Original Article

Moving on up: The political incorporation of Hispanic women into the federal judiciary of Texas

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Abstract The President of the United States, with the approval of the US Senate, appoints Supreme Court justices, as well as court of appeals and district judges. Judicial nominations are often a centerpiece of a President's legacy. Always with a complex calculi of presidential goals, nominee characteristics, institutional constraints and opportunity, Presidents have sought to balance their own policy preferences with the need to diversify the bench. This article examines the political ascension of Hispanic female judges to the Texas federal judiciary. I illuminate dynamics that structure hierarchies on the basis of race and gender. I advance an account of race-gendering as a political process that silences, stereotypes, enforces invisibility, excludes and challenges Hispanic women's ascension into the judiciary. Race-gendering constitutes a form of interested bias operating in the judiciary, which has important implications for the understanding of the internal operations of political institutions and the representation of a historically under-represented group, and their incorporation into the federal judiciary.

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I tell people I have been through both an appointment process and election process, and although an election is grueling, an appointment is brutal.

Judge Hilda Tagle

Texas currently has five US federal district judgeships vacant, with three of the seats in the border region, where caseloads are highest. It took more than 18 months before President Barack Obama finally nominated two candidates for a US District Court bench in Texas. Three of the nominations to fill the six vacancies were Hispanic women.¹ US Magistrate Diana Saldaña was nominated 15 July 2010 to a vacant seat in the Southern District of Texas. Saldaña² was confirmed by the Senate Judiciary Committee on 6 December 2010 and was unanimously confirmed by the full US Senate on 7 February 2011.³ Lawyer Marina Marmolejo was nominated to fill another vacant seat in the Southern District of Texas a few days later, 29 July 2010. She was confirmed on 3 October 2011. President Obama, on 26 January 2011, nominated 347th District Court Judge Nelva Gonzales Ramos. Judge Ramos was confirmed 2 August 2011, one day before the Senate left for its month-long summer recess. With Judge Ramos's confirmation, there are now six Hispanic women⁴ serving as US federal judges out of a total of 69 federal judges serving in the four district courts in Texas. Over the last two decades, Hispanic women have incrementally ascended to the federal Texas judiciary. We may ask: under what conditions are they doing so? Specifically, what role does race-gendering play in a Hispanic woman's candidacy for the judiciary? I examine the political experience of two Hispanic federal district judges – Hilda Tagle and Micaela Alvarez – in one of the most conservative states in the country, Texas. A close look at their personal and political experiences can contribute to our understanding of the political incorporation of Hispanic women into the federal judiciary in Texas and nationwide.

Methodology

This is a qualitative study. All four of the Hispanic female federal judges were invited to participate in this study (the exception was Judge Ramos, who had been just recently confirmed). Only two agreed to an interview. Each of the Hispanic female federal judges was asked if she thought her race and gender played any role in her candidacy for judicial office. If she answered "yes," then she was asked to explain how. If she answered "no," then she was asked to explain why not.⁵ I utilized what Strauss and Corbin refer to as "grounded theory," that is, a theory derived from data (narratives) systematically gathered and analyzed. According to Strauss and Corbin (1998), a theory derived in this way is more likely to resemble the "reality," which in this case involves acknowledging that these Hispanic women judges offer a unique perspective grounded in their social and political experiences.

To date, there is very little literature on Hispanic women as judges or as candidates for judicial office, and the literature that exists is found mainly in law journals (Echaveste, 2002; Johnson, 2002; Muñoz, 2002; Sotomayor, 2002).

- 1 Recognizing that the use of a particular label varies with region, politics and historical context, I use the term Hispanic interchangeably with Mexican American, Latina/Latino and Chicana/Chicano. In doing so, I follow the tradition established by authors such as Hardy-Fanta (1993), García *et al* (2008) and Navarro (2008).
- 2 At the time of this writing, the newest US federal judge, Diana Saldaña, has just been commissioned to serve in the Southern District. The author submitted a request for an interview, but Judge Saldaña declined to participate in this study.
- 3 In this particular case, Judge Saldaña's confirmation was approved by the Senate Judiciary Committee in 2010. However, her nomination was stalled when the Senate failed to

vote before the legislative session ended in December. Once a new legislative session began in January 2011, the Committee again approved her nomination in February, and it was moved to a full Senate vote. The full Senate voted unanimously to confirm her.

4 The second Latina to be appointed as a federal district judge in Texas was Alia M. Ludlum. She was confirmed on 14 November 2002 by President George W. Bush to serve in the Western District of Texas. She was asked to participate in this study, but she declined.

5 A similar methodology was used in the study of the first Latinas elected to various offices in Texas; see (García *et al.*, 2008).

6 These tactics include refusing to schedule a confirmation hearing, denying the nominee a Judiciary Committee vote, putting a “hold” on a nominee, vetoing a nominee through senatorial

Currently, there is no study that examines the way in which Hispanic women gain access to the Texas federal judiciary. This study is important because it contributes to our understanding of the political incorporation of Hispanic women into the federal judiciary.

