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WHEN KETANJI BROWN JACKSON WAS CONFIRMED to the United States Supreme Court, she became the sixth woman to take the bench on the nation's highest court. Her addition also put the current count of women at four — its peak. And, perhaps most notably, she became the first Black woman to join the Court in the country's history.

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But she was not the first Black woman shortlisted for the role. That honor goes to Judge Amalya Lyle Kearse, who was shortlisted by President Ronald Reagan alongside Sandra Day O'Connor in 1981. The first woman justice, as it turns out, was also almost the first Black woman justice.

Such illuminating observations of what might have been are the essence of *Shortlisted: Women in the Shadows of the Supreme Court* (NYU Press, 2020) by **RENEE KNAKE JEFFERSON** and **HANNAH BRENNER JOHNSON**. The book explores the stories of women who were considered but ultimately passed over for a gig at the country's highest court in the years leading up to Justice O'Connor's historic appointment. In a bittersweet twist, there are nine of them, enough to fill the storied seats. Told with rich detail, each woman's story amazes and impresses, offering a particular glimpse into her time — and our own. Fittingly, then, the authors conclude with reflections on how to continue to build a more equitable world both in and beyond the courtroom.

Following is an edited excerpt of the book's introduction and a discussion with the authors led by Judge **DIANE P. WOOD**, a senior judge of the United States Court of Appeals for the Seventh Circuit and a senior lecturer at the University of Chicago Law School. They discuss the book, the women who were passed over for seats on the Court, and the lessons their stories offer — for women judges and the legal profession as a whole.

— Amelia Ashton Thorn

shortlisted, ***adj*****.** Qualified for a position but not selected from a list that creates the appearance of diversity but preserves the status quo.

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AS *THE NEW YORK TIMES* REPORTED IN 1971, MILDRED LILLIE *FORTUNATELY* HAD NO CHILDREN. The article marveled at how she maintained "a bathing beauty figure" in her 50s. Lillie was not, however, featured in the news as a swimsuit model.

Instead, she was shortlisted. President Richard Nixon had included her among six potential nominees on his list for the United States Supreme Court. At the time, Lillie had served as a judge on California courts for more than 20 years. Her résumé was as competitive if not more so than others on Nixon's list. Lillie could have been the nation's first female justice, but she was not chosen. Instead, Nixon claimed to care about diversity but preserved an all-male Court.

Our book exposes the potential harms of being shortlisted and offers inspiration for women to chart a path from shortlisted to selected in any career. Stories of women shortlisted for the Supreme Court illuminate how this can be accomplished — their early successes in a world hostile to women offer excellent guidance for navigating the inequalities that endure in the #MeToo world.

But first, back to the "bathing beauty," the Honorable Mildred Lillie. The *Times* article provoked outrage on the opinion page even in that era. As one reader observed in a letter to the editor:

Your description of the "qualifications" of Judge Mildred Loree Lillie ▸

(biographical sketches of Supreme Court nominees Oct. 14) illustrates perfectly the absurd sexist prejudices to which all women are persistently subjected. Why did you choose to objectify this woman and diminish her accomplishments by including such a totally irrelevant and subjective item? You implied that Judge Lillie's body was just as significant as any single professional attribute she possesses. There was no discussion of the health — much less the physique — of any of the other possible nominees. Perhaps you could rectify this inequality by printing a discussion of the extent to which Senator Byrd has retained his schoolboy figure or the manner in which Herschel Friday fills his swimsuit.

— Barbara B. Martin, "Sketch of Judge Lillie," *The New York Times*, October 23, 1971

The image of Lillie in swimwear reflects the sexism of that era and resonates even today as consistent with society's ongoing obsession about the female body. The prevailing sentiment during Lillie's time placed men at work and women at home, with minority women often cooking and cleaning for others. Women were largely excluded from the professional class. As articulated by Justice Bradley, concurring in the Supreme Court's decision to deny Myra Bradwell admittance to the Illinois Bar in 1873: "[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood." Even as the United States neared its bicentennial, a woman certainly had never occupied a position on the Supreme Court. In fact, women were not supposed to pursue the law at all.

Their stories also expose barriers that endure whenever a candidate is shortlisted but not selected. Their collective history offers insights for transcending modern shortlists.

The simple fact that President Nixon shortlisted Lillie for the Court pushed back against gender norms that dominated the era and still persist. His shortlisting of Lillie is an early example of the very idea our book explores — being sufficiently qualified but not ultimately selected from a list that creates the appearance of valuing diversity but preserves the status quo. Nixon faced immense political pressure to place a woman on the Court but personally believed women belonged only in the home — he did not think women should even be allowed to vote! Shortlisting a woman allowed Nixon to pacify those demanding equal representation on the Court while simultaneously maintaining it as a man's world. But Nixon was not the first president to shortlist a woman and would not be the last.

