

# How much experience do you need to be California's chief justice?

## Overview

Justice Patricia Guerrero likely will be confirmed as California's 29th chief justice at the Commission on Judicial Appointments hearing on August 26, 2022, just five months after she was confirmed as an associate justice on March 22, 2022. That raises questions about how much judicial experience is necessary to lead California's judicial branch. The answer is "not much" — reviewing the history of California chief justices shows that judicial branch leaders arrived with much, some, little, or no judicial experience. There is some evidence of correlation between two factors being predictive of success or failure (gauged by length of a chief justiceship): one's age at elevation and record of prior judicial service generally correlate with a longer tenure as chief justice, particularly among the post-1934 chief justices. But as we explain, prior service as a California Supreme Court associate justice does not indicate how well or how long a chief justice will serve.

## Analysis

We examined two primary factors that are often discussed in the judicial appointments context: age and experience. Age is relevant because it speaks to wisdom and critical thinking ability; a judge should be in the optimal zone that combines enough legal experience and life seasoning to develop wisdom before succumbing to cognitive failures. Experience is relevant for both its practical component (can you run a courtroom) and for intellectual development (how has your view of the law evolved). We then evaluated whether those factors correlated with a chief justice's performance. We conclude that they do not: we found no ideal set of characteristics common to success or failure as chief justice.

### Age at appointment

Age at elevation to chief justice only correlates with length of service among the post-1934 chief justices. (We use 1934 as a dividing line for the court's modern chief

justices because that's when the current nonpartisan retention elections system started.) The overall average age of those arriving at the California Supreme Court (in any capacity) is 51, and the average age of all chief justices when elevated is similar at 50.57 years old.

But before 1934 there is much higher age variance among the justices generally and correspondingly less correlation. There were more chief justices before 1934 than after, and the pre-1934 group arrived at the court and in the chief justice's seat at younger ages: the average age at elevation pre-1934 is 48.95 years old. For example, Murray was the youngest justice when seated at 26 (elevated at 27), and Van Dyke was the oldest when seated at 76. That makes for a bigger spread and a lower average age at elevation pre-1934, and a much shorter average service as chief justice: just 4.30 years.

Among the post-1934 chief justices, one's age at elevation a better predictor of how long a chief justice will serve. The overall average age at elevation is 50.57, and among the post-1934 chief justices the average age at elevation is 55. The average post-1934 chief justice served 11.79 years, much longer than the pre-1934 group. Chief Justice Cantil-Sakauye and Gibson were 52 at elevation and served for 12 and 24 years respectively, and George was 56 and served 15 years. Conversely, Traynor was 64 and served 5.5 years, Wright was 63 and served seven years, Lucas was 60 and served 9 years. Thus, 60 is the over/under: the post-1934 chief justices who were elevated in their 50s served longer terms than those elevated in their 60s.

Justice Guerrero is 50 now (turning 51 later this year), almost exactly the overall average elevation age, and under the average elevation age of the post-1934 chief justices. That is a good predictor for at least a full 12-year term as chief justice.

## **A law degree**

A law degree does not correlate with a successful chief justiceship. Of the 28 chief justices, 16 (57%) had no verifiable law degree and 12 (43%) had a J.D. or equivalent. Five of the twelve law degrees were from out-of-state schools, and seven were from California schools. Of the seven California schools five were University of California degrees, and one each from Stanford (George) and USC (Lucas). But having a law degree is not the obvious success predictor one might assume:

arguably the worst chief justice had a J.D. from the best law school in California, and the longest-serving chief justice had no law degree at all.

One counterpoint here is that every post-1934 chief justice had a law degree, and all but Gibson (Missouri LL.B. 1914) were California degrees. Wilbur (chief justice 1923-24) was the last chief justice who read the law; every chief justice since Myers had a law degree. Although the modern trend is for chief justices to have law degrees, that reflects at most only recent gubernatorial preferences — Beatty (the longest-serving chief justice) and Field (one of the greatest) both read the law. There is an argument that the more complex modern legal system requires a law degree, but as with gubernatorial preferences we think the better explanation is that expectations for judicial qualifications have simply changed over time.

Justice Guerrero received a J.D. from Stanford. If confirmed she will finally bring the Cardinal to parity with the Golden Bears (Traynor and Bird). Considering the high variance between no degree versus law degree among the previous chief justices, even without a law degree the history suggests that a person could still be a decent chief justice.

### **Prior bench service, and length thereof**

This is a complex subject, given the diverse backgrounds of the 28 chief justices. As we previously showed, 19 sitting associate justices were elevated to chief justice.

