

# A PUBLIC CALLING: LESSONS FROM THE LIVES OF JUDGES OF COLOR IN PENNSYLVANIA

by PHOEBE A. HADDON\*

## INTRODUCTION

Thank you. It is a great pleasure and privilege to be back at Temple University to deliver the 2010 Clifford Scott Green Lecture. As I reviewed the list of past lecturers,<sup>1</sup> I was even more moved by the honor of having been asked by Dean Epps to give this talk and to be included among the men and women who have stood shoulder to shoulder with Judge Green and others I will be talking about today. Most of all, I want to emphasize the importance of this law school's effort to recognize the work of Judge Green by having others share their insights about ways to advance justice in our society.

Today's talk is the third in what I hope will be a continuing series of presentations and publications built on research about Pennsylvania's judges of color.<sup>2</sup> Although my time for research and writing is not now what it used to be as a law professor (what I now appreciate was truly a charmed life), this research has continued to inform my thinking about what it means to be a public leader in law, responding to what I call a "public calling" in the profession.<sup>3</sup> Several years ago, I made a commitment to Judge Ida Chen and other members of the First Judicial District to help organize the effort to preserve some of the writing and other memorabilia about early pioneering judges who influenced the judiciary and the

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1. Previous presenters of the Annual Honorable Clifford Scott Green Lecture include Robert J. Reinstein, Evelyn B. Higginbotham, The Hon. Theodore A. McKee, The Hon. Louis H. Pollak, The Hon. Damon J. Keith, the Hon. Nathaniel R. Jones, and Professor Drew S. Days III. 2010 HONORABLE CLIFFORD SCOTT GREEN LECTURE: "A PUBLIC CALLING: LESSONS FROM THE LIVES OF JUDGES OF COLOR IN PENNSYLVANIA", TEMPLE UNIV. BEASLEY SCH. OF LAW, [https://secure3.imodules.com/s/706/images/editor\\_documents/GreenLectureHaddon\\_3rd.pdf](https://secure3.imodules.com/s/706/images/editor_documents/GreenLectureHaddon_3rd.pdf) [hereinafter 2010 HONORABLE CLIFFORD SCOTT GREEN LECTURE].

2. In 2005, the First Judicial Council began seeking ways to not only recognize judges of color, but also to preserve their history by establishing an archive. This effort grew out of discussions surrounding the tenth anniversary of the First Judicial Council itself. One of the activities that the First Judicial Council established was the "Growing Judges Project." As part of this program, judges visited several law schools and discussed their paths to the bench, focusing on particular issues they may have faced as judges of color. Another major activity related to this effort was a 2006 symposium at the University of Pennsylvania entitled "Perspectives on Justice: The Journey from Adversity to Diversity."

3. See Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 WASH. L. REV. 573, 574 (1994) ("I believe that we have an opportunity to define good lawyering for the twenty-first century as a public calling which emphasizes a professional obligation to promote equality in the legal system.").

profession and do so to this day. We have had several programs supported by the First Judicial District, individual lawyers and judges, and law schools in the region to celebrate the work of early judges and lawyers of color and to mentor students by sharing the stories of these judges' and lawyers' achievements.<sup>4</sup> This research project has helped me understand the richness of the leadership models that come from this community. We have been privileged to have great men and women mark the way.

Today I am going to speak about some of the ways Judge Green and two other judges—Judge William Marutani and Judge Juanita Kidd Stout—spent their lives as leaders in the law to illustrate the ideal of what I call a “public calling.”

This notion of a “public calling” is more than is captured in the conception of the lawyer as an officer of the court or professional with fiduciary obligations to a particular client.<sup>5</sup> It is value-laden, though it does not always lead us to make the same choices or come out on the same sides of highly contentious social issues.<sup>6</sup> It does provide for me a justification for any lawyer to be mindful of the public interest, even as we work to promote the interests of our individual clients and pursue other private interests.<sup>7</sup> And for us professors, it challenges us to encourage our students to think beyond narrowly self-serving ways of resolving disputes in the classroom. And it leads us to seek and rely upon a moral compass to inform our choices about legal resolutions that promote inclusion, creating full participation in our democracy and full access to justice and equal protection before the law.<sup>8</sup>

I echo the observations of Charles Hamilton Houston, one of the primary architects of the elimination of Jim Crow laws (along with Justice Thurgood Marshall)<sup>9</sup> in the decades before *Brown v. Board of Education*.<sup>10</sup> In a stridency that exposed his impatience with the slow progress toward equality and full participation in the United States' socioeconomic opportunities, Houston famously observed: “[A] lawyer who is not a social engineer is nothing but a social parasite.”<sup>11</sup> These words remain provocative today. But Houston's call for lawyers

4. See, e.g., 2010 HONORABLE CLIFFORD SCOTT GREEN LECTURE, *supra* note 1 (exemplifying Temple Law School's commitment to honoring The Hon. Clifford Scott Green, who was “an inspiration, a mentor, a teacher, a role model, and a friend to innumerable minority and non-minority law clerks”).

5. See Haddon, *supra* note 3, at 574 (“It is at least as important for legal educators and practitioners to consider the kind of education which responds to such a public calling as it is for us to consider how to provide skills training for the development of competence in the practice of law.”).

6. See *id.* at 582 (noting that legal education must promote the professional values of promoting justice, fairness, and morality to survive in the twenty-first century).

7. See *id.* at 578 (“Until recently most legal educators had a similar vision: Business interests have driven how we train lawyers and continue to dominate our curriculum and our assessment of who we are.”).

8. See *id.* (criticizing the tendency “in law school teaching [to] continue to view litigation as a means by which major social issues which cannot get a fair hearing may be brought to the public, ‘cast in the form of a private dispute’”).

9. See Juan Williams, *Thurgood Marshall—American Revolutionary*, 25 U. ARK. LITTLE ROCK L. REV. 443, 451 (2003) (“Dean Houston was, in fact, creating a law school that was a boot camp. He wanted to train a cadre of revolutionaries, he said, who would use the law—use the law as an instrument of social justice.”).

10. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

11. Williams, *supra* note 9, at 453.

to draw upon their talents and skills to address social and economic inequities and to use the law as a tool to improve conditions for all citizens still resonates as a challenge meaningful for all of us.

In some ways this ideal of the “public calling” may present an even greater challenge for judges than for other lawyers. Judges must walk a path committed to principled decision-making and faithful to the law and facts at hand, while holding a concern for the values of social and economic justice and full participation.

We only need to look to the recent Supreme Court confirmation hearings to see contours of this challenge. Questions posed to Justice Sotomayor by senators, and the media’s focus on her “wise Latina” remark,<sup>12</sup> reflected the struggle of recognizing the value that diverse life experiences and upbringing offer in the courtroom. They revealed the oft-racialized fear that these differences somehow compromise the kind of principled decision-making that is the hallmark of our legal system.<sup>13</sup>

As you hear today about Judge Green, Judge William Marutani, and Judge Juanita Kidd Stout, I urge you to join me in reflecting further on how their life experiences informed their ability to rule wisely and fairly and compelled them to embody this notion of a life in the law as a “public calling.” To me, their stories reveal at least three characterizations of this idea of public commitment:

1. They lived experiences of hardship and discrimination, and used those experiences to develop a vision of public service. They were inspired by the challenges they faced and saw them as opportunities.

