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Court (1988-2008)

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Averting Diversity: A Review of Nominations and Appointments to the Philippine Supreme Court (1988-2008)

Dante B. Gatmaytan and Cielo Magno

Abstract

This paper is an empirical study on the nominations and appointments of Supreme Court Justices during a twenty-year period from 1988, when the Judicial and Bar Council (JBC) was created in the 1987 Philippine Constitution, to 2008. The study examines the profile of individuals nominated by the JBC including their gender, age, geographical origin, academic background, and professional experience. It also explores whether the appointing Presidents display any preferences based on personal characteristics relating the effects of these preferences to the diversity on the Supreme Court. The study indicates that nominees and appointees all hail from the same background. As a result, membership of the Supreme Court is sorely unrepresentative of Philippine society. This study sets the stage for future research that will determine how this lack of diversity on the Supreme Court can affect the resolution of legal issues.

KEYWORDS: selection of judicial appointees, diversity

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I. Introduction

This is a study of the nomination and appointment of Justices and their effect on the composition of the Supreme Court of the Philippines. The study examines the nominees and appointees during a 20 year period from 1988, when the Judicial and Bar Council (“JBC”) was created by the 1987 Constitution, to 2008. The JBC is a constitutional body created to screen candidates and to submit a list of nominees to the President for appointments to the judiciary. It was built into the Constitution to limit the President’s discretion in the selection of judicial appointees. The objective of this study is to present a profile of the individuals whose names are submitted for appointments to the Supreme Court of the Philippines. It also examines cross-sectional data to see whether the four Presidents who took office in the post-Marcos era (after 1986) sought out personal characteristics when appointing Justices to the Supreme Court. This study relates the effect of these preferences to the diversity of the Supreme Court, and examines whether this diversity reflects Philippine society. This study sets the stage for future research on how the composition of the Court affects the resolution of certain legal disputes. This study does not analyze whether the nominees and appointees to the Supreme Court meet the qualifications spelled out in the Constitution.¹

This Article proceeds in the following manner: Part II reviews the literature on the Philippine Supreme Court and the relevance of diversity to the composition of courts. Part III provides a brief note on the diversity of Philippine society. Part IV discusses the nomination process for appointments to the Supreme Court. Part V describes the data and methods used in this research. Part VI examines the JBC’s nominees to the Supreme Court. Part VII examines the data pertaining to the appointees to the Supreme Court. Part VIII presents our analysis of the data. We make our conclusions in Part IX.

II. Review of Literature

The Philippine Supreme Court has generated very little scholarly interest. Tate² examined the social background and career patterns of Supreme Court Justices from 1901-1968 to see how these factors affect their voting patterns.

¹ See Phil. Const., Art. Phil. Const., Art. VIII, § 7, par. 3. Judicial appointees must be of “proven competence, integrity, probity, and independence” but it is difficult to measure these constructs, so we opted to limit the study to an analysis of the more evident characteristics of those who are nominated and appointed to the Supreme Court.

² C. Neal Tate, *The Social Background, Political Recruitment, and Decision-Making of the Philippine Supreme Court Justices, 1901 -1968* (Ph.D. Dissertation, Tulane University, New Orleans, 1970) [Unpublished] [Tate 1970]. Tate, C. Neal (1970) *The Social Background, Political*

Tate³ found that the Philippine Supreme Court constituted part of the political elite that was far less representative than most other elites and that the under-represented regions were those with the highest population growth and low rates of literacy—places “where social problems are considerably greater”.

Tate⁴ also examined the educational background of Supreme Court Justices and found that graduates of the University of the Philippines supplied the majority of the appointees in the post-colonial period (from 1946) since they began churning out graduates in 1913. Since 1962, all but two of the Justices graduated from the University of the Philippines. The colonial period was dominated by graduates of the University of Sto. Tomas, the oldest university in the Philippines.

The judiciary was the leading source of appointees to the Supreme Court. Almost two-thirds of the appointees (58%), had prior judicial experience and almost half came from the Court of Appeals. Over half (25) came from the bureaucracy—from the top brass of governmental departments—usually from the Department of Justice. The remaining ten Justices were evenly divided between those with occupations related to law (private practice and the academe) and those who held political office, each at 5% each. The mean age of Supreme Court Justices was 57.1 and their mean tenure was 9.2 years.⁵

Tate⁶ also discovered that there was no uniform route to a Supreme Court judgeship—recruitment to the highest court was not “simply the reward for long-serving, brilliant, or otherwise ‘meritorious’ judges, despite widespread public endorsement of this idea as a recruitment norm”.

Nothing else along Tate’s study has since been produced. There are journal articles on the post-Marcos Court that touch on politics and decision-making but not the selection of members of the judiciary or the composition of the Court.⁷

Recruitment, and Decision-Making of the Philippine Supreme Court Justices, 1901-1968. Unpublished Ph.D. dissertation. Tulane University, New Orleans.

³ Tate 1970, *supra* at 109.

⁴ Tate 1970, *supra* at 118-120.

⁵ Tate 1970, *supra* at 131-135).

⁶ Tate 1970, *supra* at 150.