	28	Total number of CJs
Elevated	19	67.86%
New	9	32.14%

In the remaining group of nine:

- Two were true brand-new appointments: Bird, who had no prior judicial service; and Sullivan, who was appointed as five-month placeholder by Governor Hiram Johnson after Beatty died in office.
- Two had lengthy judicial records: Chief Justice Cantil-Sakauye served on various courts for 20 years, as did Wright for 17 years.
- Searls was serving as one of the court's commissioners.

- Three new chief justices won direct popular elections: Beatty (who had a lengthy judicial record) won a direct election in 1888, Morrison (a sitting judge) won a new direct election in the 1879 contest that established the new seven-member court, and Sanderson (no judicial experience) won a new direct election in the 1863 contest that established the new five-member court.<sup>[1]</sup>
- Hastings (former chief justice of Iowa) was selected by the legislature to lead the new three-member court established by the 1849 constitution.

The takeaway here is that two-thirds of all past chief justices were elevated while serving as associate justices on the court. And only three chief justices had zero prior judicial experience: Bird, Sullivan, and Sanderson. Those three are all outliers for distinct reasons: Sullivan took the job as a placeholder, Sanderson became chief justice by statute, and Bird's sad story is well-known. Justice Guerrero's nine years of total judicial experience on the Superior Court and Court of Appeal place her in the overwhelming majority of past chief justices with significant bench time. This is a good predictor for a successful chief justiceship.

### **Prior service as an associate justice**

Evaluating the effect of prior associate justice service reveals several problems with evaluating California's chief justices as a group. One is that changes over time reveal a pattern of shorter service in the court's early years. People live longer now, and it is less common for justices to die unexpectedly; the last chief justice to die in office was Waste in 1940. Shorter lifespans partly explain the fact that in the court's first 50 years chief justices tended to serve just a few years.

Using Beatty as the pivot illustrates this divide. There were 14 chief justices in the approximately 50 years before him and 13 chief justices in the century after him. And among the 28 chief justices the average time of service is 6.17 years; only six chief justices served double-digit terms of 10 or more years, five of those six are in the past 100 years, and three (half of all double-digit terms) are in the past 50 years. There's also the problem of changes in how justices are seated: 75% of all chief justices served before 1934 (when the current appointment-retention system began) when direct elections and electoral challenges were a factor.

Those considerations make the post-1934 group of chief justices (starting with Gibson) the fairest comparison group for Justice Guerrero. Assuming that length of service is one metric for how successful a chief justice is, comparing the post-1934 chief justices shows no relationship between prior associate service and length of service as chief justice.

Gibson had no judicial experience before being appointed as associate justice; he sat for just nine months as associate justice before being elevated to chief justice, and he served as chief justice for 24 years. Traynor had no judicial experience before being appointed as associate justice; he sat for 24 years as associate justice before being elevated to chief justice, and he served as chief justice for 5.5 years. Wright had 17 years of experience on the bench (Municipal Court, Superior Court, and Court of Appeal) before being appointed directly to chief justice from the Court of Appeal and he served for 7 years. Bird had no judicial experience before being appointed directly to chief justice, where she served for 10 years. Lucas had 17 years prior judicial experience (1967-84) and served 3 years as associate justice before being elevated to serve 9 years as chief justice. George had 19 years of experience on the bench (Municipal Court, Superior Court, and Court of Appeal) before being appointed as associate justice; he served 5 years as associate justice before being elevated to serve 15 years as chief justice. And Chief Justice Cantil-Sakauye had 20 years of judicial experience (Municipal Court, Superior Court, and Court of Appeal) before being appointed directly from the Court of Appeal to serve 12 years as chief justice.

We see no pattern in those factors and conclude that prior service as an associate justice does not correlate with the length of a chief justice's term. Several point examples illustrate the absence of correlation. Of the 19 sitting associate justices elevated to chief justice, the average time sitting as an associate before elevation is 3.54 years. Traynor served as associate for 24 years, the longest term of any associate elevated to chief, and Murray and Gibson served as associates for five and nine months respectively, the shortest terms of any associate elevated to chief. But Traynor served as chief justice for only 5.5 years, and Gibson served the second-longest term as chief justice (24 years). Beatty is the longest-serving chief justice (over 25 years); he served a total of 60 years on the bench, including 5 years as Nevada's chief justice. But he had zero experience on the California Supreme Court

before he became its chief justice after winning a direct election in 1888.

The seven appointments with other judicial experience similarly show no pattern. All three new direct appointments with no associate justice time served as chief justice for about a decade: Wright for 7 years, Bird 10 years, and Chief Justice Cantil-Sakauye for 12 years. Chief Justice Cantil-Sakauye and Wright were appointed from the Court of Appeal; Wright was chief justice for seven years, and Chief Justice Cantil-Sakauye for twelve. Hastings served two years, Searls served two years before losing his reelection race to Beatty, Morrison won a new direct election in 1879 and served eight years, and Sanderson won a new direct election in 1863 and served a statute-limited two years.<sup>[2]</sup> We see no commonality in those factors.

