

THE RISE OF AFRICAN AMERICAN WOMEN JUDGES
DURING THE PAST CENTURY

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ABSTRACT

Ascension to the bench for African American women has historically been slow. At the formation of the Mound City Bar Association in 1922, there were few African American women lawyers in the United States. Nearly a century later in 2020, a rapidly increasing number of African American women have joined state and federal courts in Missouri and across the country. This Article documents the rise of African American women judges that has occurred over recent decades. The authors assert that the elevation of African American women jurists positively affects both perceptions of our legal system and the outcomes of judicial decision-making in this country. Despite the advancement of these accomplished jurists, the authors suggest that significant work still remains in obtaining an equitable racial and gender representation in the judiciary.

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“Just your mere presence makes people stop and listen. Your colleagues may not agree and your perspective may not make a difference in the particular case at issue, but it opens the minds of your [colleagues] to different perspectives . . . to the table that would not otherwise have had a voice.”

*Former Florida Supreme Court Chief Justice Peggy Quince*¹

INTRODUCTION

At the formation of the Mound City Bar Association in 1922, there were few African American women lawyers in the United States.² Ascension to the bench for African American women has been historically slow, but it has accelerated in the past thirty years.³

By 2020, a rapidly increasing number of African American women joined state and federal courts across the country. Four African American women were appointed to the federal courts of appeals in the first six months of President Joseph R. Biden’s administration. The state supreme courts of Delaware,⁴ Washington,⁵ New Jersey,⁶ and Missouri⁷ received their first

1. Amber Fricke and Angela Onwuachi-Willig, *Do Female “Firsts” Still Matter? Why They Do for Female Judges of Color*, MICH. ST. L. REV. 1529, 1550 (2012).

2. Census records indicate that there were ten documented African American women lawyers in 1900. See J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944 625 (1993).

3. LINN WASHINGTON, BLACK JUDGES ON JUSTICE: PERSPECTIVES FROM THE BENCH iv (1995).

4. Press Release, Delaware Supreme Court, The Honorable Tamika R. Montgomery-Reeves takes the Oath of Office for Justice of the Delaware Supreme Court (Jan. 3, 2020) (on file with authors).

5. Michael Goldberg, *Inslee Appoints Superior Court Judge G. Helen Whitener to State Supreme Court*, WASH. ST. WIRE (Apr. 13, 2020), <https://washingtonstatewire.com/inslee-appoints-superior-court-judge-g-helen-whitener-to-state-supreme-court/> [<https://perma.cc/NG5U-PUBU>]. See also *Justice G. Helen Whitener*, WASH. CTS., https://www.courts.wa.gov/appellate_trial_courts/supreme/bios/?fa=scbios.displayfile&fileID=Whitener [<https://perma.cc/42Z6-R63B>].

6. See *Justice Fabiana Pierre-Louis*, N.J. COURTS <https://www.njcourts.gov/courts/supreme/justicebiographies.html#fabiana> [<https://perma.cc/3B78-QND4>].

7. *Supreme Court of Missouri Welcomes Judge Robin Ransom to its Bench*, MO. CTS. (May 24, 2021), <https://www.courts.mo.gov/page.jsp?id=177614> (last visited July 30, 2021).

African American women judges in the past year. Seven of Colorado's nine African American women judges were appointed in the past two years.⁸

As our profession celebrates the advancement of these accomplished jurists, the reality that these women hold the designation of “first” in their respective courts in the second decade of the twenty-first century indicates the significant work that remains to obtain equitable representation in the judiciary. This Article explores how the elevation of African American women jurists affects the perception of our legal system and the outcomes of judicial decision-making in this country.

I. AFRICAN AMERICAN WOMEN LAWYERS IN THE UNITED STATES

Any analysis of African American women judges must start with the entrance of African American women into the legal profession. The progression of African American women lawyers began almost 150 years ago with the bar admission of Charlotte E. Ray in 1872—the first African American woman lawyer.⁹ A Howard University School of Law graduate, Ray practiced in the District of Columbia.¹⁰ Mary Ann Shad Carey, Ida G. Platt, and Lutie A. Lytle soon followed to form the first group of African American women lawyers in the United States.¹¹

At the time these women became lawyers, not many African Americans were accepted into law schools. Further, at that time, many lawyers became licensed by sitting under a lawyer as an apprentice.¹² The trailblazing “firsts” found that the opportunities for them to practice law were limited. Along with African American men and other women, there were few opportunities to practice in a court of law or work for private “prestigious” law firms.¹³ Lutie Lytle, the first African American woman law professor,

8. Avicra Luckey, *A Record 9 Black Women Are Currently Serving as Judges in Colorado*, 9NEWS (Feb. 17, 2021, 9:59 PM), <https://www.9news.com/article/news/community/voices-of-change/colorado-black-women-judges/73-259dddf-61c3-4ea4-8f9f-64dc4be855d4> [https://perma.cc/93AK-7Y4M].