⁷ These works are written by two scholars. See C. Neal Tate & Stacia L. Haynie, “Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court, 1961-1987” (1993) 27 Law & Soc’y Rev. 707; C. Neal Tate, “Courts and Crisis Regimes: A Theory Sketch with Asian Case Studies” (June 1993) 46 Pol. Research Q. 311; C. Neal Tate, “The Judicialization of Politics in the Philippines and Southeast Asia” (April 1994) 15 Int’l Pol. Science Rev. 187; and C. Neal Tate & Stacia L. Haynie, “The Philippine Supreme Court under Authoritarian and Democratic Rule: The Perception of the Justices” (June 1994) 22 Asian Profile 209.

In contrast, studies in the U.S.⁸ have analyzed the traditional, political and professional criteria that influence Supreme Court appointments. The literature is thick with arguments that favor the constitution of diverse collegial courts. It has been argued that judicial diversity is a means of attaining judicial independence and accountability.⁹ Specific criteria such as the gender of the judges are important because some studies have shown that the gender composition of Federal courts in the U.S. has a significant effect on sex discrimination and sexual harassment cases.¹⁰

Even the need for prior judicial experience for appointment to the Supreme Court has been questioned. Studies suggest that the appointing powers should strive to create a more diverse Court by taking career experience as seriously as they do race and gender. Requiring prior judicial experience produces in the Court a homogeneity that prevents it from operating optimally. The President, the study suggests, should look beyond appellate courts for potential talent and also pay attention to the career experiences of the incumbent Justices¹¹ and strive to balance the perspectives on the bench.

The importance of these studies cannot be overemphasized. Decisions are more likely to be regarded as illegitimate if the decision-making body, whether by a jury or judge, “is homogeneous, exclusive, and not representative of a cross section of the community”.¹² Ifill¹³ argues that “the interaction of diverse viewpoints and perspectives is essential to impartial, legitimate, and fully informed judicial decision-making”. Racial diversity, she adds, “is an essential ingredient for the judiciary to guarantee both structural and individual impartiality”.

As other authors¹⁴ have explained, there are at least two forms of the argument for diversity in the Supreme Court. It is argued, first, that greater diversity “may increase the public trust in the Court”. That is, increasing

⁸ William E. Hulbary, & Thomas G. Walker, “The Supreme Court Selection Process: Presidential Motivations and Judicial Performance” (1980) 33:2 *Western Pol. Q.*, 185.

⁹ James Andrew Wynn Jr & Eli Paul Mazur, “Judicial Elections Versus Merit Selection: Judicial Diversity: Where Independence and Accountability Meet” (2004) 67 *Alb. L. Rev.*, 775.

¹⁰ Jennifer L. Peresie, “Female Judges Matter: Gender and Collegial Decision-Making in the Federal Appellate Courts” (May 2005) 114 *Yale L. J* 1759.

¹¹ Lee Epstein, et al., “The Norm of Prior Judicial Experience and its Consequences for Career Diversity on the U.S. Supreme Court” (2003) 91 *Cal. L. Rev.* 903 at 960.

¹² Kevin R., Johnson & Luis Fuentes-Rohwer, “A Principled Approach to the Quest for Racial Diversity on the Judiciary” (2004) 10 *Mich. J. Race & L.* 5 at 6-7.

¹³ Sherrilyn A. Ifill, “Through the Lens of Diversity: The Fight for Judicial Elections after *Republican Party of Minnesota v. White*” (2004) 10 *Mich. J. Race & L.* 55 at 57.

¹⁴ F. Andrew Hessick & Samuel P. Jordan, (2009) 41 “Setting the Size of the Supreme Court” *Ariz. St. L.J.* 645 at 655.

demographic diversity “may convey a sense of inclusion to demographic groups that would otherwise be unrepresented on the Court, and that sense of inclusion may in turn generate greater public confidence in the Court”. Second, it is also argued that increasing the diversity of information and views held by the Justices will increase the total information provided to the Court, which will lead to more informed and better decisions.

III. Diversity in the Philippines

Philippine society is marked by diversity. By the end of 2010, the population is projected to reach 94,013,200, a little more than half—47,263,600—would be men, while 46,749,600 would be women.¹⁵ One in ten of the population aged ten to 64 years old cannot read and write, and only 49 million are functionally literate.¹⁶

The Central Intelligence Agency *World Factbook*¹⁷ lists other bases of diversity in Philippine society: Filipinos make up several ethnic groups: Tagalog (28.1%), Cebuano (13.1%), Ilocano (9%), Bisaya (7.6%), Hiligaynon Ilonggo (7.5%), Bikol (6%), Waray (3.4%), and others (25.3%).

They are also divided in their faiths. Roman Catholics make up 80.9% of the population, while Muslims constitute 5%. They are followed by Evangelicals (2.8%), the Iglesia ni Kristo (2.3%), Aglipayans (2%), other Christians (4.5%), others (1.8%), unspecified (0.6%), those with no religion (0.1%).

Filipinos also speak many languages, to wit: Filipino, English, Tagalog, Cebuano, Ilocano, Hiligaynon or Ilonggo, Bicol, Waray, Pampango, and Pangasinan.

