

Introductory Remarks

The Honorable Diana E. Murphy*

This would be easier if we were all rock singers.¹ Thank you, Dean Stein. Dean Stein is my former professor, and he had a very difficult job trying to get everyone's attention and to get the system working. I appreciate his help greatly.

I want to reassure you that not everybody up here is going to be giving a speech. The program may have been a little misleading in that respect.

Judge Bright, as Chairman of the Program Committee, and Chief Judge Lay wanted to have the program this year recognize the Bicentennial of the Constitution. We decided that we would not concentrate on pomp and circumstance, we wouldn't have a drum and fife corps like they did yesterday in Philadelphia, but we would try to look at the Constitution with a fresh eye and with renewed interest.

In this year the Constitution is being celebrated and venerated. It is the foundation of many of the important principles which have allowed our ordered society to develop and the foundation of the freedoms that we have. The separation of powers, the federal system, the independent judiciary, the Bill of Rights passed in 1791 — all of these things we are celebrating this year. And in one of those quirks of fate, the best pageant and the best dramatic performance illustrating constitutional issues are the Iran Contra hearings televised in the last few weeks which depict the tension that exists between some of these constitutional principles. To-

* Diana E. Murphy is a United States District Judge for the District of Minnesota. She was appointed by President Carter in 1980, the first woman to sit on the federal bench in Minnesota. (The first federal judge in Minnesota was appointed in 1858.) Prior to being appointed to the federal bench, Judge Murphy served on the Minnesota District Court, 1976-1980. She practiced law in the litigation area with Lindquist & Venum in Minneapolis before she became a judge.

She received most of her higher education at the University of Minnesota, graduating with a B.A. magna cum laude in 1954 and a J.D. magna cum laude in 1974. She did graduate work in history, 1954-1958, at the Johannes Gutenberg University in Mainz, Germany and at the University of Minnesota where she was teaching assistant.

1. The sound system in place for this program failed, and the alternative arranged by the technicians required each speaker to hold a performance-type microphone to the mouth.

morrow there is going to be a discussion on original intent, what that may be and what it may demand.

Today we want to look at this concept of "We the People."² I think all American citizens in 1987 feel like we are the people. We all feel that we have a stake in our government and in our society. But as we know, and as we will hear more from the panel, the Constitution did not include women when it talked about persons or people. The persons referred to were white men with property. Indians were explicitly excluded in the Constitution.³ Race was never mentioned, but in the representation provision slaves were counted as less than full people.⁴ There was no mention of women until the nineteenth amendment was passed in 1920, assuring the right of women to vote. So it's interesting to take one of these groups, the women, and look back and see why it is that women were not mentioned, and how the situation has changed over the years, and how women became full persons within the Constitution and laws of the United States.

I am very happy to be the convener of this group of women that is seated on the podium. This is a historic event in the history of the Eighth Circuit Judicial Conference because there has never before been a panel entirely made up of women, and these women are a very distinguished group. Each of these women is a trail-blazer who has opened opportunities for other women. I recognize many other outstanding women in the audience, but time doesn't permit me to mention them. I would like, though, to call attention to one very special woman and that is Judge Elsijane Roy, United States District Judge for the District of Arkansas. Judge Roy, would you stand please. Judge Roy was the first woman ever to sit on the federal bench in the Eighth Circuit. She was among the first ten women in the history of the United States to be federal judges, and she was also the first woman to sit on the Arkansas Supreme Court. We are honored to have her here today.

Now I'd like to introduce the women that are sitting on the platform. Each of them graduated from their various universities with honors, and they have all written prolifically. To my immediate right is Professor Mary Beth Norton. Professor Norton is Professor of History at Cornell University. She recently has been appointed to the Mary Donlon Alger Chair of History at Cornell. She was educated at the University of Michigan, received her Mas-

2. "We the People" is the name adopted for the official celebration of the Bicentennial. The preamble of the Constitution begins with the words "We the People of the United States."

3. U.S. Const. Art. I, cl. 2(3).

4. *Id.*

ters and Ph.D. degrees at Harvard. She has written five books, including one entitled *Liberties' Daughters — the Revolutionary Experience of American Women*, and numerous articles. She has been awarded several prizes for her published writing, and she has given major lectures in this country and abroad. She has also served on the National Council on Humanities.