2. Their vision was grounded on an abiding commitment to equal access to justice and fairness. They undertook to make that promise real in tangible ways.

3. Their impact reached beyond their professional role in the courtroom, to community involvement through service, mentoring, and encouragement. It is not exaggeration to say that hundreds—if not thousands—of lawyers and leaders have been influenced by their work.

I will talk about each of these characteristics found in each of these three judges. Notably, however, Judges Green, Marutani, and Stout are known for living quiet lives of service and influence.<sup>14</sup> They were not concerned with their own

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12. Sonia Sotomayor, *A Latina Judge's Voice*, 13 BERKELEY LA RAZA L.J. 87, 92 (2002). Then-appeals court Judge Sonia Sotomayor remarked, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life,” in response to Justice O’Connor’s assertion that “a wise old man and wise old woman will reach the same conclusion in deciding cases.” *Id.*

13. See Stephanie Condon, “*Wise Latina*” May Still Be A Problem for Sotomayor, CBS NEWS (June 5, 2009, 11:33 AM), [http://www.cbsnews.com/8301-503544\\_162-5065714-503544.html](http://www.cbsnews.com/8301-503544_162-5065714-503544.html) (“Some senators have said this week they are still questioning Sotomayor’s judicial approach to race . . .”); see also Charlie Savage, *A Judge's View of Judging Is on the Record*, N.Y. TIMES, May 15, 2009, at A21 (“[Justice Sotomayor’s] remarks came in the context of reflecting her own life experiences as a Hispanic female judge and how the increasing diversity on the federal bench ‘will have an effect on the development of the law and on judging.’”).

14. See, e.g., Charisse R. Lillie & Stephanie L. Franklin-Suber, 2002 ABA Spirit of Excellence Award Nominee: The Honorable Clifford Scott Green, Senior Judge, United States District Court for the Eastern District of Pennsylvania (2002) (on file with the Commission on Racial and Ethnic Diversity in the Profession, Am. Bar Ass’n) (detailing the influence Judge Green has had on many young people and enumerating many of his professional successes); Telephone Interview with The Hon. Ida Chen, First

personal success and did not seek power or accolades for their accomplishments. Their contributions more visible in the work of new generations of lawyers, judges, law professors, their clerks and staff,<sup>15</sup> but they also profoundly affected the lives of every day people who were inspired to emulate their examples. Many of these affected individuals have taken up the calling as public leaders improving our society. A large number are here today in the audience or represented by their families and certainly have other stories that can inform my brief exposition.

#### A. Judge Clifford Scott Green

##### 1. Developing a Vision for a Public Calling

As I talk about a public calling of these judges, it is only fitting to start with Judge Clifford Scott Green himself. Throughout his career, including forty-three years on the federal and state benches,<sup>16</sup> he served as an inspiring role model for aspiring lawyers and judges. Judge Green's judicial opinions were influential, but his insights offered off of the bench in social and other settings, his encouragement of younger lawyers and every day citizens, and his example of how a public citizen can lead with humility and have a great impact, reached far beyond the courtroom.<sup>17</sup> His own words capture his sense of the law as a public calling: "One should enter the legal profession motivated by a desire to advance the cause of justice and not merely in the quest of great financial rewards. One should be willing to work hard to remedy injustice and have the courage to speak out against injustice wherever found."<sup>18</sup>

Like many others in this room, I am grateful to have personally known Judge Green. I know and have heard lots of stories that reveal the seriousness of purpose with which he exercised his judicial authority while retaining an often self-deprecating sense of humor that softened, but did not blunt, his razor sharp insights. He made it seem like administering justice was easy, but that belied the often courageous steps he took as a judge and a lawyer. Perhaps one of the greatest joys I had as a younger member of this faculty was hosting two of the finest jurists I know at a student session about the legal profession with a focus on judging. Judge Green joined Judge Louis Pollak, his close friend, at that session and they talked about delivering justice when personal values and the rule of law appear to conflict. Judge Green and Pollak came from dramatically different backgrounds in terms of

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Jud. Dist. of Pa., Ct. Com. Pl. (Mar. 16, 2010) (commenting on the guidance Judge Marutani and Judge Stout provided to minority lawyers and on their devotion to dispensing justice).

15. See, e.g., Lillie & Franklin-Suber, *supra* note 14 (quoting numerous people whose legal careers were positively influenced by Judge Green); Telephone Interview with The Hon. Ida Chen, *supra* note 14 (recounting how Judge Marutani served as a mentor to the Hon. Ida Chen); Telephone Interview with Professor Linn Washington, Temple Univ. Sch. of Comm. & Theater (Mar. 16, 2010) (noting that Judge Stout funded scholarships and made opportunities available to minorities through her clerkships).

16. Clifford Scott Green, JUST THE BEGINNING FOUND., <http://www.jtbf.com/index.php?src=directory&view=biographies&srctype=detail&refno=69> (last visited Nov. 15, 2010).

17. See, e.g., Lillie & Franklin-Suber, *supra* note 14 (quoting numerous people whose legal careers were positively influenced by Judge Green).

18. Clifford Scott Green, *supra* note 16.

privilege<sup>19</sup> and shared a respect they held for each other that was genuine and revealed in their conversation about justice. Both spoke about the importance of integrity and principled decision-making that had defined their careers and underlay their great respect for each other as jurists. They opened themselves to probing questions from the students and they spoke candidly of the awesome responsibility of judging in a way that exposed their love of the law and mutual respect for their judicial fellow traveler.

Born in the early 1920s, Judge Clifford Scott Green grew up in Philadelphia in “a poor but close and supportive family.”<sup>20</sup> After high school, he worked various jobs<sup>21</sup> and eventually enlisted in the Signal Corps Reserve and was called to active duty with the Air Force.<sup>22</sup> Five years later he received an accounting degree from Temple University.<sup>23</sup>

When a faculty adviser told him that there were no jobs for African American Certified Public Accountants (CPAs) in Philadelphia, Judge Green went on to pursue a career in law and enrolled at Temple Law School,<sup>24</sup> with (he said) “at least a hope of future opportunities.”<sup>25</sup>

While in law school, he was an editor of the *Temple Law Review* and a member of Temple’s first moot court team.<sup>26</sup> He also worked on the campaign for the Honorable Herbert Edward Millen, the first African American who was appointed and later elected a judge of a court of record in Pennsylvania, an experience that motivated Judge Green to pursue his own career on the bench.<sup>27</sup> Judge Green graduated from Temple Law School with honors, then passed the bar exam with the highest score in the state.<sup>28</sup> Despite these accomplishments, he could not secure a position with a law firm.<sup>29</sup>

His perseverance led him to join other young African American lawyers who established the pioneering African American private law firm, Norris, Schmidt, Green, Harris, Higginbotham & Brown.<sup>30</sup> At that firm, Judge Green and his colleagues substantially increased access to justice for the African American

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19. See *History of the Federal Judiciary: Louis Heilprin Pollak*, FED. JUDICIAL CTR., <http://www.fjc.gov/servlet/nGetInfo?jid=1904&cid=141&ctype=dc&inststate=pa> (last visited Nov. 15, 2010) (noting that Judge Pollak was raised in New York, NY, and earned degrees from Harvard and Yale); *Clifford Scott Green*, *supra* note 16 (noting that Judge Green grew up in a poor family in Philadelphia).