Before we can begin to understand the role that race and gender have played in the election and appointment of two Hispanic women, it is important to understand the politics of federal judicial appointments in Texas. Second, a theoretical framework of race-gendering is offered as a useful method for studying the social and political experiences of Tagle and Alvarez’s climb to the federal judiciary. Third, this essay provides a profile of Hispanic women in the law profession. The remainder of the essay examines the way in which the intersectionality of ethnicity and gender may have played a role in their electability and the appointment of each woman to the highest level of the federal judiciary in Texas.

The Politics of the Federal Judiciary

Lower-court nominations (that is, federal district courts) historically have not been salient political issues. Presidents and senators treated lower court vacancies as patronage – rewarding rather than policymaking opportunities (Harris, 1953). Owing to the lower political salience of these positions, senators are able to oppose lower-court nominations through a variety of nontransparent pre-floor tactics.⁶

The low and uneven salience of judicial appointees grants senators significant discretion over the timing of confirmation decisions. Senators pay few costs for delaying confirmation because media and public attention to the confirmation process is rare and because most senators seldom take an interest in nominees outside their home state or region. Also, the low visibility but high importance of judicial appointments enhances senators’ bargaining leverage with the president over appointments or unrelated matters when they choose to delay a nomination (Goldman, 1997, 134; Biskupic, 1999). Studies on judicial selection suggest that the degree of delay on judicial nominations varies directly with institutional opportunities and race-gendering (Holmes, 2007; Diascro and Solberg, 2009).

Institutional Opportunities

Two institutional structures widely allocate the opportunity to obstruct lower court nominations: the committee system protects the interests of the home-state senators, and procedural rules invest party coalitions with influence over the Senate agenda.

Impact of Committees

The committee chair has significant control over the committee's agenda. As ideological differences between the chair and the president increase, the Senate should take longer to reach a decision on the nominee. Alternatively, chairs might exercise their procedural discretion to the benefit of intensely interested senators who do not serve on the panel, such as home-state senators for the appointee. Because the committee counsel sends out "blue-slips" to the home-state senators for each nominee, deference to such senators is institutionalized (Grossman, 1965). Should a senator mark the blue-slip "objection" or refuse to return the slip, tradition dictates that the chair will decline to hold a hearing on the nomination. In practice, negative blue slips do not always kill a nomination, but they can delay a nomination (Goldman, 1997, 134). Because presidents consult with home-state senators of their party before selecting district court nominees, only home-state senators who are ideological foes of the president should take advantage of their institutionalized ability to obstruct. Thus, the Senate should take longer to render a decision on the affected nominee if a home-state senator is ideologically distant from the president.

courtesy, or refusing to schedule a floor vote. See Sherer (2005).

Impact of Parties

Because the Senate majority leader holds the right of first recognition on the Senate floor, he wields an effective veto over executive session – the forum in which nominations are considered by the Senate. Thus, we should see a slowdown in confirmation when the president's opposition controls the Senate.

Divided government might affect the speed of confirmations beyond a blanket slowdown across all nominees. Only recently has the process of lower federal court confirmation been influenced by both the political context and the nature of the institutions involved (Martinek *et al*, 2002, 358). To illustrate, since 1 January 2011, the Senate has only confirmed four nominees. We may ask: Why the slow movement in the confirmation process? Texas Senator John Cornyn, a GOP Senate leadership member who sits on the Judiciary Committee explained: "Almost all of the energy was fueling the debt-ceiling debate, and unfortunately there was some unfinished business before the adjournment and so we were basically out of time" (Martin, 2011). President Obama has made 87 nominations, but the Senate has confirmed only 31 in the legislative session of 2010 (Martin, 2011). Only two nominees, both Hispanic women, have been confirmed for the state of Texas. When compared with past Presidents George W. Bush and Bill Clinton, President Obama lags in the number of appointees by this point in their presidencies, and most of the gap is on the district court level. However, President Obama, unlike George W. Bush in his first two years, also

has appointed two Supreme Court Justices, Sonia Sotomayor and Elena Kagan (Judicial Selection Snapshot).

As political scientists note, President Obama has appointed a far more diverse group, by gender and race, than any other president. Half of the district court appointments during 2009 and 2010 were women, compared with 21 per cent under Bush and 31 per cent under Clinton. Also, among President Obama's appointees in his first two years, 27 per cent were black, 10 per cent were Asian-American and 7 per cent were Hispanic. He has also put forward three openly gay nominees (Judicial Selection Snapshot).

In addition to the institutional factors that one must consider in the nomination and confirmation of a judicial candidate, there is also the race and gender of a candidate. Martinek *et al* (2002) reveal, in their study of lower federal court nominations between 1977 and 1998, that race and gender do matter for district court appointments (337–361). The section that follows addresses the theoretical application of this reasoning.

