

**Prepared Remarks of U.S. District Judge Carlton W. Reeves
Before the House Subcommittee on Courts, Intellectual Property, and the Internet
March 25, 2021**

To Chairman Johnson, Ranking Member Issa, and Members of the Subcommittee:

I am honored to testify alongside esteemed colleagues Judge Chen, Judge Donald, Judge Bailey, and Judge Ho. Their brilliance is proof that diversity makes our justice system stronger. Between their words and the testimony of renowned academics like Professors Stacy Hawkins and Maya Sen, and attorney Peter Kirsanow, I am sure you'll have all the evidence¹ you need to know that we must diversify our federal courts.

As I prepared my comments, I thought about the only other time that I have had the honor and privilege of appearing before this august body, nearly 11 years ago at my confirmation hearing. On that day I was joined by Judge Mary Murguia,² Denise Casper,³ Edmund Chang,⁴ and Judge Leslie Kobayashi.⁵ The room looked like America, a country populated by persons of various races, colors, sexes, genders, religions, and sexual orientations, a representation of the tapestry that has been woven to make our more perfect Union.

At the hearing, Senator Durbin asked me the following question: "Can you talk to us about the importance of racial diversity on the Federal bench in Mississippi, given your personal experience growing up in Mississippi and your knowledge of how far your state has come?" My

¹ Reams of scientific evidence already support the idea that diversity is essential to all kinds of courtroom decision-making. See Jennifer S. Hunt, *Race, Ethnicity, and Culture in Jury Decision Making*, 11 ANN. REV. L. & SOC. SCI. 269 (2015) (collecting studies). Research on federal judges' ideological tendencies shows that their votes, on multi-member courts, tend to be ideologically dampened when "sitting with two judges of a different [expected] political party." Cass R. Sunstein et al., *Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation*, 90 VA. L. REV. 301, 304 (2004); see also Sherrilyn A. Ifill, *Judicial Diversity*, 13 GREEN BAG 2D 45, 52 (2009) ("[J]udicial decisionmaking is not just about outcomes; it is also about the *process* of judicial decisionmaking"). Other research has demonstrated "that for at least two types of cases—Title VII sex discrimination and sexual harassment—a significant correlation existed between gender and individual federal appellate judges' decisions," and "that the presence of a female judge significantly increased the probability that a male judge supported the plaintiff in the cases analyzed." Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 YALE L.J. 1759, 1761 (2005). Studies of jurors, meanwhile, establish that "the mere presence of non-whites in the jury room made the white jurors . . . open to other possible interpretations." STEVEN JOHNSON, *FARSIGHTED* 54 (2018).

² Judge Murguia was the first Latina to serve on the district court in Arizona. She was nominated to the Ninth Circuit. *Mary Murguia, JD*, EMILY TAYLOR CTR. FOR WOMEN & GENDER EQUITY, <https://emilytaylorcenter.ku.edu/womens-hall-of-fame/murguia-mary> (last visited Mar. 22, 2021).

³ Denise Casper was the first African-American woman nominated to the district court in Massachusetts. *The Honorable Denise J. Casper*, LONG ROAD TO JUST., <http://www.longroadtojustice.org/topics/leadership/denise-casper.php> (last visited Mar. 22, 2021).

⁴ Edmund Chang was the first Asian-American Article III judge in Illinois and only the second AAPI Article III judge to be appointed outside of the East and West Coasts. *Judicial Humility and Judicial Humiliation, A View from the Trenches*, OSHER LIFELONG LEARNING INST., <https://www.cmu.edu/osher/publications/weekly-essentials/2020/winter/honorable-edmond-chang.html> (last visited Mar. 22, 2021).

⁵ Judge Kobayashi, a sitting Magistrate Judge, was nominated for a district judgeship in Hawai'i. See *Active Asian-American & Pacific Islander Article III Judges*, MINORITY CORP. COUNS. ASS'N, <https://www.mcca.com/resources/reports/federal-judiciary/asian-american-pacific-islander-judges/> (last visited Mar. 22, 2021).

response, in part, was that “judges serve several functions, role models to other lawyers, role models to students, role models to the people who come before the court. People need to see that they have a chance; that they, too, can one day come to the great hall of the Senate and be nominated by a President to be a judge.”⁶ My answer to that question today would be the same, as I am reminded every day how others perceive my role and purpose through their telephone calls, text messages, emails, notes, conversations, and in-court reactions and statements.

All I can add to this remarkable panel is a simple plea: go big. Aim high. Be bold. Simply be committed to diversity in the third branch of our government.

