kyl and Senator McCain. All agreed to submit the Judge's name for nomination. Judge Zapata is grateful for the support he received from Senator Kyl, who was on the Senate Judiciary Committee. He knew that if he were to be appointed he would have to have his state senators behind him. He completed the Justice Department investigation and the President sent his nomination to the committee. Judge Zapata's nomination was put on the consent calendar and was approved the last day before session ended.

IV. HISTORICAL PERSPECTIVE

According to the American Bar Association, minorities occupy a small share of the bench, beginning at the federal level and continuing throughout the entire justice system. There are 1,310 Latino and Latina Judges in the United States, Puerto Rico, U.S. Armed Forces, and territories of the United States. This number represents judges at all levels including the United States Supreme Court; President Barack Obama appointed Justice Sonia Sotomayor in 2009. The number is constantly changing due to new appointments and recent retirees. "Federal judicial seats are hard to track... As of January 1997, 3.3 percent of all federal judges were Hispanic," stated Carlos G. Ortiz, White House liaison for the Hispanic National Bar Association. The Hispanic population is an estimated 29.2 million in the United States, or 10.9 percent of the population according to the Census as of June 1, 1997. The Latino population, since July 1, 1990, has increased 29 percent, while the non-Latino white population has increased 3 percent.

A. The Federal Judicial Confirmation Process

A federal judge is appointed to the bench and not elected. Federal judges are nominated by a congressman, either from the House of Representatives or the Senate. The Senators submit the candidate's

27. MARIA D. RAMOS, FAMILY VIOLENCE PREVENTION FUND, BENCHBOOK: CULTURAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES (1997).
29. Id.
30. Id.
31. U.S. CONST. art. III.
name to the President. Next, the candidate must pass a Federal Bureau of Investigation background check through the Justice Department. Once the background check is completed the President sends the nomination to the Senate Judiciary Committee or subcommittee. The committee may or may not decide to hold hearings. The entire senate or the subcommittee may conduct the hearings. Once voted out of the committee, the nomination goes to the Senate Majority Leader. The nomination will be placed on the Senate Calendar. If the nomination is placed on the consent calendar, there was no debate. However, every senator must agree to the nomination; there can be no rejection. The entire Senate is involved in the judicial selection process. There can be fighting between the different factions within the Senate that have nothing to do with the judicial applicant, but the fighting can hold up the confirmation. Once confirmed, a new Federal Judge receives a lifetime appointment.32

1. The First Latino Federal Judge33

Federal Judge Reynaldo Garza of Brownsville, Texas, became the first Latino to be appointed to the Federal District Court when President John F. Kennedy selected him for the position in 1961.34 Judge Garza remembers President Kennedy telling him, "It's up to you to do a good job so others can follow you."35 Judge Garza is the son of Mexican immigrants.36 Judge Garza was born in 1915 and is the sixth of eight children. Judge Garza's rise to a federal judgeship was due to his accomplishments as an outstanding lawyer in Brownsville for over 20 years, but knowing Lyndon B. Johnson played a critical role in Garza's appointment.37 Judge Garza's record as a judge was outstanding; he caught the eye of President Carter who offered him the opportunity to become the U.S. Attorney General. The Judge refused the offer because he did not want to forego his lifetime appointment or leave Brownsville. However, when the President offered him a Fifth Circuit Court of Appeals position in 1979, Judge Garza accepted the

32. This information comes from Judge Zapata, who shared his judicial appointment process and confirmation with me.
33. See FISCH, for Judge Garza's biography.
35. Id.
36. Id.
37. Id.
appointment.\textsuperscript{38} “I was a very lucky man... I got on the right horses,” he said.\textsuperscript{39}

Judge Garza began his tenure as a federal judge during the civil rights movement of the 1960s. He states he never thought of his Hispanic roots as he decided segregation cases. “A federal judge has to be color blind,” he said. “I have no likes or dislikes. Everyone is the same to me.” Today the Judge is on senior status, handling a reduced workload. Judge Garza is humble about his accomplishments for himself and his community. “I did what I thought was right,” he said.\textsuperscript{40}