The Judiciary as a Race-Gendered Institution

Mary Hawkesworth presents a theory that examines the dynamics that structure hierarchies on the basis of race and gender. The underlining argument behind raced-gendered institutions is that gender is inseparable from race, class, ethnicity, nationality, sexual orientation and other socially constructed hierarchies of difference (Acker, 1992). Acker argues that formal institutions can be so gendered to the disadvantage of women that institutional leaders take this disadvantage for granted and understand traditional procedures and practices as “neutral” (Acker, 1990). Kathlene (1989) finds that as women become an increasingly significant percentage of an institutional body, “men can become verbally aggressive and controlling in a hearing” to the disadvantage of women.

Hawkesworth (2003) claims that “racing-gendering involves the production of difference, political asymmetries, and social hierarchies that simultaneously create the dominant and the subordinate.” She argues that racing and gendering are active processes that occur through the actions of individuals, as well as through laws, policies, and organizational norms and practices. “The identities of women of color are constituted through an amalgam of practices that construct them as ‘other’ (to white men, men of color, and white women), challenging their individuality and their status as fully human” (Hawkesworth, 2003). The multiple practices through which race-gendering is generated and sustained are complex and many-layered. Silencing, excluding, marginalizing, segregating, discrediting, dismissing, discounting, insulting, stereotyping and patronizing are used singly and in combination to fix women of color “in their place.” Whether deployed intentionally or unwittingly, race-gendering practices

produce relations of power that alter the conditions of work and the conditions of life for women of color in subtle and not-so-subtle ways. They create situations in which the playing field is not equal.

Some of the existing literature on women as jurists has done much to expose such disadvantages: historical exclusion, quotidian discrimination (including stereotyping); gender-biased appointment procedures and criteria; perceptions of a male-dominated, hostile environment (Genn, 2008); and working practices that facilitate men's routines rather than women's lives (Thornton, 2007). The "old boy" network that provides useful information and strengthens the cultural habitus of the male judge has often disadvantaged women (Echaveste, 2002; Feenan, 2008). Hawksworth's race-gendering provides a useful tool for examining the way in which Hispanic women are incorporated into the federal judiciary. However, before we examine the experiences of Tagle and Alvarez, contextualizing Hispanic women in the law profession is necessary.

Profile of Hispanic Female Lawyers in Texas

To see what makes the appointments of federal Judges Hilda Tagle and Micaela Alvarez empowering for Hispanic women, it is important to understand the circumstances from which they arose. By the time Tagle graduated from law school in 1977, there were only a few Hispanic women practicing law, and many of them did not do trial work. In 1982,⁷ there were fewer than 5000 female attorneys in Texas (13 per cent of the membership). A statistical profile of the State Bar of Texas membership of 2000–2001 reported that women made up 27 per cent.⁸ This same report indicated that 12 per cent of all Texas Bar members were minority – 6.0 per cent Hispanic/Latino, 3.7 per cent African American/Black, 1.2 per cent Asian/Pacific Islander, 0.3 per cent Native American Indian and 0.9 per cent other race/ethnicities (Cannon and Priestner, 2001). As of 2005, women accounted for 54 per cent of racial/ethnic minority law students in Texas (despite the rising cost of tuition), whose representation in the Bar has been increasing. Now, 46 per cent of those obtaining their first-year Texas attorney license are women. However, while women have significantly increased their representation in the Texas legal profession, the percentage of current female Bar members is still lower (at 30 per cent) than the proportion of females in the general Texas population (51 per cent) and in the Texas work force (45 per cent). Women represent a larger proportion of racial/ethnic minority attorneys than they do among the non-minority lawyers in Texas. Overall, 43 per cent of the racial/ethnic minority attorneys are women, compared with women being 29 per cent of Caucasian/Anglo attorneys, 53 per cent of African-American/Black attorneys, 50 per cent of Asian/Pacific Islander attorneys, and approximately one-third of both Hispanic/Latino and Native

7 According to the Texas State Bar, information on gender was not available prior to 1982.

8 It is difficult to obtain statistics on gender and racial/ethnicity of the early history of the State Bar, but information that is cited comes from membership department records and published reports. Information on minorities in the early history is particularly hard to obtain. See <http://www.texasbar>

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9 The other primary professions women find themselves in are 3 per cent other non-law related, 2 per cent full-time judges, 2 per cent unemployed/not looking, 1 per cent law faculty, 1 per cent retired-not-working, 1 per cent unemployed/not looking. For more information see State Bar of Texas, Women Attorneys: Attorney Statistical Profile (2009–2010) at http://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends.

American Indian attorneys. Overall, female lawyers in Texas are younger and have been licensed for fewer years than male attorneys (Cannon and Priestner, 2001, 3).

In 2009, the Texas State Bar again conducted their annual profile of minority women in Texas. Women comprise 32 per cent of the bar membership. Of this number 84 per cent are Caucasian/Anglo women, 4 per cent are Black and 7 per cent are Hispanic/Latino, with Asians consisting of 2 per cent, Native American Indians less than 1 per cent and Other making up slightly over 1 per cent. Of all the women attorneys, 58 per cent are in private practice, followed by 16 per cent in practice as government attorneys, 11 per cent as corporate/in-house counsel, and 4 per cent in other law-related positions.⁹

Hispanic women may be a growing political force as they meander their way through the law profession, but the barriers are very real. Tagle and Alvarez's narratives reveal that most of the time having the necessary qualifications is not enough. The data from Tagle and Alvarez reveal that their educational and career aspirations are grounded in their families' and communities' economic and sociopolitical struggles.