20. *Clifford Scott Green*, *supra* note 16.

21. *Id.*

22. Michael Hinkelman, *Judge Clifford Scott Green Dies—Presided Over Case That Helped Abolish Racism in Pa. State Police Hiring*, PHILA. DAILY NEWS, June 2, 2007, at Local6.

23. *Id.*

24. *Id.*

25. *Clifford Scott Green*, *supra* note 16.

26. Robert J. Reinstein, *Revered Jurist Clifford Scott Green '51: 1923-2007*, TEMPLE ESQ., Fall 2007, at 7, available at [http://www.law.temple.edu/pdfs/esq/esq\\_fall2007.pdf](http://www.law.temple.edu/pdfs/esq/esq_fall2007.pdf).

27. *Clifford Scott Green*, *supra* note 16.

28. Peter J. Liacouras, C. of Temple Univ., Remarks at Judge Green’s Funeral 2 (June 7, 2007) (on file with author).

29. See Lillie & Franklin-Suber, *supra* note 14 (describing how Judge Green forged a unique career path in private practice because he was barred from practicing in Philadelphia’s major law firms); *Clifford Scott Green*, *supra* note 16 (noting that upon graduation Judge Green joined Philadelphia’s first African American law firm).

30. Hinkelman, *supra* note 22.

community in Philadelphia by “providing legal services to those in the Philadelphia area whom one could call legally dispossessed.”<sup>31</sup> The firm also significantly advanced the presence of African Americans in the judiciary<sup>32</sup>—perhaps more than any other in the country at the time. In addition to Judge Green, several of the firm’s lawyers—A. Leon Higginbotham, Jr., Herbert J. Hutton, Doris Mae Harris, Harvey Schmidt—moved on to become a cadre of well recognized state and federal judges.<sup>33</sup> The law firm trained lawyers and produced partners and associates who later became corporate legal counsel, a president of a major university, partners in major law firms, law professors, and a wide array of other African American lawyers<sup>34</sup> who have provided legal services and engaged in civic participation, in ways that have profoundly affected Philadelphia, the Commonwealth, and the nation.

This firm’s work was responsible for creating new health care institutions and other nonprofit and economic organizations, real estate developments and other businesses—many of which still exist today.<sup>35</sup> During the time of persistent informal segregation of opportunities in the region, the law firm challenged unequal access.<sup>36</sup> One commentator studying the law firm, Aaron Curtis Porter, observed: “[T]he mindset and philosophical practice of the law firm was that it became a model for working with and helping to build African American organizations and institutions designed to improve conditions in the African American community while it also addressed racial inequality through the legal process.”<sup>37</sup>

## 2. A Commitment to Equal Access to Justice and Fairness

Judge Green’s life reflects this commitment. After practicing law privately from 1952 to 1964, Judge Green became a judge on the Philadelphia Court of Common Pleas,<sup>38</sup> which was then the County Court of Philadelphia.<sup>39</sup>

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31. Steven H. Hobbs, *Shout from Taller Rooftops: A Response to Deborah L. Rhode’s ‘Access to Justice’*, 73 *FORDHAM L. REV.* 935, 937 (2004-2005).

32. Hinkelman, *supra* note 22; John Shiffman, *Judge Clifford Scott Green Dies at 84*, *TEMPLE ESQ.*, Fall 2007, at 7, available at [http://www.law.temple.edu/pdfs/esq/esq\\_fall2007.pdf](http://www.law.temple.edu/pdfs/esq/esq_fall2007.pdf).

33. Hinkelman, *supra* note 22; Shiffman, *supra* note 32.

34. See Albert S. Dandridge, III, *Commentary: Norris Schmidt, Philadelphia’s First African-American Firm, Is a Model for All Firms*, *LEGAL INTELLIGENCER*, July 20, 2007, <http://www.law.com/js/article.jsp?id=900005556347> (“Little did [the lawyers who formed Norris Schmidt] know at the time that they all would become giants in the legal profession.”).

35. Aaron Curtis Porter, *The Career of a Professional Institution: A Study of Norris, Schmidt, Green, Harris, Higginbotham, and Associates 7* (1993) (unpublished Ph.D. dissertation, Univ. of Pa.) (on file with Univ. of Pa.).

36. *Id.* at 6 (discussing the firm’s representation of economically disadvantaged African Americans and Hispanics in cases relating to equality in the political arena, housing, and minority businesses and noting that it was the first major firm to represent the local NAACP in Philadelphia public school discrimination cases).

37. *Id.* at 7-8.

38. *Funeral Services Thursday for Judge Green*, *PHILA. BAR REP. ONLINE*, VOL. 8., NO. 46 (June 4, 2007), <http://www.philadelphiabar.org/page/BRO060407?appNum=1>.

39. *Clifford Scott Green*, *supra* note 16.

As many of you know, Pennsylvania's judges are elected.<sup>40</sup> Today there is much controversy about judicial independence and merit in the process of electing judges as compared with other appointment processes.<sup>41</sup> Each of these judges I talk about today stood for elections and were eventually successful in attaining a seat on the Court of Common Pleas.<sup>42</sup> There is no question about their independence and principled decision-making once elected. There is controversy, however, about whether elections as compared with some kind of appointment process would have better served the interests of diversity and excellence. Notably all of these judges (like many other people of color) began their careers as judges being appointed before going on to win judicial elections.<sup>43</sup>

While serving on the Court of Common Pleas, Clifford Scott Green played a significant role in reforming the Pennsylvania Bar passage process.<sup>44</sup> As a member of a Special Committee appointed by the Philadelphia Bar Association to examine allegations of discrimination,<sup>45</sup> Judge Green and others on the Special Committee spent nine months investigating why fewer than twenty percent of African American candidates were passing the Bar Exam.<sup>46</sup> With the dedication and sound judgment that exemplified his judicial career, Judge Green helped to uncover practices that had placed obstacles for African American passage.<sup>47</sup> No doubt the

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40. *About the Courts*, THE UNIFIED JUDICIAL SYS. OF PA., <http://www.pacourts.us/Links/Public/AboutTheCourts.htm> (last visited Nov. 14, 2010) (delineating the election terms of the various levels of judicial offices in Pennsylvania).

41. Compare Gene Johnson, *Sandra Day O'Connor: Stop Electing Judges*, HUFFINGTON POST (Sept. 14, 2009, 07:29PM), [http://www.huffingtonpost.com/2009/09/14/sandra-day-oconnor-stop-e\\_n\\_286603.html](http://www.huffingtonpost.com/2009/09/14/sandra-day-oconnor-stop-e_n_286603.html) ("The first woman to serve on the U.S. Supreme Court says there's a serious problem with the government in Washington and many other states: They elect their judges."), with David K. Dewolf, *Electing Judges Keeps Them Accountable*, SEATTLE PI OPINION (Nov. 3, 2006), [http://www.seattlepi.com/opinion/290941\\_judgeelection03.html](http://www.seattlepi.com/opinion/290941_judgeelection03.html) ("The reason our state constitution provides for the election of judges is . . . because judges should be accountable to the people through the electoral process for their fidelity to the rule of law.").