9. SMITH, *supra* note 2, at 18.

10. *Black History Month: Celebrating Charlotte E. Ray*, OFF. OF THE ATT'Y GEN. FOR D.C. (Feb. 26, 2019), <https://oag.dc.gov/blog/black-history-month-celebrating-charlotte-e-ray> [https://perma.cc/ENK3-GPT4].

11. SMITH, *supra* note 2, at 18.

12. *Id.* at 33–35.

13. *Id.* at 4–19.

taught Domestic Relations, Evidence, and Criminal Procedure at Central Tennessee University, an African American law school, in 1897.¹⁴

In a 1935 *Chicago Defender* article, attorney Edith Spurlock Sampson chronicled the careers of several African American women lawyers.¹⁵ Many of these lawyers were not practicing law or worked multiple jobs in addition to their legal work.¹⁶ A few women practiced law for themselves or worked for their local court.¹⁷ Although many were licensed, sometimes in multiple states, these lawyers frequently worked as junior high and high school teachers, social workers, entrepreneurs, apartment managers, actuaries, court reporters, morticians, and bank cashiers.¹⁸ Ollie M. Cooper became the secretary to the dean of Howard University Law School, her alma mater.¹⁹ Clara Christopher worked as the Chief of the Department of Claims and assistant in the legal department at National Benefit Life Insurance Company, and she “was said to be the highest salaried woman of color in the insurance field.”²⁰ The commitment of these women laid the foundation for the exceptional African American women lawyers and judges who followed them into the legal profession as practicing lawyers and judges.

As of 2020, there were more than 1.3 million lawyers in the United States.²¹ Five percent of all lawyers are African American, although African Americans comprise 13.4% of the United States population.²² The percentage of African American attorneys remains unchanged from a decade ago.²³ Twenty-four percent of African American lawyers work in law firms, 28% work for the government, 15% work in house, and 12% are solo practitioners.²⁴ Because many states have only recently begun collecting demographic data on their bar members, and most still do not, it is challenging to comprehensively assess the race and ethnicity of lawyers across the United States.²⁵

14. REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 277–78 (J. Clay Smith, Jr. ed., 1998).

15. *Id.* at 16–23.

16. *Id.* at 17–23.

17. *Id.*

18. *Id.*

19. *Id.* at 20.

20. *Id.*

21. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2020, 2 (2020).

22. *Id.* at 33.

23. *Id.*

24. *Id.* at 43.

25. *Id.* at 33.

During the past thirty years, African American women lawyers began to operate at the highest levels of federal, state, and local government. Mayor Lori Lightfoot of Chicago is a former corporate attorney and prosecutor.²⁶ Atlanta Mayor Keisha Lance Bottoms is a former judge and council member, who became the only Atlanta mayor to have served in all three branches of local government.²⁷ Juliana Stratton currently serves as Lieutenant Governor for the State of Illinois.²⁸ Both African American women who served as United States Senators, Carol Mosely Braun and Kamala Harris, were former prosecutors elected in 1992 and 2016, respectively.²⁹ In 2015, Loretta Lynch became the first African American female Attorney General of the United States, and three other African American women lawyers have been elected as the attorney generals of their states.³⁰ The highest elected office obtained by an African American woman lawyer is Kamala D. Harris's election as Vice-President of the United States in 2020.³¹

26. *About Mayor Lori E. Lightfoot*, CITY OF CHI., https://www.chicago.gov/city/en/depts/mayor/supp_info/about_the_mayor.html [https://perma.cc/BXL4-KN9N].

27. *Meet the Mayor*, CITY OF ATLANTA, GA, <https://www.atlantaga.gov/government/mayor-s-office/meet-the-mayor> [https://perma.cc/GP7Z-FMLR].

28. *Lieutenant Governor Juliana Stratton*, OFF. OF LT. GOVERNOR, <https://www2.illinois.gov/sites/ltg/Pages/default.aspx> [https://perma.cc/2VH7-S5TW].

29. *Oral History Project, Women of the Senate: Carol Moseley Braun*, U.S. SENATE, https://www.senate.gov/artandhistory/history/oral_history/MoseleyBraunCarol.htm [https://perma.cc/3767-CHAG]; see also *Kamala Harris*, THE WHITE HOUSE, <https://www.whitehouse.gov/administration/vice-president-harris/> [https://perma.cc/F8XD-VTD9].

