



by Hon. Judith Colenback Savage

## Hon. Ojetta Rogeriee Thompson Judge, U.S. Court of Appeals for the First Circuit

Somewhere in the backcountry of Greenville, S.C., midway between the state capital and Great Smoky Mountains National Park, a white slave owner with German immigrant roots named Jacob Bedenbaugh and his brother went to the local slave auction to buy themselves wives. According to family lore, his brother decided against the idea, but Jacob returned with Sarah, a beautiful slave of half Native American and half black descent. Jacob owned Sarah, but he also came to love her as his wife. He built a little house for Sarah on the back of his property in Prosperity, S.C. (known then as Frog Hill). It became the family home for her and their eight children for more than 40 years. The homestead still remains in the family today.

History teaches us that when Jacob and Sarah began life as an interracial couple in South Carolina around 1860, the issue of slavery was driving America toward civil war. The nation had just elected Abraham Lincoln as its President, South Carolina responded by seceding from the Union, and the separatist community in which they lived viewed Sarah not as an equal partner, but as Jacob's property. What drove this couple to defy the social mores of the time remains a mystery. Perhaps it was simply love. What is known, however, is that they did so with unusual courage and at great personal risk. Even though their interracial relationship was not illegal during the Civil War, Reconstruction, or the beginning of the Jim Crow era—as the legislature had repealed the state's antimiscegenation law—it was considered “unnatural.” To discourage such relationships, the State of South Carolina indicted and tried Jacob and Sarah for fornication in 1890, after they had been together for 30 years. Five years later, the state amended its constitution to make interracial marriage illegal. Yet, the law never worked to separate the two.<sup>1</sup>



More than 100 years later, on March 17, 2010, Ojetta Rogeriee Thompson, the great-granddaughter of white slave owner Jacob and his mixed-race slave wife Sarah, became the first African-American and second woman to be confirmed as a judge on the U.S. Court of Appeals for the First Circuit. She had the honor of being nominated to the federal bench by the first African-American President of the United States, Barack Obama. A mother of three children and wife of a Rhode Island state court

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trial judge, she is one of the few federal appellate judges with extensive judicial experience as a state court trial judge. Judge Thompson's journey from her native Greenville to the federal appellate court in Boston not only reveals her amazing personal story, but it provides insight into her broad tapestry of human experiences and the swerve of history that shaped her as a person and as a judge.

Judge Thompson was born near Greenville in 1951 and grew up in a brick house in a close-knit all-black neighborhood. There were no stay-at-home moms in her community. Everyone's parents worked. Her mother was a teacher, and her father was a teacher and principal. Her father died when she was only eight, leaving "Mama" to raise her and her sister, with the help of family and friends. Judge Thompson's grandmother, whom she called "Mother," helped Mama take care of the two girls during the school year. She taught little Rogeriee how to bake cakes and pies and schooled her on family history.

From kindergarten through eighth grade, Judge Thompson attended a segregated Catholic school in Greenville. Only the nuns and the priest were white, although it was hard to see the color of their skin beneath their vestments. She did not really process her immediate world as segregated; she was quite content in her nurturing family, school, and community. Yet, during her growing up years, she became increasingly aware of state-sponsored segregation around her. There were blacks-only lunch counters, water fountains, and movie theaters. She had to sit in a special segregated section of the auditorium when she went to the circus or concerts. There were two sock hops: the white hop and the colored hop. People of color were killed trying to exercise their right to vote.

Following the U.S. Supreme Court's landmark decision in *Brown v. Board of Education*,<sup>2</sup> public school desegregation eventually came to South Carolina. It crept slowly into town, eventually causing the all-black elementary schools to be closed in favor of integration of the all-white schools. Judge Thompson recalls the angst among black teachers, like Mama, who had to prove they were as good as white teachers to get jobs at the newly integrated schools. The process of desegregation was so slow that when Judge Thompson entered the historically all-black public high school for 9<sup>th</sup> and 10<sup>th</sup> grades, 10 years after the historic decision, it still had only a handful of white students. It would take a devastating fire in the school to speed along the process of integration.

