Women of Color in the Judiciary: An American Dream

Charles Z. Smith
Introduction

It was 217 years ago at Constitution Hall in Philadelphia, on July 4, 1776, that the Declaration of Independence was signed as a "unanimous Declaration of the thirteen United States of America," with 56 signatures by representatives of the states of New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Massachusetts-Bay, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

As a flag-waving patriot, I firmly believe that our great nation was indeed "conceived in liberty and dedicated to the proposition that all [persons] are created equal." Those words come direct, almost word for word, from the most quoted sentence in the Declaration of Independence.

It is neither "political correctness" nor "revisionist editing" to substitute the more inclusive word "persons" for "men." The Declaration of Independence was actually the handiwork of the special drafting committee appointed by the Congress: John Adams, Benjamin Franklin, Thomas Jefferson, Robert Livingston, and Roger Sherman. Thomas Jefferson was given the task of preparing the draft. Benjamin Franklin also was significantly involved in the drafting. Some historians suggest a minor debate over the language, with Thomas Jefferson making some concessions for the sake of collegiality.

While I would not suggest any linguistic inclusiveness attitudes by the brilliant Benjamin Franklin (historically recognized as an outright male chauvinist), I would like to believe, though, that Thomas Jefferson might well have used a more inclusive reference or perhaps intended, by that legal device of which we were enamored for so many generations, that when the Declaration says "men" it includes "women." Regardless, I feel very comfortable in editing out male dominant or male assumptive language even in a document as word specific as our Declaration of Independence.

"We hold these truths to be self-evident that all [persons]... are created equal, that they are endowed by their Creator with certain
inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...."

After the signing, the Declaration of Independence was further reinforced by the ringing of the Liberty Bell, which bears the inclusive inscription "Proclaim liberty throughout all the land unto all the inhabitants thereof."

It is significant that the Declaration of Independence was followed on September 17, 1787 by our great United States Constitution whose preamble further reinforced our devotion to liberty: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Justice for All—All for Justice

It is fitting and proper, then, that our American Bar Association at the 1993 Annual Meeting has adopted for its theme "Justice for All—All for Justice."

Women of Color in the Judiciary

There is great excitement in the air today. The Task Force on Opportunities for Minorities in the Judicial Administration Division, under the inspired leadership of Bankruptcy Judge Bernice Bouie Donald, is celebrating "women of color in the judiciary." It is a celebration of the cultural diversity of our nation and of our efforts at fuller participation in one of our most significant public institutions (the judiciary) by persons of all ethnic and cultural backgrounds.

Why celebrate "women of color in the judiciary?" It is simply the next step in our continuing "recognition of ethnic and racial diversity in the Judiciary" which was begun at the 1992 Annual Meeting when we recognized the 31 minority persons (or persons of color) serving on the courts of last resort in their respective states and the District of Columbia.

Despite the fact that women constitute at least 52 percent of our national population, only 6 of the 31 justices were women. This led, then, to consideration of the status of women in our society in general, the status of women in the judiciary, and the status of women of color in the judiciary.

According to a 1991 survey by the National Center for State Courts, of 356 justices serving on courts of last resort, 35 are women.
Other data suggests a comparable percentage of women at other levels of court—approximately 10 percent. The Bureau of National Affairs in 1988 indicated that of 833 intermediate appellate court judges, 81 were women. Using that 10 percent figure, of 9,325 trial court judges, 932 would be women. Of 18,234 judges of courts of limited jurisdiction, 1,823 would be women.

Because of the nature of judicial appointments, elections, and retirements, the statistics on the number of judges will vary from month to month and, of course, from year to year.

One of the great strengths of America as we would like it to be (and as perceived by the optimists among us) is its racial, ethnic and cultural diversity. In simplest terms, we are referring principally to whites (of various ethnicities and religions), African Americans (Blacks), Hispanics (Latinos), Asian Americans (Japanese, Chinese, Filipinos, Koreans, East Indians and Indo-Chinese), Pacific Islanders, and Native Americans (American Indians).

The Significance of Diversity in a Democratic Society

We celebrate the richness of our diversity. We used to boast of the great "melting pot" which presupposed that we would merge our identities into an amorphous American model. The passage of time has taught us the fallacy of that concept. We now believe that we can be distinctly American, but still maintain our cultural history, language, music and identity. To me this is still a melting pot, but with an improved recipe for its ingredients.

According to the 1990 Census, 80.3% or 199,686,070 of our national population of 248,709,873 is white; 12.1% or 29,986,060 is black (African American); .8% or 1,959,234 is American Indian, Eskimo or Aleut; 2.9% or 7,273,662 is Asian or Pacific Islander; 3.9% or 9,804,847 is "other race"; and 9% or 22,354,059 is of "Hispanic origin" of any race.