30. *Attorney General: Loretta E. Lynch*, U.S. DEP'T OF JUST. (Aug. 24, 2017), <https://www.justice.gov/ag/bio/attorney-general-loretta-e-lynch> [https://perma.cc/CT5J-4R3Z]. Pamela Lynn Carter served as Indiana Attorney General between 1993 and 1997. Kamala Harris was Attorney General for California from 2011 to 2017. Leticia James currently serves as Attorney General in New York. *Kamala Harris*, BRITANNICA, <https://www.britannica.com/biography/Kamala-Harris> [https://perma.cc/ZZ2W-QURE]; *Carter, Pamela Lynn*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/education/news-wires-white-papers-and-books/carter-pamela-lynn> [https://perma.cc/ZK24-ZPFW]; Amy B. Wang et al., *New York Attorney General Letitia James Announces Run For Governor*, WASH. POST (Oct. 29, 2021), <https://www.washingtonpost.com/politics/2021/10/29/new-york-attorney-general-letitia-james-announces-run-governor/> [https://perma.cc/4FJ7-3TQG].

31. *Kamala Harris*, *supra* note 29.

II. ASCENSION OF AFRICAN AMERICAN WOMEN JUDGES

The ascension of African American women lawyers into the judiciary began with the appointment of Jane Matilda Bolin as a judge on New York City's Domestic Relations Court in 1939.³² Indicative of the times, the mayor consulted her husband before asking her to serve.³³ She served the family court for forty years until her mandatory retirement age.³⁴ After Judge Bolin's historic appointment, African American women jurists were not appointed to the bench in any significant numbers until recently. The following provides a short summary of African American women lawyers who have joined the federal and state courts since Judge Bolin's tenure.

A. African American Women Judges in the U.S. Federal Courts

United States Supreme Court justices, federal appeals court judges, and federal district court judges are colloquially referred to as "Article III" judges, because Article III of the United States Constitution provides for the establishment of a Supreme Court and inferior courts.³⁵ These federal judges are nominated by the President of the United States and confirmed to office by the United States Senate.³⁶ United States magistrate judges and United States bankruptcy judges also serve the federal judiciary. United States magistrate judges are selected by the district court judges in their district and serve eight-year appointments. United States bankruptcy judges serve fourteen-year terms and are selected by the circuit court judges of the circuit where their districts are located.³⁷

The Supreme Court of the United States has never had an African American woman justice. Since its first sitting in 1790, only five women have served as justices, including Associate Justice Sonja Sotomayor, the only woman of color.³⁸ The federal judiciary currently has nine African

32. The Hon. Anna Blackburne-Rigsby, *Black Women Judges: The Historical Journey of Black Women to the Nation's Highest Courts*, 53 HOW. L.J. 645, 666-68 (2010).

33. *Id.* at 668.

34. *Id.* at 669.

35. See U.S. CONST. art. III, § 1.

36. *About Federal Judges*, U.S. CTS., <https://www.uscourts.gov/judges-judgeships/about-federal-judges> [<https://perma.cc/EQ6S-VR5C>].

37. *Id.*

38. See *Justices 1789 to Present*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx [<https://perma.cc/FA5B-55MX>].

American women serving on its courts of appeals, out of twelve who have ever served on a federal court of appeals.³⁹ Four of the currently serving judges, Judges Tiffany Cunningham, Ketanji Brown Jackson, Candace R. Jackson Akiwumi, and Eunice C. Lee, were appointed in 2021.

Table 1- African American Women on Federal Courts of Appeal

<u>Judge</u>	<u>Court</u>	<u>Year Service Began</u>	<u>Designation</u>
Tiffany P. Cunningham ⁴⁰	Federal Circuit	2021	First
Bernice B. Donald ⁴¹	Sixth Circuit	2011	First
Ketanji Brown Jackson ⁴²	District of Columbia Circuit	2021	Third
Candace R. Jackson-Akiwumi ⁴³	Seventh Circuit	2021	Second
Amalya Lyle Kearse ⁴⁴	Second Circuit	1979 (Senior Status)	First
Eunice Cheryl Lee ⁴⁵	Second Circuit	2021	Second

39. See *Biographical Directory of Article III Federal Judges, 1789-present*, FED. JUD. CTR., <https://www.fjc.gov/history/judges> [<https://perma.cc/SZ3F-2N6Q>].

40. *Cunningham, Tiffany Patrice*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/cunningham-tiffany-patrice> [<https://perma.cc/S5LT-E58C>].

41. *Donald, Bernice Bouie*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/donald-bernice-bouie> [<https://perma.cc/S2B9-EQ8M>].

42. *Jackson, Ketanji Brown*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/jackson-ketanji-brown> [<https://perma.cc/PJY3-NNVM>].

43. See *Jackson-Akiwumi, Candace Rae*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/jackson-akiwumi-candace-rae> [<https://perma.cc/9FTN-UKM9>].

44. See *Kearse, Amalya Lyle*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/kearse-amalya-lyle> [<https://perma.cc/JXD7-6DXW>].

45. See *Lee, Eunice Cheryl*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/lee-eunice-cheryl> [<https://perma.cc/68PV-AZZ4>].