The lack of prior service as an associate justice similarly shows no pattern. Indisputably one of the greatest justices ever to serve on the court, Traynor served the longest period as associate, then served as chief justice for 5.5 years before retiring. Compare that with Murray's equivalent 5.5 years as chief justice — despite serving the shortest period as associate (five months). Traynor was close to the end of his 30 years on the court before being elevated, and was already one of the greats; Murray was the youngest justice ever seated and died in office at the young age of 33 in a time when the court's opinions were often stated in 100 words or less.<sup>[3]</sup> Wright came directly from the Court of Appeal and served ably as chief justice for seven years, and Beatty had no judicial experience at all before notching 25 years as the longest-serving chief justice and dying in office in a time when justices could be challenged for reelection. Compare that with two other no-prior-judicial-experience chief justices: Sullivan, who took a five-month placeholder appointment as a favor to his friend Governor Hiram Johnson, and Bird's disastrous decade.

The upshot is that prior judicial experience is not conclusive about the quality or length of a chief justice's service. And given the small post-1934 sample size, the unusual nature of the job, and the highly personal factors that play into length of service, it's difficult to draw firm conclusions. From this review we see little predictive value from time served as an associate justice to the length of a chief justice's term, to the extent that a long chief justiceship is a success metric.

Instead, other factors such as age at elevation are more important. Chief Justice

Cantil-Sakauye was 52 when elevated and served for 12 years, Gibson was also 52 at elevation and served 24 years, Traynor was 64 and served 5.5 years, Wright was 63 and served seven years, Lucas was 60 and served 9 years, George was 56 and served 15 years. The chief justices in this group who retired did so at an average age of 69.83: Cantil-Sakauye 63, Lucas 69, Wright 70, Traynor 70, George 71, Gibson 76. Together, these figures show that the best predictor of how long a chief justice will serve is their age at elevation.

Justice Guerrero Court has about nine years total judicial experience: four years Superior Court and five years Court of Appeal, and has been an associate justice for about five months (March to August 2022). Comparing her to the most recent group of chief justices, with nine years on the bench Justice Guerrero sits between the “new” appointments (Gibson, Traynor, Bird) who had no previous judicial experience, and the Wright-Lucas-George-TCS appointments who all had lengthy bench careers. And for time as an associate justice her five months is roughly equivalent to Gibson’s nine months in the middle of the spread: Wright 0 - Bird 0 - TCS 0 - Gibson 9 months - Lucas 3 years - George 5 years - Traynor 24 years. We conclude that Justice Guerrero’s five months as an associate justice says nothing about how long or well she might serve as the 29th chief justice. The more important factors are her age at elevation (50) and total record of judicial service (9 years), and both factors are positive indicators for her.

### **Conclusion**

This review shows that someone with little or no experience on the California Supreme Court can be a great chief justice; conversely, prior service on the court is no guarantee of success. The best biographical indicators of how long and how well Justice Guerrero might serve as the 29th chief justice are her current age and (less so) her prior judicial service. Justice Guerrero is 50 years old, and the average age of a chief justice when seated is 50.57 years old. All the recent chief justices who were elevated in their 50s served over a decade: Chief Justice Cantil-Sakauye was 52 and served for 12 years, Gibson was also 52 and served 24 years, George was 56 and served 15 years. Prior judicial service is a positive-but-inconclusive indicator, with most of the recent chief justices having long bench records before being elevated. And even the lack of any prior judicial experience would not necessarily be a bad

sign: Berkeley has the distinction of producing arguably the best and worst California chief justices, both of whom lacked previous judicial experience. The upshot is that from an age-and-experience perspective Justice Guerrero is in the optimal zone to be primed for good service as California's 29th chief justice.

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Chief senior research fellow Stephen M. Duvernay contributed to this article.

1. Sanderson drew the shortest two-year term and so became chief justice. The law for the new court elections in 1863 set staggered terms for the seats; as the term of the chief justice expired, the one that had drawn the next shortest term automatically became the chief justice. J. Edward Johnson, *History of the Supreme Court Justices of California 1850-1950* (1963) at 90. Shafter, who drew the longest ten-year term, is the only one of the five-person slate elected in 1863 who did not serve as chief justice — he resigned just three years into his term “because of failing health.” *Id.* at 102. ↑
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3. See, e.g., *Feillett v. Engler* (1857) 8 Cal. 76. The opinion by Chief Justice Murray is just 63 words: “We have repeatedly decided, that justices of the peace cannot entertain suits for money demands where the amount in controversy exceeds two hundred dollars. Consent of parties cannot give a jurisdiction which the Constitution denies. It makes no difference whether the judgment was suffered voluntarily or not. It was for all purposes absolutely void, and the execution and sale under it a nullity.”). ↑