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A Call to Action

Gary M. Jackson

In October 2018, I had a call to action. It was not the result of an unarmed Black man unnecessarily killed by a white police officer, nor the horrific botching of a no-knock search warrant in a woman's apartment resulting in her death. My call to action came when a Black colleague, Denver District Court Judge William Robbins, announced his retirement. At that time, Judge Robbins was the only Black district court judge out of 181 in the state of Colorado. Soon after, Colorado Court of Appeals Judge Karen Ashby, a Black woman, announced her retirement. She was the only Black appellate court judge or justice out of 29 in Colorado. These two announced retirements could have resulted in zero Black judges on the highest courts of Colorado. This possibility distressed me. It seemed that the prospect of bringing diversity to Colorado's judicial branch, initiated by the Civil Rights movement of the 1950s and 1960s, had come to a halt. The potential of zero Black judges and an equally bleak number of Hispanic judges at the highest judicial levels was more than just an embarrassment to our legal system—it was an affront to our judiciary and to the citizens of Colorado.

I have been aware of the lack of Black judges in Colorado long before 2018. Since I became a deputy district attorney in 1970, I discovered many times that I was the only Black person in the room. But this was 2018. And if you were not digging into the demographics of Colorado judges, you would assume that in a progressive-minded state like Colorado we would have had more than two Black judges serving on our appellate and highest trial courts. When I realized that Colorado's courts were about to look like Alabama's—a state that still has zero Black judges on its supreme and appellate courts—I realized that I must take action.

In 2019 the Brennan Center released its State Supreme Court Diversity study. Twenty-three states had zero Black judges on their supreme courts. Since 1994, every Black candidate for Alabama's 19 appellate judgeships has lost to a white candidate. ThinkProgress wrote, "At-large elections have been a common tactic across the country to minimize the political influence of voters of color." Colorado and Alabama are not the only courts that fail to reflect the diversity of their citizens. This failure has damaged the reputation and perceptions of the judicial system, not to mention a plethora of injustices due to intentional or implicit bias. All of this must serve as a call to action for every individual on every level of America's judicial branch of government.

One would think that during the last fifty years significant changes would have occurred in the judicial system, and that my experiences of being the only Black person in the room in the 1970s would now be outdated and irrelevant. It is true that there are more minority lawyers and municipal, county, district, and even appellate judges; however, the number of justices remains few and far between, and the pool of potential up-and-coming minority attorneys continues to be low nationwide. Changing these demographics will require a commitment backed by clear intention and consistent effort. But bringing about change must take far less time than the fifty years since the foundation for my own call to action was laid.

In 1970 I was the only Black prosecutor out of more than four hundred in the state's district attorney's offices, and in 1974, when

I was hired as an Assistant U.S. Attorney for the District of Colorado, I was the only Black federal prosecutor in the Tenth Circuit. As one of the founders of the Sam Cary Bar Association of Black Lawyers and Judges in 1971, I developed longstanding relationships with all the associations of color and specialty bars in Colorado. Seven years later, I joined a boutique trial firm where I remained for 37 years.

My call to action was leveraged by my insider role in the Colorado legal community over this lengthy period. Most recently, as a Denver county court judge, I made a commitment to actively speak out about how diversity on the bench in Colorado was moving backwards. In October of 2018 there were only three Black judges out of 334 judges in the state. According to an in-depth study by the *Denver Post*, published on July 19, 2020, more than 25% of Colorado's population is Black or Hispanic.

My seat on the bench gave me a greater platform to raise the level of awareness of the issue and the growing danger to the legitimacy of our judicial system. Hence, my call for action became a dogged pursuit. Now, during these times of social unrest where truth is lost in rhetoric and lies, increasing public awareness of the need for a strong, fair-minded, constitutionally oriented judicial system could not be greater. Regardless of one's role—justice, judge, attorney, advocate, or one's gender, race, or background—it is incumbent upon each of us in the legal profession to use our voices, resources, and platform to change the trajectory of the "gavel gap" trend. The gavel gap refers to the disparity between race and gender composition of the courts and the demographics of communities they serve.

R. Buckminster Fuller spoke about the concept of "trim-tabling," a metaphor where the giant rudder on ships can only be moved by turning a little rudder at the tail of the big rudder. The smaller rudder "trim-tabs" the larger rudder. We all must become trim-tabbers whose individual and group efforts move the great ship of state.

What follows is the course of action I have chosen. Each person's path will differ, but everyone can become a trim-tabber. I offer my experience to clarify the long-term work that is required and the importance of perseverance, grit, experience, and most of all, networking.

I began by identifying approximately 20 legal and judicial organizations and bar leaders to approach with my concerns. Strategically, it was important to identify those organizations with whom I had a past relationship and those organizations with sound leadership and respected reputations throughout the legal community. First, I met with the leadership of the American Board of Trial Advocates (ABOTA), whose charge is to ensure jury trials are available to everyone in the nation's court systems. The membership pledged to work to correct the disparity and several people volunteered immediately.