2. Other “First” Latino Federal Judges\textsuperscript{41}

Judge Garza was the only Latino to be appointed to the federal bench until 1979. President Jimmy Carter appointed several Latinos to the bench. One of the President’s appointees in 1979 was Judge A. Cabranes who was the first Hispanic Federal District Judge of the U.S. District of Connecticut.\textsuperscript{42} Judge Cabranes was not widely accepted at first because he was considered an interloper from academia who would flounder in the courtroom. However, he would develop a reputation among attorneys as “one of the most commanding– and most challenging–judges to sit on the federal bench in [Connecticut].”\textsuperscript{43}

In 1994, Hispanic groups were hopeful that President Bill Clinton would appoint a Hispanic to the Supreme Court and Cabranes was their top choice. Judge Cabranes came under fire again; many said that he would only be selected to the High Court because the President would be doing the “Hispanic thing.” The statement did not offend Judge Cabranes and he “made it clear he saw judges as born of politics, not ordained from on high.”\textsuperscript{44} At a testimonial for two Hispanic Superior Court Judges, Judge Cabranes said,

Our leaders, on all sides, fail to teach the American people that judicial appointments, even at the highest levels are eminently political appointments. That there is nothing sinful about the word

\begin{itemize}
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Id.
\item \textsuperscript{41} I apologize if I omitted any person who was appointed as a judge during this time period.
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Id.
\end{itemize}
politics. And most important of all, that the politics of inclusion is not necessarily inconsistent with the politics of merit.\textsuperscript{45}

However, when President Clinton appointed Justice Stephen Breyer to the Court, the Hispanic Bar Association was outraged. Wilfred Caraballo, the group's president said, "This is inexcusable and a slap in the face to all Hispanics."\textsuperscript{46} Judge Cabranes was later appointed to the Second Circuit Court of Appeals in 1994.

Another judge appointed in 1979 by President Carter was U.S. District Judge James DeAnda, Houston's first Hispanic Judge. The son of Mexican immigrants, Judge DeAnda only spoke Spanish until he entered elementary school. Now he jokes about his Texas drawl, saying, "I can say 'y'all' in two languages."\textsuperscript{47}

In 1980, President Carter appointed Judge Robert Aguilar to the Northern California U.S. District Court. Later, Judge Aguilar would be the first federal judge to be charged with racketeering, but after jurors deadlocked on seven of the charges, the U.S. dropped the charges against the Judge. He was also found not guilty of the charge that he improperly attempted to influence another U.S. District Judge.\textsuperscript{48}

In 1985, President Ronald Reagan appointed New Jersey's first Hispanic federal judge, Joseph H. Rodriguez, Jr.\textsuperscript{49} President Reagan nominated him twice due to Senate conservatives holding up Judge Rodriguez's nomination. In 1992, President Clinton appointed two Latinos to the federal bench. First, Judge Eduardo Robreno, who was the first Cuban-American judge and the first Hispanic Judge in Pennsylvania. He serves on the U.S. District Court for the Eastern District of Pennsylvania.\textsuperscript{50} Second, Judge Sonia Sotomayor, who became the first Latina to be appointed to the federal bench.\textsuperscript{51} Judge Sotomayor's nomination was held up due to the in-fighting of different factions in the Senate.\textsuperscript{52} Eventually, she was appointed to the U.S. District Court

\textsuperscript{45} Id. \\
\textsuperscript{46} Id. \\
\textsuperscript{51} M.P. McQueen, Senate Delays Hispanic Nomination, \textit{Newsday} 10, Jul. 4, 1992, available at 1992 WL 7542708. \\
\textsuperscript{52} Id.
in Manhattan.\textsuperscript{53} In 1998, Judge Sotomayor became the first Latina to be appointed to the Second Circuit Court of Appeals;\textsuperscript{54} at that time, she was the only Latina on all the federal circuit courts. In 2009, President Barack Obama appointed Justice Sotomayor to the Supreme Court. She is the first Latina appointed to the highest Court in the United States.

