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Judicial appointment process should be open

Governor should focus on qualifications, not appeasing demands for diversity

An Orange County Register editorial

Gov. Arnold Schwarzenegger has an opportunity to substantially affect the California judiciary with the appointment of 50 new judges beginning this month, and another 100 annually, pending the Legislature's funding.

We hope the governor selects wisely, choosing judges who will apply the law, not modify it on the fly to fit their personal prejudices. But there are two other factors bearing on Mr. Schwarzenegger's decisions.

First, there is pressure from ethnic groups for Mr. Schwarzenegger's appointments to "leave a legacy of diversity," as characterized by Lilia Garcia, a lawyer who tracks judicial appointments for the San Diego La Raza Lawyers Association. What Ms. Garcia means is she would like to see more Latinos appointed as judges.

A recent demographic survey of the judiciary showed it to be, "overwhelmingly white and male," the San Diego Union-Tribune reported. Of the 1,598 judges on California trial courts, appellate courts and the Supreme Court, 73 percent are men, and 70 percent are white. California's population, by comparison, breaks down this way: 43 percent white, 35 percent Hispanic, 12 percent Asian and 6 percent black.

The racially minded state Assembly leadership has balked at funding new judicial positions because 19 percent of Mr. Schwarzenegger's appointments since 2003 have been minorities.

We urge the governor to resist filling racial quotas. No one wants to – or deserves to – go before a judge who got his or her job because of skin color. We doubt candidates want to be appointed because of the color of their skin. Politically correct considerations should never trump criteria that include competency, experience and skills.

Having said that, we find it hard to believe that there aren't plenty of competent, experienced and skillful candidates of every race and background available in this state. Our advice: Examine how the candidate universe is created and seek a richer candidate pool.

The La Raza Lawyers Association, however, raises another factor entirely worthy of consideration – making judicial appointments transparent. When candidates apply to be appointed, they are vetted by committees of local lawyers and judges, whose identities are kept confidential, ostensibly to shield them from attempts to influence their decisions,

the Union-Tribune reported. The process smacks of elitism and secrecy, the antithesis to open government.

We agree with Fredericka McGee, legal counsel to Assembly Speaker Fabian Nuñez, who said: "These committees are people who have a lot of power to vet candidates. At some point they should be publicly accountable, and then the whole process would be more accountable."

The upcoming judicial appointments are an opportunity for Mr. Schwarzenegger to bring solid jurists to public service, to base his selections on merit rather than race or gender and, not least of all, to strike a blow for open government.

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