



# More Diversity on Federal Bench: Now is the Time

By Marc H. Morial



When Revius Ortique, Jr. — the first African-American justice on the Louisiana Supreme Court, the first African-American judge on the Orleans Parish Civil District Court and a dear family friend — died in June 2008, it reminded me of how difficult the struggle for judicial diversity, especially on the federal bench, has been in Louisiana.

The under-representation of African-American federal judges in Louisiana is a long-standing travesty that has compromised public confidence and resulted frequently in the unequal application of the law. Moreover, although we can share with pride Louisiana Supreme Court Chief

Justice Catherine D. Kimball's recent installation as Louisiana's top jurist, the historic under-representation of women is also a cause for concern.

As president of the National Urban League, I address this issue primarily as an advocate of equal justice and fairness. I am a member of the Louisiana State Bar Association and was an active practitioner for 10 years before I began my public service career. I was a named plaintiff and chair of the Plaintiff's Committee in the historic case of *Chisom v. Louisiana*, which, along with its companion, *Clark v. Louisiana*, helped to dramatically increase the number of African-American Louisiana state court judges. My late father, Ernest

N. (Dutch) Morial, before becoming the first African-American mayor of New Orleans, was the first African-American Juvenile Court judge and the first African-American elected to the Louisiana Court of Appeal.

I grew up believing in the important role of judges and lawyers in not only administering the law but also promoting equal justice and fairness. I was proud to follow in my father's footsteps as mayor of New Orleans before becoming president and CEO of the National Urban League in 2003, which places me in a role to monitor the selection and confirmation of federal judges by the President and the Senate, respectively.



We must proudly remember that Louisiana has produced some of the finest African-American judges and lawyers in the history of this country, including trailblazers like Justice Ortique and former civil rights lawyer A.P. Tureaud, who has been called the father of the civil rights movement in New Orleans. They are a part of the pantheon of outstanding African-American Louisiana jurists that include Israel M. Augustine, the first African-American Criminal District Court judge; Joan Bernard Armstrong, the first African-American woman to become a judge; Bernette J. Johnson, the first African-American woman Louisiana Supreme Court justice; Lionel R. Collins, the first African-American judge in Jefferson Parish; and Freddie Pitcher, Jr., the first African-American judge in Baton Rouge.

The paucity of African-American federal judges is certainly not because of a lack of qualified candidates waiting in the wings. The number of African-American lawyers and state court judges who could potentially rise to the level of federal judges has substantially increased over time. The bottom line is there is a large pool of highly qualified potential federal judges.

But it was not until 1978, some 82 years after the infamous *Plessy v. Ferguson* Supreme Court decision upholding the legality of segregation in Louisiana and throughout the Jim Crow South, that Robert Collins of New Orleans became the first African-American federal judge in the Deep South. Despite the fact that African-Americans make up about one-third of the population of Louisiana, only a tiny fraction of the hundreds of federal district court and court of appeals judges appointed over the last 50 years have been African-American. Currently there are only three African-American federal judges in Louisiana: Carl E. Stewart of the 5th Circuit Court of Appeals, Ivan L.R. Lemelle of the Eastern District and Chief Judge Ralph E. Tyson of the Middle District. All are serving with distinction and have broad respectability among members of the bench and bar. I am not proud of the fact that, in Louisiana, the vast majority of people who have had dealings with the

federal judiciary have seen more African-American judges on Court TV than in the actual halls of justice.

It is time for that to change. With Barack H. Obama as our new President and Eric H. Holder, Jr. as our new Attorney General, I am hopeful that the scales of justice will begin to find true balance with the appointment of more African-American federal judges in Louisiana.

Why is diversity on the federal bench important? One only has to look at the legacy of legal injustices perpetrated against African-Americans—from lynchings and enforced school segregation to poll taxes and red-lining—to understand that a more diverse judiciary is important in the rendering of equal justice under the law. While there are some who would argue that the disproportionate number of African-Americans in our criminal justice system is a totally colorblind phenomenon, I believe this is wrong.

Diversity promotes the very notion that justice is colorblind and helps ensure that the law applies equally to all. As Louisiana's unique tradition of gumbo diversity continues to expand in the 21st century, it is important that federal judges are able to relate to the experiences of all the diverse communities in Louisiana. The late Justice Oliver Wendell Holmes once opined, "The life of the law is not logic, it is experience."

As a nation dedicated to liberty and justice for all, the appointment of a diverse pool of federal judges is one of the most important duties of a United States President. Most have not adequately fulfilled that obligation. This tide has turned somewhat in recent history. President Carter appointed 28 African-Americans as district judges and nine as appellate judges, more than all previous presidents combined. President Reagan appointed seven African-American judges to the federal bench. President George H.W. Bush appointed 13 and President Clinton appointed 53.

While the lack of African-American judges is a problem throughout the nation, it is particularly acute in the South. According to a 2007 article by David Love, "In nine of 11 states in the South, former President

George W. Bush failed to nominate a single Black judge for 62 vacancies. The federal appellate courts—particularly the 4th, 5th and 11th U.S. circuit courts—have been equally disappointing. Out of 75 nominations in these three circuits, not one Black judge has emerged in the states of Alabama, Georgia, Louisiana, Mississippi, North and South Carolina, Texas, Virginia and West Virginia." We can and must do better.

It would be impossible for President Obama to completely remedy this historic exclusion. But, according to the Federal Judicial Center, he will have the opportunity to fill at least 41 vacant judgeships—29 district and 12 circuit, including several in Louisiana.

All judges are bound to rule according to the facts of each case and the dictates of law, but it is clear that a diverse judiciary is essential to the dispensation of colorblind justice. It is also clear that increasing diversity among federal judges will strengthen public trust in the judiciary and build greater confidence in the new Administration. I hope to see my beloved Louisiana turn from a past of exclusion to a new era of inclusion in the 21st century. We will all be better for it.

*Marc H. Morial has served as president and chief executive officer of the National Urban League since 2003. He has coordinated initiatives such as the Urban Youth Empowerment Program, Entrepreneurship Centers and the National Urban League Empowerment Fund. A graduate of the University of Pennsylvania with a degree in economics and African-American studies, he also holds a law degree from the Georgetown University Law Center in Washington, D.C. and honorary degrees from Xavier University, Wilberforce University and the University of South Carolina Upstate. He serves as an Executive Committee member of the Leadership Conference on Civil Rights and the Black Leadership Forum. He is the recipient of the Louisiana State Bar Association's Pro Bono Publico Award. He has served in the Louisiana Senate, on the adjunct faculty of Xavier University in Louisiana and as mayor of New Orleans. He was elected by his peers as president of the bipartisan U.S. Conference of Mayors. (120 Wall St., 8th Flr., New York, NY 10005)*