Case Study of Race-Gendering: Hispanic Women Moving on Up

Tagle grew up in a working-class town of 13,000, where the median income is just slightly more than US\$16,000 (Stump, 1999). Her mother and father were born in the South Texas area, Driscoll and Runge, Texas, respectively. Her maternal grandfather was a sharecropper, and her paternal grandmother was a farm worker. After her parents met and married, they settled in Robstown. She would be the first in her family to graduate from high school, college and then law school. Her father was a mechanic, and her mother was a beautician. Since Tagle was the only girl in the family, when she was still a teenager her mother wanted to make sure she could financially support herself, so she enrolled her in beauty school. Tagle remembers, "She wanted to make sure that in case something were to happen that I wound up having to support myself or children on my own, I would have something to fall back on, so that is why she made me go to beauty school." Tagle had very little interest in becoming a beautician. But she said, "the dutiful daughter that I was, I went even though I never really liked it." Tagle was a licensed beautician at 16 years of age. She went on to junior college at Del Mar College, then East Texas State University, North Texas State University and the University of Texas School of Law. She would return home to work as a public defender, a private practice attorney and eventually as a teacher at Del Mar College.

In 1975 Hilda Tagle was one of only three Latino students enrolled at the University of Texas School of Law, and the Latino students found comfort in

one another's company. When Tagle graduated from law school in 1977, she spent a few months working as a law clerk at the Legal Aid Society of Central Texas, but then she was offered a job at the city attorney's office in Corpus Christi, Texas that same year. She was one out of five Latina women lawyers in that region. I interviewed her on 14 December 2007, at which time she described her experience this way:

...I mean, it was still novel for a woman, a Mexicana, to be in a courtroom, and I didn't realize the importance of all that until later on. ... It got me acclimated to being in a courtroom, to being in front of a judge as opposed to being head of an office practice, where basically you do transactional work and never appear as an advocate. (Tagle, 2007)

After a two-year stint in the city attorney's office, Tagle was recruited by the district attorney's office in Nueces County. She was the third Latina woman to work as an Assistant District Attorney. "There were actually three of us – Irma Rangel from Kingsville, Mary Helen Bonilla Berlanga from Corpus Christi, and me."

After working as an assistant district attorney for a year, Tagle left that job and became an instructor in the Legal Assistant Program for Del Mar College for four years. She was ready for something new and different. She taught classes at Del Mar in the morning, and in the afternoons and evenings maintained a private practice representing people in criminal cases. She says she "felt like she needed a steady income." It was at this time that Tagle became involved in local politics. She was asked to serve as chair of an election steering committee for her longtime childhood friend, Richard Borchard, for a Nueces County Commissioner's seat. She succeeded in helping him win the election. Little did she know that Borchard's friendship would propel her into a judicial office.

Shortly after Borchard's election as a county commissioner, the Texas state legislature passed a bill creating a new County Court-at-Law No. 4. An advertisement for that court went out for the position of judge. She applied but did not get the appointment. "The county commissioners appointed a gentleman who had been involved in politics and the legislature for many years. He was an Anglo man, and he was far more connected than I was. He had a big political base, which I did not, and Hispanic women seeking an appointment to a public office was a novel idea." So, she took matters into her own hands and enrolled in the chamber of commerce's leadership program and worked for one summer in then-US Representative Solomon Ortiz's Washington, DC office. She returned to Corpus Christi, where she continued her private practice while teaching at Del Mar College, and waited for her political opportunity. Meanwhile, Borchard was learning to become a key political player.

In 1985, the Texas State Legislature created County Court-at-Law No. 3. The perfect political opportunity had presented itself, and Tagle started lobbying for the appointment. She describes her experience this way:

One Commissioner, who was an older gentleman, told me that I should forget about being a judge because the job of a judge was too stressful for a woman. So, I thought, well, I guess I don't have his vote. I didn't get discouraged because I thought, well, if I don't try, I won't know. So, sure enough I got appointed, but it was a two-to-three vote.

This time around, she had some political clout that she had built from her days in the Chamber of Commerce's leadership program, working in US Representative Ortiz's office, and running Borchard's campaign. Commissioner Borchard, who was chair of the search committee at the time, nominated Tagle. The nomination was seconded by Carl Bluntzer, and the swing vote was the county judge Robert Barnes. She was appointed to County Court-at-Law No. 3 (Powell, 2007). She recounted the story this way:

I felt like he made up his mind just like when you are at the restaurant and the waitress asks you if you want your eggs over easy or scrambled, and you kind of have to make a split-second decision. I felt like his decision was just like that, last minute. ... Anyway, they had just appointed an Anglo man, and I guess he felt like, okay, it is time to maybe do something different.