Before Sandra Day O'Connor secured her legacy as the first woman nominated and confirmed to the Court in 1981, a handful of presidents formally shortlisted at least nine others for that role. *Shortlisted* is a project of first impression. We are the first to identify and explore the stories of these women in light of their shared experience of being shortlisted. Until now, their individual and collective stories have largely gone untold.

In early 2020, three women sat on the United States Supreme Court. Justice O'Connor retired in 2006. Only four of the 114 justices have been women, a mere 3.5 percent. No president has nominated a woman to the position of chief justice. This glaring lack of gender parity on the Court is reflective of leadership positions across all sectors of the legal profession and the workplace as a whole. Women enter law school and most entry-level legal positions in numbers roughly equal to men. For nearly two decades, around 50 percent of all law graduates have been women, and that number increases every year. Yet they do not advance into the upper echelons of the profession in similar numbers.

Numerous studies document the lack of women lawyers in positions of

power, and the results have remained relatively static over the years. The data cited here captures the state of women in the legal profession in the years ranging from 2018 to 2019. According to the National Association of Women Lawyers annual survey, 22 percent of managing partners and 20 percent of equity partners in the nation's largest law firms are women. Only 3 percent of equity partners are women of color. Women represent less than 26 percent of female general counsels in the Fortune 500, make up almost 32 percent of law school deans, and account for 32 percent of tenured law school professors. Only 38 percent of law review editors-in-chief at the top 50 U.S. law schools are women. In 2019, women held just over 23 percent of statewide elective executive offices, down from a peak during 1999–2001. Nationally, as of 2018, the percentage of women in Congress was 23 percent in the Senate and 20 percent in the House. In the same time frame, only 36 percent of the judges serving on state supreme courts or their equivalent were women. Just a handful of states have a *majority* of women on their highest court, and many have only one. Only 23 percent of lawyers who argue cases before the Supreme Court are women. The situation deteriorates even more when factoring in race, ethnicity, and sexual orientation.

Contemporary discourse on gender and the Supreme Court in disciplines like gender studies, law, media, and political science (including our own previous research, described in the preface) has mostly focused on the stories of the women who are selected, not shortlisted. Reporters, commentators, and scholars frequently retell Justice O'Connor's story as the first woman to serve on the Court, followed by a discussion of the three successful female nominees who followed in the wake of her legacy. The year 1981 is remembered as a pivotal and celebrated year as President Ronald Reagan made history by nominating the first woman to the Court. Over the course of the next 30 years, four more women would be nominated, three successfully confirmed. Ruth Bader Ginsburg was nominated and appointed to the Court in 1993, followed by Sonia Sotomayor in 2009 and Elena Kagan in 2010. Harriet Miers was nominated but withdrew from consideration in 2005. [Justice Ketanji Brown Jackson was nominated and confirmed after this book's publication.]

Coverage of the women nominated and confirmed to the Court is important, but here we expand the narrative to include the untold stories stumbled upon in our media study, the stories of those shortlisted. It is valuable, as a preliminary matter, to tell their stories as part of the larger historical record of women's entry into the legal profession. But beyond that, their stories also expose barriers that endure whenever a candidate is shortlisted but not selected. Their collective history offers insights for transcending modern shortlists. Our work builds upon earlier scholarly efforts that developed the theory of the "leaking pipeline," in other words, the idea that women enter the profession in numbers equal to men but do not advance into leadership positions at the same rate, if at all. One way the pipeline "leaks" is via shortlisting, with qualified women considered in the mix of candidates but not selected.

Shortlists help to identify and explain latent discrimination and bias both within and outside of the judiciary. Many attempts to achieve diversity are effectively nothing more than window-dressing intended to create the appearance that diversity is valued. Take the so-called "Rooney Rule," named for former president and owner of the Pittsburgh Steelers Dan Rooney, which is a policy adopted by the National Football League requiring that at least one ethnic minority be interviewed when hiring for head coaching and senior leadership positions. Some herald the rule as a success because it has increased the number of minorities who interview for these positions, arguing that even if a minority candidate is not selected, there is benefit in at least considering them. Aspirational policies like these, however, have done little to change the demographics of who is actually hired.