There are also a large number of indigenous peoples in the Philippines. The National Commission on Indigenous Peoples lists 95 distinct indigenous groups in the Philippines, including Muslim groups. The indigenous groups in the Philippines can be classified into seven major groups: 1) the Mindanao Lumad, 2) the Cordillera Peoples, 3) the Caraballo Peoples, 4) the Agta and Aeta, 5) the Mangyan, 6) the Palawan Hill Tribes, and 7) the Muslim groups in Mindanao.¹⁸

¹⁵ Republic of the Philippines, National Statistics Office [NSO 2010], *Projected Populations by Sex, Region and Province, and by Single-Calendar Years: 2000-2010*, online: <http://www.census.gov.ph/data/sectordata/popproj_tab3r.html> (last visited 29 September 2010).

¹⁶ NSO 2010, *About one in ten Filipinos 10 to 64 years old cannot read and write*, NSO Special Release No. 193, online: <http://www.census.gov.ph/data/sectordata/fl03_lsf.html> (last visited 29 September 2010).

¹⁷ Central Intelligence Agency (2010) *The World Factbook*, online: <<https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>> (last visited 2 October 2010).

¹⁸ Jose Mencion Molintas, “The Philippine Indigenous People’s Struggle for Land and Life: Challenging Legal Texts” (2004) 21 *Ariz. J. Int’l & Comp. L.* 269.

IV. Nomination Process for Appointments to the Supreme Court – The JBC

After the collapse of Marcos in 1986, Filipinos adopted a new Constitution which included safeguards to strengthen judicial independence. Amongst other things, the 1987 Constitution created the JBC to prepare the list of nominees to the judiciary. The appointment of all judges by the President is no longer subject to confirmation by the Commission of Appointments, a body composed of members from both houses of Congress.¹⁹

For easy reference, sections 8 and 9 of the Philippine Constitution (Article VIII) provide:

SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

SECTION 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list

¹⁹ Florentino P. Feliciano, “The Application of Law: Some Recurring Aspects of the Process of Judicial Review and Decision Making” (1992) 37 Am. J. Juris. 17.

of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

The JBC was created to depoliticize appointments to the judiciary. It recommends appointees to the Judiciary and may exercise other functions assigned by the Supreme Court. The JBC is composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members. The regular members of the JBC are a representative of the Integrated Bar of the Philippines, a professor of law, a retired Member of the Supreme Court and a representative of the private sector. In practice, two members of Congress—a senator and a member of the House of Representatives—sit on the JBC. There are, in fact, eight JBC members, each of whom casts one vote.²⁰ The President appoints the members of the Supreme Court and judges of the lower courts from a list of at least three nominees prepared by the JBC for every vacancy.

V. Data and Study Method

The dearth of information on the nominees and appointees to the Supreme Court makes this study necessarily preliminary. We use only very limited publicly available data as our requests for additional data were denied by the JBC. As others have explained, the likelihood of obtaining documents from the JBC is “practically nil” as requests for data are repeatedly turned down.²¹

Information on the list of nominees and appointees from the inception of the JBC in 1988 through February 2006 was provided by the Philippine Center for Investigative Journalism.²² Some data on the tenure of retired Justices are also available from the website of the Supreme Court of the Philippines.²³ All data regarding the nominees and the appointees after February 2006 are gathered from

²⁰ Artemio V. Panganiban, “Role of the Judicial and Bar Council” *Philippine Daily Inquirer* (8 September 2007).

²¹ Aries Rufo, “A Reporter’s Nightmare” Newsbreak (December 2007/February 2008) at 21-22.

²² See Isa Lorenzo, “The JBC Under Scrutiny,” *The Daily PCIJ*, 06 February 2007, online: <<http://www.pcij.org/blog/?p=1349>> (last visited 13 December 2009).

²³ See Philippine Supreme Court, *Supreme Court E-Library Memorabilia Room*, online: <<http://elibrary.judiciary.gov.ph/index.php?pageid=a45475a11ec72b843d74959b60fd7bd64563fea1ca2e1>> (last visited 13 December 2009).

newspaper reports. The JBC prepared another list of nominees at the end of 2008. However, because the President did not fill the vacancy before the end of that year, those nominees have been excluded in this study. Chi-square was used to test for statistical significance of differences in proportions and non-parametric Mann-Whitney test was used to evaluate statistical significance of difference in means. We test to see if there is anything that would suggest patterns in the selection and appointment of Supreme Court justices. This serves as a preliminary study for future research on the effect of characteristics of judges on Court decisions.

VI. The Nominees

In the first two decades, 80 individuals have been nominated to the Supreme Court. Some of these individuals were nominated more than once so that as of 2008, the JBC submitted 208 nominees to the Supreme Court. Twenty-nine were nominated only once while 51 individuals were nominated multiple times. On the average, nominees were included in the list 2.5 times. Of the 80 individuals who were included in the list, 65 (81%) were men and 15 (19%) were women.

The nominees also came from a variety of backgrounds, a vast majority of whom were in government service at the time their names were included in the list of nominees. More than half (63.8%) of the individuals nominated were part of the judiciary when they were considered for appointment. Those who were with the Executive Branch comprised 17.5% of those nominated. Members of the academe made up 7.5% and those coming from private practice constituted 8.8%. Another 2.5% was made up of individuals who were working in some other capacities such as Commissioner of the Commission on Elections and Chairman of the Presidential Fact Finding Commission to conduct a thorough investigation of the failed coup d'état of December 1989.