Over the next year, I met individually with representatives of legal and judicial organizations and bar leaders to discuss the diversity gap in Colorado. Critical to this initial effort were meetings held with members of the Colorado Supreme Court. The buy-in by the justices was immediate. It was obvious to all concerned that the

appellate courts did not reflect the population they served. There had not been a Black supreme court justice since 1993 when Justice Greg Scott became the first and only Black supreme court justice in Colorado. When he retired, followed by the retirement of the only Black appellate court judge, there would be zero Black justices and appellate judges. By speaking about the paucity of Black and Hispanic judges and pointing out that Colorado was on the verge of having zero Black judges on its highest-level benches, the justices of the supreme court, other judges, and I appeared at various venues to highlight the lack of diversity in all 22 judicial districts across the state.

Next, I went to the Colorado Judicial Institute (CJI). CJI has a 50-year history of promoting the nonpartisan selection of judges and judicial excellence. Its board is comprised equally of lawyers and non-legal members, including the retired former Chief Justice of the Colorado Supreme Court. In 2016 I was selected as County Court Judge of the Year by CJI. I subsequently became a member of the Board of Directors, which increased my platform of influence.

At CJI's 2019 Fall Board meeting, I expressed my concerns regarding racial disparity in the court system. Again, I was met with great support. By unanimous vote the board agreed to be a founding member of a Diversity on the Bench Coalition and to use its resources to dismantle the barriers to diversity that have caused the gavel gap. The next major step was meeting with the Colorado Bar Association (CBA), its president, and executive council. By unanimous approval, the CBA agreed to be a co-sponsor with CJI. The CBA provided its statewide resources, including a staff member and website access, and the president of the organization agreed to be one of the founding leaders of the CBA/CJI Diversity on the Bench Coalition (Coalition).

The Coalition's framework started with the assumption that of the three branches of government, citizens have the most direct contact with the judicial branch. Although citizens participate in the legislative and executive branches of government, it is in the judicial branch where citizens come into direct contact with their government. Hence, diversity on the bench becomes personal. The court system needs to reflect the demographics of the community. CJI and the CBA have teamed up to lead a movement that will comprehensively address our state courts' lack of diversity. The Coalition's goal is to harness our broader community's power to implement systemic changes that survive and thrive beyond the current leadership teams. The Coalition has a hand-selected group of what we call "super volunteers," from diversity bar presidents to law school deans, the Attorney General's office, big and small firms, and judges around the state to create our 19-member coordinating council. Each of the coordinating council members had to have these qualities to be selected:

- Respected within the diversity and inclusivity community.
- Track record of getting things done.
- Skilled at bringing people together.
- Ability to work with CBA and CJI.
- Willingness and availability.

Patricia M. Jarzowski, CBA past president and Colorado Women's Bar Association past president, and I were selected to chair the Coalition. The Coalition wanted to ensure that our work is action oriented and not just aspirational. The coordinating council has been meeting for the past year to design an action plan. The

plan is action oriented and results driven.

We gave priority to the five largest counties with the greatest disproportionate minority representation in the judicial system, and set a course of action centering on five primary areas:

1. *Candidate Development*: Increasing the number of applicants for judicial openings.
2. *Nominating Commissions*: Increasing the diversity of commission members and providing additional training.
3. *Deciding Officials*: Educating decision makers at every level of the process of the value of a diverse bench.
4. *Accountability and Tracking*: Tracking ongoing judicial appointments and judicial nominating commissioners to ensure that data are accurate.
5. *Messaging and Promoting*: Publishing stories from all sources of the value of diversity to the broader community and emphasizing the need for a more diverse judiciary.

The Coalition is now in the implementation phase of our work. Our leaders have broken into seven teams organized by a goal and focused on implementing a section of the action plan. One of the Coalition's goals is to harness the power of our broader community. The Coalition's work does not usurp the individual work of community partners. Our goal is to design a plan to work together in a new way by:

- Sharing ideas
- Designing new approaches
- Building a broad, coordinated coalition
- Tackling systemic changes

In addition to the seven teams, we have built a powerhouse of community coalition members that include:

- The Colorado Supreme Court, the Court of Appeals and the Chief Judges' Council, District and County Court Judges' Associations
- All of the diversity bar associations and specialty bar associations
- The State Public Defender's Office, the Attorney General's Office, and the Colorado District Attorney's Council
- The American Board of Trial Advocates, the American College of Trial Lawyers, the Faculty of Federal Advocates
- The Center for Legal Inclusiveness

The Coalition has 60 community leaders representing over 27 community organizations working together to implement the action plan.

The results have been promising. Forty percent of judges in Colorado are now women, including five Black female judges. In one of the five counties on which we focused, the first-ever Black judge has been appointed, and in the county with the highest number of Black people, the first Black judge in over a decade was appointed to the district court bench. In 2018 Colorado had three Black, 27 Hispanic, five Asian, and 296 white judges on the bench. Today, there are 10 Black, 32 Hispanic, one Native American, six Asian, and 138 female judges.