President Clinton also appointed U.S. Bankruptcy Judge Manuel Barbosa in 1998.\textsuperscript{55} He is known as "El Abogado" because as a child when he worked as a migrant farmhand he defended Mexican workers who had been accused of wrongdoing by the farmer, their employer.\textsuperscript{56} In March 1999, President Clinton also nominated Julio M. Fuentes for a seat on the Third U.S. Circuit Court of Appeals.\textsuperscript{57}

An appointment to the federal bench is based both on merit and politics. Latinas and Latinos have demonstrated that they can be successful at the federal level. Judge Garza was the first Latino Judge appointed in 1961 and it took over eighteen years before the next Latino was appointed. Latinos are making inroads onto the federal bench, and, as more Latinos become lawyers, the pool of qualified Latinos will also increase, thereby creating the opportunity for the bench to become more representative of the population as a whole.

\textbf{B. The Selection of State Judges: The Missouri Plan ("Merit System")\textsuperscript{58}}

Since the early 1800's, state judges were elected to the bench.\textsuperscript{59} In 1940, Missouri became the "first state to adopt a merit plan for the
selection and retention of judges.”60 The Missouri plan sought to bring together the appointment process and popular election, containing three basic elements: (1) a commission composed of judges, lawyers and lay people; (2) the commission would submit nominations to the governor who made the appointment; (3) the appointee would be subject to retention, a non-competitive election.61 Today twenty-one states elect their judges.62 Twenty other states and the District of Columbia appoint their judges with or without a nomination commission. Nine states, Arizona included, have a system that includes a combination of merit selection at first, and then some type of retention method at a later point. Eighteen states, after initially appointing their judges, have elections on whether to retain the judges, Arizona included.63

The Judge as a Representative64

Recognizing state trial judges as representatives of the communities they serve has always encountered resistance. People prefer to imagine that the judges should be “independent decision makers who act without regard to the public will and outside the political arena.”65 In a law review article, Professor Sherrilyn A. Ifill states, “This is all the more surprising in light of the rough and tumble, quid pro quo world of electoral and appointive politics from which judges are selected.”66 The Supreme Court has recognized that judges perform at least a limited “representative function.”67 Yet, the Court has yet to define what the nature of the representation is.68

Professor Ifill uses Philosopher Hanna Pitkin’s view of three kinds of representation: formal, descriptive, and symbolic.69 Formal representation is a contract between the representor and the represented, in which the representor can only act under the authority of the represented.70 Descriptive representation is the most familiar; the representative should “be an exact portrait, in miniature, of the people

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60. Id. at 315.
61. Id.
62. Id. at 314.
63. Id.
65. Id. at 128.
66. Id.
67. Id. at 132.
68. Id.
69. Id. at 134.
70. Id.
at large, as it should think, feel, reason and act like them.”\textsuperscript{71} While symbolic representation is where the representative is a symbol, “which ‘stands for’ a set of feelings or expressions—like a flag symbolizing a country or a set of scales symbolizing justice.”\textsuperscript{72}

When a community wants a bench that “looks like us,” there is hesitancy that the judge will become a descriptive representative, giving in to public will.\textsuperscript{73} But for judges, representation is a very complex undertaking.\textsuperscript{74} “Judges represent multiple constituencies and thus may be guided in their actions by several factors or influences…”\textsuperscript{75} representing “at once, the legal system, justice, the communities they serve, as well as their own moral values,” states Professor Ifill. All the while, the judge seeks to “preserve the authority and consistency of the legal system by respecting precedent and uniformity.” A judge is chosen because she is trusted to “blend and balance these considerations appropriately in the exercise of [her] inevitable discretionary power,”\textsuperscript{76} Professor Ifill states.