She was appointed county court judge in 1985, becoming the first Hispanic female judge in Nueces County and only the second in any Texas court (Stump, 1999).

In 1986, Tagle was elected to the county court-at-law without opposition (Averyt, 1994), and in 1990 she faced her first Democratic opponent, Robert Gonzalez, a municipal court judge. By all accounts, he was established, with a large political base. But Tagle had taken advantage of political opportunities. She had two candidate training seminars under her belt by the time she had her first serious challenger. She had textbook knowledge on how to run and win a campaign. She beat Gonzalez 55 per cent to 45 per cent in the Democratic primary and was reelected without opposition in the general election. She spent more than \$36,000 to his \$28,000 (Williams, 1990). Tagle was becoming more confident about her abilities as a candidate.

In early 1994, it was rumored that 148th District Judge Margarito Garza was not going to run for reelection. Tagle scheduled a lunch with Garza to confirm what she had heard. He told her in no uncertain terms that he was not going to run for reelection. Upon learning this she decided that she was going to run for his seat. Then Garza changed his mind after he received a low ranking in a

survey of attorneys that rated local jurists. The survey was conducted by the Nueces County Bar Association and asked association members to rate judges in areas including judicial demeanor, ability to interpret and apply the law correctly, fairness, and courtesy (Harrill, 1994b).

Tagle's campaign strategy was tactical. She was competitive, raising \$77,000 from attorneys and independent business people – and most of that was from men (Orwig, 1994). Her campaign theme had been “to restore dignity to the 148th District Court” (Harrill, 2001). Judge Garza had political baggage that she never brought up in campaign, but he had been issued a public reprimand one year before by the Texas Commission on Judicial Conduct that he just could not overcome (Harrill, 1994a). In March, Tagle was forced into a runoff with Garza. At this point, she switched from “no confrontation to open aggression” (Harrill, 1994a). Robert Bezdek, a political science professor at Texas A&M University at Corpus Christi said, “[Tagle's team] started pointing out what the articles in the newspaper had been pointing out all along – that he had been reprimanded and that he did make some controversial statements. Those were some of the most credible ads that we've seen. It was factual, from what I can tell” (Harrill, 1994a). One of Tagle's ads highlighted the fact that the Texas Commission on Judicial Conduct had censured Judge Garza for a case in which he lambasted a woman who asked for a protective order against her live-in boyfriend. According to the court record, Garza stated, “...But you want us to protect you, ma'am, from your own stupidity. You move in with a man, without benefit of marriage or anything whatsoever, and then when he starts acting like an animal, according to you, so you say, 'Hey, come protect me.' If you want me to treat you with respect, then you tell me you ain't shacking up with that guy.” Garza denied the protective order. Tagle responded by saying, “It is the duty of the judge to apply the law as written and not to use marital status as a criterion for granting a protective order” (Harrill, 1994a). Tagle beat the incumbent with 17,826 votes, or a 58 per cent share, to Garza's 12,966, or 42 per cent, to win the judicial seat for the 148th District Court post. There was no Republican candidate in the general election.

During her first tenure as district judge she was encouraged by personal friends, the Mexican American Legal Defense Fund (MALDEF), prominent attorneys, and a 13th Court of Appeals Court Judge, Gilberto Hinojosa, to apply for one of five new federal judicial positions in the Southern District of Texas. She filled out the lengthy questionnaire at the behest of Judge Hinojosa and turned it in to then-Democratic Senator Bob Krueger, who was on the Texas judicial selection committee, and began to strategize. She called Frank Herrera, a prominent lawyer in San Antonio, and requested a meeting with him. In their brief conversation, she learned that the president “wanted a Hispanic woman” and he thought “she had the best shot.” Tagle had applied for the judicial position for the Corpus Christi division and did not get it. She learned that then-President Clinton was considering another judicial appointment for the Brownsville division.

However, Krueger lost his election to K. Bailey Hutchinson. Tagle then had to learn the protocol. "Tradition had it that when there was not a senator of the president's party, the responsibility or the honor of submitting names for consideration to the president went to the dean of the congressional delegation of the president's party. That, at the time, was Henry B. Gonzalez of San Antonio." She first began lobbying every business person who had influence with Congressman Gonzalez and every Democratic congressional person in Texas. She claims, "By this time I was used to making cold calls... that is, you telephone someone that you don't even know, introduce yourself, and ask them for their support." In 1995, she succeeded in winning Congressman Gonzalez's nomination, successfully went through the FBI investigation, was evaluated by the American Bar Association, recommended by the Office of Policy Development, and nominated by President Clinton in August 1996. However, because Clinton was in the midst of political controversy (for example, Whitewater allegations, Vince Foster's suicide, a Republican Congress, and so on) her appointment was delayed and eventually expired. Presidential nominations are only valid for one congressional term, and Clinton was running for re-election, which meant she would have to go through the re-nomination process. She resubmitted her application, continued lobbying Texas congressional delegates, and was finally nominated by President Clinton in March 1997 and confirmed by the Senate in March 1998 to serve as a federal judge for the Brownsville Division of the Southern District of Texas.

