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## A Bench More White, Male and Conservative

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As other presidents have vowed, [President Bush](#) said in 2001 that he would not impose an ideological litmus test for his appointees. He said he would demand only their understanding that "the role of a judge is to interpret the law, not to legislate from the bench." But scholars say that despite these protestations, there has been a discernible pattern in both the backgrounds and the rulings of the judges Bush picked.

As a result of Bush's 311 appointments to federal district courts and the appellate bench, judges across the country are more male, more white and slightly more Hispanic than those in place at the end of [Bill Clinton's](#) presidency. A third of the nominees during Bush's first term had "a history of working as lawyers and lobbyists on behalf of the oil, gas and energy industries," according to a study by the Center for Investigative Reporting.

A [University of Houston](#) study of rulings by Bush's district court appointees through 2004 found that 27 percent of the judges supported what might be considered "liberal" outcomes in litigation related to the Bill of Rights or civil rights -- "giving the President the lowest score of any modern chief executive," according to the author, Robert A. Carp. Bush's judges also were much less likely to express support for privacy rights.

There is, Carp said, "a noticeable and measurable shift in a conservative direction, in favor of business [and] to favor the prosecution in a criminal case."

A [University of Chicago](#) study in 2006 similarly found that judges appointed by Bush and other Republican presidents were much more likely to uphold "conservative" federal regulations -- those that favor industry -- than their Democratic counterparts.

Last year, for example, the 10th Circuit, meeting en banc, threw out a panel's decision allowing conservationists to join a lawsuit seeking the closure of a national park road in Utah used by oil and gas firms. The majority's ruling limited the right of nonprofit groups in six Western states to present evidence or appeal what courts decide in such cases.

Bush's appointees nationwide have generally been "less hospitable" to allowing groups without direct financial interests to intervene in court, said [University of Pittsburgh](#) law professor Arthur D. Hellman, an expert on federal appellate courts. That viewpoint skews litigation by giving "less attention to values that are not measured in dollars," he said.

In June, a Republican-appointee majority of the [8th Circuit](#) -- with jurisdiction over seven Midwestern and Plains states -- lifted an injunction against what is perhaps the most radical anti-abortion law in the country: a South Dakota law requiring that doctors read a five-point tract meant to discourage women from proceeding.

The tract states a view that no court had previously sanctioned, namely that "abortion will terminate the life of a whole, separate, unique, living human being" and that by having an abortion, a woman will sever her "existing relationship with that unborn human being."

The court's majority said the will of the state legislature should be respected. But in dissent, Judge Diana E. Murphy, a Clinton appointee, accused the majority of bypassing "important principles of constitutional law."

-- R. Jeffrey Smith

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