There also was religious tension. Although she attended a Catholic grade school, Judge Thompson belonged to a Southern Baptist church. She was taught in school that she would go to hell if she did not convert. Her Baptist church became the center of the civil rights movement in Greenville. She recalls the day that national civil rights leader Whitney Young came to church and fired everyone up. She rose to her feet, joined hands with hundreds of townspeople, and sang the immortal "We Shall Overcome."

During these years, Judge Thompson was curious about racial prejudice. She felt the injustice and wondered why her people were so hated and why she suffered discrimination. It bothered her that more black soldiers than white soldiers seemed to die in Vietnam. Yet, she never lost hope because people were so dedicated to change. Mama raised her to understand the limitations placed upon her by the segregated South, but she also gave her daughter courage: "You can do anything you want to do and be anyone you want to be." Young Rogeriee saw enough change happening around her to believe those words.

A small summer program on the other side of the Smoky Mountains would start her down this path. As she studied in Knoxville, Tenn., with gifted black teens from all over the South, she started thinking, "How do I get out of Greenville?" Hers was not a plea to run away from home; she was simply yearning for an education and a breadth of experiences and opportunities that only could be found elsewhere. The program director told her about the Student Transfer Education Program (STEP) in Scarsdale, N.Y., that identifies promising students of color, enables them to live with a host family for the last two years of high school, and offers them a rigorous education.<sup>3</sup> She went home to talk to Mama. Her mother said, "I have to pray on it."

At age 16, young Rogeriee's prayers were answered. She left her warm cocoon of family and friends in South Carolina and boarded the train, alone, for a new and uncertain world in New York. As she prepared to meet her host family, she stood on the sidewalk, scared and wide-eyed, amid the skyscrapers of midtown Manhattan. In an instant, she had traded her urban black public high school in Greenville for a wealthy suburban white public high school in Scarsdale.

Scarsdale was not Greenville. In her class of about 400 students, she was one of only four black students. She felt different and alienated. Few white boys were interested in dating a black girl. She was expected to speak for all black people when any topic of race came up in class. And though she liked her new family, she missed Mama. She thought about going home, but was "brave enough to stay." The shocking assassinations of Martin Luther King Jr. and Bobby Kennedy that spring further tested her resolve.

She took solace that summer in a return to Knoxville. Amidst the torment on the national scene, it was time to start thinking about college. A young man there, who was

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headed to Brown University in the fall, convinced her to apply. But her guidance counselor in Scarsdale had other ideas. She told young Rogeriee that, notwithstanding her stellar high school record, she would never get in. Judge Thompson politely responded, “Just send my transcript.”

Brown admitted her to the Class of 1973. Confidence rising, she made the most of her last year of high school. She befriended two new black students from the STEP program, enjoyed her many white friends, learned to sail, attended rock concerts in New York City, was active in the Unitarian Church youth group, made the honor roll, and joined one of the last Mariner Girl Scout troops. She even found herself a way to travel to Europe that summer like the rest of her classmates. Through the Experiment in International Living, she ventured to Guilianova, Italy, on a scholarship to live with a host family. When she returned home, Woodstock was in progress. But with all of the roads into and out of the music festival closed, she and her Scarsdale friends had to be content to spend their final days together before college watching rock and roll history on television.

The years that Judge Thompson spent at Brown were turbulent times on college campuses nationwide. The civil rights movement increased in violence, and protests against the Viet Nam War raged. The Kent State massacre—“the day the war came home”<sup>4</sup>—marked the end of her freshman year. The students at Brown had to decide whether to strike in support of the unarmed Kent State students who had been killed during their anti-war protest. The voting took place via the gates near the

College Green. If you wanted to vote in favor of the strike, you exited through the Faunce Gate; if you wished to vote against the strike, you exited through the opposing gate. Judge Thompson and 1,894 other Brown students walked out the Faunce Gate on that fateful day, joining almost 4 million students nationwide who had voted to strike; by majority rule, with only 884 Brown students voting against the strike, school ended for the year for most students. With final examinations now optional, students had the option to participate in anti-war protests nationally, or take classes, or both.<sup>5</sup> Judge Thompson promptly left for Mississippi to join anti-war rallies at Jackson State University and Ole Miss.