<u>Judge</u>	<u>Court</u>	<u>Year Service Began</u>	<u>Designation</u>
Johnnie B. Rawlinson ⁴⁶	Ninth Circuit	2000	First
Judith Ann Wilson Rogers ⁴⁷	District of Columbia Circuit	1994	Second
Ojetta Rogeriee Thompson ⁴⁸	First Circuit	2010	First

Judges Allyson Kay Duncan (Fourth Circuit), Ann Claire Williams (Seventh Circuit), and Janice Rogers Brown (District of Columbia Circuit) have retired from service as federal court of appeals judges.⁴⁹ The Third, Fifth, Eighth, Tenth, and Eleventh Circuits have never had an African American female member. The District of Columbia Circuit has had the most African American women judges with three, the Second and Seventh Circuit have had two, and the other circuits—the First, Fourth, Sixth, and Ninth—have had one each.

President Lyndon Johnson appointed civil rights lawyer Constance Baker Motley as a United States District Court Judge for the Southern District of New York in 1966, making her the first African American woman federal judge.⁵⁰ Since that time, fifty-two African American women have served as United States District Court judges,⁵¹ including former and current Circuit Judges Bernice Donald, Kentaji Brown Jackson, Johnnie B. Rawlinson, and Ann Claire Williams, who advanced to the appellate level. Twenty-nine African American women currently serve as U.S. District

46. See *Rawlinson, Johnnie B.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/rawlinson-johnnie-b> [<https://perma.cc/Q8WZ-MCZL>].

47. See *Rogers, Judith Ann Wilson*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/rogers-judith-ann-wilson> [<https://perma.cc/MRP6-BN7Y>].

48. *Thompson, Ojetta Rogeriee*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/thompson-ojetta-rogeriee> [<https://perma.cc/J7HJ-RUGU>].

49. Judge Duncan retired in 2019, Judge Williams retired in 2018, and Judge Brown retired in 2017.

50. Tomiko Brown-Nagin, *Identity Matters: The Case of Judge Constance Baker Motley*, 117 COLUM. L. REV. 1691, 1699–705 (2017).

51. *Biographical Directory of Article III Federal Judges, 1789–present*, FED. JUD. CTR., <http://www.fjc.gov/history/judges> (choose “Select advanced search criteria,” select “Personal Characteristics and Background,” and then select “Race or Ethnicity”) (last visited Nov. 14, 2021). This number does not include four judges who identify as multi-racial with African American heritage.

judges, including nine who have attained senior status, a form of semi-retirement. Six African American women district court judges currently preside as the chief judge of their district courts.⁵²

The number of African American women magistrate and bankruptcy judges that serve the federal judiciary, while increasing, remains low. One exception is the Eastern District of Missouri, where three African American women currently serve as U.S. magistrate judges; in an unusual occurrence, they were appointed consecutively between 2011 and 2013.⁵³ This district recently experienced the first transition of the Chief Magistrate Judge position from one African American to another when Chief Magistrate Judge Nannette Baker's term ended, and Shirley Mensah became Chief Magistrate Judge in January 2021.⁵⁴ The bankruptcy court of the Eastern District of Missouri boasts the first African American woman bankruptcy judge in the Eighth Circuit, current Chief Bankruptcy Judge Kathy A. Surratt-States, one of fewer than twenty African American bankruptcy judges in the United States.⁵⁵ The first African American female judge in the Eastern District of Missouri was recently retired U.S. District Judge Carol E. Jackson, who first served as a United States magistrate judge from 1986 to 1992, before her appointment as a district court judge in 1992.⁵⁶ She served as Chief Judge from 2002 until 2009 and retired in 2017.⁵⁷

52. *Id.*

53. Judges Nannette Baker, Shirley Mensah, and Noelle Collins currently serve as United States Magistrate Judges in the Eastern District of Missouri. *Judges Contact Information and Requirements*, U.S. DIST. CT. E. MO., <https://www.moed.uscourts.gov/judges-contact-information-and-requirements> [<https://perma.cc/MD4V-JNB2>].

54. Press Release, United States District Court for the Eastern District of Missouri, New Chief Magistrate Judge (Jan. 4, 2021) (on file with the author).

55. Jermaine Watson, *Judicial Profile: Hon. Kathy Surratt-States, U.S. Bankruptcy Judge, Eastern District of Missouri*, FED. BAR ASS'N, <https://www.fedbar.org/wp-content/uploads/2019/10/Surratt-StatesAug2010-pdf-3.pdf> [<https://perma.cc/G54T-2464>].

56. *Jackson, Carol E.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/jackson-carol-e> [<https://perma.cc/A98W-SS3C>].

