



## Hon. Bernice Bouie Donald, U.S. Circuit Judge, Sixth Circuit Court of Appeals

**J**udge Bernice Bouie Donald is known as a trailblazer. She has taken the long, difficult road to success and has achieved more than most of us can imagine. Somehow, amidst her busy schedule of breaking down countless career barriers, she manages to give her time freely, travelling often to judge moot court competitions, to speak to groups of attorneys, and to expand the global access to justice. On paper, she appears to be a complete anomaly. As her law clerk for a year, I was thrilled to see what sort of person earns this reputation.

Judge Donald now sits on the United States Court of Appeals for the Sixth Circuit. Nominated by President Barack Obama in December 2010, she became the first African-American female judge to sit on that court. In a rare show of bipartisanship, the Senate confirmed her by a vote of 96-2—no doubt because of her 28 years of experience on the bench, her considerable credentials, and the uproar of support. In fact, she practically waltzed through her confirmation hearings.<sup>1</sup> An observer might imagine that she is merely an extraordinarily lucky person, leading a charmed life. But luck had little to do with it.

Judge Donald was born in DeSoto County, Miss., in 1951 as the sixth of ten children of a domestic worker and a self-taught mechanic. As a teenager, she was among the first four African-American students to integrate into the Olive Branch schools in Mississippi. When I asked her about this experience, she told me evasively that “there were fights,” but she showed no resentment. Despite the difficulties—or perhaps because of them—she graduated at the top of her class with honors. This is what she was supposed to do, she says.

Due to a racist school policy, however, young Bernice did not know that she had been awarded scholarships. This smart and ambitious woman was unable to pay for college on her own, so she did what she had to do. She



applied for grants and loans and, in the fall of 1969, enrolled in Memphis State University (now the University of Memphis), becoming a first-generation college student. In the summer of 1971, she got a job at Bell Telephone, transferred to the evening division, and paid her own way through school. The hard-working and dedicated student graduated in 1974 and enrolled in a part-time evening law program at the University of Memphis.



*Samara Spence is a former law clerk to Judge Donald. © 2013 Samara Spence. All rights reserved.*

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In 1979, after graduating law school, Bernice Bouie Donald (she had married W.L. Donald, a student from her sociology class, in 1973) applied for a legal position at the same phone company. The director, she tells me, would not return her calls. So she showed up at the building and called his office from the lobby to see if he was simply dodging her. This time, the director took her into his office and explained that she did not fit the mold of the company's ivy-

league lawyers because she had been a "night" student at a law school that was "not very good." Rather than pursuing a fruitless battle and explaining how her race prevented her from getting the funding to attend higher-ranked schools, she left his office crushed, opened her own practice for a time, and later joined the Memphis Area Legal Services (MALS), representing those less fortunate than herself.

Judge Donald told me that while working for MALS, she learned that a former co-worker had suffered race-based discrimination at work.

Her heart went out to this woman, and she wanted to help, but MALS did not take employment discrimination cases. This "baby attorney" begged her supervisor to allow her to take the case, *pro bono* and in her free time. She worked excruciating hours on nights and weekends to prepare and eventually won the case.

After this success, employers came to her. She received an unprompted job offer from the Shelby County Public Defender's Office. This sequence of events, Judge Donald explains, allowed her to overcome the feeling that she did not have the pedigree to succeed. She knew now that she could accomplish her goals if she fought hard enough. And oh, what a little confidence could do.

In 1982, at 31 years old, Bernice Donald ran for her first judgeship. I asked her, why, when she loved litigating, when she was—and still is<sup>2</sup>—so passionate about employment discrimination, did she decide to become a judge so early in her career. Her response surprised me.

"I wanted to be in a position of power so I could ensure that others are treated with respect by those in power," she says. "I saw too often how people, including myself, were not always treated with respect, and it was simply unacceptable." That's right—she pursued one of the most highly respected positions in the legal profession so that *others* would be treated with dignity.

I believe Judge Donald truly enjoyed running for that first position. She had the confidence to believe she was worthy, the charisma to win people to her side, and the humility to hear "no." Her mother told her as a child that "You are as good as anyone else and you are no better than anyone else." This attitude has served the judge well.

She told me about one local community leader whose support she had attempted to gain for the election. The man listened to her arguments but politely told her that he could not support her. He had supported another state judge for many years and must continue to do so, out of loyalty. Most people would have been discouraged or angry. Not this future judge. She went home and wrote a letter thanking him for listening to her. She continued that she was disappointed that he could not support her but that she understood his position and praised him for community leadership. Soon, she received a phone call from the leader. He told her that in his many years as a political backer, he had never once received a personal letter from a candidate, much less from a candidate whom he had refused to support. He had changed his mind and now promised to support her. With the help of friends, the future judge ran probably the least expensive campaign of any candidate, making personal calls, shaking hands, and mailing letters she printed herself, and it paid off. She became the first African-American female judge in the history of Tennessee. She served in the criminal division of the Court of General Sessions in Shelby County for the next six years.