42. Dominic Sama, *Friends Recall Life and Work of Judge Stout*, PHILA. INQUIRER, Aug. 23, 1998, at B6 (noting that Judge Stout was elected to Municipal Court in 1959, and served nearly three decades in Municipal Court and Common Pleas Court); Judge Ida Chen, Remarks at Portrait Unveiling Ceremony Honoring Judge William Marutani 5 (June 7, 2004) (on file with author) (noting that Judge Marutani ran for reelection in the Court of Common Pleas and won after receiving the largest number of votes in the primary and general elections, with 206,750 votes and 2,891 absentee ballots).

43. See Sama, *supra* note 42 (noting that Judge Stout was named to the state Supreme Court after serving in Municipal Court and Common Pleas Court); *Finding Aid for the William M. Marutani Papers*, ONLINE ARCHIVE OF CAL., <http://www.oac.cdlib.org/findaid/ark:/13030/kt6779r928/> (last visited Nov. 14, 2010) ("[Judge Marutani] was appointed to the Court of Common Pleas in Philadelphia County making him the first Asian American judge in the Commonwealth of Pennsylvania."). See generally Barbara L. Graham, *Do Judicial Selection Systems Matter?: A Study of Black Representation on State Courts*, 18 AM. POL. Q. 316, 316 (1990) ("[W]omen and minority groups have expressed great interest over whether judicial recruitment and selection at the state level provide new opportunities at the bench, thus addressing issues of representation, access, and participation in the judicial arena."); Clifford Scott Green, *supra* note 16 (noting that Clifford Scott Green received his first judicial appointment in 1964 to the County Court of Philadelphia and later, in 1971, was appointed to the federal bench by Nixon to serve on the U.S. District Court for the Eastern District of Pennsylvania).

44. Liacouras, *supra* note 28, at 4.

45. *Id.*

46. *Id.*

47. *Id.*

work of this Commission benefitted from the insights of the judge and its decision-making was legitimated in part because of the emerging stature of his membership.

After seven years on the Court of Common Pleas, President Nixon appointed Judge Green to the United States District Court for the Eastern District Court of Pennsylvania, and he became among the first federal district judges in the country.<sup>48</sup> As a district judge he was assigned the epic civil rights case, *Bolden v. Pennsylvania State Police*.<sup>49</sup>

The case resulted in Judge Green's landmark consent decree, which built upon the findings of discrimination by crafting the extraordinarily important requirement for the State Police to hire one minority for every non-minority hired, and an order to the State Police to reinstate the African American plaintiff, William Bolden.<sup>50</sup> It was said that Judge Green presided over the case with "tremendous capacity . . . to maintain his fairness and integrity without compromising himself,"<sup>51</sup> even as the Pennsylvania State Police fought with force and ferocity.<sup>52</sup>

In this case, like others, Judge Green "earned the respect of those who fought him the hardest as well as those who sought redress of injustice in his court."<sup>53</sup> This case opened the door for hundreds of people of color and women to join the State Police.<sup>54</sup>

In 1984, Judge Green declined the opportunity to serve on the Third Circuit Court of Appeals, believing that "he could have a greater impact on the lives of individuals and better serve his community by staying a trial judge on the District Court."<sup>55</sup> I cannot imagine a better demonstration of an individual lawyer or placing the service of justice above his or her own personal and professional advancement.

Perhaps most dramatically, Judge Green opened new doors of opportunity for attorneys of color through his selection of a diverse group of law clerks,<sup>56</sup> who have in turn built "countless paths to success, fulfillment and, in some cases, even greatness."<sup>57</sup> Many commentators have decried the lack of diversity in law clerks,

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48. See Shiffman, *supra* note 32 (noting that Judge Green was nominated to the federal bench by President Nixon in 1971).

49. 371 F. Supp. 1096 (1974).

50. See *id.* at 1101 ("[I]t is further ordered that defendants Reinstate plaintiff as a Trooper and enlisted member of the Pennsylvania State Police . . ."); see also *Bolden v. Pa. State Police*, 491 F. Supp. 958, 960 (1980) (discussing the Memorandum and Order of November 29, 1976, which mandated "the hiring of one qualified minority for each qualified white applicant and the promotion of at least one qualified minority for each two qualified white enlisted members.").

51. Hinkelman, *supra*, note 22 (quoting Harold Goodman, a civil-rights lawyer who represented the plaintiffs).

52. Lillie & Franklin-Suber, *supra* note 14.

53. *Id.*

54. See Shiffman, *supra* note 32 ("In 1975 . . . he ordered the Pennsylvania State Police to hire one minority trooper for every white trooper.").

55. Stephanie Franklin-Suber, Remarks at the Mt. Airy Presbyterian Church Black History Month Celebration (Feb. 17, 2008) (on file with author).

56. Lillie & Franklin-Suber, *supra* note 14 (quoting Sidney Wigfall, Esq., Morgan, Lewis & Bockius, LLP).

57. Stephanie Franklin-Suber, Remarks at 2003 Temple Beasley School of Law Judge Clifford Scott Green Lectureship Dinner (Feb. 25, 2003) (on file with author).



particularly since a clerkship presents a well-established pathway for young lawyers to go on to major law firm partnerships, other leadership positions in the legal profession, and judicial careers.<sup>58</sup> Clerkships have also been used as a measure of excellence for hiring by law schools and in other arenas of legal influence and privilege. Judge Green's clerks have gone on to hold these positions,<sup>59</sup> offering powerful examples of intellectual capacity, and like their judge, they have dedicated their lives to providing access for others.

### 3. Community Involvement: Service, Mentoring, and Encouragement

Judge Green's influence is felt as well in the context of mentoring and service. "Always believe in yourself" was one of many phrases that Judge Green imparted to a variety of communities with which he enjoyed interaction in public service beyond his work on the bench.<sup>60</sup> At a time when clinical programs were not commonplace in American law schools, former Temple Law School Dean Peter Liacouras called on Judge Green, then teaching an Evidence course at Temple, to help build the nation's first legal pipeline program, the path-setting Legal Education and Participation Program, or LEAP, which uses volunteer lawyers and law students to educate middle and high school students in area schools about law and citizenship, and provides these students with exposure to the concepts of public service, leadership, and academic achievement.<sup>61</sup>

Through this trailblazing program, thousands of students participated in mock trials and other classroom interactions with lawyers and law students.<sup>62</sup> Judge Green encouraged many lawyers to volunteer and offer legal lessons to students who were not likely to have engaged with the profession.<sup>63</sup> More than three decades old, the program in its latest iteration is co-sponsored with the Philadelphia Bar Association's Young Lawyers Division.<sup>64</sup> It has served as a model for American law schools, reaching tens of thousands of public, private, and parochial school students<sup>65</sup> and bringing together more than 250 attorneys and law students each year to put mock trials into action.<sup>66</sup> After participating in LEAP, many students often become so interested in the legal profession that they subsequently pursue a career in law.<sup>67</sup> Among my own students at Temple were former high

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58. *Id.*

59. *Id.*

60. *Id.*

61. E-mail Interview with Peter J. Liacouras, C. and Former Dean, Temple Univ. Beasley Sch. of Law (Mar. 17, 2010).

62. Telephone Interview with Roberta West, Director, Temple Univ. LEAP Program (Mar. 16, 2010).

63. Telephone Interview with David Travaskis, former Director, Temple Univ. LEAP Program (Mar. 16, 2010).

64. See *Law Education and Participation (LEAP)*, TEMPLE UNIV. BEASLEY SCH. OF LAW, [http://www.law.temple.edu/pages/Academics/Centers\\_Leap.aspx](http://www.law.temple.edu/pages/Academics/Centers_Leap.aspx) (last visited Nov. 4, 2010) ("The Mock Trial Camp is organized in a joint effort by Temple-LEAP and the Young Lawyers Division of the Philadelphia Bar Association.").