57. *Id.*

B. African American Women Judges in the U.S. State Courts

State court judges in the United States are appointed either through direct election or merit selection, which may involve appointment by the Governor with legislative confirmation and then elections for retention.⁵⁸ In 1975, Judge Julia Cooper Mack became the first African American woman to serve on an appellate court of last resort when President Gerald Ford appointed her to the District of Columbia Court of Appeals.⁵⁹ Judge Juanita Kidd Stout became the first African American woman to ascend to a state supreme court bench in 1988.⁶⁰ Judge Leah Ward Sears became the first African American woman Chief Justice of a state supreme court outside of the District of Columbia in 2005, during her service on the Georgia Supreme Court.⁶¹

In July 2021, there were twelve African American women serving on the state courts of last resort. Of the women currently serving, all of them are either the first or second African American woman to serve on their state's highest court. All of the appointments occurred in the last ten years, with seven occurring within the past five years. As former Indiana Supreme Court Justice Myra Selby stated: "It is always an achievement for there to be a first . . . the barriers can be broken down only when people feel comfortable with things they are unaccustomed to. The first is probably the least enviable position, but it is very important."⁶²

58. See *Judicial Selection: Significant Figures*, BRENNAN CTR. FOR JUST. (May 8, 2015), <https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures> [<https://perma.cc/NPF2-3MAS>].

59. Blackburne-Rigsby, *supra* note 32, at 672–73.

60. LAILA ROBBINS & ALICIA BANNON WITH MALIA REDDICK, STATE SUPREME COURT DIVERSITY: ACROSS THE COUNTRY, COURTS FAIL TO REFLECT THE RACIAL, ETHNIC, AND GENDER DIVERSITY OF THE COMMUNITIES THEY SERVE, BRENNAN CTR. FOR JUST. 9 (2019).

61. Blackburne-Rigsby, *supra* note 32 at 682; Dana Richens, *Meet Leah Ward Sears*, SMITH GAMBRELL RUSSELL: TRUST THE LEADERS (2017), <https://sgrlaw.com/ttl-articles/meet-leah-ward-sears/> [<https://perma.cc/VS46-8Q9U>].

62. Minde C. Browning et al., *Biographical Sketches of Indiana Supreme Court Justices*, 30 IND. L. REV. 329, 372 (1997). It was also noted in this article that Justice Selby's appointment as the first woman to the Indiana Supreme Court necessitated the construction of a women's restroom in the court. *Id.*

Table 2- African American Women Judges on States' Highest Courts

<u>Justice</u>	<u>Court</u>	<u>Year Service Began</u>	<u>Designation</u>
Leondra Kruger ⁶³	California Supreme Court	2015	Second
Tamika Montgomery Reeves ⁶⁴	Delaware Supreme Court	2020	First
Piper D. Griffin ⁶⁵	Louisiana Supreme Court	2020	Second
Michele D. Hotten ⁶⁶	Maryland Court of Appeals	2015	Second
Shirley M. Watts ⁶⁷	Maryland Court of Appeals	2013	First
Natalie E. Hudson ⁶⁸	Minnesota Supreme Court	2015	Second
Robin Ransom ⁶⁹	Missouri Supreme Court	2021	First
Fabiana Pierre-Louis ⁷⁰	New Jersey Supreme Court	2020	First
Melody J. Stewart ⁷¹	Ohio Supreme Court	2018	First

63. See Associate Justice Leondra R. Kruger, CAL. CTS., <https://www.courts.ca.gov/33016.htm> [<https://perma.cc/YXA6-ALT4>].

64. See *Judicial Officers*, DEL. CTS., <https://courts.delaware.gov/supreme/justices.aspx> [<https://perma.cc/IE7Y-WH8U>].

65. See Associate Justice Piper D. Griffin, LA. SUP. CT., https://www.lasc.org/About/Biography?p=Piper_D_Griffin [<https://perma.cc/2XXH-MJ2L>].

66. See *Michele D. Hotten*, MD. MANUAL ON-LINE, <https://msa.maryland.gov/msa/mdmanual/29ap/html/msa12366.html> [<https://perma.cc/Y8NS-NR47>].

67. See *Shirley M. Watts*, MD. MANUAL ON-LINE, <https://msa.maryland.gov/msa/mdmanual/29ap/html/msa13752.html> [<https://perma.cc/2YEF-U9SC>].

68. See Associate Justice Natalie E. Hudson, MINN. JUD. BRANCH, <https://www.mncourts.gov/About-The-Courts/Overview/JudicialDirectory/Bio.aspx?jid=1571> [<https://perma.cc/HN34-EYPJ>].

69. See Judge Robin Ransom, MO. CTS., <https://www.courts.mo.gov/page.jsp?id=57484> (last visited Oct. 1, 2021).

70. See Justice Fabiana Pierre-Louis, N.J. CTS., <https://www.njcourts.gov/courts/supreme/justicebiographies.html> [<https://perma.cc/WLR6-7WFN>].