There have been 35 nomination processes since 1988. For the first three occasions, the JBC limited the list to three names to satisfy the minimum requirement required by the Constitution. As the years went on, the JBC's list contained as many as 11 names. The average number of nominees per list was six with a ratio of five men to one woman. We do not see a pattern of increasing number of women nominees over time. Table 1 summarizes the characteristics of nominees to the Court.

Table 1. Characteristics of Individuals Nominated to the Philippine Supreme Court, 1988-2008
N=80

Gender	N (%)
Male	65 (81.3)
Female	15 (18.8)
Nature of work when nominated	
Judicial	51 (63.8)
Executive	14 (17.5)
Academe	6 (7.5)
Private	7 (8.8)
Others	2 (2.5)

VII. The Appointees

From the time the JBC began operating until December 2008, the Presidents of the Philippines appointed 41 individuals to the Supreme Court. The average age of the appointees was 63 years, seven years short of the mandatory retirement age of 70 years under Philippine law. Of those who were appointed to the Supreme Court, 78% were men while 22% were women. Almost half of those appointed graduated from the University of the Philippines. Only 12 justices pursued advanced degrees after obtaining law degrees.

A vast majority of the appointees came from the north. Around 75% (31) of the Justices appointed were from Luzon, almost half (14) of whom were from Metro Manila. Of the 41 Justices who were appointed, only seven were from the Visayas and three were from Mindanao. Two of the appointees from Mindanao were from Davao City and one was from Zamboanga City. All these Justices were educated in Metro Manila.

Table 2 summarizes the profile of the Supreme Court appointees.

Table 2. Characteristics of Philippine Supreme Court Appointees,
1998-2008
N=41

Characteristics	
Age, M (SD)	63 (4.6)
Gender	
Male N (%)	32 (78.0)
Female N (%)	9 (22.0)
Academic background	
University of the Philippines N (%)	20 (48.8)
Ateneo de Manila N (%)	5 (12.2)
San Beda College N (%)	5 (12.2)
University of Sto. Tomas N (%)	3 (7.3)
Far Eastern University N (%)	2 (4.9)
Manuel L. Quezon University N (%)	3 (7.3)
Others N (%)	3 (7.3)
Professional background	
Judicial N (%)	28 (68.3)
Executive N (%)	7 (17.1)
Academe N (%)	3 (7.3)
Private N (%)	2 (4.9)
Others ^a N (%)	1 (2.4)
Geographical origin (Island group)	
Luzon N (%)	31 (75.6)
Visayas N (%)	7 (17.1)
Mindanao N (%)	3 (7.3)

a. COMELEC and Presidential Fact Finding Commission

A. Presidents' Preferences

The first two decades of the JBC's work (1988-2008) encompasses the tenure of four post-Marcos Presidents: Corazon Aquino (1986-1992), Fidel Ramos (1992-1998), Joseph Estrada (1998-2001), and Gloria Macapagal-Arroyo (2001-2010).

We analyzed the data to see if there are differences in the Presidents' preferences for appointments to the Supreme Court. Table 3 summarizes the

information. Of the four Presidents who have taken office in the post-Marcos era, Fidel Ramos and Gloria Macapagal-Arroyo have appointed 14 Justices each (34.1%). Corazon Aquino appointed seven Justices, and Joseph Estrada appointed six.²⁴

The youngest Justice ever to be appointed, Antonio Carpio, was 52 years old when he was appointed by President Macapagal-Arroyo. One Justice was less than a year away from retirement—69 years of age—when he was appointed. Despite the variation in the age of appointees, these differences in the mean age of appointees are not statistically significant. The four Presidents tended to appoint Justices who were nearing their retirement age.

There is some disparity in the appointment of women to the Supreme Court. Half of President Estrada's appointees (three) were women. President Fidel Ramos did not appoint any woman to the Court even though the JBC included women in its list of nominees during his term. Women Presidents did not appear to prefer women when they made their appointments to the Supreme Court, keeping them to a low 28.6% of their appointees. The difference in the proportion of males and females appointed by the Presidents is marginally significant ($p = .065$).

There is a significant difference in the academic affiliations of the appointees among the different Presidents ($p < .05$). Almost three-fourths (71.4%) of Aquino's appointees were from the University of the Philippines. Macapagal-Arroyo follows with half of her appointees coming from the same university. Ramos' appointed six University of the Philippines graduates to the Supreme Court (42.9%) and Estrada appointed only two (33.3%) graduates from the same university.

The Presidents preferred members of the Judiciary for appointment to the Supreme Court. Joseph Estrada appointed five judges to the Supreme Court. The only Justice he appointed that was not from the judiciary was the then Commission on Elections Chairman Bernardo Pardo. Fidel Ramos chose 11 of his appointees from the judiciary. Both Corazon Aquino and Gloria Macapagal-Arroyo chose more than half of their appointees from the ranks of judges (57.1%).

There are no statistically significant differences between the Presidents on the geographical origins. All the Presidents followed the same trend: three-fourths of their appointees were from Luzon except for Aquino whose appointees were mostly from the Visayas and Mindanao (four out of seven appointees).