Some companies have experimented with similar policies. In 2017, the Diversity Lab launched the Mansfield Rule for law firms and corporate legal departments, named after Arabella Mansfield, the first woman admitted to practice law in the United States when she received a law license from the Iowa Bar in 1869. The Mansfield Rule requires that employers consider diverse candidates for 30 percent of open positions in leadership or governance; thus, for ten potential hires, three must be women or minorities. With a significant cohort of prestigious firms and corporations committed to the effort, this new policy seems promising, but it is too soon to assess the impact. In 2010, the Securities and Exchange Commission began requiring companies to disclose efforts to address diversity when choosing board directors in their proxy statements; however, this effort has not increased the number of women on Fortune 500 boards. The data reveals a dismal picture where, even after implementation of the SEC rule, the number of women named to boards actually decreased by 2 per- ▸

cent, down from approximately 12 percent to 10 percent. We do not mean to diminish the importance of policies like these, but we are more concerned with who is actually selected, not just who appears on the shortlist.

Our book not only recounts the history of women shortlisted for the Supreme Court, but it develops their stories as a framework to identify the harms of shortlisting and strategize solutions for women to be selected, not just shortlisted. The individual life of each woman profiled could easily be the subject of an entire book of her own. (For two women, this is actually the case.) However, the stories of women shortlisted before and immediately after O'Connor's confirmation have not yet been told in any meaningful way and have certainly not been studied in relation to one another as they are in our book. We believe there is power in a collective narrative of their lives, especially as we strive to better understand and ultimately ameliorate the dynamics that perpetually keep women on the shortlist. Each woman profiled repeatedly went from shortlisted to selected as she ascended to the judiciary, the dean's office, or the president's cabinet, even if not selected from the ultimate shortlist for the Supreme Court. Their stories offer lessons to inform and remedy the pervasive, enduring gender inequality in positions of leadership and power.

It is time for more women to move from shortlisted to selected.

— From the introduction to *Shortlisted: Women in the Shadows of the Supreme Court* (NYU Press, 2020) by Renee Knake Jefferson and Hannah Brenner Johnson.

We were surprised that neither of us had heard of Sylvia Bacon or Mildred Lillie. We were legal scholars. We were steeped in the tradition of the courts. And the fact that women had been considered for the Court before Sandra Day O'Connor became the first woman selected was really shocking to us.

DIANE P. WOOD: So what inspired you to write the book? Was there a particular moment?

RENEE KNAKE JEFFERSON: The inspiration for the book came from hallway conversations that Hannah and I had as new colleagues. We were both teaching at Michigan State and would regularly discuss the media coverage of then-nominees — and ultimately Supreme Court justices — Sonia Sotomayor and Elena Kagan. We were horrified by the focus on their being single, childless women (as if all women who serve on the Supreme Court must have children because the first two did) as well as comments about their weight, sexuality, on and on.

We decided to stop complaining about that media coverage and study it. We looked at every article written in *The New York Times* and *The Washington Post* from the early 1970s through the confirmation of Sotomayor and Kagan. The results, perhaps not surprisingly, confirmed what we suspected: that the media's coverage of nominees to the Supreme Court is in fact gendered. We also uncovered that most of the people writing about the Supreme Court nominees were men. Linda Greenhouse found that intriguing and reached out to us. She was a real source of encouragement to us. In our review, one article really stood out and led us to write *Shortlisted*.

HANNAH BRENNER JOHNSON: We read about 4,000 articles and coded them for 50 different variables as a part of a content analysis that formed the basis for our media study. Embedded in this literal stack of articles was one published in *The New York Times* in 1971. It highlighted President Nixon having selected two women as a part of his Supreme Court shortlist: Sylvia Bacon, a judge from the District of Columbia, and a judge from California named Mildred Lillie. The article discussed them as possible contenders for the Court but highlighted Judge Lillie in a laser-focused way. The article mentioned that she maintained her bathing-beauty figure, even in her 50s,

as if looking good in a swimsuit was a qualification for the Supreme Court. The article also noted that it was fortunate that she had no children. How could somebody balance both motherhood and professional life? We were stunned by the sexism in the article. It reminded us of what we were seeing fast forward, 30-some years later, as it related to Justices Kagan and Sotomayor and the ensuing media coverage.

But perhaps more importantly — and getting back, Judge Wood, to your question about what inspired us to write this book — we were surprised that neither of us had heard of Sylvia Bacon or Mildred Lillie. We were legal scholars. We were steeped in the tradition of the courts. And the fact that women had been considered for the Court before Sandra Day O'Connor became the first woman selected was really shocking to us. This led us to ask the question, "Might there have been other women who were shortlisted but never selected whom we had never heard of?" And thus began our journey into the research and ultimate writing of this book.