71. Justice Melody J. Stewart, SUP. CT. OF OHIO & THE JUD. SYS., <https://www.supremecourt.ohio.gov/SCO/justices/stewart/default.aspx> [<https://perma.cc/W8ZN-VNAV>].

<u>Justice</u>	<u>Court</u>	<u>Year Service Began</u>	<u>Designation</u>
Adrienne Nelson ⁷²	Oregon Supreme Court	2018	First
Cleo Elaine Powell ⁷³	Supreme Court of Virginia	2011	First
G. Helen Whitener ⁷⁴	Washington State Supreme Court	2020	First

III. BEYOND THE NUMBERS

The African American women jurists discussed above have not entered their positions in a vacuum. Their work, the perception of their work, and the outcomes in their courtrooms are directly impacted by the rapidly changing culture. African American women jurists understand the significance of representation of women and African Americans in our legal system. As Maryland Court of Appeals Judge Michele D. Hotten stated, “[t]he hallmark of the legal profession is the rule of law and service to others . . . I hope that I have inspired lawyers and judges to become servants to that larger narrative, while achieving a legacy of duty, honor and responsibility.”⁷⁵

Missouri Court of Appeals Judge Lisa White Hardwick, the first African American woman Court of Appeals Judge in Missouri, decided to become a judge after a successful career in private practice because she noticed that judges had a direct impact on whether people were treated equitably, and she wanted to provide a positive impact for equity and justice in our legal system.⁷⁶

72. *Biography – Justice Adrienne Nelson*, OR. ST. CTS., <https://www.courts.oregon.gov/courts/Pages/bio.aspx?person=196> [<https://perma.cc/VZD4-A9VH>].

73. *Cleo E. Powell Biography*, GREATER RICHMOND SHRM, <https://www.richmondshrm.org/page/CleoPowell> (last visited Oct. 1, 2021).

74. *See Justice G. Helen Whitener*, WASH. CTS., https://www.courts.wa.gov/appellate_trial_courts/supreme/bios/?fa=scbios.display_file&fileID=Whitener [<https://perma.cc/42Z6-R63B>].

75. *Michele D. Hotten*, THE DAILY RECORD (Maryland) (Apr. 2, 2019), <https://thedailyrecord.com/2019/04/02/michele-d-hotten/> (last accessed July 31, 2021).

76. Telephone Interview with Hon. Lisa White Hardwick, Mo. Ct. of Appeals, W. Dist. (July 30, 2021).

Recently appointed Missouri Supreme Court Judge Robin Ransom recently reflected,

It has been wonderful to represent my family and the citizens of this State. I have truly been honored to [be] a part of the changing diverse landscape of the judiciary. As an African American female, it appears that in the past, we were somewhat of an anomaly when it came to receiving judicial appointments. But I am so pleased to see that more women of color are being appointed and making remarkable strides in contributing to and improving our judicial system.⁷⁷

Twenty-First Judicial Circuit Court (St. Louis County) Judge Sandra Farragut-Hemphill stated:

I have been honored to have been the first African American judge, male, or female, to be appointed to the St. Louis County Court. Over the last 30 years, we have seen much change in the judiciary as it relates to minorities. As a female and an African American, my experiences on the bench have allowed me to truly understand the meaning of being a good “public servant” even when faced with bias, prejudice, and discrimination.⁷⁸

Ascension to the bench presented professional challenges for the first African American women judges, who sometimes experienced overt racism and sexism not only from counsel, but sometimes from their own colleagues, which continues to this day. Upon her appointment to the U.S. District Court, Judge Constance Baker Motley recalled some of the slights she experienced.

When I was introduced as a new judge at a Second Circuit Judicial Conference, the master of ceremonies said, “And now I want to introduce Connie Motley who is doing such a good job on the District Court.” In contrast, everyone else

77. E-mail from Hon. Robin Ransom, Sup. Ct. Mo. (July 23, 2021) (on file with authors).

78. E-mail from Hon. Sandra Farragut-Hemphill, St. Louis County Cir. Ct. (July 26, 2021) (on file with authors).

was introduced with a full blown curriculum vitae. Similarly, in 1968 when I was introduced by the chairman of the Seminar for New Federal Judges, my introduction went as follows: “Judge Motley has served on the Board of United Church Women and the Board of Trustees of the Y.W.C.A.”