Coming to Brown as a black student who had been educated both in the segregated South and the segregated North put Judge Thompson in a distinct minority. The black students at Brown were protective of their cultural identities and resisted assimilation. She encountered reverse pressure to associate only with them. But she resisted. Based on her experiences in Greenville

and Scarsdale, she understood that “people are people; what is important in friendship is not color, but what you have in common.” She learned to walk that fine line, maintaining her cultural identity and friendships with black students while participating fully in the life of the majority. It was a model that she would follow for the rest of her life.

As a woman interested in change, Judge Thompson was affected deeply by the progress of civil rights and civil liberties for black Americans, women, and the criminally accused. This was the era of the Warren Court—of *Brown v. Board of Education*,<sup>6</sup> *Griswold v. Connecticut*,<sup>7</sup> and *Miranda v. Arizona*.<sup>8</sup> Judge Thompson recalls the Lovings. Mildred Loving was half Native American and half black, like Judge Thompson’s great-grandmother, Sarah; Mildred’s husband was white, like Judge Thompson’s great-grandfather, Jacob. And just like Judge Thompson’s great-grandparents, the Lovings had been prosecuted criminally for their interracial relationship. The Lovings’ case went all the way to the U.S. Supreme Court; in 1967, in *Loving v. Virginia*,<sup>9</sup> the high court struck down Virginia’s antimiscegenation statute as unconstitutional, making interracial marriage legal in America. A century after Jacob bought Sarah at auction and lived with her as his wife, the injustice wrought upon Judge Thompson’s great-grandparents was righted. The Lovings were finally viewed just like every other loving couple in America.

It is no wonder that the law beckoned Judge Thompson. It held the power to change people’s lives. Armed with her English degree from Brown University and her love of books, she decided to attend law school at Boston University. To conquer the Socratic method, she sought refuge in a study group comprising of three smart and welcoming men. The four of them adopted a work hard, play hard philosophy, did well in law school, went on to successful careers in the U.S. Department of Justice, in private practice, and on the bench, and remain friends today.

Upon graduation, she joined Rhode Island Legal Services, where she served first as a staff attorney before becoming the manager of the family law unit. From there, she moved into the general practice of law, first at McKinnon and Fortunato, and then as a solo practitioner, before forming a partnership with her sister. She also was an Assistant City Solicitor in Providence. She often represented the underrepresented and the disenfranchised, doing her best to use the law to affect positive change in their lives. Native American law was her favorite area of practice. She learned this body of law after being retained as tribal counsel by the Narragansett Indians. It was during these years that Judge Thompson married Bill and gave birth to their three children: Reza (who now works as a freelance writer and digital media producer); William, Jr. (who teaches in Germany and is looking to pursue a career in conflict resolution with the State Department); and Sarah (who is a public defender in Boston). Balancing career and family was never an

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issue; her mother and grandmother had taught her that it was just part of life. She enlisted the help of a Dominican woman who became her children's "abuela" or grandmother.

After 12 years of practicing law, Judge Thompson set her sights on the bench. In 1988, she became the first African-American woman appointed to the Rhode Island District Court. In that high-volume, limited-jurisdiction court, where she served for almost 10 years, she had daily contact with a diverse population of Rhode Island citizens. She made it her practice on the bench to really talk to everyone who appeared before her—all kinds of people—and in so doing, profoundly affected their lives.

