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Brennan Center For Justice Symposium Introduction: Diversity, Impartiality, and Representation on the Bench

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BRENNAN CENTER FOR JUSTICE SYMPOSIUM
INTRODUCTION: DIVERSITY, IMPARTIALITY, AND
REPRESENTATION ON THE BENCH

*Kele Williams**

Despite the modest and hard-won gains in diversity on the bench attained during the last few decades, the American judiciary remains overwhelmingly White. The public discourse on judicial diversity has suffered from at least two important shortcomings. First, calls for increased diversity from advocates, bar associations, the executive and legislative branches, and judges are often couched in terms of the value of minority role models and of increased public confidence in the judicial system. By failing to articulate fully the substantive benefits of diversity, these discussions reduce the debate to a matter of counting the number of people of color on the bench. The value and need for diversity is far more complex and pressing than those calls suggest. Above all, diversification is essential to a fair and impartial justice system. Second, public discussion of whether certain methods of judicial selection improve or hinder diversity is driven largely by anecdotes and intuition rather than by rigorous scholarly analysis. While some empirical studies exist in this area, their findings are inconsistent and therefore inconclusive. Significant methodological challenges must be addressed to answer the difficult questions in this area. More scholarship is needed to fill these gaps and ultimately to achieve meaningful diversity on the bench.

With this in mind, the Brennan Center for Justice at New York University School of Law convened legal scholars and political scientists at North Carolina Central University on February 20–21, 2004 for a symposium entitled “Diversity, Impartiality, and Representation on the Bench.” A series of articles by Professor Sherrilyn Ifill provided the title and inspiration for the symposium. Our specific goals were two-fold. First, we wanted to encourage scholars to grapple with the complicated questions about judicial diversity. This exploration is particularly timely in light of recent trends—namely, the increasing influence of money in state judicial elections and the pervasive partisan bitterness in the federal

* Associate Counsel, Brennan Center for Justice at New York University School of Law. The Brennan Center thanks the staff of the *Michigan Journal of Race & Law* for their enthusiasm and attention to detail in producing this symposium issue, and especially to the Editor-in-Chief, Megan Whyte, for seamlessly facilitating the process. We would also like to recognize Professors Sherrilyn Ifill, Jarvis Hall, and Alex Willingham for their thoughtful insights and partnership in putting together this symposium. The Brennan Center gratefully acknowledges the generous support for the convening provided by the Carnegie Corporation of New York, Deer Creek Foundation, Joyce Foundation, and Open Society Institute. The statements made and views expressed in these articles are solely the responsibility of the authors.

nomination process—that have prompted close scrutiny of the methods and processes of judicial selection and have provided new momentum for efforts to eliminate judicial elections in favor of various forms of appointive systems. Second, we deliberately brought together political scientists and legal scholars in the belief that such interdisciplinary dialogue is necessary to fully address these issues. This symposium issue includes four of the twelve papers presented during two days of spirited debate.¹

Professor Graham answers the threshold question: how diverse is the American judiciary? She concludes that every level of the federal and state judiciary remains overwhelmingly White. For example, African Americans, who have made the most progress in attaining positions on the bench, did not exceed 7% representation on any level of state courts. In New York, which has a large Latino voting age population 13.8%, Latinos make up only 1.6% of state court judges. The picture is even more abysmal for Asian American and Native American judges. At the federal level, judges of color remain significantly underrepresented, especially among Article I judgeships (magistrates, bankruptcy judges, and administrative law judges).

Drawing on the fundamental tenets of critical race theory and analogizing judges to juries, Professors Johnson and Fuentes-Rohwer argue that increased racial diversity will lead to improved decision-making and legitimacy of the courts. The authors agree that diversity is achieved when judges fairly represent a cross-section of the community, but they argue that we must look to the individual ideologies of the judges to determine whether they will add different perspectives from those offered by the current judiciary.

Professor Lazos examines the process theory of inclusive judging and analyzes the Rehnquist Court's recent race relations jurisprudence to explain why diversity leads to stability and defensible outcomes in pluralistic societies. She argues that when racial dynamics are at work, judges must be able to engage minority viewpoints and furnish a rule of law that properly takes racial tensions into account without trumping the political process.

Professor Ifill responds to the ongoing discussion about whether states that elect judges should switch to appointment systems in light of the Supreme Court's criticism of judicial elections in *Republican Party of Minnesota v. White*.² Professor Ifill argues that the Constitution and Voting Rights Act require that diversity be central to the debate. She cautions that before presuming that judicial elections cannot be reconciled with the ideal of judges, states should seek ways to improve their methods of judicial selection and to improve judicial decision making.

1. For information about the other scholars and papers presented at the symposium, see http://www.brennancenter.org/programs/dem_fc_diversity.html.

2. 536 U.S. 765 (2002).

As is evident from these articles, the question of judicial diversity is far more complex and nuanced than the current debate suggests. Many unanswered questions remain. The scholars in this issue and the others who presented their work at our convening have begun to reframe the debate and identify the hardest questions. We hope that this symposium issue will provoke further thought and provide a context for additional scholarship that will help us to answer those questions.