V. THE ARIZONA PERSPECTIVE

A. Arizona’s First Latino Federal Judge

President Carter also appointed Judge Valdemar A. Cordova in 1979. Judge Cordova was Arizona’s first Latino federal judge. Judge Cordova received his law degree from the University of Arizona in 1950. He had previously served as a Maricopa County Superior Court Judge on two different occasions. Judge Michael D. Hawkins of the Ninth Circuit Court of Appeals remembered that at Judge Cordova’s swearing-in ceremony, he proudly pointed to an inner city neighborhood and said, “I was raised right over there.” Judge Cordova passed away in June 1988.\textsuperscript{77}

\vspace{1em}

\footnotesize
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} Id. at 135.
\textsuperscript{74} Id. at 136.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Interview with Hon. Michael D. Hawkins, Judge, Ninth Circuit Court of Appeals, in Phoenix, Ariz. (Apr. 15, 1999).
Arizona began to implement the merit system for the selection of its judges in 1974.78 In 1990, the Arizona Hispanic Bar Association, Los Abogados, argued that under the merit system, Latinos were not being appointed at the same rate as judges who were elected.79 Los Abogados wanted a return to the election of Superior Court Judges.80 The group encountered great resistance especially from the Arizona Supreme Court, legislators and judges. However, Los Abogados had a powerful ally in the State Senate, Pete Rios, who at that time was the Senate President. Rios brought the issue to the senate floor, bypassing the senate judicial committee. Los Abogados used the idea of returning to elections like a hammer. Los Abogados emphasized the importance of diversity on the bench. At one point, Rios stopped all senate business until the senators would hear the proposal.

Eventually, a compromise was born out of the tension: Proposition 109.81 Under Proposition 109, attention would be paid to selecting nominees who reflect the makeup of the general population while still keeping nominees’ merit as the prime consideration.82 Proposition 109 also broadened the role of non-lawyers in the selection process with a focus on bringing diversity to the commission too.83 The voters passed Proposition 109 in the Fall of 1992. An Amendment to the State Constitution was created as a result of the passage of Proposition 109: Article VI, § 41, which provides the following: “that the Commissions on Trial Court Appointments ‘shall consider the diversity of the county’s population and the geographical distribution of the residences of the judges throughout the county, however, the primary consideration shall be merit.”84 Rule 1, for the Commission on Appellate and Trial Court Appointments, further states:

The goal therefore, of the judicial nominating process is to select judges who have outstanding professional competence and reputation and who are also sensitive to the needs of and held in high

78. Many of the Judges I interviewed shared this information with me.
80. Id.
81. Id.
82. Ariz. Const. art. VI, § 41.
83. Id. See also note 73.
esteem by the communities they serve and who reflect, to the extent possible, the ethnic, racial and gender diversity of those communities. Competence and diversity among our judges will enhance fairness and public confidence in judicial proceedings.85

The trial commission has sixteen members with staggering four-year terms. “The commission shall have no more than two public members (non-attorneys) from each supervisorial district, which shall not be of the same political party and no more than three attorneys from the same party, none of whom shall reside in the same supervisorial district.”86 The Chief Justice of the Arizona Supreme Court also has a vote.

Los Abogados is not completely satisfied with the rate of increase of Latinos on the Arizona bench, but there has been an increase since Proposition 109. In 1999, there were five Latino judges on the Maricopa County Superior Court out of seventy-one and three Latino judges on the Pima County Superior Court. Only one Latino served on the Arizona Court of Appeals, District Two, but no Latino sat on the Arizona Court of Appeals, District One. In 2004, Judge Patricia Orozco was appointed to Arizona Court of Appeals, District One; the first Latina appointed to this bench. No Latinos have been appointed to serve on the Arizona State Supreme Court. Two Latino judges have served on the Arizona Federal District Court. In 2010, District Court Judge Mary Murguia was commissioned to serve on the Ninth Circuit Court of Appeals, the first Latina to serve as an appellate judge for the Ninth Circuit.