Former Supreme Court Justice Tom Clark, who was helping to chair the meeting, was so astounded by this introduction that he asked the master of ceremonies to let him have the microphone. Clark then told the assembled new judges about the ten cases I had argued before him when he was still on the bench. Later Justice Clark told me about the disparagement of Shirley Hofstedler, who had just been named by President Carter to the Ninth Circuit, by a group of men at the golf course. The thing which amazed him was that none of the judges had ever met Shirley Hofstedler. One of the most critical lessons I learned from my mentor, Thurgood Marshall, was to laugh off these ludicrous antifeminist affronts which were regularly hurled in my direction. Eventually, they all ended up in Marshall’s “Stories Repertoire.”⁷⁹

Judge Motley also experienced slights from other judges⁸⁰ and litigants who requested she recuse herself from cases involving racial bias and sex discrimination.⁸¹ Other African American women judges have also reported disrespect from litigants and lawyers who did not give them the same deference given to white and male judges.⁸²

79. Hon. Constance Baker Motley, *My Personal Debt to Thurgood Marshall*, 101 YALE L.J. 19, 24 (1991).

80. Hon. Raymond J. Lohier, Jr., *On Judge Motley and the Second Circuit*, 117 COLUM. L. REV. 1803, 1806–08 (2017) (discussing Second Circuit judges’ opposition to Judge Baker Motley’s appointment to the Southern District of New York court and blocking her appointment to the Second Circuit).

81. Tomiko Brown-Nagin, *supra* note 50, at 1707–11 (discussing defense counsel’s request that Judge Baker Motley recuse herself from a sex discrimination case, because as an African American woman, she likely had experienced workplace discrimination).

82. Lynn Hecht Schafran, *Not from Central Casting: The Amazing Rise of Women in the American Judiciary*, 36 UNIV. TOLEDO L. REV. 953, 957–59 (2005).

These African American women judges additionally experience what other women experience while working outside the home. The challenges of managing the magnitude of a judicial appointment with life as a spouse, parent, and other endeavors confronted these women who chose public service at a time when women were also expected to shoulder most of the responsibility of raising a family. Judge Bolin, the first African American woman on the New York City Domestic Relations Court, experienced the loss of her husband two years after the birth of their son in 1943, becoming a single parent.⁸³ She reflected that “I don’t think I short-changed anybody but myself . . . I didn’t get all the sleep I needed, and I didn’t get to travel as much as I would have liked, because I felt my first obligation was to my child.”⁸⁴

Missouri Supreme Court Judge Ransom offers the following advice to young lawyers:

You will never be 100% in any of the roles that you play. All you can do is give it your best. I am not a person that socializes after work. I don’t join many legal organizations and I am rarely seen at work functions. I enjoy my job and my colleagues 100% when I’m “on the clock”, but I have a full life outside of work that I enjoy and enjoying my life to the fullest away from work is what has allowed me to be a success on the job. Only you know what makes you happy and you cannot give other people the authority to decide that for you. Figure out what your balance is and make it work for you.⁸⁵

Judge Farrugut-Hemphill advises African American women to “take care of yourself . . . Do not let work consume you as so many of us have done[.] Don’t feel you have to be a ‘superwoman.’ Just remember, robe or not, you are still human.”⁸⁶

The presence of African Americans women lawyers and African American women judges alone will not affect the perception of the legal system by African Americans. Trust in our legal system must be earned. In

83. Blackburne-Rigsby, *supra* note 32, at 668–69.

84. *Id.* at 669.

85. Email from Hon. Robin Ransom, *supra* note 76.

86. Email from Hon. Sandra Farrugut-Hemphill, *supra* note 77.

2019, “[b]lack and white adults have widely different perceptions of how blacks are treated in America, but majorities of both groups say blacks are treated less fairly than whites by the criminal justice system (87% of blacks vs. 61% of whites) and in dealing with police (84% vs. 63%, respectively).”⁸⁷ “One survey showed that eighty-three percent of white judges believed that blacks are treated fairly in the justice system, while only eighteen percent of black judges agreed.”⁸⁸ “It is widely known that [African Americans] are arrested and imprisoned at rates that are significantly disproportionate to their numbers in the general population.”⁸⁹

There is no need to speculate the reasons for the level of mistrust many African Americans express regarding our legal system. The U.S. Constitution, as originally drafted, allowed the enslavement of African descended people and counted them as three-fifths of a person.⁹⁰ While the Constitution banned the importation of additional enslaved persons after 1808,⁹¹ it also specifically protected the property rights of slaveholders over the rights of enslaved persons who escaped from captivity.⁹² Less than seventy-five years later, the nation was plunged into a civil war over the institution of slavery. In the years immediately after the war, the nation’s political leadership enacted the Thirteenth, Fourteenth, and Fifteenth Amendments, along with significant civil rights legislation that gave African American men citizenship rights, along with rights to own property, vote, and participate in civil life.⁹³ The realization of civil and political rights was short lived, however, and the legal system again denied African Americans equality under the law for another one hundred years using now rejected legal doctrines such as “separate, but equal.”⁹⁴ Less than sixty-five years have passed since the last significant effort to recognize and enforce voting and other civil rights for African Americans through the Civil Rights

87. Juliana Menasce Horowitz, Anna Brown & Kiana Cox, *Race in America 2019*, PEW RSCH. CTR. (Apr. 9, 2019), <https://www.pewresearch.org/social-trends/2019/04/09/race-in-america-2019/> [<https://perma.cc/E3MZ-F544>].