WOOD: It's very interesting. Some studies of overlooked women were already out there. For example, the late Herma Hill Kay did some interesting writing about pioneering women law professors. Other relevant work pertains to the dropoff of women's participation in the legal profession as a whole. Women represent more than 50 percent of law students, but recent studies show how few women present oral arguments in the Courts of Appeals and at the Supreme Court, and how few women make it to be the partner-in-charge of their law firms.

JEFFERSON: As it turns out, we found nine women who were officially shortlisted by presidents before O'Connor. We didn't set out to find enough women to fill the Supreme Court but, in fact, we did. We could have had a Court of nine women as the late Justice Ruth Bader Ginsburg often suggested would be appropriate.

Soia Mentschikoff gets featured in Herma's book and in ours. She was the first female law professor at Harvard Law School and at the University of Chicago. As a student at the University of Chicago, I remember walking through the hallways and seeing her portrait up there with lots of white men. I didn't really think I had that much in common with her at the time. But writing this book gave me the occasion to go through all her archives, finding incredibly preserved handwritten teaching notes and personal correspondence. I discovered digging through those archives that we actually had a lot in common. She became a mentor of sorts, though of course I never met her while she was living. This is part of why uncovering this history is so important. She was also the first female reporter for the American Law Institute (ALI).

Structural impediments and literal physical barriers have held women back. For the early women, for instance, there was no restroom facility available to them. We don't have quite such overt barriers now, but those structural barriers remain. That's what we try to unpack in the book. We piece together archive materials, oral histories, news accounts, and more to understand how the early women in the legal profession overcame these barriers because they offer wisdom and guidance that resonates yet today.

WOOD: For a long time, in my own career, I would hear people say, "Oh, the pipeline just isn't robust enough, we don't have enough people coming along." And at some point you thought: "How many people do you need? Look at the women who are graduating from law school. They're editors-in-chief of their law reviews. They are exceling in any number of other ways. So what's the problem?"

JOHNSON: I think that's exactly right. We learned so much from getting to know these women. They were all so different in terms of their career paths and how they ultimately crafted their professional lives. That's why they ended up on the shortlist. They have so much to teach us. Although we have not had the benefit of knowing any of them personally, we think of them as kindred spirits whose lives have provided us with incredible information on how we can continue to advance the conversation and the movement toward a more equal profession.

Justice Susie Sharp from North Carolina worked diligently to get women to be represented on juries. And Judge Bacon was very active in advocating for rape-reform laws. Florence Allen, a judge from Ohio, worked hard on securing the right to vote for women and then benefited from that pool of new voters who could help elect her to various courts. In fact, Allen was the very first woman who was shortlisted for the Court. This was back in the 1930s. So there have been women who have had sufficient qualifications for a long time. I think we have fallen for the myth that there just aren't enough women in the pipeline, when the reality is that there have been so many barriers that have kept them from advancing.

I'll go back to Mildred Lillie for just a moment. Her name was put forth to the American Bar Association's Standing Committee on the Federal Judiciary by President Nixon. The committee ▸

rated her unqualified for a position on the United States Supreme Court. We saw a similar dynamic play out just a few months ago with the nomination of Judge Ketanji Brown Jackson to the Court, where her qualifications were called into question. I'll make just a footnote back to Judge Lillie. Years later, John Dean, the former White House counsel, did a critical analysis of Judge Lillie's qualifications compared to Justice O'Connor's and found the two women to be equally qualified — if perhaps not leaning a little bit in favor of Lillie's qualifications over O'Connor's. He really made the point that, whatever was at play behind those closed committee doors, it likely was at least grounded in some part in the sexism of that era.

WOOD: The systematic undervaluing of what women did is quite notable. I remember when then-Judge O'Connor was nominated, there was a certain amount of grumbling. She was just an intermediate state court judge. How did she belong on the Supreme Court? And even thereafter, if you look at academic critiques of her writing, people said she wasn't theoretical enough. People had all sorts of responses to her that you didn't see regarding the males on the Court who were doing the same thing. She was being responsible. She was looking at the record of the case. She was applying law to facts. She was doing what judges do. But somehow, because she was in that lonely position of being the only woman on the Court, maybe she was easy to criticize. I should hasten to add that these are not criticisms I would make of her — I thought she was an outstanding justice and brought a very important voice to the Court.

At the end of your book, you offer some prescriptions and strategies to improve equity. What would you single out among those recommendations as the most important?

You may have a diverse shortlist, but if you aren't selecting anyone representing diversity from that shortlist, then it becomes a tool that can undermine progress.

