



WOMEN OF THE MOTHER COURT

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The U.S. District Court for the Southern District of New York (SDNY), colloquially known as the “Mother Court,” is the oldest federal court in the United States.

Created by President George Washington through the Judiciary Act of 1789, it was the first court to sit under the new U.S. Constitution, preceding the U.S. Supreme Court by several weeks.¹

In the words of Hon. Charles Evans Hughes, former chief justice of the United States, “the courts are what the judges make them, and the district court in New York, from the time of James Duane, Washington’s first appointment, has had a special distinction by reason of the outstanding abilities of the *men* who have been called to its service.”² (Emphasis added.) It would take another 177 years before the first female judge was appointed to the court.

The Mother Court is all the more aptly named in light of its recent history. The past three chief judges of the SDNY have been women. Current Chief Judge Colleen McMahon was preceded by Chief Judge Loretta A. Preska, who, in turn, was preceded by Chief Judge Kimba Wood. The theme of women in leadership in the legal profession is particularly noteworthy given the focus of the Federal Bar Association’s upcoming convention honoring remarkable women lawyers and judges who stand in the forefront of the legal profession.³ In recognition of that notable achievement, this article is dedicated to the women of the Mother Court, which led the way in cultivating some of the most highly regarded lawyers in the United States in general, some of whom made history as a result of their appointment.

Historic Appointments at the SDNY

Appointed in 1966 by President Lyndon B. Johnson, Hon. Constance Baker Motley was not only the first woman to serve as an SDNY judge, but she was also the first African-American woman to serve on a federal bench. She presided as chief judge from 1982 to 1986, at which time she assumed senior status.³ Judge Motley is

also remembered for having drafted the original complaint in the landmark civil rights case *Brown v. Board of Education*.⁴ She was the first African-American woman ever to argue a case before the U.S. Supreme Court and was successful in nine of the 10 cases she argued before it.⁵

Another of the Mother Court’s proud history of judicial firsts was the appointment of Hon. Sonia Sotomayor as its first Hispanic woman. While serving on the federal bench, she has gained fame as the judge who “saved” Major League Baseball with her strike-ending decision in *Silverman v. Major League Baseball Player Relations Committee Inc.*,⁶ which evidenced the qualities of thought and diligence she would later bring to the U.S. Supreme Court. Appointed by President Barack Obama in 2009, Justice Sotomayor is also the first Hispanic and the third woman to serve on the U.S. Supreme Court in its 229-year history.

Appointed in 1994 by President Bill Clinton, Hon. Deborah A. Batts was the first openly LGBT female judge of the SDNY. Upon graduation, she clerked for Hon. Lawrence W. Pierce who presided at the court from 1971-1981. Judge Batts practiced with the firm of Cravath, Swaine, & Moore LLP in New York City until her appointment as an assistant U.S. attorney in Manhattan. In 1984, just before her judicial nomination, she became the first African-American appointed to the faculty at Fordham University School of Law in New York.

For 17 years, Judge Batts was the sole openly gay judge on the federal bench until 2011 when President Obama nominated Alison Nathan to a seat on the SDNY to replace Judge Sidney H. Stein. Recognized as a leading LGBT advocate, Judge Nathan’s nomination was confirmed by the Senate in a 48-44 vote on Oct. 13, 2011. Both Judge Batts and Judge Nathan continue to be active on the bench today.

2012 was another important year of significant judicial firsts at the SDNY when its first Filipino-American female appointee was sworn in. President Obama’s appointment of Hon. Lorna G. Schofield brought to the bench a skilled litigator with 20 years of experience at the New York City office of Debevoise & Plimpton LLP. Judge Schofield was the first Asian-American to chair the American Bar Association Section of Litigation, holding that position for the 2008-2009 term. At the 2017 ABA annual meeting in New York City, Judge

Schofield was presented with the annual Liberty Achievement Award for having actively promoted diversity in the legal profession.⁷ Judge Schofield was recognized as one of the “Fifty Most Influential Minority Lawyers in America” in 2008 by the *National Law Journal*.⁸

Another of SDNY’s many notable female judges was Hon. Shira A. Scheindlin (now retired), who has been a strong advocate for diversity. Upon her appointment, Judge Scheindlin prompted Jack B. Weinstein, a senior federal judge in Brooklyn, to amend his individual rules, aiming to promote diversity⁹ and hoping “that maybe other judges will follow.”¹⁰ “I’m hoping his choosing to do this will jump-start others to do the same,” she added.¹¹

Another leading advocate of female representation in the judiciary has been Hon. Barbara S. Jones. Her success in promoting gender equality is best described in the following 2017 op-ed anecdote recounted by attorney Susan Goldenkranz Pernick:

