



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2018 Vol. 7, No. 4 General Editor Lynne Liberato Executive Editor David Furlow

Columns

Immediate Past President's Message

By Dale Wainwright

Before I look back at some of the highlights of the past year, I want to feature two upcoming events on the Society's calendar. [Read more...](#)



Hon. Dale Wainwright

Message from the 2018-19 President

By Marcy Hogan Greer

Our outgoing President has done so much to advance the Society, and I have big shoes to fill. I want to thank him for his many contributions to and support for the Society. [Read more...](#)



Marcy Hogan Greer

Executive Director's Page

By Sharon Sandle

It has been sixty-eight years since the landmark case *Sweatt v. Painter* challenged the "separate but equal" doctrine of segregation in education. [Read more...](#)



Sharon Sandle

Fellows Column

By David J. Beck

Thanks to coauthors Jim Haley and Marilyn Duncan, we are pleased to report that the third book in our judicial civics and court history project, *Taming Texas*, is nearing completion. [Read more...](#)



David J. Beck

Executive Editor's Page

By David A. Furlow

Soon after becoming the Society's President, Texas Supreme Court Justice Dale Wainwright (ret.) suggested that the *Journal* dedicate an issue to the contributions of African-American judges. This special issue is the culmination of that project. [Read more...](#)



David A. Furlow



Leads

[The Constitution Imparts Responsibilities as Well as Rights](#)

By Chief Justice Wallace B. Jefferson (ret.)

Whatever was accomplished during my tenure on the Court, my contributions derived from the basic humanity, translated into a judicial setting, that my father epitomized. [Read more...](#)



The author's father, William Douglas Jefferson

[Texas Court of Criminal Appeals Judge Morris Overstreet](#)

By Michael Hurd

The tall, dapper, bow-tie-adorned county court judge from Amarillo became the first black Texan to win a statewide election. [Read more...](#)



Judge Morris Overstreet

[Chief Justice Carolyn Wright: A Profile in Excellence](#)

By John G. Browning

Chief Justice Wright is the first African-American woman in Dallas to win a countywide election, the first in Texas to win a multi-county election, and the first African-American to lead a Texas intermediate appellate court. [Read more...](#)



Chief Justice Carolyn Wright

[A Personal Remembrance of the Unforgettable Justice Henry Doyle](#)

By Hon. Murry B. Cohen

In 1978 Henry Doyle became the first African-American appellate court justice in Texas when appointed by Governor Dolph Briscoe to Houston's First Court of Appeals. [Read more...](#)



Justice Henry Doyle

[THE FIRST, THE LAST, THE ONLY:](#)

[The Legend of Justice Henry Eman Doyle, the First African-American Associate Justice of a Texas Court of Appeals](#)

By Virgie Lemond Mouton

I met Henry Doyle in 1982 while interviewing for a position as Briefing Attorney at the First Court of Appeals in Houston. I realized I was in the presence of my hero, the first graduate of my law school at Texas Southern University. [Read more...](#)