JEFFERSON: We describe the phenomenon of being overlooked as being shortlisted. But being shortlisted can also be positive. You have to be on the shortlist in order to be selected for the Court. But what we saw in our research was a dynamic that plays out across the legal profession — and across all professions — where sometimes a shortlist is used by an organization to suggest a commitment to diversity and equality but which actually preserves the status quo. You may have a diverse shortlist, but if you aren't selecting anyone representing diversity from that shortlist, then it becomes a tool that can undermine progress. I favor solutions that don't impose additional burdens and hurdles on the individuals who have been underrepresented all along. I think that's a perspective we both share. While we appreciate the work of people like Sheryl Sandberg, her book *Lean In* suggests that women need to do more. We are trying in this book to offer solutions that don't require women to do more.

Jimmy Carter literally transformed the face of the federal judiciary and put more women on the federal bench than all presidents before him. Of course, he never had an opportunity to put a woman on the Supreme Court. In our research, we are convinced that if he had had the opportunity, he would've been the first president to do so. He signed an executive order creating judicial commissions across the country, each of which had to be diverse in its makeup. These commissions were tasked with seeking out potential judicial applicants and appointees, and they required, as a qualification, that these candidates themselves possess a commitment to diversity. Anyone who's in the decision-making role of vetting someone for a position can implement that same kind of leveling-the-playing-field strategy.

JOHNSON: Another of our strategies is that we suggest collaboration should play a part in being competitive. We saw this evidence in a lot of the women's lives, but I think perhaps most significantly in that of Judge Klein, a judge from California who was shortlisted by President Reagan alongside Sandra Day O'Connor. Judge Klein spent her entire life working to address inequality. She became fed up with the rampant sexism, discrimination, and harassment that she faced in her professional life and made a very personal commitment to spend a little bit of every single day working to address that bias, that

sexism, that discrimination. She was instrumental in the creation of the National Association of Women Judges and the California Women Lawyers Association. These are entities that we all take for granted today. We have affinity bar groups in our communities. We have supportive structures where we can find mentors and engage in networking and connections. But that was not the case for many of the women in our study.

Judge Klein really lived that message throughout her career. I wonder what it must have felt like to have been shortlisted for a position on the Supreme Court and then not get it. Despite that inner disappointment that she undoubtedly must have felt, Judge Klein stood before the United States Senate and testified on behalf of Justice O'Connor during the confirmation hearings and spoke about her qualifications and the importance of putting a woman on the Supreme Court. I think that example is really illustrative of what we mean by collaboration to be competitive.

WOOD: We think of collaboration perhaps stereotypically as a trait that maybe women are better at, that this is a characteristic of women's leadership. I think it's also interesting that Judge Klein saw the broader value in having women's voices on the Court.

You've documented just beautifully who these women were. I hadn't heard of a great number of them until I read your book, and it's important to tell their stories. You've made a tremendous contribution by doing that. Now that the Court has a decent number of women on it — women of different ideological persuasions — what do we gain by having the women there?

JEFFERSON: This will be the first time we have four women on the Supreme Court at the same time. It's not quite parity. If we had five, then it would more accurately reflect the public that the Court serves. But four is pretty good. Not only do we have four women, but they are very diverse — and beyond gender and race. They are diverse in terms of their life experiences, family life, education, backgrounds, and where they grew up. It will add value to how the Court functions, but I also see a far greater value in that it will put on the national stage such a diverse array of women in professional life in a way that we have never seen before. I think that will break down a lot of stereotyping that happens in the workplace, such as assuming that the woman in the room at the board table should get the coffee.

The biases and stereotyping are even worse for minority women. I think the fact that we will have a Latina and an African American woman on the Court will help break down the stereotyping that happens across all workplaces. At least I hope it does. And, importantly, I hope it opens the minds of young girls across the country, not only to think about aspiring to and achieving the highest pinnacle in the legal profession but in any profession that they might want to choose.

JOHNSON: For a long time, I have spoken about the importance of role models, having people who look like us in positions of leadership and power. I think of Madeleine Albright, who when asked whether she had ever considered being secretary of state famously replied, "Well, it never really occurred to me because I had never seen a secretary of state wearing a skirt." In my early formative years, I remember being very inspired by Geraldine Ferraro running for vice president, seeing a woman in that kind of leadership capacity. But, more recently, I have come to understand that seeing diverse representations in these positions matters also for those who don't look like those individuals.

To address what Renee just touched on regarding the stereotypes about who can be a leader, we know that the decision-makers and those doing the selection often are not diverse. The format of the judicial nominating commissions being made up of diverse individuals who held views about the importance of diversity was really novel — and transformative. So I think having diverse women on the Court goes far toward breaking down the stereotypes and ideas of who can even be a leader on a more systemic level, in addition to inspiring those of us who might want to step into those positions.

