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Op-ed: Utah judiciary's lack of diversity will not correct itself

By Robert W. Adler

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Language identifying diversity as one of many factors to consider in choosing Utah's state judges has been removed — at least temporarily — from the application for judicial nominations.

One rationale cited for the change is that consideration of diversity should no longer be necessary as more women and minorities graduate from law school. Then, as the argument goes, qualifications alone can be the sole factor in choosing judges.

As a member of the faculty of Utah's only public law school for the past 22 years, and as dean for the past three, I believe that logic is flawed.

The current composition of Utah's judiciary is disproportionately white and male. Utah's population is nearly half female (49.7 percent as of April 2014), but only 29 out of 111 of our state judges (26 percent) are women. Utah is about 22 percent racially and ethnically diverse (including African Americans, Native Americans, Hispanics, Asian Americans and Pacific Islanders), yet only nine of our judges (8 percent) are members of a racial minority.



| Courtesy Robert Adler, op-ed mug.

Regarding the theory that this problem will be cured through increased diversity in the legal profession, in gender and ethnic balance current Utah Bar membership is nowhere close to being proportional to the state's population. The Utah State Bar is currently only 23.4 percent female. In a 2011 survey of Utah Bar members, only 6 percent identified themselves as other than Caucasian. If we rely on the existing proportions of lawyers as the source of the state's judges, with no separate consideration of diversity for similarly qualified candidates, we will only perpetuate the lack of diversity in the judiciary.

From the perspective of the state's law school, I disagree that increasing diversity in the legal profession will naturally "solve" the problem over time. In fact, the new policy might actually make it more difficult for us to remedy this imbalance. If state policy limits opportunities for women and minority lawyers, it may become more difficult for the law school (and I suspect our colleagues at BYU's law school) to recruit a diverse body of highly qualified students to study law in Utah. Even those minority students who attend law school here may move after graduation if they believe their professional opportunities here, including the honor of serving as a judge, are less robust than in other states.

But why should we even care if our judiciary is diverse? Isn't justice supposed to be blind? (Never mind that it is traditionally "Lady Justice.") Maybe so, but justice also needs to have legitimacy in the eyes of the public — the whole public.

Judges make decisions every day that have a profound impact on the lives of Utah citizens, including members of groups who are traditionally under-represented in the legal system. In a world where perception can be as important as reality, it is critically important that members of under-represented groups who enter the state courthouse believe that the deck is evenly stacked, and that they have as much of a chance of being judged by someone who looks like them as someone else.

As former U.S. Supreme Court Justice Sandra Day O'Connor said: "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." The path to Utah's judiciary should be visibly open to talented and qualified individuals of every race and ethnicity.

Robert W. Adler is the Jefferson B. and Rita E. Fordham Dean and a University Distinguished Professor at the University of Utah S.J. Quinney College of Law.