Many years ago, I was to argue a motion before Judge Mary Johnson Lowe of the United States District Court for the Southern District of New York. My adversary was also a woman. She and I stood respectfully as the judge entered the courtroom. She sat behind the bench, motioned us to sit and then just looked around. She broke into a wonderful smile, and said: “At last! I didn’t think I’d live long enough to see this.” Puzzled, I looked, too, to see what the judge saw: The court reporter, the court officer, the court clerk and the judge’s law clerk were all there. I didn’t catch on until the judge said: “We’re all women! It’s about time!” And she started to applaud. We all joined in.¹¹

Fortunately, recent years have witnessed an increase in the appointment of female judges to the federal bench, many of whom are committed to promoting diversity and more women to the judiciary. These include Article III judges Hon. Naomi Reice Buchwald, Hon. Denise Cote, Hon. Katherine Polk Failla, Hon. Katherine B. Forrester, Hon. Cathy Seibel, Hon. Laura Taylor Swain, Hon. Analisa Torres, Hon. Ronnie Abrams, Hon. Valerie Caproni, and magistrate judges Hon. Deborah Freeman, Hon. Lisa Margaret Smith, Hon. Judith C. McCarthy, Hon. Barbara Moses, Hon. Sarah Wetburn, and Hon. Katharine H. Parker.¹²

The Mother Court also proudly acknowledges the appointment by President Clinton of Mary Jo White as the U.S. attorney for the SDNY. She was the first, and so far the only, woman to lead that office. In the role from 1993 to 2002, she was known as “being an aggressive prosecutor of terrorism and white collar crime.”¹² Among her most notable cases were the indictment of Osama Bin Laden and Al-Qaeda before Sept. 11, 2001, for acts of terrorism against the United States and the successful prosecutions of four men accused of the 1993 World Trade Center bombing.¹³ In 2013, White was nominated by President Obama to serve as chair of the U.S. Securities and Exchange Commission. In 2016, she was listed as the 74th most powerful woman in the world by *Forbes*.¹⁴

The Importance of Diversifying the Federal Bench

Looking at the history of judges’ appointments at the SDNY, it is striking that it took almost 200 years for the first female judge to be appointed. At present, of the 44 judges currently appointed, 15 are women, and of 15 magistrate judges, 6 are women.

Many argue that having more women appointed to the federal

bench will improve the quality of justice. When women are fairly represented on federal courts, those courts are more reflective of the diverse populations of the communities that they serve. That leads to greater confidence in the legal system because there is a perception that the court understands the real-world implications of its rulings. With their unique perspective toward the matters at hand, and the increase in the public confidence that their presence in the system engenders, having more women on the federal bench strengthens respect for and confidence in the rule of law. This bears out in the legal scholarship, as well, because diverse courts are considered to be more likely to bring diverse perspectives to the bench and to represent the interests of a diverse community, which, in turn, leads to further equality of opportunity, enhancement of the court’s legitimacy, and strengthening of the rule of law.¹⁵ Another fascinating study of collective intelligence, conducted by Thomas Malone together with an MIT team of researchers, found that racially diverse teams outperform nondiverse ones by an astounding 35 percent.

Working Toward Increased Diversity in the Federal Judiciary

In the roughly three decades since Sandra Day O’Connor became the first female justice on the U.S. Supreme Court, the percentage of women serving as full-time judges in the federal judiciary has more than quadrupled.¹⁶ Having appointed 138 female judges—more than any president to date—President Obama played an important role in increasing gender diversity in the federal judiciary.¹⁷ However, it took a long way to get here and, even though the progress is undeniable, there is still a long way to go when it comes to diversity and equal representation in the federal judiciary. Currently, 37 percent of active U.S. district court judges are women.¹⁸ The numbers, though, are considerably lower when it comes to representation of minorities. Only 10.5 percent of federal judges are women of color.¹⁹

While some women have ascended to the top of the legal field, many still face challenges being appointed as judges, law firm partners, or even getting heard in court. That is why actions like those of Judge Scheindlin and Judge Weinstein are critical to promoting diversity. These brilliant women of the Mother Court have played a historical role in promoting diversity and breaking through biases. For that, we all must praise and embrace their legacy, and continue to work toward increased diversity in an effort to strengthen the overall quality of the system. ©



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Endnotes

¹NEW YORK COUNTY LAWYERS’ ASSOCIATION COMMITTEE ON THE FEDERAL COURTS, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK: A RETROSPECTIVE (1990-2000) 2 (Dec. 2002), <http://www.nycla.org/sitefiles/publications/fedcts.pdf>.

²*Id.* at 1 (emphasis added).