VI. DIVERSITY ON THE BENCH

The American Bar Association’s (“ABA”) Task Force on Minorities and the Justice System (“Task Force”) reported that “racial discrimination is widespread and deep frustration is pervasive among minority Americans.”87 “Minorities do not trust the court system. They don’t trust it to resolve their disputes or administer justice fairly,” stated the Task Force.88 The New York State Judicial Commission on Minorities stated, “There are two justice systems at work in the courts of New York, one for whites, and a very different one for minorities and the poor.”89 The ABA’s Task Force reported that there are low numbers

85. Id.
86. Ariz. Const. art. VI, § 41.
87. D’Alemberte, supra note 23, at 58.
88. Id. at 59.
89. Id.
of minorities on the bench and stated that “[In] a nation in which the percentage of minorities is nearing twenty-five percent and growing, increased minority representation on the bench would greatly improve both the reality and the perception of fairness.”\textsuperscript{90} Former President of the ABA, H.T. Smith, worked diligently to foster inclusion and to reduce prejudice in the American judiciary, stating “[A] more diverse judiciary will minimize prejudice and insensitivity from judges, and engender more respect from the public.”\textsuperscript{91} Professor Iffill asserts that “[D]iversity promotes impartiality by ensuring that no one viewpoint, perspective or set of values can persistently dominate legal decision making. Diversity then functions as a check on bias.”\textsuperscript{92} “As such, racial diversity on the bench would promote, rather than undermine impartiality,” Iffill stated.\textsuperscript{93}

All the judges I interviewed held the belief that diversity on the bench is important. Judge Zapata believes that the bench should reflect society at large, “Diversity gives the appearance of justice. Everyone needs to be represented in society’s institutions,” he states. “Institutions are weaker if there is no diversity.” Judge Talamante encourages not only racial diversity but also a diverse group of practitioners, “It’s healthy to have diversity.” Having a bigger pool of individuals with different ideas and experience creates a better bench as a whole. Judge Araneta asserts that it is important to have a representative government, which includes judges, lawyers, and police officers, who are representative of its population. Judge Arellano states that when a criminal defendant sees a “brown face” on the bench, he is more likely to believe that he has a stake in the judicial system. The defendant thinks the court can be made up of people who are culturally and ethnically similar to him. Judge Mundell agreed that having brown faces on the bench, a defendant believes that he has access to justice. Seeing brown faces at the top level of our judicial system demonstrates to not only the defendants but also to the public that Latinos do have an opportunity to advance, while colleagues and staff see Latinos who are qualified and capable of doing the job. Judge Gonzales said there has to be diversity on every level that represents the public, “We are public servants, I should be a reflection of whom I serve. People of color should know this.” Commissioner Chavez thinks that the “Judges should reflect the complexion of the community.”

\textsuperscript{90} Id. at 60.

\textsuperscript{91} George E. Bushnell Jr., Toward a More Diverse Judiciary: The ABA needs to look at its process of evaluating nominees for the bench, 81 A.B.A. J. 8 (1995).

\textsuperscript{92} Iffill, supra note 60, at 120.

\textsuperscript{93} Id. at 119.
I asked the Judges how they thought they impacted the bench as a Latina or Latino. The responses varied. Some did not think their presence was any different than how people treated other judges, but upon further contemplation many realized that being Latino did impact the bench. Judge Baca believed that being a Hispanic woman helped her get appointed. Former Governor Fife Symington was sensitive to the needs of the Hispanic community, and he appointed more Latinos to the bench than any other Governor. She also said that it was good for the bench to interact with minorities, which created exposure to competent minorities. There is mutual respect with not only Judge Baca’s peers but with the presiding judges. Several of the Judges thought that Latinos are held to higher standards. Judge Baca felt like she could not afford to put herself in a position where people might question her competence. Judge Gonzales said that it is good for people, especially Latinos, to see accomplished Latinos.

