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A Salute To Black Judges Of The Maryland Judiciary

By Honorable David B. Mitchell

Just the other day there was a
Civil War...
Just the other day black men and black
women were emancipated...
Just the other day black men and black
women dared to dream of being a
judge in the Maryland judiciary...
Just the other day has brought us to
today.¹

February traditionally has been a time when the United States observes National Black History Month. It is a time which offers all Americans the chance to learn more about a vital part of our history and to recognize that great men and women have envisioned the future and struggled to make their visions reality. For the first time, in commemoration of Black History Month, Marylanders saluted the legacy of Black judges and their service in the Maryland judiciary.

On February 11, 1988, thousands of Maryland citizens paid tribute to the black judges of the state's judiciary in a ceremony sponsored by the Clerks Office of the Circuit Court for Baltimore City. Of the 38 judges honored, many have set historical precedents while sitting on the bench, yet all have helped to blaze a path for justice and establish excellence and opportunity for others to learn from, live by and follow.

The historical significance of the event of February 11, 1988, can easily be set to

record. The Maryland Judiciary consists of 219 judges within the separate levels of its court system. Of that number, 18 are black judges, one of whom is female. To this total must be added the judges currently serving on the United States District Court for the District of Maryland, five sitting Orphans' Court judges, thirteen retired and former judges, and four deceased judges, overall, forty-two Americans of African descent have served as judges in the several courts of Maryland.

The salute occurred over a century after blacks were officially granted admission to the Maryland Bar. The prior practice in Maryland had been to limit the legal profession to free white males.² Through a series of successful challenges, Everett J. Waring, a graduate of the School of Law at Howard University, was admitted to the Bar of the Supreme Bench of Baltimore City,³ with all the rights and privileges attendant thereto, on October 10, 1885. This was followed five months later by the admission of Joseph Seldon Davis to the

Baltimore City Bar.

Each of these events followed the unanimous decision of the Supreme Bench of Baltimore City in *In re Wilson*,⁴ which held that the 1832 Act, limiting practice as an attorney to free white males, violated the equal protection clause of the fourteenth amendment to the federal constitution. The action overruled the case of *In re Taylor*, where the application of Charles Taylor, a colored citizen, for admission to the Maryland Bar could not be approved. Chief Judge Lawrence Bartol wrote that "[t]he privilege of admission to the office of an attorney cannot be said to be a right or immunity belonging to the citizen, but is governed and regulated by the Legislature, who may prescribe the qualifications required, and designate the class of persons who may be admitted."⁵ Furthermore, the court approvingly quoted the language of the United States Supreme Court stating:

In the nature of things, it is not every citizen of every age, sex and condition

that is qualified for every calling and position. It is the prerogative of the Legislature to prescribe regulations founded on nature, reason and experience, for the due admission of qualified persons to professions and callings demanding special skill and confidence. This fairly belongs to the police power of the state.⁶

In concluding that blacks could not be excluded from the practice of law, the Supreme Bench of Baltimore accurately forecast the eventual emergence of blacks serving in the Maryland judiciary, "if blacks could not be discriminated against in jury selection, they also could not be discriminated against in the opportunity to become judges. . . . Admission to the bar was a state prerequisite to eligibility for a judicial position. . . ." Full participation of blacks was to be protected pursuant to the fourteenth amendment and they would have to be accorded the opportunity to engage in all aspects of their citizenship which included the professions.

Despite the admission of the first black lawyers to the Maryland in 1885, nearly seven decades would pass before the prediction of their involvement in the state judiciary would come true. In the interim period, these lawyers faced extraordinary obstacles to the full participation in the Maryland justice system. In most instances the issue was survival. Actual involvement in judiciary began in the 1950's. It was then, and continues to this day, to be the result of participation in the political arena that blacks achieved a presence in the judicial branch of government. The growth in the number of black judges tracks the involvement of the citizenry in the political process.

Thus, February 11 was a significant date. Each judge who participated in the excellent program, initiated by Gloria S. Wilson⁸ and Sandra E. Banks, Clerk,⁹ has an individual story reflecting the significance of the day: The why, if you will, of marking the occasion of "A Salute to Black Judges in the Maryland Judiciary."