It is a time for boldness because our present trajectory risks a crisis of legitimacy. More than two-thirds of federal judges appointed over the last four years were white men, a group that represents less than one-third of all Americans.⁷ Thirty percent of Americans in the Seventh Circuit are persons of color, but the Seventh Circuit doesn’t have a single Black jurist.⁸ The Fifth Circuit has an enormous Latino population, yet none of its judges are Latino.⁹ I’m reminded of the raw emotion that a friend and mentor, Geraldine Sumter from Charlotte, North Carolina, experienced 10 years ago when she stepped to the podium to argue in the Fourth Circuit, and across from her for the first time, in her nearly 30 years of practice, was a panel of three African-American judges.¹⁰ At this moment having such a panel is still an elusive dream in many of our circuit courts, but especially piercing in the Fifth and Eleventh Circuits, the home of so many of America’s African-American citizens. I’m ashamed to say that my own court didn’t have a single female Article III judge until three months ago. I appreciate our Senators for fixing that two-hundred-year-old mistake. These and countless other comparisons reveal a disturbing fact: as our country becomes more diverse, our courts are becoming more homogenous.

In the judicial Oath of Office, we promise to “administer justice.”¹¹ An extreme imbalance on our courts is a threat to justice. If I have learned one thing in my years as a judge, it is this: diversity matters. When our courts are diverse, they better understand the complexity of the American experience embedded in every case that comes before them. When our courts are diverse, they reinforce public trust in our system of government. America contains multitudes. So must its courts.

⁶ *Confirmation Hearings on Federal Appointments, Before the S. Comm. on the Judiciary*, 110th Cong. 251 (2010) (statement of Richard Durbin, U.S. Senator from Illinois), <https://www.congress.gov/111/chrq/shrg66720/CHRG-111shrg66720.htm>.

⁷ See, e.g., Rorie Solberg & Eric N. Waltenburg, *Trump and McConnell’s Mostly White Male Judges Buck 30-year Trend of Increasing Diversity on the Courts*, THE CONVERSATION (Oct. 8, 2020), <https://theconversation.com/trump-and-mcconnells-mostly-white-male-judges-buck-30-year-trend-of-increasing-diversity-on-the-courts-146828> (“Our study on judicial diversity, which ended in July 2020, shows that Trump-appointed judges are 85% white and 76% men”).

⁸ *Examining the Demographic Compositions of U.S. Circuit and District Courts*, CTR. FOR AMERICAN PROGRESS (Feb. 13, 2020, 12:01 AM), <https://www.americanprogress.org/issues/courts/reports/2020/02/13/480112/examining-demographic-compositions-u-s-circuit-district-courts/>.

⁹ *Id.* Judge Benavides retired in 2020.

¹⁰ See *Hoyle v. Freightliner*, 650 F.3d 321 (4th Cir. 2011).

¹¹ 28 U.S.C. § 453; see also THE FEDERALIST NO. 80 (Alexander Hamilton) (noting that the Constitution must be structured to allow “federal judicatories to do justice”); Chief Justice John Roberts, YEAR-END REPORT ON THE FEDERAL JUDICIARY 3 (2010) (“The judiciary’s central objective is, of course, to do justice according to law in every case.”).

Righting the ship will take more than a return to past practices. While the Obama Administration appointed female judges at an unprecedented rate, nearly 60% of all judicial appointees under that administration were men.¹² And while recent decades have seen periodic efforts to bring racial and gender diversity to the bench, appointees have increasingly shared educational and professional backgrounds. Former prosecutors, partners in national law firms, and graduates of our nation’s top law schools are overrepresented on the bench. We also need insights from other public servants, those in the academy, those in small firms, and those who have represented the hopeless and dispossessed—the public defenders, the immigration attorneys, and the rural legal aid lawyers.¹³

If you go big, aim high, and be bold, you will shape not just the next generation of judges. You will encourage change in the entire “ecosystem” of the legal profession, as my friend Melissa Murray points out. In that “ecosystem,” District Judges influence the hiring of their own clerks, Magistrate Judges, Special Masters, Receivers, MDL Steering Committees, and the Clerks of our courts and all those hired into those public offices. Circuit Judges are responsible for their own clerks, Bankruptcy Judges, Public Defenders, and the Clerks of their courts. Judges and the lawyers they appoint serve on commissions, councils, committees, and other bodies to make sure our judicial system fulfills its core missions. Your leadership on the courts will have ripple effects through this powerful profession.¹⁴

The very fact that I am here before you today is a testament to *Brown v. Board of Education*. After that decision was implemented, I joined the first fully-integrated class of Mississippi schoolchildren. For twelve years, we were fortunate to be in the same classrooms with each other, develop lifelong friendships, and receive an education that prepared us for the world.

That decision—its bravery, its courage, its moral clarity—it changed my life, and I firmly believe it changed all of our lives. Diversity matters. I hope you will be similarly courageous in shaping the next generations of this country.

Thank you.

¹² Jonathan K. Stubbs, *A Demographic History of Federal Judicial Appointments by Sex and Race: 1789-2016*, 26 BERKELEY LA RAZA L.J. 92, 94 (2016).

¹³ See *Chambers v. Florida*, 309 U.S. 227, 241 (1940) (“Courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement.”).

¹⁴ Your leadership might also inspire the States to address this concern on their own courts. See Alicia Bannon & Janna Adelstein, *State Supreme Court Diversity — February 2020 Update*, BRENNAN CTR. FOR JUST. (Feb. 20, 2020), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-february-2020-update>.