Commissioner Chavez stated that by having Latinos on the bench, “We have a greater voice on issues; we are part of the power structure.” Latino Judges then have an opportunity to make suggestions that otherwise would not have been made. Judge Talamante points out that “we have a presence; we are an important part of the legal community.” All the judges agreed that one does not decide cases or motions differently because he/she is a Hispanic judge. Being Latino does not have any impact on the quality of justice that is meted out. Judge Zapata asserts, “All judges are trying to do the right thing, to be fair, just and interpret the laws.” But he said on the other hand, people on the outside view our court and if they perceive that the court is an elitist court then people would not be sure that the court would be fair to them if they were not part of the elite.

When Judge DeLeon came to the bench, the judges started learning more about Hispanics. Judges share their meals as well as their experiences, from these interactions sensitivity developed to each other’s cultures. When Ms. Ybarra joined the bench, Judge DeLeon was the only other Latino on the bench. She remembers him telling her that maybe with two Hispanics the other judges would be a little more sensitive. Judge DeLeon had encountered many racial slurs. However, Ms. Ybarra knew that it would take more than two Latinos.
Most of the judges agreed that that the bench changed them, many times in ways that they would have never imagined. Judge Mundell shared how humbling it is to have so much power over someone's life. She has become more introspective, identifying her own biases and working to overcome them. She does not want to wield power recklessly. She works especially hard, as do all the judges, to be impartial and fair. Because she has been in Juvenile Court for five years, being a judge has impacted her parenting as well as her relationship with her husband and her ex-husband. As a Domestic Relations judge, she sees plenty of hard feelings and sad stories, she sees how lucky she is. For Judge Mundell, being a judge has enriched her professional and personal life.

Judge Baca sees the seriousness of the cases before her, changing her view of society. It is a sobering experience to witness the crimes people commit against one another. Being a judge is a tremendous responsibility, especially in the criminal arena. She has to decide whether to send the defendant to programs for rehabilitation or to put the criminal away to keep the public safe. Commissioner Chavez said that being on the bench has made her "tougher-skinned and stronger in character." Judge Talamante, as well as many other judges, said that he is more conscientious of what he says and does in both his private and public life. He said that errors seem magnified. However, with close friends there are no differences.

Judge Araneta, along with other judges, stated that now that he is no longer an advocate, "you truly have to see both sides of the coin. You need to decide an issue on its merits." He considers himself a public servant that is entrusted with a public position. Commissioner Verdin said that being a judge gives her great satisfaction, the ultimate job for a lawyer. Judge Arellano stated that being a judge has had a positive impact on her. The title commands respect, she impacts people's lives. Being on the bench, Judge Arellano said that she learned to grow up; when she first became a judge she lacked a degree of maturity, she learned to temper her own behavior to be a good representative. Today her standard of behavior is high, personal behavior as well judicial behavior, but she has had to give up her private self, her anonymity. Judge Arellano said that she cannot do anything partisan, which has been difficult.

Judge Velasco spoke about the opportunity he is able to give to his family, especially his children, providing them with an education and a better lifestyle than he had. While Judge DeLeon spoke about
the negative impact being a judge had on him. He said being a judge; he tended to live a solitary life. "You get used to the isolation, but it can become a real problem because you can feel estranged from people." "Sometimes you don’t want people to bother you," Judge DeLeon said. Before he became a judge he was gregarious and social, but he learned to keep his thoughts to himself and realized he could not make a lot of friends. A judge can become totally isolated; colleagues are busy with their lives and work. On the positive side, Judge DeLeon enjoyed being around good lawyers who tried good cases. He tried to decide cases with a concept of balance, fairness and appropriateness.