In an incident which happened two years ago, a child put the salute in perspective for me. The little girl was in an empty courtroom accompanied by an assistant state's attorney who was acquainting her with what she could expect when called to testify as a witness. The child had been the victim of a crime and was understandably apprehensive of the whole experience. She was all of six or seven years old. I happened upon the pair and was quickly identified to the child as the judge. She was disbelieving. Even when I donned my judicial robe, she remained unconvinced. I was

questioned by her as to whether I really was the judge. Nothing I did or said seemed to persuade her that I indeed was who I claimed I was. Later she questioned members of my staff as to whether I really was a judge. She later disclosed to them that her disbelief in my being a judge was based solely on my race. It was not possible for her to accept the fact that a black person could actually be a judge! She herself was black. Sadly, this child is not alone. Many more still believe that it is not possible to be black and vested with the responsibility of sitting in judgment of your fellow man. The salute was as much for them as it was a testament to any individual accomplishment despite all obstacles which members of the black judiciary have faced in the course of their careers.

I could not help but reflect during the ceremony about the personal sacrifices made by untold generations which allowed me to achieve the honor of the community. The foremost were those in involuntary bondage who dared not even dream of freedom let alone someday having their offspring serve as judges. Individual heroes such as Frederick Douglass, Harriet Tubman, Sojourner Truth, George Washington Carver, W.E.B. Dubois, Thurgood Marshall, Fannie Lou Hamer, Martin Luther King, Clarence and Juanita Jackson Mitchell, and Joseph C. Howard not only dared to dream but put their lives, careers and fortunes on the line for all Marland citizens to become free. A debt of gratitude is owed them.

The celebration of the individual was gratifying, but I am sure that each of us felt that the true celebrant and beneficiary of our individual efforts was the public and the justice system. We each are a creature of the many efforts of all segments of the society throughout the state and each should be proud that despite a delayed start, black citizens can aspire to the highest offices of the profession we have chosen. It was a significant fact that the last three Baltimore City Solicitors have been both black and former judges: the Honorable George L. Russell, Jr., the Honorable Benjamin L. Brown and the Honorable Neal M. Janey. Three of the past four state's attorneys for Baltimore were black: Honorable Milton B. Allen, Honorable Kurt L. Schmoke and Honorable Stuart O. Simms. Of course, the only black to sit on the United States Supreme Court is Mr. Justice Thurgood Marshall.

The occasion was for the children. It was for them to see the reality and understand that they can master the possibilities. No longer is there a prescription that the prac-

tice of law is limited to "free white male and over 21." Men and women, black and white, old and young fully participate as judges in Maryland and we all are the better for it. While I express heartfelt gratitude for the Salute on a personal basis, I am more persuaded that the Salute gave us all the opportunity to thank our predecessors and the community which finally gave us all the chance.

Judge me not by the color or shape of my skin, but the content of my mind, and character is an admonition that still needs stating.¹⁰

Notes

- ¹ Address by Pinkney McCready, Director of Personnel, Clerk's Office for the Circuit Court for Baltimore City, Remarks at Baltimore City's Salute to Black Judges of the Maryland Judiciary (Feb. 11, 1988).
- ² Act of March 10, 1832, Ch. 268, 1831 Md. Laws: applications for the admission to practice law shall be open to any "free white male citizen of Maryland . . ."
- ³ A Koger, *The Negro Lawyer in Maryland* (1948).
- ⁴ *Baltimore Sun*, Mar. 20, 1885, at 1, col. 4, see also note 7 infra.
- ⁵ *In re Taylor*, 48 Md. at 33 (1877).
- ⁶ *Bradwell v. State*, 16 Wall. at 142 (1872).
- ⁷ Bogen, *The Transformation of The Fourteenth Amendment: Reflections from the Admission of Maryland's First Black Lawyers*, 44 Md. L. Rev. at 1040 (1985).
- ⁸ Gloria S. Wilson is the Deputy Director of Personnel for the Clerk's Office for the Circuit Court for Baltimore City. She is also a student at the University of Baltimore School of Law.
- ⁹ Mrs. Banks was the first black female elected clerk of one of the six courts of the Supreme Bench of Baltimore City in 1976. She later became the Clerk of the Circuit Court after the 1982 election when the Supreme Bench merged to become the Circuit Court for Baltimore City.
- ¹⁰ Author unknown.

The Honorable David B. Mitchell currently presides on the Circuit Court for Baltimore City. He is a 1967 graduate of Fisk University and received his Juris Doctor in 1970 from Columbia University School of Law. He was admitted to the Maryland Bar in 1970 and has since served on its Board of Governors' Committee on Professional Responsibility and Fee Disputes and Council, and Family and Juvenile Law. He is a former Commissioner of the State's Attorney Grievance Commission, serving from 1979 to 1983. In 1984 he ascended to his present position on the circuit court bench. Judge Mitchell is also an Adjunct Professor at The University of Baltimore School of Law.