Justice Doyle and Virgie Mouton in 1983

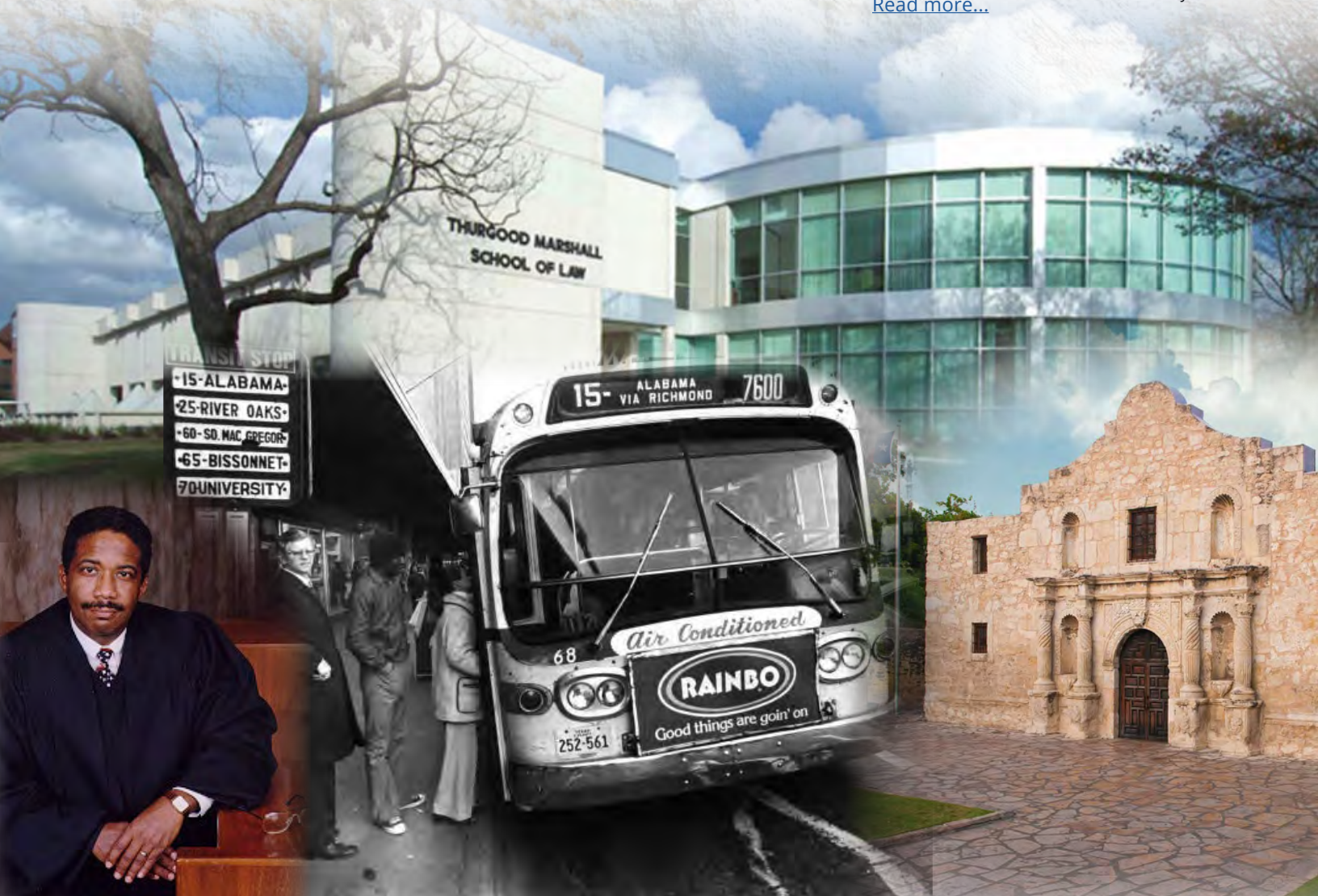
[An Interview with Judge Kenneth M. Hoyt](#)

By Hon. Andrew M. Edison

Senior U.S. District Court Judge Kenneth M. Hoyt reflects on his journey to becoming the first African-American man to serve as a federal judge in Texas. [Read more...](#)



Judge Kenneth M. Hoyt



[An Interview with the Honorable Gabrielle Kirk McDonald](#)

By Melanie Bragg

Retired Federal Judge Gabrielle Kirk McDonald discusses the road she traveled to become the third U.S. African-American federal judge. [Read more...](#)



Judge Gabrielle Kirk McDonald

[The Lady on the Bus Stop](#)

By Hon. Evelyn P. McKee

It was a hot and humid afternoon in Houston in the fall of 1967. I was seventeen years old, and one of a handful of Black students who attended a formerly all-White college. [Read more...](#)



Judge Evelyn P. McKee

[Hon. Harriet M. Murphy: First Permanently Appointed African-American Woman Judge in Texas](#)

At a civil rights protest in the late 1960s, Harriet Murphy, UT Law School class of 1969, remembered holding a sign stating "Put the Black man in the history books." [Read more...](#)



Judge Harriet M. Murphy

[There All the Honor Lies: A Memoir](#)