65. Telephone Interview with David Travaskis, *supra* note 63.

66. *LEAP*, *supra* note 64.

67. Lillie & Franklin-Suber, *supra* note 14 (quoting Sonya Lawrence, Health Care Task Force,

school participants in the LEAP mock trials. I can also testify to the uplifting feeling of watching these students argue with confidence and aplomb, shattering the image of urban high schoolers who are uninterested in competing academically or pursuing excellence in public speaking and disciplined argumentation. I have also heard law students and young lawyers talk about their own transformative experience of working with these students. I know that Judge Green took tremendous interest in the students' accomplishments. Not long before his death, I am told, Judge Green often asked Roberta West, LEAP Program Director, "How are my kids?"<sup>68</sup>

### B. Judge William Marutani

Like Judge Green, I believe the public leadership of Judge William Marutani can also help to generate a vision of a public calling in law.

#### 1. Developing a Vision for a Public Calling

In the life and work of Judge William Marutani, we see remarkable demonstration of service in a life dedicated to ensuring justice for members of diverse groups who might otherwise be marginalized in our society, denied the full rights and status of citizens without the protection of the courts.<sup>69</sup>

His extraordinary commitment becomes truly inspirational when viewed through the lens of his own personal history as a victim of injustice arising from his background as a second generation Japanese-American experiencing the nativistic prejudice that was unleashed in World War II.<sup>70</sup> Judge Marutani refrained from bitterness and resentment, and instead used his own story as to fuel that energized a tireless commitment to extend respect and equality to others, regardless of their ethnic background or gender or income.<sup>71</sup>

Born in 1923, the same year as Judge Green, Judge Marutani was a teenage pre-law student living in the state of Washington at the outbreak of World War II.<sup>72</sup> When the relocation of citizens of Japanese ancestry to internment camps began after the bombing of Pearl Harbor, he was among the 120,000 Japanese Americans living on the West Coast who were ordered to relocate.<sup>73</sup> Judge Marutani spent more than six months in a camp at Lake Tule in Northern California.<sup>74</sup>

How would any of us respond to such injustice? Judge Marutani told *The Philadelphia Inquirer* that "my mind would not accept the fact that my own

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Antitrust Division, U.S. Dep't of Justice).

68. Telephone Interview with Roberta West, *supra* note 62.

69. See generally Judge Ida Chen, *supra* note 42 (recounting milestones in Judge Marutani's life and emphasizing his service in the judiciary).

70. Pacific Citizen Staff, *Memoriam: JA 'Giant' William M. Marutani Passes, Leaves Behind Civil Rights Legacy*, PACIFIC CITIZEN.

71. *Id.*

72. See Linda K. Harris, *Captives in Their Own Land: Japanese Americans Discuss the Internment Camps*, PHILA. INQUIRER, Feb. 20, 2000, at B1 ("He was 19 and a pre-law student in Washington state when the order went out in 1942 that all people of Japanese ancestry would be relocated.").

73. *Id.*

74. Judge Ida Chen, *supra* note 42, at 1-2.

country was doing this to me . . . to have your country mistrust you, you wonder if something is wrong with you. I was insulted . . . . The paranoia in the country was just absolutely staggering.”<sup>75</sup> He was later released to attend Wesleyan University in South Dakota.<sup>76</sup> Not long after his release, Judge Marutani tried to enlist in the United States military to demonstrate his loyalty to America, but was rejected by the Navy several times.<sup>77</sup> He was eventually able to enlist and served during the remainder of World War II.<sup>78</sup> Judge Marutani’s actions were consistent with many relocated and forcibly confined Japanese Americans who continued to believe in the democratic ideals and capacity of the United States to rectify the mistakes it made built on prejudice and racial hostility.<sup>79</sup>

## 2. A Commitment to Equal Access to Justice and Fairness

Using his position as lawyer and judge, William Marutani, in his life—like Judge Green—made a commitment to equal access to justice and fairness.

After the war, Judge Marutani graduated from the University of Chicago Law School, relocated to Philadelphia, and “embarked on a tireless fight for social equality”<sup>80</sup> while practicing for nearly twenty years in the law firm of MacCoy, Evans & Lewis.<sup>81</sup> As a volunteer civil rights lawyer, he was involved with nationally important cases seeking desegregation of schools and elimination of barriers to the vote of blacks through voter registration and educating citizens about their franchise rights in deeply hostile communities in Mississippi and elsewhere.<sup>82</sup>

Judge Marutani organized a group to join the 1963 March on Washington and provided pro bono legal services to citizens.<sup>83</sup> This commitment to securing justice for other Americans came at both professional and personal risks. While working as chief trial counsel on a successful school desegregation case in Louisiana, his temporary law office was bombed to convey a warning to stay out.<sup>84</sup>

Justice Marutani’s work as a lawyer dedicated to the public interest led him to become pro bono counsel to the Japanese American Citizens League in the seminal 1967 case, *Loving v. Virginia*.<sup>85</sup> Many of you know that this was the case that ultimately led the Supreme Court to address the state prohibitions to intermarriage between whites and members of certain other racial and ethnic groups, legislation often supported by racial purity and white supremacy assumptions.<sup>86</sup> These were

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75. *Id.*

76. Maurice M. Lewis, Jr., *Japanese American is Appointed as Judge*, BULLETIN.

77. *Id.*

78. *Id.*

79. See Pacific Citizen Staff, *supra* note 70 (noting that upon his return from the war, Marutani “embarked on a tireless fight for social equality”).

80. *Id.*

81. *Id.*

82. *About the Honorable William M. Marutani*, ASIAN PACIFIC BAR ASS’N. OF PA., <http://www.apa-ba-pa.org/mc/page.do?sitePagelId=70415&orgId=apaba> (last visited Nov. 6, 2010).

83. *Id.*

84. Maurice M. Lewis, Jr., *supra* note 76.

85. *Loving v. Virginia*, 388 U.S. 1 (1967); Judge Ida Chen, *supra* note 42, at 3.

86. See *Loving*, 388 U.S. at 7 (referring specifically to a Virginia state case upholding as legitimate the state’s purpose, which was described as an “endorsement of the doctrine of White Supremacy.”).

laws found not only in the south, but across the country. *Loving* “struck down [these] anti-miscegenation laws in 17 states,”<sup>87</sup> but its impact was even greater since it recognized a constitutional violation in laws that erect a racial hierarchy built on white supremacy, striking an explicit blow to an aspect of racial apartheid left unresolved in *Brown*. He was asked to serve as *amicus curiae* (friend of the court) before the United States Supreme Court and present oral argument in this case.<sup>88</sup> It was the first time a Japanese-American presented before the High Court.<sup>89</sup> Today, the analysis and outcome of this case continues to have great significance because commentators of law review articles and litigants draw upon its analysis in the legal challenges to the prohibition of same-sex marriages in many states across the country.<sup>90</sup>

Like Judge Green, the presence of Judge Marutani set the stage for changes to the lack of diversity in the state court bench. Upon his appointment to the Pennsylvania Court of Common Pleas of Philadelphia County, William Marutani became the first Asian American judge not only in Pennsylvania, but in courts along the east coast.<sup>91</sup>

While sitting on the Court of Common Pleas, Judge Marutani made many landmark decisions—among them, *Newberg v. Board of Public Education*<sup>92</sup> in 1983. *Newberg* was a sex discrimination case, challenging the maintenance of separate male-only and female-only public high schools in Philadelphia.<sup>93</sup> A detailed analysis of the facilities, faculty, and instructional program of the two schools demonstrated the school for boys, Central High School, far outpaced Girl’s High School, the school for girls.<sup>94</sup> Relying on equal protection grounds and the Equal Rights Amendment to the Pennsylvania Constitution, Judge Marutani’s ruling provided support for equal access to public education for female students.<sup>95</sup>

87. *About the Honorable William M. Marutani*, *supra* note 82.

