

I want to thank the Chair, the Ranking Member, and this committee for inviting me to speak today on the topic of diversity. I'm not going to speak today on the importance of diversity. I don't think this body would be holding such a hearing if you did not understand why a truly diverse federal bench is important to our democracy. It is. Instead, I want to talk about some of the challenges we as a court are facing in our attempts at diversity and inclusion, and some of the steps we can take to open opportunities for broader spectrum of judicial applicants. This means looking at some of the traditional pathways to the federal bench, as well as looking to some of the less traditional pathways.

When I last spoke on this subject of diversity, I was in front of a group of young clerks and lawyers at the Administrative Offices of the Federal Court in Washington DC. One of the clerks asked me how we can diversify the federal courts and, without thinking my words through, my response was "We need get over our addiction to Harvard and Yale." The room went dead silent.

It turns out that almost every lawyer in the room went to Harvard or Yale.

I'll be the first to say that these are great law schools. But diversity and inclusion cannot rely simply on the pedigree of a diploma from a particular school. It requires us to reach out and proactively invite more people to the table: rural students, first generation graduates, public interest law students, and minority students who did not have the support to navigate to our country's finest law schools.

So, we need to look at the traditional pathways that get people to the federal bench and we need to make that path wider.

One of the first pathways is judicial clerkships. Many of my colleagues on the federal bench began their careers as a judicial clerk. It is a job that opens doors. But when it comes to the hiring of clerks, regional law schools are often overlooked in favor of the top ranked law schools. But regional law schools are much more accessible to a diverse group of students: students from rural communities, working moms and dads, students caring for an aging parent or grandparent, students who were the first in their family to navigate higher education, and minority students. I have had clerks from top law schools. I've had clerks from local law schools. They are equal in their excellence.

The second traditional pathway to the bench is the magistrate judge positions. In most Districts, magistrate judges are chosen by the judges themselves. There is a tendency to pick someone who is known and someone we are comfortable with. That often tends to be someone who looks a lot like us. It is often someone from a law firm or the US Attorney's Office. But we need to encourage people who don't necessarily look like us to apply. I was very proud that the District of Oregon, three years ago, selected the first Muslim American judicial officer in United States history when we selected Mustafa Kasubhai to sit as our newest magistrate judge.

I have sat on panels at many law schools where invariably we are asked what is the best career choice I can make in order to become a judge. The number one answer is to work at the United States Attorney's Office. The number two answer is to work in a reputable law firm and get very involved with your state and local bar associations. These are good answers and these are in fact traditional career paths to the federal bench. But why aren't we able to tell these young minds, "go work with the poor; get a job with legal aid; be a public defender; become an immigration attorney; help injured workers." I know that when I was nominated to the bench, the Obama administration would point to the fact that I

was a former public defender as quickly as they pointed out I was openly gay. I was LGBT-PD. I felt like a unicorn.

We need to explore these non-traditional career paths and at least ask the question, “why are we not going to those working with the poor and marginalized?” Is it because we think they are less intellectual? Or that they are zealots and cannot be fair? Serving the poor and marginalized should not be a strike against anyone if they have the detachment necessary to follow the law. I was a public defender who opposed the death penalty. When I became a judge, I had to sentence someone to death because that was the lawful verdict of the jury. I followed the law. That’s what we do.

Finally, we need to work closely with the diversity law associations to encourage their student members to apply for clerkships, their young attorneys to participate in federal court activities, and their qualified members to seek appointment. And the diversity law associations need to work together. In Oregon, I know that Senator Wyden has asked that they not simply endorse one of their own members and compete against each other, but to work together to put forward names that they could uniformly endorse. It is because of this cooperation that my name was able to come forward. I don’t think it would otherwise.