The average tenure of the justices is also presented in Table 3. Because there is a mandatory retirement age of 70 for Supreme Court Justices, we are able

²⁴ President Aquino actually appointed more Justices before the JBC was constituted under the 1987 Constitution. When she took office after the collapse of the Marcos regime, she abolished the Supreme Court and appointed its entire membership. Had Estrada's term not been cut short by a revolt, he might have been able to appoint more Justices.

to project the tenure of all the incumbent Justices. It shows that justices appointed by Gloria Macapagal-Arroyo had the longest average tenure (eight years) while those appointed by Joseph Estrada had the shortest (five years). The difference in tenure of Justices under the different Presidents is not statistically significant. Among those who have already retired, the average tenure on the Supreme Court was about five years. One Justice served for less than a year. Former Chief Justice Hilario Davide served the longest with 14 years. If we include the incumbent Justices in our analysis, the Justices' tenure on average jumped to seven years. The longest serving Justice since the JBC was created would be Justice Antonio Carpio who will have served for 18 years before he retires.

Table 3. Characteristics of Philippine Supreme Court Appointees, by appointing President, 1998-2008

	Appointing President			
	Aquino N=7	Ramos N=14	Estrada N=6	Arroyo N=14
Average age of appointees M (SD) [min – max]	61.4 (3.7) [56-67]	63.8 (5.4) [53-69]	65.0 (3.2) [62-68]	62.2 (5.1) [52-68]
Gender				
Male n (%)	5 (71.4)	14 (100.0)	3 (50.0)	10 (71.4)
Female n (%)	2 (28.6)	0 (0.0)	3 (50.0)	4 (28.6)
Academic Background				
University of the Philippines n (%)	5 (71.4)	6 (42.9)	2 (33.3)	7 (50.0)
Ateneo de Manila n (%)	1 (14.3)	0 (0.0)	1 (16.7)	3 (21.4)
San Beda College n (%)	1 (14.3)	2 (14.3)	0 (0.0)	2 (14.3)
University of Sto. Tomas n (%)	0 (0.0)	0 (0.0)	3 (50.0)	0 (0.0)
Far Eastern University n (%)	0 (0.0)	2 (14.3)	0 (0.0)	0 (0.0)
Manuel L. Quezon University n (%)	0 (0.0)	2 (14.3)	0 (0.0)	1 (7.1)
Others n (%)	0 (0.0)	2 (14.3)	0 (0.0)	1 (7.1)
Nature of Position				

Judicial n (%)	4 (57.1)	11 (78.6)	5 (83.3)	8 (57.1)
Executive n (%)	2 (28.6)	0 (0.0)	0 (0.0)	5 (35.7)
Academe n (%)	1 (14.3)	1 (7.1)	0 (0.0)	1 (7.1)
Private n (%)	0 (0.0)	2 (14.3)	0 (0.0)	0 (0.0)
Others n (%)	0 (0.0)	0 (0.0)	1 (16.7)	0 (0.0)
Geographical Origin				
Luzon	3 (42.9)	12 (85.7)	5 (83.3)	11 (78.6)
Visayas	3 (42.9)	2 (14.3)	1 (16.7)	1 (7.1)
Mindanao	1 (14.3)	0 (0.0)	0 (0.0)	2 (14.3)
Average length of tenure M (SD) [min-max]*	7.9 (4.1) [3-14]	6.4 (5.4) [0-17]	5.2 (3.1) [3-10]	8.1(4.7) [2-18]

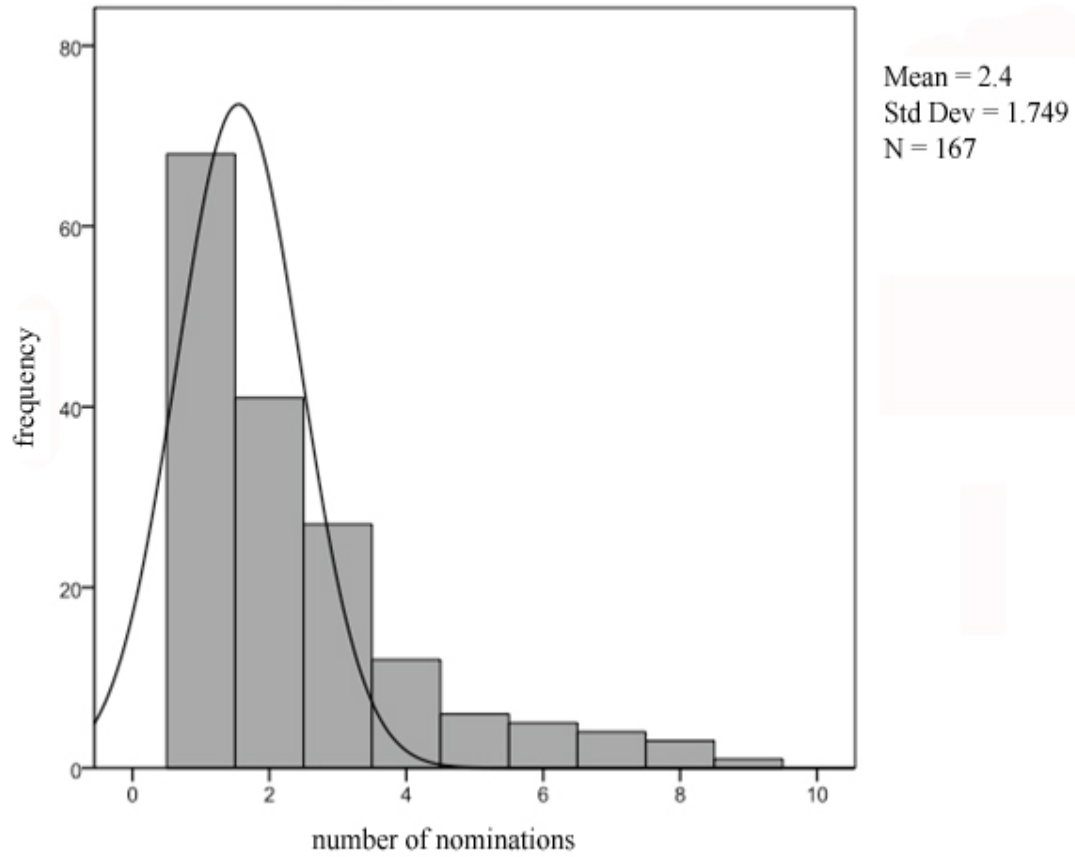
*The tenure for judges who are still serving was estimated based on retirement age.