88. Judge Ida Chen, *supra* note 42.

89. *Id.*

90. *See, e.g., Baker v. Nelson*, 191 N.W.2d 185, 187 (Minn. 1971) (referring to the reasoning in *Loving* and stating that it “indicate[s] that not all state restrictions upon the right to marry are beyond the reach of the Fourteenth Amendment”); *In re Marriage Cases*, 183 P.3d 384, 437 (Cal. 2008) (comparing and contrasting *Loving* with other decisions featuring different types of discrimination) *superseded by constitutional amendment*, CAL. CONST. art. I, § 7.5, *as recognized in* *Strauss v. Horton*, 207 P.3d 48, 64-65 (Cal. 2009) (providing that only marriage between a man and a woman is valid or recognized in California), *overruled by* *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 927 (N.D. Cal. 2010) (holding CAL. CONST. art. I, § 7.5 unconstitutional), *appeal docketed* No. 10-16696 (9th Cir. Dec. 6, 2010).

91. *See About The Honorable William M. Marutani*, *supra* note 82 (“Judge Marutani became the first Asian American outside of the Pacific Coast states to preside as a judge of a court of general jurisdiction.”).

92. 26 Pa. D. & C.3d 682 (Pa. Ct. Com. Pl., Phila. Cnty. 1983).

93. *Id.* at 683-84.

94. *See id.* at 706 (“The findings of fact in this proceeding . . . establish that the two schools, and in particular the educational opportunities provided, are materially unequal.”).

95. *See id.* at 711-12 (finding the maintenance of the two public schools as single-gender institutions was in violation of the Equal Protection Clause of the Fourteenth Amendment and the Equal Rights Amendment to the Pennsylvania Constitution).

### 3. Community Involvement: involving Service, Mentoring, and Encouragement

Like Judge Green, Judge Marutani demonstrated his public commitment to community involvement through service, mentoring, and encouragement.<sup>96</sup> Again we see how the judge's impact must be measured not only in his rising beyond the inequality he experienced in his path to public leadership in the law, advancing constitutional and civil rights as a lawyer and judge, but also by understanding how he used his office to encourage others to follow in his footsteps. Judge Marutani, with his "wonderful, sonorous voice"<sup>97</sup> is remembered by all of his law clerks as highly committed to the rule of law and as a person who always wanted to change things for the better.<sup>98</sup> He was encouraging to all his clerks, but was especially influential for the young Asian lawyers as well, who found him "not to push people [in]to doing things, but there to provide support and set an example."<sup>99</sup> Given the small number of role models who shared their ethnic background, Judge Marutani was an extraordinary resource to these young lawyers.

As Temple Law Professor Linn Washington, who has studied judges for decades, observed, Judge Marutani's impact extended well beyond the bench.<sup>100</sup> He served on numerous civic and charitable boards and commissions.<sup>101</sup> Perhaps most notable was his service on the presidential Commission on Wartime Relocation and Internment of Civilians.<sup>102</sup> This Commission concluded that the internment of Japanese Americans was "the unjust result of racism, wartime hysteria and a failure of political leadership."<sup>103</sup> As a result of the Commission's work, a bill was introduced in Congress (HR 442),<sup>104</sup> which formally acknowledged the injustice of the evacuation, relocation, and internment of Japanese American citizens during World War II.<sup>105</sup> Later known as the Civil Liberties Act of 1988, the bill was signed into law by President Ronald Reagan to provide a Presidential apology and symbolic payment of \$20,000 to the internees, evacuees, and persons of Japanese ancestry who lost liberty or property because of discriminatory action by the Federal government during World War II.<sup>106</sup>

Like Judge Green, Judge Marutani's influence on the next generation of lawyers and judges was profound. In a moving symbol of the transfer of the mantle of responsibility, shortly before he passed away, Judge Marutani sent civil law books, his personally annotated Pennsylvania Trial Manual, and his judicial robe, to Judge Ida Chen.<sup>107</sup> Judge Chen has said he challenged people to undertake the

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96. Pacific Citizen Staff, *supra* note 70.

97. Telephone Interview with Hon. Marilyn Go, Mag. Judge, U.S. Dist. Court for the Eastern Dist. of N.Y. (Mar. 16, 2010).

98. *Id.*

99. *Id.*

100. Telephone Interview with Professor Linn Washington, *supra* note 15.

101. *About the Honorable William M. Marutani*, *supra* note 82.

102. *Id.*

103. *Id.*

104. Civil Liberties Act of 1988, 50 U.S.C. app. § 1989 (1988).

105. *Id.*

106. *Id.*

107. Judge Ida Chen, *supra* note 42 at 6.

commitment to serve and often asked her: “Ida, are you working hard?”<sup>108</sup> Since I know of few harder working judges than Judge Chen, I am convinced his challenge spurred others like her to honor this judge by embracing the calling of public leadership in the law.

Judge Marutani touched many lives and inspired generations of lawyers who followed him to continue the work of promoting access to justice in terms of the diversity of the bench and bar. But I would be remiss if I failed to point out how poorly we have done to increase diversity on the bench and leadership in the legal profession in the representation of Asian Americans. Today, Asian American judges make up only 10.93% of all state judges nationwide.<sup>109</sup> And according to the Bureau of Labor Statistics, only 4.1% of all lawyers in the United States are Asian American.<sup>110</sup> These figures are perhaps all the more surprising given the stereotypes that abound about Asian American achievement in the discourse about affirmative action.<sup>111</sup>

### C. Judge Juanita Kidd Stout

#### 1. Developing a Vision for a Public Calling

The third judge I would like to highlight in developing a vision of a public calling is Judge Juanita Kidd Stout. Judge Stout was a pioneer in the legal community during a time when segregation blocked both women and African Americans from many positions and leadership in the profession.<sup>112</sup> Rising above racial and gender discrimination, she dedicated her career to wielding the law as a tool for enhancing social justice.<sup>113</sup> She profoundly affected the life possibilities of the inner city youth who came before her in her courtroom.<sup>114</sup>

Born just a few years before Judges Marutani and Green, Juanita Kidd Stout grew up on a farm in Oklahoma, where she said she was often isolated from other children.<sup>115</sup> As a result, she spent a lot of time with her parents, who tutored her and taught her social skills that she found useful later in life.<sup>116</sup> She was an

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108. *Id.*

109. *National Database on Judicial Diversity in State Courts*, AM. BAR ASS’N, <http://www.abanet.org/abanet/jd/display/national.cfm> (last visited Nov. 14, 2010).

