



ASSOCIATED PRESS/RIC GAY

More Money, More Problems

Fleeting Victories for Diversity on the Bench

By Michele L. Jawando and Billy Corriher October 2015

Introduction and summary

As America winds down its celebration of the 50th anniversary of the Selma-to-Montgomery March and the Voting Rights Act of 1965, the country continues to reflect on the progress made toward racial and political equality. One cannot help but recognize the crucial role the judiciary played and continues to play in achieving this progress, whether it was the U.S. Supreme Court declaring “separate is not equal,” as it did in *Brown v. Board of Education*,¹ or the more recent decision in *Shelby County v. Holder*, which struck down a key provision of the Voting Rights Act.²

While the role of the federal judiciary and the decisions it metes out are often examined, far less focus and study is directed to the role of state courts and their impact and influence on ordinary citizens. Even less is known about who sits on these courts and their backgrounds, both personal and professional. While our courts are supposed to be fair arbiters of justice for all, communities are forced to wrestle with the fact that their judicial benches are filled with people who are not representative of their constituents. In many states, the judges do not look like the defendants and plaintiffs who stand in front of them. This report examines one of the myriad reasons for that discrepancy by looking at how judicial elections and the rising costs of judicial campaigns keep individuals of color off the bench. Just as importantly, this report also examines how that glaring lack of diversity calls into question the overall fairness of our justice system.

Progress 2050, a project at the Center for American Progress that examines the racial, ethnic, and demographic shifts in our nation, has made note of the reality that the United States is well on its way to becoming a nation with no clear racial or ethnic majority.³ In fact, people of color already make up more than 40 percent of the population in 13 states.⁴ By 2044, the majority of the U.S. population will be people of color, according to estimates based on data from the Bureau of the Census.⁵

What do these demographic shifts actually mean for the country, and specifically, for our justice system? As a nation, we have wrestled with how to use the Voting Rights Act and other policy solutions to help create a more inclusive and just society. The results, in terms of political equity for women and people of color, are mixed. For example, the country has now twice elected an African American to the highest office in the land.

But according to the Reflective Democracy Campaign and its new database of more than 42,000 elected officials, whites and white men dominate elected offices. Women and people of color are vastly underrepresented.⁶ Elected politicians in the United States are overwhelmingly white—90 percent—and male—71 percent. While men of color make up 19 percent of the population, they account for only 7 percent of elected officials. Likewise, women of color are 19 percent of the population but hold only 4 percent of elected offices. White women are proportionally slightly better off when it comes to elected office: They are 32 percent of Americans and 25 percent of elected officials.⁷

In an increasingly competitive marketplace, employers are responding to America's demographic shift with a greater appreciation of the need for a diverse workplace, often because of the many tangible benefits. The federal Glass Ceiling Commission⁸ found that diversity has a positive impact on an organization's bottom line:

Organizations which excel at leveraging diversity (including the hiring and advancement of women and nonwhite men into senior management jobs, and providing a climate conducive to contributions from people of diverse backgrounds) will experience better financial performance in the long run than organizations which are not effective in managing diversity.⁹

One of the many statistics used to bolster this finding was a study by Covenant Investment Management, which rated the performance of the Standard & Poor's 500 companies on a series of factors related to the hiring and advancement of women and nonwhites.¹⁰ The study found that the annualized returns for the 100 companies rated lowest in equal employment opportunities earned an average return on investment of 7.9 percent, compared with an average 18.3 percent return on investment for the 100 companies that rated highest.¹¹ Despite these benefits, there is a startling lack of diversity at the highest echelons of corporate governance. In a 2012 study of Fortune 500 CEOs conducted by the Center for American Progress, only 21—a mere 4.2 percent—were people of color: In that group of 500 CEOs, there were four blacks, nine Asians, and six Latinos.¹²

While the workplace continues to examine inclusion, our classrooms are becoming a lot less diverse. A 2014 article in *The Atlantic* profiled high schools in Tuscaloosa, Alabama, after the school system was released from federal judicial supervision stemming from a long-running integration lawsuit.¹³ According to the article, “while segregation as it is practiced today may be different than it was 60 years ago, it is no less pernicious: in Tuscaloosa and elsewhere, it involves the removal and isolation of poor black and Latino students, in particular, from everyone else.”¹⁴

Issues of inclusion often come before the state supreme courts, which determine the scope of important constitutional rights such as the right to vote¹⁵ and the right to an adequate education.¹⁶ And it is up to state court judges to settle contract and family disputes, as well as hear the vast majority of criminal cases. That is why who sits on these courts matters. Judges’ awareness of issues important to their communities, and the lens through which they view cases, will vary. While we expect our courts and our judges to be fair, we should also expect our judiciary to reflect the communities they serve.

As our country grapples with demographic change and the associated issues, there is a dearth of scholarship and data around judicial diversity—specifically, where the judiciary intersects with the political process through judicial elections. This report aims to add to that sparse canon of information.

Our Mission

The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

