

Portuguese-Americans in the Judiciary

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Abstract:

The following remarks address the extent to which Portuguese-Americans serve in the judicial branch at both the Federal and State levels. The presentation focuses on the under-representation of Portuguese-Americans on the bench, even in those areas where members of that ethnic group have a significant presence. After reviewing the underlying reasons for that fact, the text discusses several means to promote a greater representation of Portuguese-Americans in the judiciary. It notes the link between the existence of specialized bar associations, organized by lawyers from various racial and ethnic groups, and the advancement to the bench of lawyers from those communities. The text calls for the formation of a national Portuguese-American Bar Association to enhance the influence of Portuguese-Americans in matters involving the law, the legal profession and the judiciary. It further describes the role of such an organization in providing professional support and encouragement to its members, as well as advocating for the Portuguese-American community nationwide in matters of significance to this community, including the appointment of judges. The text concludes with the assertion that courts and the judges on them should reflect the communities that they serve.

Keywords:

Portuguese-American community; judiciary; judges; lawyers; bar association

Resumo:

O seguinte texto aborda até que ponto luso-americanos servem no ramo judicial ao nível federal e estadual. A apresentação enfoca a falta de representação de luso-americanos no judiciário, mesmo nas áreas em que membros deste grupo étnico têm uma presença significativa. Depois de analisar os motivos para esta situação, o texto discute várias maneiras de promover maior representação de luso-americanos na área judiciária. Nota-se a ligação entre a existência de associações especializadas de advogados, organizadas por advogados de vários grupos raciais e étnicos, e a promoção de advogados daquelas comunidades. O texto recomenda a formação de uma associação nacional de advogados luso-americanos para aumentar a influência de luso-americanos em questões relacionadas à lei, à profissão legal e à área judiciária. Descreve-se o papel de uma organização deste tipo em fornecer encorajamento e apoio profissional aos membros e em advogar pela comunidade luso-americana ao nível nacional sobre questões importantes para esta comunidade, inclusive na aprovação de juízes. O texto conclui afirmando que as cortes e seus juízes devem refletir as comunidades que servem.

Palavras-chave:

Comunidade luso-americana; judiciária; juízes; advogados; associações de advogados

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The following text was delivered in a panel entitled *Integration of Portuguese-Americans in Public Office* at the PALCUS Inaugural Portuguese-American National Conference, held in Washington, D.C., on June 23, 2018.

Let me start by saying how much I appreciate the opportunity to join my esteemed colleagues in discussing this morning's topic. My fellow panelists are from the legislative and executive branches of government, and I will be sharing my reflections as they relate to the judicial branch.

As we all know, the legislative branch makes the laws, and the executive branch executes those laws, but it is the judicial branch that interprets them and determines how they are to be applied. As a result, our state and federal appellate courts deal with important matters involving both our lives and our liberties, and the selection of judges who are charged with that responsibility has a significant impact on how justice is rendered. Our trial courts, in turn, apply the laws enacted by the legislative branch and interpreted by our appellate courts. In doing so, trial judges must also contend with the effects of challenging social conditions in the cases that come before them, such as increasing levels of violence and the deepening drug crisis. It goes without saying that the selection of judges who pass judgment on such matters is of great significance to us all.

Given the importance of the judicial role, it is appropriate for us to consider the extent to which Portuguese-Americans are represented on the bench. Time does not permit me, however, to outline the different ways in which judges are selected across the country. They range from lifetime appointments (made by the president or a state's governor) to service for a term of years, either by gubernatorial appointment or, in some cases, by election.

That said, to what extent *is* the Portuguese-American community represented in the ranks of the judiciary? Permit me to answer that question with respect to my own state of Massachusetts, which has a combined total of 410 appellate and trial court judges. And how many Portuguese-American judges are there currently in our state? The answer is as simple as it is sad: *one*, a recently appointed juvenile court judge. I don't suppose that much more need be said to suggest that Portuguese-Americans are underrepresented in the Massachusetts judiciary, especially considering the size of our ethnic community statewide. Looking at it from another perspective, were Portuguese-Americans represented in our judiciary in the same proportion that they are represented in our state Senate and House of Representatives, Massachusetts would have between 13 and 31 Portuguese-American judges. Not just one.

This is significant, because to discuss the integration of Portuguese-Americans in the judiciary in any meaningful way first requires that there be an adequate representation of our ethnic community on the bench. That is clearly not the case in Massachusetts. Although my information is largely anecdotal, I fear that our experience in Massachusetts is not atypical and that Portuguese-American communities are underrepresented in the judiciary nationwide, even in those areas where we constitute a significant portion of the population. Without doubt, those Portuguese-Americans currently serving as judges do so with distinction, such as Justice Maria Araujo Kahn, who was appointed to the Connecticut Supreme Court last year. The point I am making here is that we need more such examples of Portuguese-American legal talent on the bench throughout the United States.

Now for the more challenging questions: *First*, why are Portuguese-Americans underrepresented on the bench even in areas where we have a significant presence? And *second*, how can we as a community, especially those of us pursuing careers in the law, promote a greater representation of Portuguese-Americans in the judiciary?

Let me turn to the first question—why we have relatively few Portuguese-Americans on the bench. As a starting point, we must remember that the universe of people who can serve as a judge is limited in a way that participation in the legislative and executive branches of government is not. Using Massachusetts as an example, a potential applicant for a judgeship must satisfy certain basic professional requirements such as having a juris doctorate degree, being a member of the bar in good standing, and having at least 10 to 15 years of legal experience.