110. U.S. DEP’T OF LABOR & U.S. BUREAU OF LABOR STATISTICS, *LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY 16* (2009), available at <http://www.bls.gov/cps/cpsrace2009.pdf>.

111. See Miranda Oshige McGowan & James Lindgren, *Testing the “Model Minority Myth,”* 100 NW. U. L. REV. 331, 331 (2006) (“The stereotype of Asian Americans as a ‘Model Minority’ appears frequently in the popular press and in public and scholarly debates about affirmative action, immigration, and education.”).

112. Amy E.B. Kapp, *Breaking Barriers to the Bench as a Black Woman from 1959-1998: Juanita Kidd Stout* 15 (Apr. 5, 2002) (unpublished paper, Stanford University) (on file with The Women’s Legal History Biography Project), available at <http://www.law.stanford.edu/library/womenslegalhistory/papers/StoutJ-Kapp02.pdf>.

113. *Id.* at 47.

114. See *id.* at 30 (noting that Judge Stout always made education a requirement for probation because she believed that a lack of education was a cause of violent criminal behavior.)

115. *Id.* at 2.

116. *Id.*

accomplished student, ultimately graduating law school during an era where not many African Americans and even fewer women graduated from high school.<sup>117</sup>

As a young student, Judge Stout put great energy into her studies.<sup>118</sup> While she emphatically stated that she “certainly ‘does not approve of segregation,’” she took great pride in the educational experience at the segregated schools she attended and finished high school at the age of sixteen.<sup>119</sup>

Because Oklahoma’s accredited colleges did not admit African Americans at the time she graduated, Judge Stout began college at Lincoln University in Jefferson City, Missouri.<sup>120</sup> She attended Lincoln University for two years, where she began to build a professional network that would last her lifetime, linking her to other women who would also become important figures in Philadelphia, such as Sadie T.M. Alexander and Councilwoman Marion Tasco.<sup>121</sup> She later transferred to the University of Iowa and received a bachelor’s degree in music from there in 1939.<sup>122</sup>

Judge Stout sealed her commitment to a public calling when Charles Hamilton Houston came to Missouri to argue a case while she was at Lincoln University.<sup>123</sup> She had already developed an interest in the law.<sup>124</sup> In the documentary, *The Road to Brown*, Judge Stout observed:

He brought this case seeking a young man’s admission into the law school. That is the only time in my life—grade school, high school, college, or even graduate school, or professional school—that I ever cut class. But even though I was a teenager, I had heard of Charles H. Houston, and I had a life-long ambition to be a lawyer myself, and when I heard that Charles H. Houston was coming to Jefferson City, Missouri, I cut class and went to the Supreme Court of Missouri that day, and I was thrilled!<sup>125</sup>

This exposure to the powerful tool of the law would influence her entire career. Eventually Judge Stout moved to Washington, D.C., began her studies at Howard University School of Law, and worked for Houston in his Washington, D.C. law firm.<sup>126</sup> She eventually left Washington, D.C. to follow her husband and finished her degree at the University of Indiana where her husband was doing graduate work.<sup>127</sup> She received her law degree from Indiana and went on for a

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117. *See id.* at 1 (“[S]he worked as a lawyer and a judge although she was Black in the era of Jim Crow, a woman in an era where only a handful of women pursued careers outside the home.”).

118. *See, e.g.,* Kapp, *supra* note 112, at 4 (“During her school years, Juanita participated in almost every extracurricular activity offered by her school.”).

119. *Id.* at 6.

120. *Id.* at 6-7.

121. *Id.* at 7.

122. *Id.* at 8.

123. *Id.* at 7.

124. Kapp, *supra* note 112, at 8.

125. *THE ROAD TO BROWN* (William Elwood, Producer 1989).

126. Kapp, *supra* note 112, at 13.

127. *Id.* at 15.

graduate degree in law as well, which she received in 1948.<sup>128</sup> She passed the Pennsylvania bar exam in 1954.<sup>129</sup>

## 2. Commitment to Equal Access to Justice and Fairness

Like Judges Green and Marutani, Judge Stout demonstrated a commitment to equal access to justice and fairness. This commitment led her to love the law because of its ability to work in the public good. Judge Stout once said, “[i]f I had nine lives. I’d want to be a lawyer every day of every one.”<sup>130</sup> She ran her own practice,<sup>131</sup> which was not only common among African American lawyers at that time period, it is still a commonality for large numbers of people of color in practice, a reflection in part of the reality of limitations that are still present in access to the full opportunities offered by the profession. Judge Stout later accepted a position at the Philadelphia District Attorney’s Office after the chief recruited her “because she worked so hard.”<sup>132</sup>

Six months later, Judge Stout became the Chief of Appeals, Pardons, and Paroles Division.<sup>133</sup> She was widely known as an effective leader.<sup>134</sup> Although perceived as an “outsider” from the south rather than as a Philadelphian, Judge Stout became the first African American woman to sit on the bench in Philadelphia when she was nominated by Governor David Lawrence to fill a vacancy in the Municipal Court.<sup>135</sup> Two months later, in September 1959, she won the election for a ten-year term on the court, making her the first African American woman to win a judicial election in Pennsylvania<sup>136</sup> and I am told one of the first in U.S. history.<sup>137</sup> As an interesting aside, the opponent she defeated in that election would go onto a distinguished judicial career of his own—his name was Clifford Scott Green.<sup>138</sup>

Judge Stout won elections for two consecutive ten-year terms on the Court of Common Pleas before her appointment to the Pennsylvania Supreme Court by Governor Robert Casey in 1988.<sup>139</sup> Again, she was a trailblazer: the first American woman to serve on any state supreme court.<sup>140</sup> “At 5 feet, 3 inches, [Judge Stout] often had to sit on a pillow to be seen at the bench.”<sup>141</sup> Despite her size, she was not

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128. *Id.*

129. *Id.* at 17.

130. *Id.* at 1.

131. *Id.* at 17-18.

132. Kapp, *supra* note 112, at 19.

133. *Id.* at 20.

134. *See id.* at 45, 48 (stating that Judge Stout was a part of a group of judges considered to be trailblazers, and that she was regarded as a role model and an icon for many judges).

135. *See id.* at 21 (noting that despite the fact that she had no political connections and was unknown to party leaders, Governor David L. Lawrence appointed Judge Stout to an open seat on the Municipal Court in 1959).

136. *Id.* at 21-22.

