

Charting the Confusing Judicial Appointment Stats

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The Recorder and www.callaw.com

February 28, 2008

Remember the old saw about lies, damned lies and statistics? Well, after this week it's quite clear, to Legal Pad anyway, that the sage who first uttered that adage was talking about judicial diversity numbers.

Over the past few days the governor and the State Bar released figures detailing the gender and ethnicities of California's judicial applicants. Required by law, the numbers' release was supposed to give us all a clearer idea of how well Gov. Arnold Schwarzenegger is doing on his pledge to diversify his judicial picks.

But instead of clarity, the numbers only seemed to provide ammunition for those who support the governor and his judicial appointments secretary, Sharon Majors-Lewis, and those who think Schwarzenegger prefers middle-aged white male appointees.

So Legal Pad crunched some numbers and came to the conclusion that, as with many things shaped by race and politics, success in diversifying the judiciary is in the eye of the beholder.

Consider the first numbers, the composition of judicial applicants over the last two years (and click on any of our four charts to blow them up nice and big):

It looks pretty straightforward. More attorneys of color are applying. But look at the jump in the number of applicants describing their ethnicity as "other" or declining to say altogether. The application question about race is voluntary and it appears that a lot of applicants either don't feel like they fit into a single category or just don't want to fill in a box.

Now things get really dicey.

Here are the numbers for appointees over the last two years, as well as Schwarzenegger's 291 total judicial picks and the overall ethnic make-up for California's bench.

First, some disclaimers. The governor's office wasn't required to provide statistics for his 2006 appointments; we got those numbers from a State Bar diversity committee report. That report only classified appointees as white, Asian or Pacific Islander, African American or Latino. There was no category for "other" or Native American, so we think the statistics for white are probably too high.

Also, the Assembly Judiciary Committee provided the figures for current judicial officers. We asked staffers there why the percentages only add up to about 95 percent; we haven't heard back yet about the missing 5 percent. And finally, you'll notice the numbers are given in percentage, not raw tallies. Why? Because that's all the governor was required to give. Without the raw numbers, it's harder to judge just what's going on.

Now fans of Majors-Lewis say, look, the numbers show that more ethnic minorities have been appointed to the bench over the last year and while there's still a long way to go, that's the right trend. Critics like Assemblyman Dave Jones, D-Sacramento, argue that the overall composition of the governor's appointments since he took office in 2003 mirrors that of the current bench. If that bench is ever going to better reflect the racial makeup of California, Jones says, the governor is going to have to start appointing a lot more judges of color.

Lastly, here are the numbers about applicants to the JNE Commission for the last two years:

It appears that more ethnic minorities are applying to become judges. But are more being screened out during the process? That's hard to say without accurate, raw appointment numbers from 2006 and 2007. And what role do the governor's secret regional vetting committees play in helping – or hurting – the governor's diversity numbers? Since we don't know exactly how they operate, let alone who they are, that remains a mystery.

If you want a bigger headache, consider the numbers by gender. Women fared poorly before JNE. Just 25 percent received a coveted "well-qualified" or "exceptionally well-qualified" rating last year, compared to nearly 42 percent of men. The numbers don't explain why.

One thing among this mud of numbers seems clear: state lawmakers need better, standardized numbers if they're going to draw conclusions about the diversity of California's bench.