

The Call for Our System to Treat Blacks Fairly and Justly — A Universal Truth

Chief Judge Angela McCormick Bisig

There are fervent pleas on the streets of Louisville each night that our nation reform its system of criminal justice to ensure it treats Black citizens justly and fairly. The daily protests have been ongoing for weeks. There are gatherings of all walks of life, from mothers, fathers, teachers, doctors, students, members of faith communities protesting, chanting, and asking for change. Our legal system and our judiciary are included in that call for equality. We hear you. We see you. We are listening.

As the Chief Judge of the Jefferson County region, I felt it important to speak about racial issues, the current awakening happening in our country, and enduring pain expressed by so many in these protests and other forums. I must add that I have not vetted this column with my colleagues on the bench, so the opinions expressed here are my own.

As judges, we are governed by a canon of judicial ethics. Canon 5(a) prohibits a judge from engaging in political activity by campaigning as a member of a political organization. Canon 4 provides that any extra-judicial activities should not reasonably cast doubt on the judge's capacity to act impartially as a judge. Canon 3(2) states "A judge shall not be swayed by partisan interests, public clamor or fear of criticism." It is because as judges we are not law creators, but law appliers, that we are strident in our efforts to stay out of political issues.

We must be impartial when we do our job in courtrooms every day. If we are seen in support or opposition of a public issue, and then our job calls upon us to rule on issues involving those same interests, the erosion of the role of "judge" as the impartial arbiter of the dispute could result, or at a minimum, our impartiality could be called into question.

As judges, we are called upon to apply the law to specific situations and facts. We hung up our role as advocates when we chose to don the black robe. Lawyers advocate, judges listen and decide cases without the sway of outside influence. Justice demands that we not simply follow the swell of public opinion on any given topic, but instead apply the law to facts and people before us outside the dictates of that day's popular cause. Judges are trained to wait until we have all of the evidence in a case presented before making a decision.

I outline these ethical considerations to explain why you generally won't see judges out holding rallies, speaking out publicly on issues or organizing legislative responses to community concerns. Justice demands that our role be to apply any laws that our community determines govern us and the unbiased enforcement of the rules that a

democratic majority vote into existence.

I often say that I believe a characteristic of a good judge is to be "non-judgmental." While at first blush this may cause you to scratch your head, to me, it means we apply the law as written, but with the understanding that we don't know the

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whole story of anyone's life who comes before us in court. Their journey, their experiences, their path. As a judge, we may only see a small sliver of the entire humanity of the individual before us. We don't know what decisions we would have made if we stood in their shoes. So we apply the law, but I argue we should not be judgmental. Everyone who comes before us should be treated respectfully, justly and with a knowledge that the court will follow the rule of law.

While keeping with our ethical obligation to remain impartial, we also can acknowledge what I remember from college philosophy class as a big T truth. Big T truths are universal truths. Not a factual determination or a little t truth, like the ones we make in court, but a standard so clear that it can be seen and acknowledged as truth. If you are a part of the government of the United States of America and the Commonwealth of Kentucky, you live each day with the premise that all men are created equal and should be treated equally in the eyes of the law. I do not think it is a political statement to acknowledge this truth. Without question our legal system must take responsibility to treat all people fairly.

However, because of our nation's long history of systemic discriminatory treatment towards its Black citizens, we must be particularly steadfast in our responsibility to treat them fairly. As a court system, we must turn a mirror on ourselves. It cannot be that every element of the criminal justice system looks outwardly to the other system partners (police, clerks, sheriffs, prosecutors,

defense attorneys) as contributing to the problem (a portion of our community does not feel they are treated justly), but not at themselves. We must all look at what we can do.

Judge Denise Clayton, Chief Judge of the Kentucky Court of Appeals, leads a system-wide task force called the Racial Fairness Task Force, whose goal is to continually evaluate all elements of the criminal justice system, all entry points, to look for ways we can identify racial discrimination. Our judges have participated in implicit bias training as part of our state-wide judicial college. We also have a separate disproportionate minority confinement committee in our juvenile court. We are implementing restorative justice in our juvenile courts to attempt to repair the harm caused to crime victims in a way that allows offenders a deeper understanding of the impact of their actions. These are all good steps. But we are still here, there are still problems.

Judges should not ignore what is going on in our world. I cannot imagine the pain of a parent worrying about their child being pre-judged by the system in place to ensure justice in our world. An important point for this article is that the courts of the Commonwealth are open to the public. This is important because it ensures that the public can hold us accountable for the way we administer our responsibilities.

Every single day, the work we do in Jefferson County is transparent and accessible to anyone who would like to observe. We record everything that happens in our courts with audio and visual. When we make a decision, it is done on an open court record, or memorialized in written documents. If you want to request to watch a day in my or my colleagues' courtrooms, the 3rd floor circuit clerks can provide you with a recording of our handling of every case. You can observe what we do. We embrace the accountability an open and transparent court process affords. We must not be tone deaf to the world around us, the echoes of history and the unique experiences of others.

Therefore, we all have a responsibility to look at ourselves. Lawyers also have a responsibility to examine their role in our justice system in light of these events. I hope that the isolation we all feel as a result of the virus constrictions is seen as an opportunity for reflection and action for those in the legal community. Please hold us accountable. We are listening.

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