137. Robert McG. Thomas Jr., *J.K. Stout, Pioneering Judge in Pennsylvania, Is Dead at 79*, N.Y. TIMES, Aug. 24, 1998, at A15. In 1959, Judge Stout became the first black woman in the U.S. to win election to a court of record. *Id.*

138. Kapp, *supra* note 112, at 21-22.

139. Sama, *supra* note 42.

140. Kapp, *supra* note 112, at 33.

141. *Id.* at 1.



retiring and was known to become “‘outraged if there was an injustice in the courtroom[.]’”<sup>142</sup> Using her platform as a judge, she spoke often about the unjust exclusion of African Americans from juries because of challenges by lawyers to their participation on jury panels. Often this exclusion was based on an unstated racial purpose for exclusion. While on the trial bench, her decision in the 1983 case, *Commonwealth v. Hardcastle*,<sup>143</sup> predicted the principle that was at the heart of the 1986 United States Supreme Court decision *Batson v. Kentucky*.<sup>144</sup> In *Batson*, the Court ruled that a prosecutor’s use of what lawyers call peremptory challenges (used to exclude potential jurors) may not be used to exclude jurors based solely on their race.<sup>145</sup>

In Philadelphia’s Court of Common Pleas, Judge Stout was renowned for being particularly tough on gang violence.<sup>146</sup> While serving on the Municipal Court, she often chastised gang members that came through her courtroom.<sup>147</sup> She was threatened with bomb and death threats that resulted in the city assigning her to a twenty-four-hour-a-day bodyguard.<sup>148</sup> But despite the firm sentences she gave to individual offenders and her tough stance on crime, she “seemed to reserve her greatest fury for what she perceived as [crime’s] underlying cause, an almost willful ignorance, especially among defendants who had dropped out of school without learning to read and write.”<sup>149</sup> It was also observed that “Stout’s strong position on punishing kids . . . likely came from her stated desire to deter their bad behavior but also to protect them, to ensure that they were not subject to difficult conditions on the streets or at home.”<sup>150</sup> This led Judge Stout sometimes to take particular interest in some of the young defendants and juveniles who appeared in her court and, before it became popular, to seek alternatives to incarceration for these young men and women.<sup>151</sup> Judge Stout often counseled and supervised alternative life paths for these young people, urging them to change their ways, stay in school, and avoid violence as a way of resolving disputes.<sup>152</sup>

Judge Stout strongly valued education and often included educational

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142. Faye Flam, *Juanita Kidd Stout Dies at Age 79*, PHILA. INQUIRER, Aug. 22, 1998, at A1.

143. See Kapp, *supra* note 112, at 30-31 (discussing Judge Stout’s decision in that case, specifically her development of a burden-shifting principle for cases in which the defendant makes a prima facie showing of race discrimination in the jury selection process).

144. 476 U.S. 79 (1986).

145. *Id.*

146. Flam, *supra* note 142.

147. See Kapp, *supra* note 112, at 23-24 (“[Judge Stout] looked beyond the law for moral guidance and was willing to be paternalistic and disciplinarian . . .”).

148. *Id.* at 24.

149. Robert McG. Thomas Jr., *supra* note 137.

150. Kapp, *supra* note 112, at 25.

151. See *id.* at 25. Judge Stout supplemented five girls’ probation with orders that they “grow plants from a seed or bulb, make skirts with a proper fit not too tight, beautify one room in their homes for five dollars, and write 2000-word essays on what a young lady should be . . . obviously hoping that they would contrast their violent, delinquent behavior against the gentle roles they should assume as women.” *Id.* But see *id.* at 24 (noting that Judge Stout was outspoken about her belief that incarceration as a deterrence, was necessary for every offense).

152. See *id.* at 30 (“When [Judge Stout] had a defendant, she would extol the virtues of education . . .”)

requirements as a part of probation for some young people.<sup>153</sup> Many who practiced law in Philadelphia courts during her career know of people whose first exposure to the legal system was as a defendant in Judge Stout's courtroom, and, because of her interest in them and commitment to help them turn their lives around, some of them went on to finish school, attend college, and even graduate from law school.<sup>154</sup>

### 3. Community Involvement: Service, Mentorship, and Encouragement

Like the other judges, Judge Stout's public calling included her community involvement outside of her work as judge. Not only she active in numerous civic organizations within the local community, but her involvement also led to her an appointment as a special ambassador to the Kenyan independence celebration.<sup>155</sup> "She wrote numerous articles about race, crime, and justice" and lectured at law schools, colleges and high schools in six African countries and at home in the late 1960s.<sup>156</sup>

After age limits forced Judge Stout to retire from the Pennsylvania Supreme Court, she continued to serve as a senior judge because she viewed judging as "the best job in the world. Each day brings something different, a new experience. Everything about it is interesting."<sup>157</sup> She often spoke with great concern about persistent racial and gender bias in the courts.<sup>158</sup>

Passing away from leukemia in 1998, Judge Stout is remembered for "set[ting] a standard in which everyone was oblivious of her race and gender," and as "a role model for thousands of Philadelphia lawyers"<sup>159</sup> and young people whose lives she touched.

## CLOSING REMARKS

The lessons we have learned from the lives of Judges Green, Marutani, and Stout vividly demonstrate the vitally important role judges of color have played in advancing justice within our society. But as current data supports, while the judiciary has become more racially diverse, it hardly reflects the diversity of the American society it serves, both on the federal and state level.<sup>160</sup> Other judges have confronted inequality and injustice, but we should not lose sight of the enormous

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153. See *id.* at 24 ("[Judge Stout] would always [include education] as a requirement for probation.").

154. Kapp, *supra* note 112, at 47 ("[Judge Stout] mentored a boy . . . after adjudicating him as a teenage[r] in juvenile court, and he became like a son to her.").

155. *Id.* at 23.

156. *Juanita Kidd Stout*, WEST'S ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/doc/1G23437704190.html> (last visited Nov. 13, 2010).

157. Telephone Interview with John K. Fiorillo, Partner, Unruh, Turner, Burke & Frees (Mar. 31, 2010).

158. Kapp, *supra* note 112, at 38.

159. Flam, *supra* note 142.

160. See Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 WASH. U. L. REV. 1117, 1122 (2009) ("[A]lthough a minority judge is not the rare phenomenon it was decades ago, the American judiciary continues to be overrepresented by Whites. . . . [T]his overrepresentation persists in both the federal and state courts.").

challenges public leaders, like the three I have highlighted, faced in their personal lives, and the enormous influence they have had for the development of others who follow in their footsteps. Each embodied the three elements of the ideal of a life in the law as a public calling—(1) they each developed a vision of public service growing out of their personal experiences, (2) they devoted themselves to equal access to justice and fairness, and (3) they reached beyond their professional work to serve, mentor, and encourage those who followed after them.

Researchers are just starting to examine the relationship between a more diverse judiciary and the judicial decision-making process. One recent study suggests that the public's confidence in the judicial system would be enhanced by a more diverse bench, which would also provide more minority role models.<sup>161</sup> Another observes that increased judicial diversity may “substantively improve the judicial decision-making process by increasing judicial impartiality and yielding fairer legal outcomes.”<sup>162</sup>

I recall a conversation with Federal Judge Thelton Henderson of the Northern District of California, in which he offered that the appearance of justice is served by having lawyers and judges of color work alongside whites sharing a common commitment to administer the law. With candor Judge Henderson argued that justice is undermined when the only other African Americans he and other court participants see in the federal courthouse in California are defendants in criminal cases. And for many of the poor and people of color who are in the courts, legitimacy of decision-making is compromised when the participation between judges and those appearing before them appears segregated by class, race, and even gender.

Consistent with my call to public leadership for judges and lawyers, I believe it is also important for legal educators to find new ways to fill the pipeline to college and law school with talented individuals who will be prepared to become law clerks, lawyers in practice and judges replicating the lives of the public service of our three judges. The lives of Judges Green, Marutani, and Stout are certainly inspiring. If we live our lives in the law as a public calling—dedicated to helping others and advancing justice in society—we will prove ourselves worthy heirs to the remarkable legacy they bequeathed us.

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161. *Id.* at 1120.

162. *Id.*