Alvarez was born in Donna, Texas to immigrant parents. She is the fourth of 10 children. Her family would migrate to California to pick grapes in the fields, to Montana to pick sugar beets, and then to Colorado, Ohio, Idaho, Michigan and Illinois before returning to the Rio Grande Valley when the picking seasons ended. "I remember," she said during our interview on 2 November 2007, "migrating up until my second year in undergraduate school and still some years after that" (Alvarez, 2007). She recounts:

I can remember working in the strawberry fields. Back in the day they would have little company stores. There were little vans, and you could pick the strawberries and turn them in and they would give you chips that you could use at the company store. ... The first summer that I actually worked full time I was 10 years old. ... It was very difficult that summer because we worked in Montana nonstop, Monday through Sunday from sunup to very close to sundown. We wouldn't stop working unless it rained. That summer there was no rain all summer long. I had just turned 11 and I was working alongside my parents nonstop for about two months. ...

She recalls that her parents would take her and her brother and sisters out of school two weeks before the school year ended and return just in time for school to start. She graduated high school in three years and only thought

about going to the University of Texas at Austin because her boyfriend's brother was going there. "I never had my counselor talk to me. I wasn't really what any of them thought was college material. I came from a migrant family. At the time my boyfriend was thinking of going there and he got me an application to school." The day right after high school graduation, she was off to Montana to work in the fields. While she was away she applied to the University of Texas at Austin and was accepted. She married after her sophomore year. She still migrated with her family to work the fields when she could but was focused on school. She graduated with a social work degree in 1980 and delayed law school for six years, during which time she and her husband started a family. She felt the pressure of cultural expectations. "Coming from a very traditional family, it was like, 'okay, you have been married some years, why don't you have children?' So, my son was born in 1982. Then it was 'okay, I have to wait a little bit more because now he was too little for me to go back to school and we now had new expenses.'" So she waited four more years and entered law school in 1986.

Alvarez withdrew her retirement funds and went to law school full time. It was the first time in her life that she did not have to work and go to school. Her husband took on a second job to help with her school. "My husband was supportive but at the same time he came from a traditional, although in some ways, not completely traditional family. He came from a family where his mom had been a stay-at-home mom. He is one of two children, and he is Hispanic. He was also very traditional in that sense, and not that he ever asked me to stay home, but I could see the hesitancy in him. Overall, he was supportive." She graduated from law school in 1989 and moved back to the Rio Grande Valley. She was employed at the prestigious law firm of Atlas and Hall, L.L.P.

It was at Atlas and Hall that she had a chance to gain the experience she needed familiarizing herself with various aspects of the law. They were a family-oriented firm and were always supportive of Alvarez. But, in 1993 she had an opportunity to join a small firm as an associate with the potential to become partner within one year. "I would have equal say in what kind of work we did as a law firm, the types cases we did, and how big we got." By this time, Alvarez's second child was one-year old, and she wanted to have a third child. In 1995, she was pregnant with her third child and describes her experience in private practice this way:

...the firm was wonderful, but it was difficult to be raising a family and working. My [law] partner was very understanding because on several occasions I would have my children in the office with me if they didn't have school and there was no one to watch them. They would come to the office with me. Over time we even set up a playroom for the children.

In 1995, George W. Bush assumed the governorship in Texas. Alvarez was pregnant with her third child and working at her flourishing law firm. One day, she received a call from newly appointed Secretary of State Tony Garza. She describes her initial introduction this way:

My secretary called me and said, ‘Tony Garza would like to speak to you,’ and I remember saying to myself ‘I don’t know him. ... I don’t think it is the Secretary of State calling me.’ I really thought it was someone calling to handle a divorce case. Occasionally, I would get called because I was at the top of the alphabetized list of lawyers in the firm. People would go down the list asking each lawyer if they handled divorce cases. So, he got on the line and he identified himself. To being with, I was shocked because I was wondering, ‘why is he calling me?’ But, basically he said that Bush needed to make an appointment to the 139th Judicial District Court, that he was looking for people who might be interested, and that my name had come up. Would I be interested? I said, ‘I really haven’t thought about it, I don’t know.’ He responded, ‘Well, think about it, and if you are interested, let me know.’

The Bush administration was actively courting the Hispanic vote, so it isn’t surprising that he made more appointments of Hispanic judges than any previous governors (Diascro and Solberg, 2009). She eventually went to Austin for the vetting process and committed herself to running for election to hold the seat.

This was a win for then-Governor George W. Bush because appointing Alvarez to Hidalgo County’s 139th State District Court would make her the first Hispanic woman ever to serve as district judge in that county. This appointment would bolster Bush’s appointment record in Texas. Some Democratic minority lawmakers praised Bush because the appointments he made were to key boards and judicial positions (Sánchez, 1995).

Alvarez was the only female district judge in an all-male club. She recounts one particular encounter where she claims her gender suddenly became noticed.