B. Frequency of Nomination

Graphs 1 and 2 summarize the frequency of nomination of individuals who were not appointed and of those who were appointed to the Supreme Court. Out of the 208 nominees, 167 were not appointed and 41 were appointed. Since the unit of analysis is the nominee, the same individual can appear in both graphs. For example, Justice Vicente Mendoza was appointed on his ninth nomination. The data for all the times he was nominated but not appointed (first to eighth nomination) are in Graph 1 where his name appears eight times, for each of his nominations. The data when he was appointed (ninth nomination) are in Graph 2 where he was assigned the value of nine for the number of nominations he had before being appointed.

Nominees who were not appointed had an average of 2.42 nominations. Nominees who were eventually appointed had an average of 2.95 nominations before getting the appointment suggesting that the chances of appointment to the Supreme Court increase as one is repeatedly nominated. We see that there are outliers in the frequency distributions of the number of nominations in Figures 1 and 2. There are eight outlier cases for those who were not appointed and two outlier cases for those who were appointed. After removing the outliers, the data included for those who were not appointed are $n=159$ while for those appointed, $n=39$. These produce a lower mean number of nominations for both groups: the mean of those who were not appointed equals 2.14 and for those who were appointed, 2.62.

Graph `1. Frequency distribution of the number of nominations of individuals who were not appointed to the Supreme Court



Graph 2. Frequency distribution of the number of nominations of individuals who were appointed to the Supreme Court

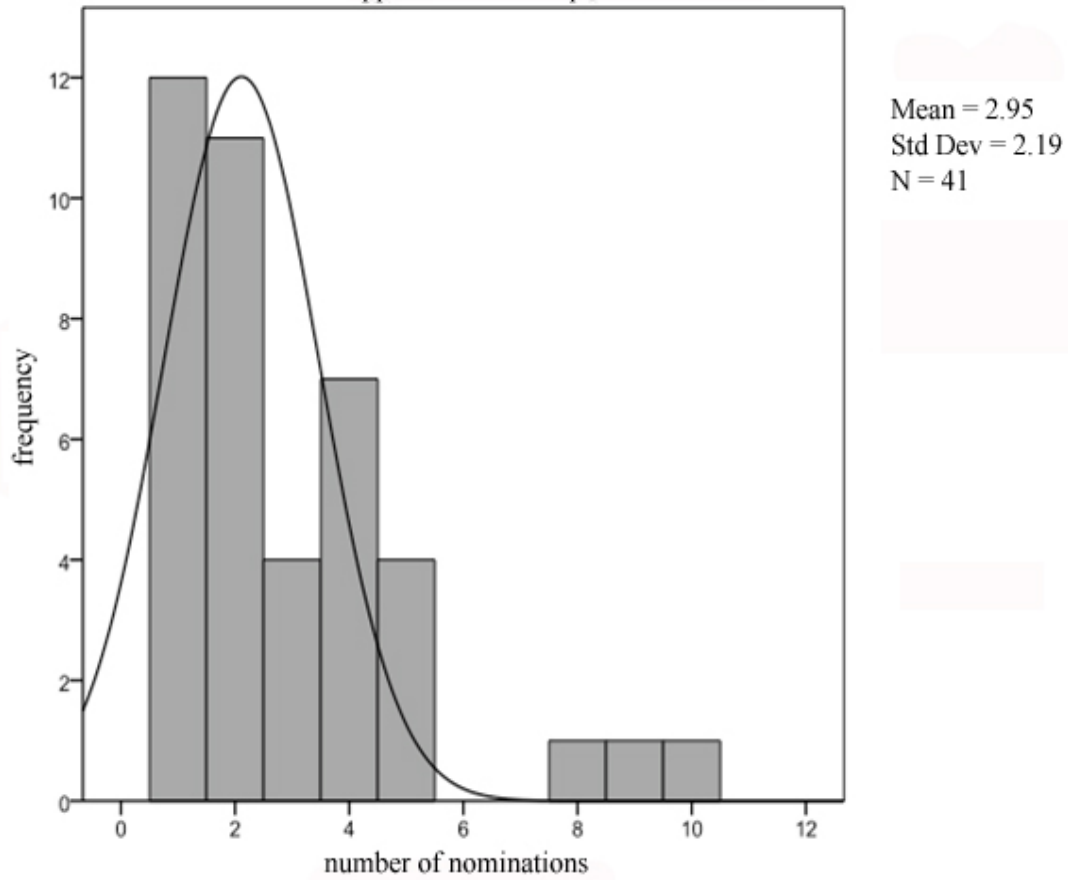


Figure 1. Outliers in the frequency distribution of the number of nominations of individuals who were not appointed to the Supreme Court