³Donna Frosco, president of the FBA's SDNY Chapter welcomes *The Federal Lawyer* readers who will be joining us in New York in September, where we will celebrate the installation of Maria Vathis as the incoming president of the Federal Bar Association.

⁴CONSTANCE BAKER MOTLEY, U.S. DIST. CT. S.D.N.Y., <http://history.nysd.uscourts.gov/bios/Motley.pdf> (last visited July 6, 2018).

⁵*Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954).

⁶See *supra*, note 3.

⁷*Silverman v. Major League Baseball Rel. Inc.*, 880 F. Supp. 246, 261 (S.D.N.Y. 1995).

⁸Heather Fox, *Judge Lorna G. Schofield Receives 2017 Liberty Achievement Award*, THOMSON REUTERS (Aug. 15, 2017), <http://www.legalcurrent.com/judge-lorna-g-schofield-receives-2017-liberty-achievement-award>.

⁹United States Senate Committee on the Judiciary, Questionnaire for Judicial Nominees (Apr. 24, 2012), <https://www.judiciary.senate.gov/imo/media/doc/LornaSchofield-PublicQuestionnaire.pdf>.

¹⁰Judge Weinstein issued a court rule urging a more visible and substantive role for young female lawyers working on cases assigned to him. A relevant portion of the rule reads as follows: "Junior members of legal teams representing clients are invited to argue motions they have helped prepare and to question witnesses with whom they have worked." U.S. DIST. CT. E.D.N.Y., INDIVIDUAL MOTION PRACTICE OF JUDGE JACK B. WEINSTEIN, <https://img.nyed.uscourts.gov/rules/JPW-MLR.pdf> (last visited July 6, 2018).

¹¹Judge Weinstein amended his rules to read: "Junior members of legal teams representing clients are invited to argue motions they have helped prepare and to question witnesses with whom they have worked"; Hon. Ann M. Donnelly of the EDNY has an analogous rule in place, encouraging inexperienced attorneys to participate in court proceedings.

¹²Federal Bar Council, Second Circuit Redbook, 2018-2018, 61-114.

¹³Alan Feuer, *A Judge Wants a Bigger Role for Female Lawyers. So He Made a Rule*, N.Y. TIMES (Aug. 23, 2017), <https://www.nytimes.com/2017/08/23/nyregion/a-judge-wants-a-bigger-role-for-female-lawyers-so-he-made-a-rule.html>.

¹⁴Susan Goldenkranz Pernick, *Women in the Courtroom*, N.Y. TIMES (Aug. 31, 2017), <https://www.nytimes.com/2017/08/30/opinion/women-law.html>.

¹⁵*Supra* note 1, at 8.

¹⁶*Id.*

¹⁷Caroline Howard, *Women Who Rule the World: The 26 Most Powerful Female Political Leaders of 2016*, FORBES (June 6, 2016), <https://www.forbes.com/pictures/hhef45ihm/mary-j-white/#63423b3f764d>.

¹⁸These inferences were echoed in the following two significant publications on diversity in federal judiciary: Sital Kalantry, *Women in Robes: Judges, Gender and Justice*, AM. Q. (July 31, 2012), <http://americasquarterly.org/women-in-robos>; CIARA TORRES-SPELLISCY ET AL., IMPROVING JUDICIAL DIVERSITY (2d ed. 2010), http://www.brennancenter.org/sites/default/files/legacy/Improving_Judicial_Diversity_2010.pdf.

¹⁹*Decades After O'Connor, Role of Women Judges Still Growing*, U.S. COURTS (Mar. 29, 2013), <http://www.uscourts.gov/news/2013/03/29/decades-after-oconnor-role-women-judges-still-growing>.

²⁰*This is the First Time Our Judicial Pool Has Been This Diverse*, WHITE HOUSE (June 8, 2016), <https://obamawhitehouse.archives.gov/>

[node/256756](https://www.federalbar.org/node/256756).

²¹As of June 1, 2017, a total of 59 women were serving as U.S. circuit court judges, 14 representing 37 percent of all active circuit court judges (men comprise 63 percent). Of the active female circuit court judges serving on June 1, 2017, the greatest number were appointed by President Obama—who appointed 24, or 41 percent, of the 59 female judges—followed by Presidents G.W. Bush (16), Clinton (14), G.H.W. Bush (3), and Reagan (2). BARRY J. McMILLION, U.S. CIRCUIT AND DISTRICT COURT JUDGES: PROFILE OF SELECT CHARACTERISTICS, CONGRESSIONAL RES. SERV. (Aug. 1, 2017), <https://fas.org/sgp/crs/misc/R43426.pdf>.

²²*Id.*



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