We were having a judges meeting. One of the judges started talking, and he just forgot I was there. He started talking about having a get together at the ranch, I don’t remember what he called it. He kept saying, ‘we just need to go out there and barbeque and drink some beer.’ He is just going on. And, then all of a sudden it dawns on him that I am sitting there and he turns to look at me and he says, ‘We will invite you when we do this.’ Well, I never got invited.

She held the post for a year and a half before losing her first election bid to Democrat Leticia Hinojosa 36.25 per cent to 63.74 per cent despite having

received a perfect 10 rating in categories measuring her ability to make efficient use of lawyer's time, to be fair and impartial, to demonstrate proper judicial demeanor, and to apply the law correctly (Roebuck, 2009). Her election loss can be credited to two possible reasons. First, Hidalgo County has a long history of being a Democratic stronghold, so the fact that Alvarez was an appointed Republican candidate in a democratically controlled area of Texas made her election an uphill battle (Averyt and Laue, 1996). Second, her campaign strategy was one in which her entire staff consisted of volunteers. She never paid anyone, not even *politiqueos* (someone who talks politics). "In the Valley...these are people who claim they can get you a certain number of votes if you will pay them. ... I was approached by some and refused." She ran television advertisements, radio advertisements and used campaign literature, but she was not willing to pay anyone to work on her campaign. She contends,

I do think there is something demeaning about a judge having to run for office where you are asking people to vote for you. Because generally if you are running for city council you are going to tell people, well this is what I want to do for you. If you are running for senator you tell people this is what I can do for you. If you are running for judge, you can't tell people this is what I want to do for you. The only thing you can say is that I am going to treat you as fairly as I treat that person campaigning against me.

After losing the election, she returned to private practice as a partner at Hole & Alvarez, L.L.P., in McAllen, Texas, where her legal defense work focused primarily on insurance employment and medical cases.

In 2003, Alvarez received a phone call from a friend informing her that a federal judgeship was going to become available in Laredo, Texas. They encouraged her to apply. By this time, Alvarez's practice was growing and she found herself working longer hours, divorced, with three children, including two small girls. She thought, "My son was a little bit older but the other two still needed my attention. I needed stability, and so I decided it was something I was willing to pursue at the time." She started to lobby by calling people whom she thought might provide her with some direction, as well as information on who was on the selection committee and whose endorsement she might need. "The process took roughly a year from the first phone call to the time of the appointment." She also made "cold calls," and by this time she had more political connections that she had developed during her time serving as a state district judge and having been in practice for so long. She was endorsed by Senators Kay Bailey Hutchinson and John Cornyn and eventually was confirmed by the entire Senate in November 2004, receiving her commission in December 2004.

Conclusion: The Making of Hispanic Female Federal Judges

The life experiences of federal Judges Tagle and Alvarez make clear that the election and appointment of Hispanic female judges illustrate how the political process (of committees and parties) has ingrained conceptions and practices related to race and gender that indeed affect the outcome. Presidents Bill Clinton and George W. Bush desired to leave a legacy of diversity on the federal bench. The senatorial blue slip courtesy and divided government make the process of nominations and confirmations political. For Tagle and Alvarez, race and gender were key to the selection and appointment process.

The experiences of Justices Tagle and Alvarez also illustrate that there is more to judicial appointments than the institutional process itself. This article addresses the importance of culture, building networks, funding, personal knowledge and learning curve, and community complexity in support for candidates. For both women, the judiciary has been a man's business (that is, it has been gendered). Tagle was overlooked in her first attempt at a judicial appointment because it was "too stressful for a woman." In Alvarez's case, she was excluded from participating in the all-male club of barbequing and drinking. Moreover, the process of judicial appointments has long been a "white" business (that is, it has been raced) because Tagle and Alvarez, much like Justice Sonia Sotomayor, were trail blazers with unique ethnic personal experiences that mattered in the selection and appointment process. Tagle was the first county court-at-law judge in Texas and the first Hispanic woman appointed to the federal judiciary. Alvarez was the first district court-appointed judge. The appointment of Hispanic women to the federal judiciary has significant implications for understanding the internal operations of political institutions, the substantive representation of a historically underrepresented group and the practice of democracy in the United States. Their personal stories just may hold the recipe for success for later generations of Hispanic lawyers/judges/justices.