88. Blackburne-Rigsby, *supra* note 32, at 649.

89. Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S. CAL. L. REV. 1219, 1261 (2000).

90. U.S. CONST. art. I, § 2.

91. U.S. CONST. art. I, § 9.

92. U.S. CONST. art. IV, § 2.

93. A. LEON HIGGINBOTHAM, JR., SHADES OF FREEDOM RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS 82 (1996)

94. *Id.* at 81–93.

Act of 1964 and The Voting Rights Act of 1965. Therefore, African Americans' perception of the legal system lives against the backdrop of this significant history.

“Political scientists and legal scholars have long argued that the perception of unequal treatment is the single most important source of dissatisfaction with the American legal system.”⁹⁵ “[L]itigants may feel more obliged to comport with court orders, believe that justice was fairly served, or feel their voices have been heard if they believe that the legal system has treated them fairly.”⁹⁶ As U.S. District Judge Edward Chen opined, “[a] diverse judiciary signals the public acknowledgment of historically excluded communities and sends an invaluable message of inclusion. It enhances courts’ credibility among affected communities who would otherwise feel they have no voice within the institution.”⁹⁷

If a diverse bench could increase public confidence in the judicial system, it may suggest to a litigant that decisions will reflect a diverse understanding of situations in society. As a service to the public, and theoretically a reflection of public opinion, the law reflects the ideal of fairness when exercised. In reality, however, the law’s objectivity can become mired in various ways. This can give the perception of a monolithic institution of the law that only serves the interests of the majority or is not representative of minority groups. Ideally, the legal system and the law should reflect the entire society it represents.⁹⁸

Former Chief Justice of the Louisiana Supreme Court Bernette J. Johnson told a newspaper at her impending retirement, “[l]ook, I did all I could do,” she said. “What the court will do in the future, I’m going to leave it to them.”⁹⁹ Former Judge Evelyn Baker, the first African American woman judge in the state of Missouri, has joined efforts to advocate for

95. Brooks, *supra* note 89, at 1245.

96. Melissa L. Breger, *Making the Invisible Visible: Exploring Implicit Bias, Judicial Diversity, and the Bench Trial*, 53 U. RICH. L. REV. 1039, 1064 (2019).

97. *Id.* at 1075.

98. *Id.* at 1076.

99. John Simerman, *Bernette Johnson, Louisiana’s First Black Chief Justice, Leaves Office Speaking Her Mind*, TIMES-PICAYUNE (Dec. 26, 2020), https://www.nola.com/news/courts/article_093097e8-446a-11eb-8424-1b72e7dc04d2.html [<https://perma.cc/LXG5-LDVZ>].

juvenile offenders who are eligible for certification as an adult based on her regret in sentencing a sixteen-year-old juvenile defendant, Bobby Bostic, to 241 years in prison in 1997. Judge Baker writes:

The last thing I want to see Missouri do is create more Bobby Bostics, especially when today we know better and have science regarding juvenile brain development. Children prosecuted as adults have a 34 percent higher recidivism rate than those who remain in the juvenile system. This is in part due to the fact they are denied the educational, rehabilitative, and trauma-informed care provided in the juvenile system.¹⁰⁰

CONCLUSION

The American legal system's expressed commitment to having judges reflect the communities they serve must also include a commitment to ensuring equity in decision making and outcomes. It must not only be true, but every American must perceive it to be true. Perceptions do not change overnight. There must be a concerted effort and investment of resources from all interested parties to maintain a legal system that functions fair and equitably in an increasingly diversified country. Hopefully, initiatives such as the Missouri Supreme Court Commission on Racial and Ethnic Fairness and other initiatives will enhance our understanding and help address deficiencies as we move forward in the diversification of our state and federal judiciaries.¹⁰¹

The future looks hopeful for the appointment of more African American women in the judiciary, including the possibility of the first appointment of an African American woman to the Supreme Court of the United States. Based upon the extraordinary achievements of the "firsts" and "seconds,"

100. Judge Evelyn Baker, *Bobby Bostic's Judge to Missouri Senate: Don't Make My Mistake on Child Defendants*, RIVERFRONT TIMES (Aug. 5, 2020), <https://www.riverfronttimes.com/newsblog/2020/08/05/bobby-bostics-judge-to-missouri-senate-dont-make-my-mistake-on-child-defendants> [<https://perma.cc/6Q3K-MLYY>].

101. See Hon. Lisa White Hardwick, *Justice For All: An Overview of the Supreme Court of Missouri's Commission on Racial and Ethnic Fairness*, 67 WASH. U.J.L. & POL'Y 111 (2022) (also published in this volume).

and of those who follow them, the nation's future will be better and stronger, fairer and more equitable, thanks to their dedicated service to our nation.