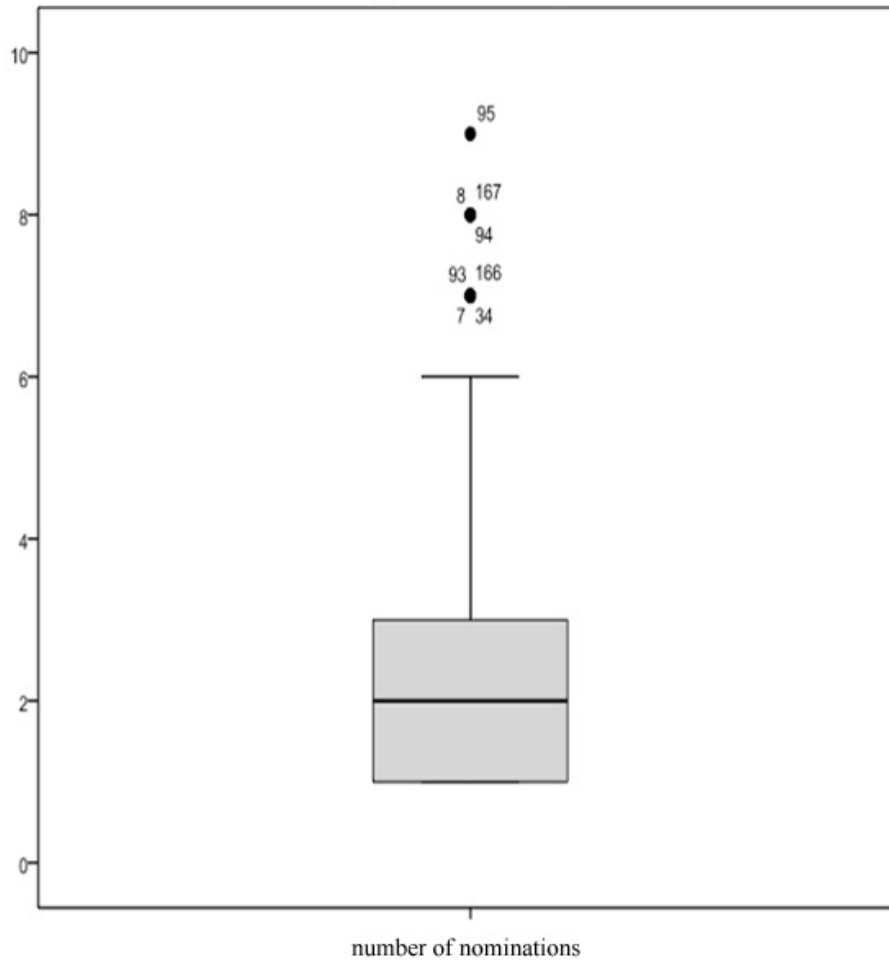
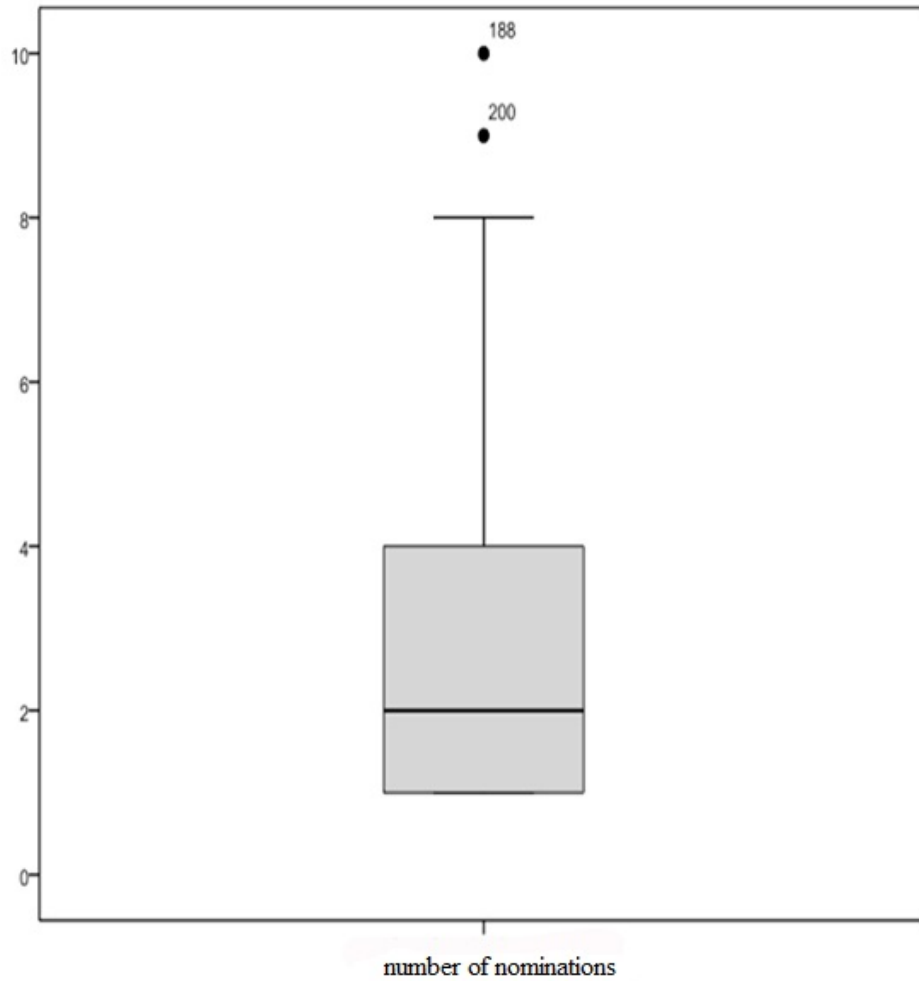