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References

- Acker, J. 1990. Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations. *Gender and Society* 4(2): 139–152.
- Acker, J. 1992. From Sex Roles to Gendered Institutions. *Contemporary Sociology* 21(5): 565–569.
- Alvarez, M. 2007. Interview, 2 November, San Antonio, TX.
- Averyt, L. 1994. Tagle Seeks Judgeship of 148th District Court. *Corpus Christi Caller-Times*, 4 January: B2.
- Averyt, L. and C. Laue. 1996. Crowded Field for Sheriff, Other Races. *Corpus Christi Caller-Times*, 3 January: 1B.
- Biskupic, J. 1999. Hatch, White House at Impasse on Judgeships. *Washington Post*, 5 June: A01.
- Cannon, C. and K. Priestner. 2001. Statistical Profile of the State Bar of Texas Membership (2000–2001). *State Bar of Texas*; <http://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=11533>, accessed June 2001.
- Diascro, J.S. and R.S. Solberg. 2009. George W. Bush’s Legacy on the Federal Bench: Policy in the Face of Diversity. *Judicature* 92(6): 298.
- Echaveste, M. 2002. Brown to Black: The Politics of Judicial Appointments for Latinos. *Berkeley La Raza Law Journal* 13(1): 39–42.
- Feenan, D. 2008. Women Judges: Gendering Judging, Justifying Diversity. *Journal of Law and Society* 35(4): 490–519.
- García, S., V. Martinez-Ebers, I. Coronado, S.A. Navarro and P. Jaramillo. 2008. *Políticas: Latina Public Officials in Texas*. Austin, TX: University of Texas Press.
- Genn, H. 2008. The Attractiveness of Senior Judicial Appointments to Highly Qualified Practitioners. Report to the Judicial Executive Board. London: Directorate of Judicial Offices for England and Wales.
- Goldman, S. 1997. *Picking Federal Judges – Lower Court Selection From Roosevelt Through Reagan*. New Haven, CT: Yale University Press.
- Grossman, J. 1965. *Lawyers and Judges: The ABA and the Politics of Judicial Selection*. New York: John Wiley and Sons.
- Hardy-Fanta, C. 1993. *Latina Politics, Latino Politics: Gender, Culture, and Political Participation in Boston*. Philadelphia: Temple University Press.
- Harrill, R. 1994a. Tagle Defeats Garza – Ousted Incumbent Surprised at Vote. *Corpus Christi Caller-Times*, 13 April: B1.
- Harrill, R. 1994b. Two Challengers Mount Efforts to Unseat Garza. *Corpus Christi Caller-Times*, 23 February: B4.
- Harrill, R. 2001. Opponents Target Judge’s Reprimand. *Corpus Christi Caller-Times*, 3 February: B2.
- Harris, J. 1953. *Advice and Consent of the Senate: A Study of the Confirmation of Appointments by the United States Senate*. Berkeley, CA: University of California Press.

- Hawkesworth, M. 2003. Congressional Enactments of Race-Gender: Toward a Theory of Raced-Gendered Institutions. *American Political Science Review* 97(4): 532.
- Holmes, L.M. 2007. Presidential Strategy in the Judicial Appointment Process. *American Politics Research* 35(5): 567–594.
- Johnson, K.R. 2002. On the Appointment of a Latino/a to the Supreme Court. *Berkeley La Raza Law Journal* 13(1): 1–14.
- Judicial Selection Snapshot. 2011. Alliance for Justice. 28 July 2011; www.afj.org/judicial-selection/active.asp, accessed 2 August 2011.
- Kathlene, L. 1989. Uncovering the Political Impacts of Gender: An Exploratory Study. *Western Political Quarterly* 42(2): 397–421.
- Martin, G. 2011. Democrats Rip GOP for Failing to Act on Judges. *San Antonio Express News*, 5 August: 2B.
- Martinek, W., M. Kemper and S. Van Winkle. 2002. To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977–1998. *The Journal of Politics* 64(2): 337–361.
- Muñoz, F. 2002. Overcoming Barriers: Being Flexible and Creative. *Berkeley La Raza Journal* 13(1): 29–31.
- Navarro, S.A. 2008. *Latina Legislator: Leticia Van de Putte and the Road to Leadership*. College Station, TX: Texas A&M Press.
- Orwig, G. 1994. Women Gaining Power – Female Candidates Win, Force Runoffs. *Corpus Christi Caller-Times*, 10 March: A1.
- Powell, J. 2007. Robert Barnes, 1928–2007 – Ex-county Judge Kept Firm Hand on the Helm. *Corpus Christi Caller-Times*, 13 March: A1.
- Roebuck, J. 2009. Laredo Judge Likely to Fill McAllen's Newest Federal Judicial Post. *The Monitor*, 2 August: 1A.
- Sánchez, C. 1995. Governor's Early Appointments Tend to Mirror Himself. *Fort Worth Star-Telegram*, 21 August: 1A.
- Sherer, N. 2005. *Scoring Points: Politicians, Activists and the Lower Federal Court Appointment Process*. Palo Alto, CA: Stanford University Press.
- Sotomayor, S. 2002. A Latina Judge's Voice. *Berkeley La Raza Law Journal* 13(1): 87–93.
- State Bar of Texas. Women Attorneys: Attorney Statistical Profile (2009–2010), http://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends.
- Strauss, A. and J. Corbin. 1998. *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. Thousand Oaks, CA: Sage Publications.
- Stump, J. 1999. Small Town Politics a Religion in Robstown. *Corpus Christi Caller-Times*, 19 July: A1.
- Tagle, H. 2007. Phone interview. 14 December.
- Thornton, M. 2007. 'Otherness' on the Bench: How Merit is Gendered. *Sydney Law Review* 29(391): 391–413.
- Williams, S. 1990. Tagle Beats Back Gonzalez Challenge. *Corpus Christi Caller-Times*, 14 March: 1Bc.