Book by Judge Harriet M. Murphy

This autobiography of the first permanently appointed female African-American judge in Texas is the story not only of an African-American woman who grew up in a highly segregated society, but of the civil rights movement in its most turbulent years. [Read more...](#)



[Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72, Part 3](#)

By Stephen Pate

In 1871, President Grant nominated John Bruce of Alabama for the Eastern District of Texas's judgeship. Once again, Texans erupted with incredulity. [Read more...](#)



President Ulysses S. Grant

[San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto. Part 2](#)

By Dylan O. Drummond

In this second part, we will meet the five San Jacinto veterans who served simultaneously as District Judges and Associate Judges of the Republic Supreme Court. [Read more...](#)



Depiction of the Battle of San Jacinto's "Twin Sisters" cannons



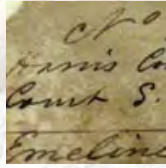
News & Events

[The Time to Preserve Texas's Slave Case Records is Now](#)

By Bill Kroger

Texas slavery records locked away in the district and county courts for Texas counties, especially those in East Texas, need to be preserved as soon as possible.

[Read more...](#)



The Original Petition in the 1847 *Emeline* lawsuit for freedom

[Chief Justice Carolyn Wright and John Browning Receive Legal History Award](#)

The J.L. Turner Legal Association Foundation held its annual Scholarship and Awards Gala in Dallas on October 21, 2017.

[Read more...](#)



Chief Justice Carolyn Wright & John Browning

[September 7 Hemphill Dinner Will Feature Address by U.S. Fifth Circuit Chief Judge Carl E. Stewart](#)

By Marilyn P. Duncan

The Society's main fundraising event is scheduled for Friday, September 7, 2018, at the Four Seasons Hotel in Austin. [Read more...](#)



Chief judge Carl E. Stewart

[GREAT WAR COMMEMORATION ON NOVEMBER 14, 2018](#)

[The Society and Supreme Court Will Honor Judges and Governors Who Served](#)

By David A. Furlow

The Texas Supreme Court and the Society will honor the seven Supreme Court Justices, two Court of Criminal Appeals Judges, and three Governors who served in the Great War. [Read more...](#)



Great War Commemorative Pin

[Saving and Savoring San Antonio's 300-Year History](#)

By David A. Furlow

The Society celebrates the 300th birthday of San Antonio and the Alamo, and the origins of Texas's Spanish and Mexican law, by serving as one of the sponsors of the Texas General Land Office's 9th Annual *Save Texas History* Symposium. [Read more...](#)



Save Texas History Symposium poster

Membership & More

[Calendar of Events](#)

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[2018-19 Member Upgrades](#)

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An Interview with the Honorable Gabrielle Kirk McDonald

By Melanie Bragg

Retired Federal Judge Gabrielle Kirk McDonald and I reconnected via Skype on May 16, 2018 to discuss the road she traveled to become the third U.S. African-American federal judge and to help create and preside over the first International Criminal Tribunal for the Former Yugoslavia. Judge McDonald was one of my first female mentors when I graduated from law school in 1982. I was always impressed by her warmth, her beauty, and her down-to-earth personality. Her early experiences, uncomfortable as some of them were, formed the basis for her life's work and accomplishments. Although she doesn't admit it was by design, threads that run through the tapestry of her life spring out of her early beginnings.

Who is Gabrielle McDonald?

When I asked Judge McDonald why she became a lawyer, she gave a big smile and said, "There's a story that my mother tells. When I was about five, she had an appointment with a lawyer and he had a safe in his office. I asked him what was in the safe, and he said money. And that was when I decided I wanted to be a lawyer." She continued, "I don't know if I believe that. I say, 'I never wanted to be a lawyer, I wanted to be a *civil rights lawyer*.' I didn't want to practice tax law. I wanted to save the world."



Left: Judge Gabrielle Kirk McDonald. Photo provided by Judge Gabrielle McDonald. Right: Photo from City University of New York website.

McDonald's Background on the East Coast

Growing up on the East Coast with a bi-racial mother, Judge McDonald experienced racial discrimination from an early age. As she recalled, "My mom was bi-racial, but she looked white. And, she chose to marry black. She took me to Bloomingdale's when I was about eight to get my hair cut. She left me in the salon and went off to shop. When she came back, I was still sitting

there. She turned the place out! I was so petrified. I thought they were going to cut off my ears. There were instances in my childhood where I witnessed the difference between how white people were treated and how black people were treated.”

Judge McDonald said she thinks that her background mirrors the average black person growing up:

I was a latch key kid. My mother was divorced when she was very young, and we moved to New York where she became an understudy to Hilda Simms in *Anna Lucasta*, the first Black play on Broadway. My mother was a petite woman, but she spoke up loudly. She always made me feel special in a good sense. I remember her saying, ‘I don’t care if you don’t love me, you’re going to do well.’ She died of breast cancer when she was fifty-one.

The young McDonald and her mother moved to Teaneck, New Jersey, an almost all-white community, in 1955 as black families began to move in. The era of “block busting” had begun. Judge McDonald recalls, “Realtors would come to white owners of houses and say ‘African Americans are moving in, so you had better sell your house, because property values are going down.’” Her mother was active in an interracial organization formed to stop that process. Another instance took place in third grade when they moved to Riverdale and her mother leased an apartment without her daughter being there. Later when Judge McDonald showed up, all hell broke loose. As she explained it,

They wanted to put us out. These types of experiences made me aware of the differences because of the way I was treated. Like when I would run home from school, being called the N-word. I can remember when we went to Washington, D.C. for our senior class. When everyone kind of coupled off on that school trip, I can remember a feeling, a sense of being left out because there was no such thing as interracial dating then. But these examples are somewhat minor compared to what African Americans faced then and face now. I was often a witness to the different treatment by other people and, of course, when I was a “victim” I understood it rather clearly.

When I asked Judge McDonald about her first memories of wanting to save the world, she reminded me of the way the world appeared in the 1950s:

I was thirteen in 1955 when Emmett Till, a fourteen-year old African-American, was lynched in Mississippi after a white woman said she was offended by him in her family’s grocery store. Some people have said that was the trigger that started the civil rights movement. His mother left the casket open at his funeral. To this day I remember seeing his photo in *Jet Magazine* on the right-hand side of the page. When I say I wanted to make things better, it’s not like I decided then that I was going to work for the NAACP Legal Defense Fund. But, I knew that what he experienced and what I experienced was wrong and I took it upon myself to take on that burden.

Judge McDonald's Hunter College and Howard University days

These early experiences contributed to her desire to combat injustice. Judge McDonald got her determination to make things right in 1961 while at Hunter College in New York City. She attended a symposium to celebrate the 100th Anniversary of the Emancipation Proclamation. Professors from Howard University School of Law were there to talk about the civil rights movement. After the conference, she made an important decision: "I wanted to be a civil rights lawyer and I wanted to go to Howard." With a recommendation from Edward Brooke, the first black Senator from Massachusetts in the United States since Reconstruction, she was accepted.



Left: Great Seal of Howard University. Right: Founders Library, Howard University, Wikimedia.

Judge McDonald's life rose to new heights when she went to Howard University School of Law. For the first time in her life, she was not a member of a minority. "The professors at Howard had all participated in the civil rights movement," she explained. "They were lawyers who had worked with Thurgood Marshall."

When I graduated from Howard, my first job and really the only job I wanted, was with the NAACP Legal Defense Fund. At twenty-five, I mostly handled employment discrimination cases. In 1968, we needed a lawyer in Houston to serve as cooperating counsel with the NAACP Legal Defense Fund. I learned about Mark McDonald, a nice looking, recent divorcee. Mark was seven years older than me and had graduated from Thurgood Marshall Texas Southern University. I called and told him about the case and we set up a time to meet in Houston.

By December, we were married. I traveled the two and a half years that I was with the Legal Defense Fund and argued cases in the Fifth Circuit and Eighth Circuit. When I moved to Houston I was an Earl Warren Fellow, which meant that I was given a stipend for a year to help ease my transition from the New York NAACP office to practicing law. Houston reminded me of Mississippi; discrimination was really institutionalized. All the petrochemical plants would hire blacks but would

keep them in a line of progression that prevented them from going to a higher paying position. We sued all of the corporate giants and all of the steel companies.

Judge McDonald was busy in Houston working for the NAACP Legal Defense and Education Fund. She did not want to be a federal judge and she did not seek it out. Rather, a staffer in Senator Lloyd Bentsen's office contacted her. She says, "I was always the lead lawyer and at that time, there were no women in the U.S. Attorney's office. The only other woman who I saw there regularly was Marian Rosen, with her long mink coat. And, no blacks. Period."

Judge McDonald was in her mid thirties when she was approached to apply for a newly created federal judgeship. She recalls, "My whole life had been spent pushing the system. I stood out and I had my mother's 'I'm gonna get you' attitude. I certainly didn't want to be part of the system, but if Lloyd Bentsen was interested in appointing me, I had to."

Her application went through and she became the third African-American federal judge. President Jimmy Carter nominated McDonald to serve as a federal judge of the U.S. District Court for the Southern District of Texas on February 27, 1979, appointing her to a new seat created by special statute.¹ The U.S. Senate confirmed her nomination on May 10, 1979, and she received her commission on May 11, 1979, when thirty-seven years old. She was the first African-American appointed to serve on a federal Texas court and the third African-American appointed in the entire United States.

While on the federal bench in Houston, many high-publicity cases landed in her court. One of the most notorious was the Ku Klux Klan case that pitted recently arrived Vietnamese fishermen against local fishermen and Ku Klux Klan extremists based in Santa Fe, Texas who threatened to burn the immigrants' fishing boats and made them fear for their lives.² Judge McDonald heard the case and granted relief that brought a swift end to the local Klan chapter's program of domestic terrorism.

In 1980, she struck down the medical state law requiring acupuncturists to be licensed physicians, holding that "[i]t is the individual making the decision, and no one else who lives with pain and the disease. It is the individual making the decision, and no one else, who must undergo or forego the treatment."³

She handled a case filed by Gertrude Barnstone involving the television show *Death of a Princess*, about the execution of a Saudi princess who had taken a commoner as a lover. It may have been the most controversial program in the history of American television.⁴ "The PBS station decided they were not going to show it," she said. "There was testimony that the oil companies did not want it to be shown because it showed Saudi Arabia in a bad light because of the way that women were treated. I held that they were refusing to show it for unconstitutional

¹ 92 Stat. 1629.

² *Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981).

³ *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. 1980).

⁴ Thomas White and Gladys Ganley, "The 'Death of a Princess' Controversy," *PBS Frontline* (1983), <https://www.pbs.org/wgbh/pages/frontline/shows/princess/reflect/harvard.html>

reasons." Because the local PBS station was a public entity, she viewed it as being a state actor. "The Fifth Circuit reversed me."

There was a criminal case involving Robert Eckels, a prominent Houston politician. "Eckels and a journalist were charged with bribery. I dismissed the case against the journalist and found Eckels not guilty. I had a lot of high profile cases that were assigned randomly, but I still don't know how I managed to get all of those cases."

Judge McDonald retired from the federal bench in 1988. She went on to teach law school and practice in a firm. When I asked her about her transition from federal judge to international judge serving on the International War Crimes Tribunal, she said it was just like becoming a federal judge—someone saw her work and asked her to serve. "I knew the legal advisor at the State Department I had worked with at the NAACP," Judge McDonald explained. "When the International War Crimes Tribunal was established in 1993, he contacted me because they were looking for judges with criminal experience."

Having accepted the judgeship, she faced new challenges.

First, we had to create the Tribunal. We had no rules of procedure, no premises, no police force. The eleven judges sat and drafted the rules of procedure and evidence using a document that had been given to us by the U.S. Since I had taught law school procedure and evidence in between being a federal judge and this assignment, this transition fit me very nicely. The rules had a common law bent, as did the statute that the Security Council drafted creating the Tribunal.