WOOD: As I recall, Michelle Obama made a point very much like that about the confirmation of Justice Ketanji Brown Jackson. So there's that aspect of it. The Court, among other things, is a very public institution. Even though there are only nine people on the Court, having it reflect something of what the United States is sends a message to all those young people you're talking about. I think that's quite important. It's a door-opening message.

I think it also drives home that talent exists everywhere. Talent isn't just confined to certain little enclaves, and we are not doing ourselves a favor if we are shutting off the flow of people from every corner of our society. There's even research in the international realm that indicates that countries that have more open opportunities for women tend to be more prosperous. The countries that are saying "men only here, men only there" are shutting themselves off from an enormous pool of talent, ▸

imagination, and other important things.

Having myself sat on a multimember court for more years than I care to admit, I wonder whether you think the quality of the conversation in the conference room will change? They've heard the cases. Now the rubber's going to meet the road. Are these people from differing backgrounds going to see, for example, an antitrust case, a criminal prosecution of a big drug ring, or whatever else they may be looking at differently?

JEFFERSON: You would be able to tell us better than we can tell you, but what we've found in our research is that sometimes the perspective that a woman can bring is valuable. Justice Ginsburg talked about it in a case that involved the strip search of a 13-year-old girl. Justice Ginsburg said that she was able to shed some light for her male colleagues on why that would be a particularly vulnerable time for a young woman that they had not fully appreciated. I don't know that it makes a difference every time, but even if it makes a difference some of the time to have a perspective of a woman — or just different experiences generally — it's important.

That's certainly true in the case of Justice Ketanji Brown Jackson. She brings far more diversity than just being a Black woman to the Court. She will bring her experience as a federal public defender, her experience on the sentencing commissions, etc. I have to imagine that changes the conversation. Now, does it change the votes for the decisions? That's tougher. I think especially right now, we have a really politicized Court on certain issues. So it might not change the outcome, but it might change the way an opinion is written. It might change the way a dissent is written. And again, I feel weird saying this to you, Judge Wood, you know far better than me, but sometimes the dissent can pave the way for where the Court will go eventually and later capture a majority of the votes.

WOOD: Absolutely. That's happened to me once or twice. And there is some analogous literature to that point in some of the interviews that were done with Justice Thurgood Marshall, who of course was the first Black person, male or female, to sit on the Court, and he made very thoughtful contributions.

You see his contributions reflected in the papers of the other justices who he was serving with that are available in various libraries around the country and in the Library of Congress. Justice Marshall was quite a storyteller. I knew him from the year I clerked at the Court, which was a real privilege. He would shed light on fact situations that the Court was considering. His experience allowed him to see things that maybe others simply had overlooked or explain the importance of a certain point they might not have realized. So I think it's actually quite analogous to what you are talking about here.

JOHNSON: It can be very difficult for somebody when they are just one, right? So the fact that Justice Marshall could have those conversations and raise those points is really quite incredible. I think many individuals who are the only woman or person of color in a workplace or other situation, for example, may intentionally silence themselves or not feel comfortable speaking out. Now we have had two Black men serve on the U.S. Supreme Court who could not be more different. When there is more than one, it keeps us from falling into the trap of making assumptions about someone and their views based on a specific facet of their identity like race or gender.

WOOD: That's a very important point of course, and actually leads me to one of your other recommendations. One of your strategies is to implement structural changes that do not burden women, such as simply calling people "Justice" rather than "Mr. Justice" or "Madam Justice" and cutting the gendered preface away altogether. Can you think of other examples of that structural change that's actually pretty neutral to both men and women? No man is going to feel excluded from the Court by the fact that he's going to be called Justice Gorsuch and not Mr. Justice Gorsuch, for instance.

JOHNSON: Cornelia Kennedy, who was one of our shortlisted women, deserves credit for moving us away from gendered honorifics. She was overseeing a moot court competition in which Justice John Paul Stevens was participating. Judge Kennedy became irritated when the female law students continued to refer to her as madam justice. At one point I think she threw up her hands in frustration and said to the students, "Why do you address me as Madame Justice? The word justice is not a sexist term." Justice Stevens heard that critique, took it back to Washington, and had a conversation with his colleagues on the Supreme Court. Justice Potter Stewart conceded that at some point they would see a woman on the Supreme Court, so they might as well go ahead and just remove that honorific.

JEFFERSON: Even though each shortlisted woman couldn't have been more different in terms of their background

and experience, every single one of the women we profile faced barriers in their professional advancement. And even though each of these women never made it off the shortlist for the Supreme Court, they had incredible accomplishments along the way.