Ms. Ybarra said she brought the Hispanic woman’s perspective to the bench for the first time. Due to her uniqueness, the presiding judge would ask her to accept responsibilities that other judges were not asked to accept, i.e. speak at engagements on behalf of the court. However, these extrajudicial responsibilities would come back to haunt her. She has learned to say no and has realized that "just because you are different you do not have to do everything.” Judge Gonzales said that she has grown as a lawyer because she has to learn a little about everything—civil rights, insurance, security fraud. She has found this to be especially fascinating. As a judicial officer she has learned to love the law.

IX. STEPS TO INCREASE THE PRESENCE OF LATINOS ON THE BENCH

In this section I will share the steps that the judges think are important to become a successful judicial applicant. Several judges wanted to let potential applicants know that there is nothing special about the judges. Judge Zapata said, “I ain’t no rocket scientist.” Ms. Ybarra said, “Hispanic Judges should not be seen as the exception.” “I’m nothing special, if I can do it, you can do it,” states Judge Arellano. I do think the Judges are special people, special in the sense that they had a dream and were willing to pursue the dream, in spite of many obstacles. They are the Latino Community’s success stories, role models for all. Listen to how they think we can increase the presence of Latinos on the bench.

To help more Latinos get appointed to the bench, first the Latino Community must get Latinos into law school, help them through law school and help them pass the bar. Next, we must encourage people to apply for judicial positions and aggressively support the applicants. Hispanic groups need to promote the applicants and teach the applicants to promote themselves. The Latino community has to be part of the power structure. Judges gave specific advice for potential
applicants: (1) be good at what you do, pick one thing and be good at it, do something that will set you apart from your peers; (2) build and maintain a good reputation; (3) network with friends, colleagues and their friends and colleagues; (4) keep track of every person you know, do not burn any bridges; (5) maintain a judicial demeanor; (6) it is very important to know who is willing to speak on your behalf, you need to have a power structure behind you. Politics play a large role in judicial appointments, but you have to have the qualifications to do the job.

The potential applicant should decide early on what area of law she wants to practice in. She should be encouraged to be a judge and in turn the Hispanic community should work towards grooming the applicant. The judges recommend that the applicant practice in mock interviews. The interviews can provide the applicant with constructive criticism. Community service should be a top priority for every applicant. The applicant should get involved with the Hispanic community, especially if she wants their support, but more importantly get involved with the community in general. The applicant may want to work on Hispanic issues in the United Way, for example. Hispanics need to realize that we may be Hispanics but we are not all the same and that it is good to have diversity within the Hispanic community. Sometimes the Hispanic community can be its worst enemy.

The applicant will need a group or groups to support her through the process. The applicant should not give up or get discouraged. Once the applicant gets appointed, she needs to do a good job, because if she does a poor job, her performance will hurt the Hispanic community. Being a Latino Judge comes with added responsibility. Commissioner Verdin said, “It is easy to work hard when you are doing what you love.” Judge DeLeon said that it is important not to get overworked. He asserts that we must work towards balance in our lives. “Workaholics are not good for the system,” Judge DeLeon states.

Hispanic Lawyers: should (1) actively recruit qualified people; (2) assist new lawyers, i.e. mentor; (3) encourage the nomination commissions to take into consideration the applicant's background—not everyone has had the same opportunities, i.e. how well the applicant has overcome obstacles; and (4) offer workshops to warn of pitfalls and build networking opportunities.

An applicant should develop her common sense. She must have judicial demeanor because throughout the day she is delivering bad news. She must remember the human element. The decisions a judge makes is extremely important to the people it impacts. A judge recognizes that the person did a bad thing, however she is still a human being.
Ernie Calderon shared the strategy that Los Abogados has developed to support Latino and other applicants. First, the group needs to send up several qualified Hispanics. The group understands that its applicant will not always be appointed, but if it sends up several and none are appointed then the group can question the nominating commissions. Next, the group works to get a least one Hispanic appointed to each commission. Finally, the group has to have someone who can call the governor directly and promote the applicant. Ultimately, Los Abogados demands and expects full participation in the appointment of judges. “We want what you have,” Danny Ortega said. “There is enough to go around.”