Although there has been important growth, there remains substantial work to be done. For example, the county with one of

JUDGE JACKSON'S INCLUSIVENESS OUTREACH EXAMPLE CONTACTS

CBA/CJI Diversity on the Bench Coalition Website:
<https://www.cobar.org/For-Members/Diversity-on-the-Bench>

Coalition Chair Patricia Jarzowski: Patricia.Jarzowski@icloud.com
303.322.3344

Colorado Judicial Diversity Outreach Coordinator Sumi Lee:
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largest minority population has zero Black judges at any trial level, and no Hispanic judges on its district court bench.

When a new governor took office in our state, Gov. Polis, in January of 2019, the Chief Justice of the Colorado Supreme Court invited me to join a group of ten appellate and district judges to advise him about judicial diversity issues. After that meeting I made a point of developing a working relationship with the Head of Boards and Commissions for Colorado who monitors the composition of the 23 state judicial nominating committees for judges, and the chief legal officer for the Governor, who coordinates the interviews for the three finalists for each position. Through regular contact, I kept the conversation regarding the elimination of the gavel gap in the forefront of their deliberations. Meanwhile, on the legislative side, the Colorado legislature approved a new position in the State Court Administrator's Office called Outreach Coordinator who is responsible for education and outreach related to judicial vacancies. This new position, the first of its kind in the nation, is applying a data-driven approach. The Outreach Coordinator's responsibilities include education and outreach to attorneys and students, both undergraduate and law school, about judicial opportunities; recognition and eradication of systemic barriers; education on the application process; and work on existing judicial programs and committees. The Coalition is working closely with the Outreach Coordinator, with whom I have made several presentations to local bar associations, specialty bars, and universities to encourage individuals of color to consider judgeship a part of their career path.

But working behind the scenes as an insider will not be enough. Public pressure was needed to speed the process of change. We needed more trim-tabbers. Over the course of my career, I developed relationships with the mainstream press, as well as neighborhood and minority media outlets. I wrote several articles about my pathway to the bench and the lack of judges of color. One media outlet after another found the issue newsworthy. On July 19, 2020, the *Denver Post*, Colorado's only state-wide print publication, published a Sunday front page investigative report outlining in statistical detail the lack of judicial diversity at all levels throughout the state. The issue was picked up by local television news shows, and then by blogs and podcasts that have continued to expand across social media.

Just as in football, an effective ground game is essential to an offense strategy, my ground game required weekly meetings with representatives from a variety of trial organizations, including many specialty/diversity bar associations in Colorado, such as the Sam Cary Bar Association, the Colorado Hispanic Bar Association, the Asian Pacific American Bar Association of Colorado, the South Asian Bar Association of Colorado, the Colorado Lesbian Gay Bisexual Transgender Bar Association, the Colorado Criminal Defense

Bar, and the American College of Trial Lawyers. Each specialty/diversity bar became an active participant in working to eliminate the gavel gap. Twenty-three organizations eventually became coalition partners, along with numerous volunteers working in teams.

But even with all of the above work and effort, it still will not be enough. Many public and charter schools remain segregated by race and economic background. Students of color do not see themselves as agents of change within the legal system. More often they feel victimized by that system. Hence, the most essential work needs to begin by sparking the imaginations of middle school students so they recognize that a career in the legal profession is within their reach; then, continuing to nurture that possibility through presentations and programs sponsored by lawyers and judges in the high schools; and finally, supporting college students with strong, formal mentorship programs that guide them through law school. My colleagues and I regularly talk to students in middle and high schools about how they can make a difference as attorneys and judges. We inform them of the avenues available to diverse students to join the profession, and the specialty bars have established scholarship opportunities for deserving men and women. I am also a part of a group of alumni from the University of Colorado who connect with undergraduates from a variety of colleges and universities to recruit students to the CU law school. We have organized a mentor program to guide students of color through the challenges of being in the minority in their law school classes.

In 2009, when I was presented with the Colorado Bar Association's Award of Merit, in my acceptance speech, I acknowledged all of the "helping hands" that assisted me in my career trajectory. Now I realize that "helping hands" was an understatement. Today, there can be no single voice, no one leader who can bring these urgent changes. The works of Dr. Martin Luther King, César Chávez, Dolores Huerta, President John F. Kennedy, Justice Ruth Bader Ginsburg, and John Lewis served to inspire, but now the hard work of "trim-tabbing" falls equally upon all of us in the legal profession. What is at stake is no less than the health of the American judicial system. We have just witnessed what calamity exists when the system of checks and balances in our government is thrown out of balance. As America grows more racially and ethnically diverse, that delicate balance can only be maintained when the members of the judicial branch, from municipal and county courts to the state and United States Supreme Court, look like the citizens they serve. No longer can we afford a kind of lazy truthfulness that does no more than hope for change. The call to action for each one of us cannot be ignored any longer.



Hon. Gary M. Jackson, a Colorado native, worked as a prosecutor for seven years, a senior partner in law firms for thirty-seven years, and a judge for seven years before retiring from the Denver County Court in 2020. Co-founder of the Sam Cary Bar Association, the Colorado Association for Black Attorneys and Judges, and the Colorado Criminal Defense Bar, he has received a multitude

of awards for judicial excellence and service to the community. Judge Jackson will provide mediation and arbitration services with Judicial Arbitrator Group, Inc.