Another barrier, and this was actually one that wasn't improved until Sandra Day O'Connor was appointed to the Court, was having physical facilities appropriate for women, like a bathroom. Now of course we don't have that same kind of physical barrier in place today. But similar kinds of structural barriers persist.

Here's an example. Soia Mentschikoff — in addition to being the first female law professor at Harvard and Chicago, the first female reporter for the ALI, and the first female permanent dean at the University of Miami law school — was also the first female president for the Association of American Law Schools [AALS]. That organization has an annual meeting in which the law professors come together, make professional connections, and sometimes receive job opportunities or awards. She noticed that women weren't attending the annual meeting and learned it was because it was held during the holidays, the day after Christmas through the New Year. Anyone who is a primary caregiver of young children — a role often held by women — knows that's not a time that you can leave your house. In fact, the men attending the annual meeting apparently joked about the fact that they liked getting out of the house at that time of year.

So Soia changed the meeting time to happen after the holidays, which allowed more women to attend. In fact, it allowed Hannah and me to attend as very junior scholars when we had toddlers. We even won an award for the media study we talked about earlier. If that meeting time hadn't been changed, we probably would not have been able to attend, would not have received the award, and might not have written this book or be having this conversation today. Changing the timing of a meeting so you can accommodate those with obligations like caregiving is something that benefits anyone who is a caregiver — male or female. It's also an example of a structural change that doesn't impose additional burdens upon those who historically were excluded.

Changing the timing of a meeting so you can accommodate those with obligations like caregiving is something that benefits anyone who is a caregiver — male or female. It's also an example of a structural change that doesn't impose additional burdens upon those who historically were excluded.

WOOD: Absolutely. I'll just digress for a moment and say what a remarkable person Soia Mentschikoff was. When she came to the University of Chicago Law School with her husband, Karl Llewellyn, they would not give her a professorial rank appointment. They gave her a more limited appointment, with a title along the lines of "senior lecturer." It was not until Karl passed away that the law school finally gave her a professorial appointment. She stayed there for a number of years thereafter before moving to Miami. She'd already done the Harvard part of her career. I met her at one of those AALS meetings over Christmas. I was not teaching yet but was considering an offer from the University of Chicago, so I wanted to talk to her about it. I had a fabulous conversation with her. A little bit later I did wind up teaching on the University of Chicago faculty. Soia knew firsthand what it was like to be relegated to a position that by no means corresponded with her intellect, her talent, her productivity.

Could each of you pick a favorite among these women that you've studied so carefully? Who stood out to you for who she was? If it's Soia, that's OK. I mean, I don't mind talking a little bit more about her. She was just the most amazing person.

JEFFERSON: We get asked this question a lot. It's usually a tie for me. Soia is always my favorite just because I feel like she's a kindred spirit after having spent so much time in her archives. So ▸

maybe I will talk about someone whom we haven't mentioned yet.

Amalya Kearse is also a favorite for me for a number of reasons. She is still a judge today on the United States Court of Appeals for the Second Circuit. She was appointed by President Carter, and was the first African American woman to be put on a federal appellate court. She, in fact, served on one of those commissions charged with selecting nominees or appointees to the bench. Then eventually one of the commissions selected her and put her on the Court of Appeals. She graduated from the University of Michigan and was the first African American woman to be a partner at a Wall Street law firm at a time when women and minorities were regularly excluded. At one point, someone who was interviewing her read her résumé and said, "Your résumé is incredible. I wish you were a man." I can't imagine how defeating that must have felt.

When she was appointed to the Second Circuit and sworn in, she went to dinner with family and friends afterward. She and her mother, a physician, arrived first and were seated. The maître d' brought someone else in who asked, "Is the judge here yet?" And the maître d' said, "No, just these two ladies," as if the two ladies couldn't have been the judge or something more than just these two ladies.

Judge Kearse was shortlisted by Reagan at the same time as O'Connor, so we could have had an African American female Supreme Court justice since 1981. Hannah and I have been trying to dispel the myth surrounding Biden's nomination of Jackson that suddenly Black women are qualified for the Court. No, they long have been. And Judge Kearse would go on to be shortlisted a second time by Reagan when he instead appointed Justice Kennedy to the Court. Her name was also floated as a possible solution when it looked like Clarence Thomas' confirmation might fail. She was shortlisted again by President Clinton for Justice Breyer's seat, which will now finally go to a Black female justice.

Each of these women was constantly being told no and having doors closed to them, yet their persistence has definitely been incredibly inspiring to me in my own life. We all experience rejection. We self-shortlist.