Next to her is Judge Ruth Bader Ginsburg, who is United States Circuit Judge for the District of Columbia Circuit. She was appointed to that position in 1980. She was educated—there's a line of coincidences among these women — in her undergraduate days at Cornell, where Professor Norton teaches. She went to law school at Harvard and Columbia, served on the law review in both schools, was law secretary to Judge Palmieri in the Southern District of New York, went on to become a distinguished professor of law at Rutgers and Columbia, and visited numerous other law schools. In her curriculum vitae, there are two pages listing the briefs and oral arguments that she has presented to the United States Supreme Court. She is particularly important to what we are talking about today because as a professor she developed some of the intellectual and theoretical underpinnings for changes in the law relating to women. As an advocate she argued many of these cases in front of the Supreme Court. She also has published many books, monographs, and articles, including a number on Swedish law. She is a member of the Council of the American Law Institute, Executive Committee of the American Bar Foundation, and other organizations.

Next to her is seated Lynn Hecht Schafran, an attorney and the Director of the National Judicial Education Program to Promote Equality of Women and Men in the Courts. She went to Smith as an undergraduate and received her M.A. and J.D. from Columbia. In two of the coincidences I mentioned, she is a former student of Judge Ginsburg, and she clerked for the very same United States District Judge in the Southern District of New York, Judge Palmieri. Ms. Schafran has been a litigator. She is very much involved now in advising various task forces on gender bias in state courts. She is special counsel to the New York City Commission on the Status of Women and chair of the Committee on Sex and Law of the Association of the Bar of the City of New York. She is also a member of the New York State Banking Board.

Next to her is seated Judge Constance Baker Motley. Judge Motley is Senior United States District Judge for the Southern District of New York, the former Chief Judge of that district, and

one of the first women ever to be active in the Judicial Conference of the United States. Judge Motley was the fourth woman to become a federal judge. She was appointed in 1966. She was educated at New York University and at Columbia Law School. For twenty years, from 1945 to 1965, she was on the legal staff of the NAACP Legal Defense and Education Fund. She was its principal trial attorney. She has argued many cases in front of courts all over the country. She has won approximately ten cases in the United States Supreme Court. Not many advocates in history can make that claim. As an advocate she led to important advances in education rights, housing rights, right to counsel, and other areas. She was the first black woman to serve in the New York State Senate and the first woman ever to be president of the Borough of Manhattan. She has received many honorary degrees. I told you about coincidences and that Professor Norton has recently been appointed to the Mary Donlon Alger Chair at Cornell University. That chair was endowed by a woman who was one of the earliest federal judges — she served on the Customs Court, and Judge Motley knew Judge Alger. Judge Motley has also argued before Florence Allen, who was the first woman federal judge and who sat on the Sixth Circuit.⁵ When I asked her about it she said, “Well, I remember I argued the Detroit housing case and the Memphis school case [before her].” She has indeed had her hand in many landmark cases.

At the other end of the podium is Justice Beryl Levine, who is a Justice of the North Dakota Supreme Court. She was appointed to that position in 1985. Justice Levine was born in Winnipeg and educated originally in Manitoba. Then with her husband she came to the United States and received her law degree at the University of North Dakota, which I see well represented here. She later became a partner in the Vogel law firm in Fargo, with which Judge Bright has many associations. She served as Chairman of the Judicial Planning Committee in North Dakota and Chairman of the Commission on Children at Risk.

Justice Levine and I are members of the Program Committee⁶ and in a sense we are the bookends of this panel. That’s sym-

5. Judge Allen was appointed to the federal bench in 1934. She also was the first woman elected justice of a state supreme court — in Ohio.

6. A subcommittee of the Program Committee prepared and organized the program on Women and the Constitution. The subcommittee was chaired by Judge Diana Murphy and included: Robert B. Anderson, Pierre, South Dakota; Hon. Beryl Levine, Bismarck, North Dakota; Lindsey Miller-Lerman, Omaha, Nebraska; Judith Whittaker, Kansas City, Missouri; and Professor Irving Younger, Minneapolis, Minnesota.

bolized by where we are sitting. The women in the center are the presenters, so to speak. Professor Norton is going to start. She is going to discuss the constitutional status of women in 1787. Then Judge Ginsburg is going to follow her, and she is going to talk about how women became a part of the Constitution and some of the significant milestones along the way. Ms. Schafran is going to talk about the status of women in today's court systems. And Judge Motley is going to provide a more personal note. I've asked her to talk about some of her personal experiences because she has been involved since 1945 in so much of the development of the law expanding opportunities for minorities and for women. Then we will get a response from Justice Levine, who represents the state judiciary here.

I am very proud to be presenting this outstanding group of women.