In August 1999, several organizations in Arizona held a daylong workshop to assist Latinos who want to apply to the bench.

X. CONCLUSION

I want to thank each Judge for graciously sharing their time and stories with me. I am honored to have had the opportunity to meet such extraordinary individuals. My life has been enriched. Latino Judges bring diversity to the bench—richness from their cultural and ethnic experiences. The bench has only benefited from having a diverse group of individuals who confront prejudices, lies, and misinformation, no matter how well intentioned it might be. The bench has been impacted in important ways. The Latino judges demonstrate that they are people, performing a public service, who add to the pool of judges colors and hues that were not available to the bench before their arrival. The judges have grown as a result of being on the bench, some have grown tired—especially those who trail blazed a path for others to follow. We are forever indebted to them. Some have blossomed in ways they had never expected. All have proven to society that when Latinos are given an opportunity, they are capable of doing a superb job. Changing the complexion of the bench is an important goal, one that we should methodically and diligently work towards.

APPENDIX

The Judges’ Status Updates

1. Hon. Louis A. Araneta, Judge, Maricopa County Superior Court, retired in 2009.

2. Hon. Silvia R. Arellana, Judge, Maricopa County Superior Court, retired in 2009. Judge Arellano is currently an Immigration Judge at the Florence Immigration Court in Arizona.
3. Hon. Anna Marie Baca, Judge, Maricopa County Superior Court, retired in 2009.

4. Hon. Harriet E. Chavez, Commissioner, Maricopa County Superior Court. Judge Chavez was appointed to the Maricopa County Superior Court bench in 2003; she was the Northwest Presiding Judge in 2007 and currently is on the Criminal Rotation.

5. Hon. Francisca Cota, Judge, Phoenix Municipal Court.

6. Hon. Armando De Leon, Judge, retired, Maricopa County Superior Court.

7. Hon. Louis F. Dominguez, Judge, Phoenix, Municipal Court; currently is the Surprise Presiding Judge, appointed in 2013.

8. Hon. Irma E. Gonzales, Judge, United States District Court, Southern District of California; Judge Gonzales served as the Chief Judge from 2005-2012, she assumed Senior Status in 2013 and retired later that year.

9. Hon. Mary H. Murguia, Judge, United States District Court, District of Arizona; Judge Murguia was appointed to the Ninth Circuit Court of Appeals in 2010. She is the first Latina to sit on the Ninth Circuit.

10. Hon. Barbara Rodriguez Mundell, Judge, Maricopa County Superior Court. Judge Rodriguez Mundell served as the Presiding Judge from 2005-2010. Judge Mundell retired in 2010. She was the first Latina to serve as a Presiding Judge.

11. Hon. J. Matias Tafoya, Judge, Phoenix Municipal Court. Judge Tafoya is currently the Presiding City Magistrate for the City of Mesa, Arizona.

12. Hon. David Talamante, Judge, Maricopa County Superior Court. Judge Talamante is currently the Civil Presiding Judge for the Southeast Facility in Mesa, Arizona.

13. Hon. Maria Del Mar Verdin, Commissioner, Maricopa County Superior Court. Judge Verdin is currently on Special Assignment in the Civil Department of the Maricopa County Superior Court.

14. Hon. Sonia Sotomayor, Judge, United States Court of Appeals, Second Circuit. Justice Sotomayor was the first Latina appointed to the United States Supreme Court in 2009.

15. Hon. Stephen C. Villarreal, Judge, Pima County Superior Court. Judge Villarreal is currently assigned to the Family Law Bench at the Pima County Superior Court.

16. Hon. Bernardo P. Velasco, Judge, Pima County Superior Court. Judge Velasco was appointed in 2000 to the United States District Court for the District of Arizona as a federal magistrate judge.
17. Gloria Ybarra, former Maricopa County Superior Court Judge. Judge Ybarra serves as a Judge for the City of Phoenix Municipal Court.