WOOD: Of course, Justice Breyer's predecessor was Justice Blackmun, for whom I worked. Justice Breyer was extremely gracious to Justice Blackmun; indeed that "seat" on the Supreme Court has had many distinguished occupants, including Justices Story, Holmes, Cardozo, and Frankfurter. Justice Jackson will have big shoes to fill, although she's more than capable of doing that as I well know, thanks to her amazing work on the council of the ALI, where she has served for a number of years (as have I).

So, Hannah, what about you? Who is your favorite among the shortlisted women you've researched?

JOHNSON: Renee knows that I struggle with this question every time I'm asked. One of the things that has just been so incredible about this project for me is that all these women — although none of them made it to the U.S. Supreme Court — have had incredibly rich professional lives in terms of the successes that they've achieved and the obstacles that they've overcome. They could not be more different in terms of their ideas about any number of things.

Susie Sharp, chief justice on the North Carolina Supreme Court, didn't believe that women could do both motherhood and professional life. She really bought into this idea of separate spheres. She never married, never had children, and personally had pretty racist viewpoints. Yet on the bench, she put those views aside and voted in a very famous case in North Carolina to desegregate a public golf course. Contrast her with Florence Allen, who was the very first woman ever considered for the Court, in the 1930s. Allen also never married a man but lived in very intimate relationships with two women over the course of her life. Recently, Renee was in the archives at the LBJ Presidential Library and found a letter that President Lyndon Johnson wrote to one of Judge Allen's life partners offering condolences on her death. The letter wasn't explicit, but it acknowledged their special and

intimate long-term relationship. These examples illustrate just how complex and multi-layered their lives were.

Each of these women was constantly being told no and having doors closed to them, yet their persistence has definitely been incredibly inspiring to me in my own life. We all experience rejection. We self-shortlist. Being able to learn from these women, and how they navigated their paths, has been something that I am forever grateful for. In fact, after this conversation, I feel like I just want to go back to the book, not as an author but as a reader.

WOOD: Both of you have touched upon circumstances that for women seem to be obstacles, but aren't for men. Plenty of men have young children, too, but they don't typically say, for instance, "I can't go to the AALS meeting," or "I need to leave strictly at 5 o'clock because the babysitter or the nanny is leaving."

I remember being the first and only woman on the University of Chicago Law faculty who had three children, the oldest of whom was four. The male faculty members didn't know what to do about it. They weren't sure whether they should exclude me from all of the workshops. They weren't sure whether they should get mad at me if I didn't give a 24-hour turnaround on commenting on papers. And I was certainly feeling my own way there, as were they. Part of what I frequently think of when I look at these amazing women is that we need to let women who are not Herculean in their talents succeed, too. So many women have so much to contribute.

Whether it's childcare or opportunities for a more flexible schedule or other kinds of things, it turns out often that these are amenities that men find very useful as well. But if you're going to be realistic, women need it more. I'm not sure how we get there. You found these superstars from the past and they're very inspiring, but we need more.

JEFFERSON: Yes, well said. I mean maybe we leave it there. We need more.

WOOD: We definitely need more. So it's a great contribution and a great book. The Supreme Court is a nice place to shine the light, but these problems are pervasive and go well beyond the law. You mentioned assumptions regarding who gets the coffee in the workplace. I have a stepdaughter who is a chemical engineer and runs oil fields. It won't surprise you that most chemical engineers are men. When she shows up in a room, she's been asked to get the coffee. She usually says: "Actually, I'm not thirsty right now. If you want coffee, go get it." You need some sort of pleasant way of saying, "Please, don't do this."

JEFFERSON: I love that. Judge Wood, this has been an absolute delight to talk with you about the book and to hear your insights. Thank you so much for making the time. It's been wonderful.

WOOD: My great pleasure. Thank you for writing the book and thank you to Duke and the Bolch Judicial Institute for sponsoring this.

RENEE KNAKE JEFFERSON holds the Doherty Chair in Legal Ethics at the University of Houston Law Center. A Fulbright awardee and elected member of the American Law Institute, her work has been featured in *The New York Times*, NPR, *Politico*, *The Wall Street Journal*, *The Washington Post*, and other media.

HANNAH BRENNER JOHNSON is a professor of law at California Western School of Law. Her research explores the disparate power dynamics within institutions and systems. She studies both inequality in the legal profession and the perpetration and related reporting, investigation, and adjudication of sexual violence.

DIANE P. WOOD is a senior judge of the United States Court of Appeals for the Seventh Circuit, where she served as chief judge from 2013 to 2020. She is a senior lecturer in law at the University of Chicago, a lifetime member of the American Law Institute, and a member of the Bolch Judicial Institute Advisory Board.