Moreover, a serious judicial candidate must exceed those minimum requirements, distinguishing himself or herself through significant professional accomplishment in the legal field or some form of noteworthy public or community service. This necessarily limits the pool of potential applicants, because developing such a professional résumé takes considerable time and effort.

Having said that, my sense is that the number of Portuguese-Americans attending law school is growing, expanding the number of our ethnic colleagues pursuing a legal career. This is significant, of course, because without Portuguese-American lawyers, we can't expect to have Portuguese-American judges. When I became a member of the bar 42 years ago, Portuguese names were few and far between among those practicing law in my area. Over time the situation has improved markedly, with a discernible increase in the number of Portuguese-American lawyers. This, in turn, provides a larger talent pool from which future judges may be drawn, which represents a significant step in the right direction.

The fact that a lawyer has had a distinguished legal career, however, does not mean that he or she will become a judge. If an attorney wishes to serve on the bench that person must put his or her name forward to be considered for judicial office. You do not get a surprise phone call in the middle of the night telling you that you are going to become a judge. Applications for judgeships are kept confidential, so it is hard to estimate the number of Portuguese-American lawyers who have applied for judgeships in Massachusetts. Based on the available information, however, I believe the number of Portuguese-American judges in our state has been restricted, at least in part, by the limited number of qualified candidates willing to put their names forward. There may be several reasons for this, including the obvious fact that once a lawyer is appointed to the bench he must give up his or her law practice and all the opportunities and financial rewards it may involve. I remember encouraging a successful Portuguese-American lawyer to apply for a judgeship. His response was telling: "I would love to be a judge, but not yet."

Perhaps greater emphasis should be given to the public service aspect of a career in the judiciary, especially among Portuguese-American lawyers who are otherwise active in civic activities. Serving as a judge will never be as financially rewarding as a successful law practice, but a career in the judiciary has its own rewards that, in my mind, far outweigh any such financial limitations. Indeed, there are few professions in which one can touch as many lives as does a judge, who can bring justice, and sometimes mercy, to those who would otherwise never experience either of those things.

Another factor is whether Portuguese-American lawyers—especially those interested in judicial careers—have done the same kind of groundwork that lawyers from other groups perform, including participation in professional activities that support the practice of law and promote the legal profession, such as state bar associations and judicial nominating committees. These organizations, and others like them, constitute both the formal and informal networks that can influence the appointment of judges. Failure to participate in such activities thus amounts to a lost opportunity to engage in, if not influence, the judicial selection process.

It is also significant, with respect to the selection of judges, that across the country there exist numerous specialized bar associations representing groups based on race, ethnicity, and other factors. Indeed, Massachusetts is typical in this regard, having bar associations organized by lawyers from the African-American, Asian, Hispanic, Italian, and Greek communities, among others. In the past there was an unsuccessful attempt at a Portuguese-American Bar Association, suggesting that, to date, Portuguese-American lawyers in my state have not done the same kind of groundwork necessary to advance their interests that we see lawyers from other ethnic groups performing.

This leads us to the second question that I raised: How can we as a community, especially those of us pursuing careers in the law, promote a greater representation of Portuguese-

Americans in the judiciary? Answering for myself, I am strongly of the view that the time has come for the formation of a *national* Portuguese-American Bar Association. The establishment of such an association, with statewide chapters where appropriate, would provide a tremendous boost to the influence of Portuguese-Americans in matters involving the law, the legal profession, and the judiciary. Although an effort to form such an association on the state level was not successful in Massachusetts, my understanding is that better results have been achieved in Connecticut, which currently has an active Portuguese-American bar association; there may be others around the country of which I am unaware. The role of such an organization at the national level, however, would be a comprehensive one, providing professional support and encouragement for its members, as well as advocating for the Portuguese-American community nationwide in matters of significance to it, including, but not limited to, the appointment of judges.

Before closing, I would like to address one further question with respect to the number of Portuguese-Americans serving in the judiciary: What difference does it make? What difference does it make that we don't have more Portuguese-American judges on the bench? Let me answer plainly: It makes a big difference, but not merely for reasons of ethnic pride. The profile of our ethnic group is no doubt enhanced by the accomplishments of its members. Service in the judiciary is a significant achievement and every member of our ethnic community stands a little taller when one of our number becomes a judge.

I would like to suggest, however, that there is another equally significant reason to hope that more Portuguese-Americans will be called to judicial service. To do justice—and to be perceived by the public as doing justice—our courts, and the judges on them, should reflect the communities they serve. This is part of the bedrock upon which public confidence in our judicial system rests. The public has the right to expect that judges will bring to the bench not only their education and training, but also their whole being, meaning who they are and their entire experience in life. Judges are the face of the community in the courthouse, and while we want judges who are legally skilled, we also want men and women on the bench whose judgment will be informed by a firsthand familiarity with the public they serve. This is particularly true with respect to our trial courts, and there is no question in my mind that it makes a big difference in Portuguese-American communities to know that the judge in the courtroom is named Aguiar, Silva, or, perhaps, even Rapoza. That is not to say, however, that cases should be decided based on ethnic favoritism. Far from it. Rather, it underscores the fact that the judiciary upon which we all rely must understand the community of which it is a part.

At the end of the day, however, the importance of doing justice and treating people fairly is not just a Portuguese-American issue. It is an issue that affects all racial and ethnic groups in this nation. In a society as diverse as ours, there should be ample room for everyone at the table—and when we speak of the judiciary, ample room at the judge's bench as well. In seeking to achieve this goal as Portuguese-Americans, we cannot expect others to do the job for us. We will no doubt require the cooperation and assistance of others, but the initiative must come from *us*, and I sincerely hope that with this inaugural conference, we will take the first step.