

What Does Judicial Diversity Really Mean?

by Patrick Dankwa John

We all want more diversity, right? Being against diversity is like being against goodness and sunshine. No one is against diversity. We're all for it, in theory. Until it may cost us something. Then most of us aren't so gung-ho. Oh, but how we love to talk about diversity so platitudinously. Real diversity means that the dominant group must share some power and wealth, which they are almost always reluctant to do. Real diversity takes a lot of hard work. When it gets right down to it, most of us are unwilling to put in the effort real diversity requires.

By diversity I don't just mean people from lots of different backgrounds working together. I mean people from different backgrounds who take the time and effort to learn (in a non-judgmental way) about those who are different. That's true diversity. That kind of diversity doesn't just happen by accident. It takes lots of hard work. Note how high school and college students of different ethnicities tend to stick with members of their own racial or ethnic group once class is over.

When I was in the military, there were even studies done showing that military bases were very racially integrated, but when soldiers left base, they segregated themselves, and the civilian community surrounding the base was usually also racially segregated. Is it any different with attorneys? I don't think so. What about with judges? Several years ago, a black judge in New York City complained that most of his white judicial colleagues were, simply put, clueless about the racial discrimination that most blacks face routinely. The judge was Bruce Wright, and he wrote book about it called "Black Robes, White Justice."

When we think about judicial diversity, perhaps we're aiming too low. We're aiming to get our numbers up (as we should), but we're not incentivizing anyone to put in the hard work of actively engaging and learning about those outside their affinity group. How can we encourage judicial aspirants to put in the hard work that true diversity requires? We can provide a real incentive for them that goes beyond mere lip service.

There are several bar associations that focus on protecting the interests of various ethnic/racial/religious/gender groups (often called affinity bar associations). Imagine how much judicial aspirants would learn about those who are different from them if they were active in bar associations that focused on the interests of those outside their affinity group. If a white attorney were active in the Cook County Bar Association, she would learn more than any formal "diversity and inclusion" seminar could ever teach. A non-Jewish attorney who became active in the Decalogue Society of Lawyers would gain an appreciation and understanding of the Jewish community that would be hard to gain in any other way. But this takes great effort. That's why so few people do it.

So how can we get attorneys to do it? It could be done if the Illinois Supreme Court and the circuit judges make it a priority when appointing associate judges and appointing circuit judges to fill vacancies. But how can we get beyond the mere sugar-coated feel-good talk about how we all want more diversity and actually get people to do diversity? I think one way to do that is by adding a question to the applications for judicial evaluations for the Alliance of Bar Associations for Judicial Screening, the Chicago Bar Association, and the applications for associate judge and to fill circuit court vacancies. Currently, all of those forms ask the applicant to list the bar associations they've been a member of. I propose that a question be added along the lines of: "Explain in detail your activities in a bar association whose focus is to further the interests of those outside your ethnic/cultural/religious/gender group." Imagine if such a question were added to the applications, accompanied by a public statement from the bar associations, the Illinois Supreme Court, and the Office of the Chief Judge of the Circuit Court of Cook County, that active involvement in a bar association outside an applicant's affinity group would be looked upon favorably. This could incentivize real diversity and send a clear signal to attorneys that if they put in the hard work on diversity, their hard work will be rewarded. I have to admit there is one drawback to this idea. I fear that so many attorneys will rush online to join the affinity bars that their websites may crash.

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