Figure 2. Outliers in the frequency distribution of the number of nominations of individuals who were appointed to the Supreme Court



VIII. Analysis

Supreme Court nominees tended to have the same gender and age, to come from the same region, and to be trained in Manila. All the appointees to the Supreme Court came from the same pool of hopefuls. With few exceptions, the Presidents appointed nominees with the same gender, age, geographical origin and legal training. Interestingly, Fidel Ramos did not appoint any women to the Court. Joseph Estrada on the other hand appointed the most women, as well as Justices who were not educated at the University of the Philippines. He also appointed Justices who were older and who, therefore, had shorter tenures on the Court. These preferences can perhaps be explained by the composition of Estrada's advisory team—leftist leaders, technocrats, bankers—²⁵ which could have allowed him to consider other factors when making judicial appointments.

We see that the number of women nominees did not increase over time. A ratio of five is to one in the number of women nominees reveals gender bias in the selection process. Only 20% of those appointed to the Supreme Court were women. Interestingly, the U.S. Supreme Court has had only two women sit on the Court until 2008.²⁶ In the Philippines, in the last two decades alone, nine women were appointed. Although women nominees were appointed to the court and there is no statistically significant difference in the Presidents' preference of Court Justices by gender, we have to note that women were still in the minority.

We also know that the majority of the nominees were from the judiciary. The Presidents prefer nominees from the University of the Philippines. Their preference in terms of age has no statistically significant differences between them. The Justices appointed were nearing retirement age.

Since the average age of the appointees is 63 years, the Philippines has a high turn-over rate of Supreme Court Justices. In the 20 years since the JBC began its operations, it has forwarded 208 nominees (80 different individuals) for possible appointment by four different Presidents. In this period, 41 people were appointed to the Supreme Court and an additional seven were appointed in 2009. To put this in perspective, the U.S. Supreme Court has had only 111 Supreme Court Justices by the end of 2008 and only seven appointees between 1988 and 2008, all of whom were still sitting as Supreme Court Justices at the end of 2008. The constant turnover should be studied to examine whether it has an effect on the Philippine Supreme Court's jurisprudence.²⁷

²⁵ See William Case, "The Philippine Election in 1998: A Question of Quality" (1999) 39 Asian Survey 468.

²⁶ Since Barack Obama assumed the U.S. presidency in 2009, he was able to appoint two more women—Sonia Sotomayor and Elena Kagan—to the Supreme Court.

²⁷ In the U.S., new Supreme Court Justices have been found to adhere to *stare decisis* early on in their appointment but tend to strike out in new paths as they settle into the bench. See

There is one other feature of the Philippine appointment process that stands out. As stated in the previous paragraph, there were 208 nominees but only 80 different individuals who were nominated, 29 of whom were nominated only once while 51 were nominated multiple times. A person can be nominated several times unlike the practice in the U.S. As we pointed out, nominees who were not appointed to the Supreme Court were nominated an average of 2.42 times. Those nominees who were eventually appointed had a slightly higher average of 2.95 nominations. Repeated nomination to the Supreme Court could indicate a shallow bench from where nominees are recruited. This does not augur well for diversity on the Court.

IX. Conclusion

We set out to describe the appointment process, nominees and appointments to the Philippine Supreme Court, and their implication on the Court's diversity. The Philippine Supreme Court is made up mostly of men in their early 60s—drawn almost exclusively from Luzon and from Metropolitan Manila-based law schools. The Supreme Court makes room for women who all hail from similar backgrounds. We found that the membership of the Supreme Court does not come close to reflecting the diversity of Philippine society. The lack of diversity in the Court could also have implications for minorities who may not view the Court's decisions as legitimate.

Future studies should examine whether this lack of diversity has any effect on sex discrimination or sexual harassment Court cases. Other issues such as the very short tenure of the Justices should also be studied to determine its impact on the stability of case law.

Jeffrey A. Segal & Harold J. Spaeth, "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices."