

Opening Statement

MUCH ACHIEVED, MORE TO DO

BETH L. KAUFMAN

The author is chair of the Litigation Section and a partner with Schoeman Updike Kaufman & Gerber LLP, New York City.

In 1982, when I was a mid-level associate, Constance Baker Motley became chief judge of the Southern District of New York. She was both the first woman and the first Black woman to serve in that role and did so until she took senior status in 1986. She had been on the “short list” for the Supreme Court. I was not acquainted with Judge Motley, but thanks to a recent biography and excerpts of her autobiography, I feel I have come to know her. I also learned about her stellar career as a civil rights lawyer. But her path was not an easy one, just like the paths of those we celebrate in this issue of LITIGATION.

Judge Motley grew up in New Haven, Connecticut, a town with much diversity. She attended integrated schools, from elementary through law school. But she still was prohibited because of her race from entering a beach in the suburbs of New Haven. When she was not considered for a job at any private New York law firm after her graduation from Columbia Law School, she began litigating some of the

most significant civil rights cases in the country’s history, including those desegregating schools in the South, and writing the briefs in *Brown v. Board of Education*. She did that at the NAACP Legal Defense and Education Fund, where she had been hired by its then head, Thurgood Marshall, when she was fresh out of law school.

In the South, handling her cases, Judge Motley often was denied lodging at hotels, the right to dine in restaurants, and even the right to buy groceries in grocery stores. When she traveled by car with her husband and son, the family had to stop at nearly every gas station they came across in certain states, because not every station would sell the family gasoline or allow them to use restrooms.

She also encountered outright racism and indignities in the courtroom. In one case, Judge Motley extended her hand to shake an opposing counsel’s, and he declined to reciprocate. He refused to call her Mrs. Motley in the courtroom and referred to her as “she” or “her” or by her

first name, or as “New York counsel.” She persevered through it all, however, won her cases, and played a major role in desegregating the South.

We have seen much change for the better. Our vice president is a Black woman (and lawyer). For the first time, a Black woman, Ketanji Brown Jackson, is a Supreme Court justice. But the overall advancement in our profession of attorneys of color—and specifically those who are Black—has lagged. According to the 2020 census, Blacks represented 13.4 percent of the U.S. population. Yet, Black attorneys accounted for only 5.13 percent of associates, 2.63 percent of nonequity partners, and 2.03 percent of equity partners at 233 national law firms across the country.

What can we, as a Section, do to improve the experience of Black lawyers in our profession? We can ensure that diversity, equity, inclusion, and accessibility pervade all that we do. We can ensure that Black lawyers gain opportunities to lead and speak and write. We can educate our leaders and members and help them identify and overcome implicit bias. And we can highlight, in a very public way, as we have in this issue of LITIGATION, the problems that still need to be overcome.

Diversity, equity, inclusion, and accessibility initiatives have been part of the Section’s mission for decades and continue to expand. The Section has its first chief diversity officer, and robust diversity committees in council and our leadership more generally. Our Diverse Leaders Academy advances young, diverse leaders in the Section and the profession. We sponsor Diverse Lawyers Trial Academies—two this bar year—to lift lawyers of color to first-chair trial lawyer status. The Task Force on Racial and Economic Justice is launching projects to ensure that we keep these issues at the forefront of what we do.

There is a lot more to do, but we can take pride in the strides we have made in improving the Black experience. ■