One does not have to commission a professional study to determine that ethnic minorities or persons of color are grossly underrepresented on the courts in all of our states and in the Federal system. One needs only walk into any courtroom anywhere in the United States to realize that the benches generally are occupied by white male persons, with a sprinkling of women and a sprinkling of persons of color.

What then of women of color in the judiciary? It is this group that we celebrate today.
Directory of Minority Judges

Our Task Force, under the continuing efficient hard work of Judge Arthur L. Burnett, Sr., District of Columbia Superior Court, and Judge Benjamin Aranda, Ill, Torrance (California) Municipal Court, is compiling a comprehensive directory of all minority judges (or judges of color) in every court in the United States.

As of April 1, 1993, we listed 2,226 judges (1,242 African American/Black, 181 Asian/Pacific Islander, 787 Hispanic/Latino; and 16 Native American). Of this group, at least 476 are women (306 African American/Black, 32 Asian/Pacific Islander; 134 Hispanic/Latina; and 4 Native American).

Judge Jane Matilda Bolin

Our Task Force especially honors retired Judge Jane Matilda Bolin, who is believed to be the first woman of color to become a full-time judge when she was appointed in 1939 by Mayor Fiorella LaGuardia to the New York Court of Domestic Relations (later the New York Family Court). Judge Bolin, who is an active woman of 85 years, was planning to join us in our celebration today until she was ordered by her physicians to forego some of her public commitments. We dedicate our all-day program to this remarkable woman.

Significant "Firsts" Among Women of Color in the Judiciary

While we honor all the 476 or more women of color in the judiciary, we signally honor the women who are "firsts," most of whom are on the platform today:

(1) Judge Constance Baker Motley, United States District Court for the Southern District of New York, the first woman of color in the Federal judiciary;

(2) Retired Justice Juanita Kidd Stout, Pennsylvania Supreme Court, the first African American woman elected to the judiciary and the first African American woman to be appointed to a state supreme court;

(3) Chief Justice Rosemary Barkett, Florida Supreme Court, the first Latina to be appointed or elected to a state supreme court;

(4) Justice Joyce Luther Kennard, California Supreme Court, the first Asian American woman to be appointed or elected to a state supreme court;

(5) Justice Leah J. Sears-Collins, Georgia Supreme Court, the first woman and the first African American woman to be appointed and elected to a state supreme court; and
Judge Bernice Bouie Donald, United States Bankruptcy Court, Memphis, Tennessee, the first African American woman to be appointed to the bankruptcy court.

This morning at our opening session at the Sheraton New York Hotel, we had an exhilarating keynote speech by Judge A. Leon Higginbotham, Jr., recently retired from the United States Court of Appeals for the Third Circuit.

Our afternoon session, which begins at 2:00 o'clock, will be held at the Park Central Hotel. The judges we have identified as significant "firsts" will share their experiences in a panel discussion. The event will be closed with a summary presentation by Professor Derrick A. Bell, Jr., formerly of Harvard Law School and now at New York University Law School.

We hope our celebration today will inspire even greater strides towards recognizing the status of women, towards affirmative inclusion of all persons in every phase of our society, and towards a recognition of ethnic and cultural diversity as necessary ingredients in a democratic society. We are all immigrants or descendants of immigrants, with the exception of our Native American sisters and brothers whose ancestors came to these shores more than 15,000 years go.

Maya Angelou: "In the Pulse of the Morning"

The essence of cultural diversity in its truest sense is perhaps best expressed in the Inaugural Poem written by our sister, Maya Angelou, "On the Pulse of the Morning." That beautiful document ends with these words:

Lift up your faces, you have a piercing need
For this bright morning dawning for you.
History, despite its wrenching pain,
Cannot be unlived, and if faced
With courage, need not be lived again.

Lift up your eyes upon
The day breaking for you.
Give birth again
To the dream.

Women, children, men,
Take it into the palms of your hands.
Mold it into the shape of your most
Private need. Sculpt it into
The image of your most public self.
Lift up your hearts,
Each new hour holds new chances
For new beginnings.
To not be wedded forever
To fear, yoked eternally
To brutishness.

The horizon leans forward,
Offering you space to place new steps of change.
Here, on the pulse of this fine day
You may have the courage
To look up and out upon me, the
Rock, the River, the Tree, your country.
No less to Midas than the mendicant.
No less to you now than the mastodon then.

Here on the pulse of this new day
You may have the grace to look up and out
And into your sister's eyes, into
Your brother's face, your country
And say simply
Very simply
With hope
Good morning.