When I was presiding over the *Tadic* case at the War Crimes Tribunal we had two trial chambers and it fell into our trial chamber where I was the presiding judge.⁵

Parallels between the tribunal cases and U.S. civil rights issues

I asked Judge McDonald whether the human tragedies she witnessed at the Hague were beyond what she had seen before. She answered, "Yes, it reminded me of our racial problem here." The case involved two highly integrated communities who were battling each other:

I saw parallels with what was happening in the U.S. My time at the International Criminal Tribunal for the Former Yugoslavia was really a culmination of all my various careers. The culmination of all my civil rights experience I infused into the human rights armed conflict. There's not too much difference between civil rights and human rights. Human rights we are given because we are human. Civil rights we are given by law. But, racial minorities didn't have civil rights.

The International Criminal Tribunal for the Former Yugoslavia closed in December 2017. It was the first international criminal tribunal, and it paved the way for the International Criminal Court.

⁵ See "The Tadic Case: the Verdict," CC/PIO/190-E, *United Nations International Tribunal for the Former Yugoslavia*, <http://www.icty.org/en/press/tadic-case-verdict> (May 7, 1997).

Right:
The International
Criminal Court.
Photo courtesy
of Netherlands
Tourist website.



Below:
Judge Gabrielle
McDonald and
Hillary Rodham
Clinton.
Photo provided by
Judge McDonald.



Judge McDonald's wisdom shared with students

Judge McDonald acknowledges that “things that have happened to me in my life have happened not because I’ve asked for them, but because the job I was doing was seen by someone else to have been of worth. When I was teaching at Thurgood Marshall School of Law after I retired from the federal bench, I would tell the students, ‘You know, when you graduate from law school, as soon as you pass the bar, you are a lawyer. And you have to produce. There is no waiting period.’ And I remember one student saying, ‘You’ve been so successful, and you have all this experience.’ I said, ‘It wasn’t always that way. I was a law student once too.’”

Judge McDonald offered the following advice to her students and the audiences she has addressed: “Give it your all and lead your life with your heart and your mind. That is very important to me personally because if you are in the law, there is a sense of compassion you must have. The more successful you become, the more compassion you need because the more likely you are to lose it.”

“When I taught professional responsibility, I told them to watch it,” she said, “because very quickly, you buy that first BMW and then you start to slip a little, then you slip a little more. It becomes very easy once you start. You have to have a good moral sense. The law is what stands between us and anarchy. We are a society of laws not men.”

At the center of her message to the students at Howard is to keep civil rights at the forefront. “I tell them this,” she said,

“Every student graduating from Howard University School of Law should care about civil rights. That doesn’t mean you have to be a civil rights lawyer. Even if you are a tax lawyer, there will come a defining moment when it’s going to be put to you, that you can do something, say something, or be quiet. And if you are quiet about it, it is going to come back and haunt you. The point is, you ought to speak up, especially if you come from Howard University School of Law. You have an obligation to, because of what has come before you.”

Conclusion

Judge McDonald used her early experiences with discrimination and adversity to rise to the top of her profession. Due to hard work and her determination to “save the world”, she did just that on the national and international scene. Her life has come full circle. She deserves the many accolades she has received.⁶

Judge McDonald closed our interview by acknowledging the key influences in her life. “I am who I am because of my mother, Frances, and grandmother, Priscilla. My grandmother was a rock. She was strong. My mother stayed on me and loved me in a very demonstrative way. One

⁶ Among other accolades, Judge McDonald has received the National Bar Association’s first Equal Justice and Ronald Brown International Law Awards; the American Society of International Law’s Goler T. Butcher Award for Human Rights; the American Bar Association Commission on Women in the Profession’s Margaret Brent Women Lawyers of Achievement Award; the Open Society Institute’s first Women Groundbreakers in International Justice Award in 2007; and the 2008 Dorothy Height Lifetime Achievement Award.

of my relatives wrote me a wonderful letter saying that I reminded her of my grandmother. That was probably one of the greatest compliments I have ever received.”



MELANIE BRAGG practices general civil law and trial law at Bragg Law PC in Houston, Texas, with an emphasis on probate, business, and mediation. She is also the 2018–19 Chair of the American Bar Association’s Solo, Small Firm, General Practice Division. A speaker and a coach, she is also the author of the nonfiction book *Defining Moments: Insights into the Lawyer’s Soul* (soon to be published by the A.B.A.) and of the legal thriller *Crosstown Park*.

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