Her later judgeships were a bit different. After being turned down the first time, Judge Donald sought a bankruptcy judgeship and was selected to serve as United States Bankruptcy Judge for the Western District of Tennessee—the nation's first African-American female to have this title. She speaks fondly of her time on that bench, where she was surrounded by national bankruptcy experts who treated her like family.

In 1995, she moved again. This time, President Bill Clinton nominated her to serve as the first African-American female U.S. District Judge in the Western District of Tennessee. She truly hit her stride in that role and loved presiding over what she describes as the "theater of the courtroom." She held this position until her present appointment in 2010. I asked her whether it was strange to obtain what was, effectively, a political appointment for a position that is, and must be, non-political in nature. She told me simply that there was no reasonable way to avoid it. Federal appointments merely take the political decision out of the hands of the many and place it in the hands of the few. Either way, you hope the voters are principled and objective.

Throughout her time serving in these many prestigious roles, Judge Donald has kept her commitment to treating people with respect, even those least likely to get it. She told me of a man she had sentenced to a multi-year term of imprisonment who approached her on the street one day. He said he had completed his sentence, that he never forgot what she told him at sentencing, and that he was getting his life together. He actually thanked her for encouraging him to improve himself! She explains that the judicial system is better able to maintain its integrity when people feel like they have been heard, even if they ultimately lose their case.

Judge Donald's reputation of having a "balanced judicial temperament" is so well marked that many express hopes

she will improve the collegiality of the Sixth Circuit.<sup>3</sup> They could not have made a better bet. Judge Donald is capable of disagreeing respectfully, considering other views of the law, and bringing previously unnoticed issues to the table without insulting anyone's intelligence or integrity. She brings a "why not" attitude—probably owing to her history of "firsts"—that forces those around her to think carefully and base their decisions in strong reasoning. I would describe her jurisprudence as pragmatic, with a distinct distaste for contorted or dismissive logic.

Her dedication to respect extends to her life off the bench. She is well-loved by those from all walks of life. A few months ago, Judge Donald took me and my co-clerks court-watching at the Court of General Sessions to show us "how the rest of the world lives." It was like walking down the red carpet with a celebrity. Current judges welcomed her fondly, some offering to let us sit in the jury box to watch proceedings. Attorneys greeted her so often that she could barely make it five paces down the hall. Security guards and administrators all had a kind word for her. She greeted people by grasping one of their hands in both of hers, looking them in the eye, and introducing them to each of her law clerks. She has the same demeanor in other environments as well. She knows the names, families, and personal struggles of all the staffers at the various establishments she frequents. She never forgets to ask after a sick spouse or a recent promotion. Judge Donald does more than treat people with respect—she makes people feel special.

She also remains deeply committed to public service. Judge Donald currently serves as the president of the American Bar Foundation (ABF)—the first African-American and the first female to hold this position.

Through the ABF, the nation's leading research institute for the empirical study of the law, she frequently speaks on the neuroscience behind implicit bias, a problem she believes erects barriers to achieving equality through the law. She formerly served as secretary of the American Bar Association—yet another "first"—which is one of the world's largest voluntary professional organizations.

Judge Donald's mother taught her that she should "never be afraid to stand alone." In many ways, Judge Donald does stand alone. She operates at lightning speed, missing nothing and finding the correct solution about five paces ahead of everyone else. But, owing to her genuine kindness and humility, she will always have the support of those of us lucky enough to know her. ☺

## Endnotes

<sup>1</sup>Michael Collins, *U.S. Dist. Judge Bernice Donald of Memphis Breezes Through Confirmation Hearing*, THE COMMERCIAL APPEAL, (March. 16, 2011), available at [www.commercialappeal.com/news/2011/mar/16/us-dist-judge-bernice-donald-memphis-breezes-throu/](http://www.commercialappeal.com/news/2011/mar/16/us-dist-judge-bernice-donald-memphis-breezes-throu/).

<sup>2</sup>Hon. Bernice B. Donald and Eric Pardue, *Bringing Back Reasonable Inferences: A Short, Simple Suggestion for Addressing Some Problems at the Intersection of Employment Discrimination and Summary Judgment*, 57 N.Y.L. Sch. L. Rev. 749 (2012).

<sup>3</sup>Bartholomew Sullivan, *U.S. Dist. Judge Bernice Donald of Memphis Wins Confirmation to the Federal Appeals Court*, THE COMMERCIAL APPEAL (September 6, 2011), available at [www.commercialappeal.com/news/2011/sep/06/us-district-judge-bernice-donald-memphis-wins-conf/](http://www.commercialappeal.com/news/2011/sep/06/us-district-judge-bernice-donald-memphis-wins-conf/).