In 1997, she was elevated to the Rhode Island Superior Court, serving as its first African-American woman jurist. For almost 13 years on that court of general jurisdiction, she handled jury and nonjury trials in complex civil and serious criminal cases. She relied on her academic background and skills in research and writing. Yet, she never forgot the people whose cases came before her. In deciding federal appellate cases today, she often draws upon her state trial court experiences—never forgetting what actually happens in the courtroom and ever mindful that there are real people behind the cold record.

As a highly successful black woman in the state, she became a standard bearer for the African-American community and a mentor for so many of its young people. She never turned down a speaking engagement or an invitation to serve on a board or commission. While her public service is legendary, two of her most notable accomplishments are sitting on the board of trustees of her alma mater, Brown University, and working with the Rhode Island Supreme Court to bring certified court interpreters to the state courts.

In 2009, President Obama nominated Judge Thompson to the First Circuit Court of Appeals. In 2010, the Senate confirmed her appointment. She became one of only 11 African-American women in the country serving as judges on the federal courts of appeal. She brought her swearing-in ceremony to the people, convening at Rhodes on the Pawtuxet, a legendary banquet hall in Cranston, R.I., rather than in the federal court in Boston. Greenville and Scarsdale came to Rhode Island that day, as dozens of friends and family members poured into buses and cars and drove north to honor their favored daughter.

Judge Thompson then donned her black appellate robe and wasted no time in making her mark. In her first year or two, she published stinging dissents in cases involving immigration,<sup>10</sup> qualified immunity for police officers,<sup>11</sup> and Puerto Rican voting rights.<sup>12</sup> Just recently, in a whistleblower case, the U.S. Supreme Court relied upon her dissent in reversing the First Circuit.<sup>13</sup> In speaking about Judge Thompson, Judge Nancy Gertner of the U.S. District Court for the District of Massachusetts commented, "What comes out of this is the enormous value of having different voices on the bench."<sup>14</sup>

Judge Thompson's judicial voice is one of courage. And courage, according to her favorite poet,

Maya Angelou, is "the most important of all the virtues."<sup>15</sup> When her heroine died a few months ago, Judge Thompson reached for her copy of *And Still I Rise*, Maya Angelou's inspiring poetry collection. She presented the little book to her lawyer daughter, Sarah, who bears the name of their slave ancestor, Sarah Bedenbaugh. Inside, in Maya Angelou's words, is a message of remembrance for all African-American women and a message of hope for all of us:

Out of the huts of history's shame  
I rise  
Up from a past that's rooted in pain  
I rise ...  
Into a daybreak that's wondrously clear  
I rise  
Bringing the gifts that my ancestors gave,  
I am the dream and the hope of the slave.  
I rise  
I rise  
I rise.<sup>16</sup> ☉

## Endnotes

<sup>1</sup>This history is derived from records maintained by the South Carolina Department of Archives and History. See National Register [of] Properties in South Carolina, Joseph Bede[n]baugh House, Newberry County (1185 SC Hwy. 773, Prosperity vicinity), [www.nationalregister.sc.gov/newberry/S10817736034/](http://www.nationalregister.sc.gov/newberry/S10817736034/).

<sup>2</sup>347 U.S. 483 (1954) (declaring unconstitutional state laws establishing separate public schools for black and white students).

<sup>3</sup>See [www.scarsdalestep.org](http://www.scarsdalestep.org).

<sup>4</sup>*Kent State: The Day the War Came Home* (2000).

<sup>5</sup>Martha Mitchell, *Encyclopedia Brunoniana* (Brown University Library 1993).

<sup>6</sup>See n. 2, *supra*.

<sup>7</sup>381 U.S. 479 (1965) (invalidating state law prohibiting contraception on the grounds that it violated the constitutional right to privacy).

<sup>8</sup>384 U.S. 436 (1966) (holding that statements made by a defendant in police custody and under interrogation will be admissible at trial only if the defendant was first informed of, understood, and voluntarily waived his or her *Miranda* rights).

<sup>9</sup>388 U.S. 1 (1967).

<sup>10</sup>*Dehonzai v. Holder*, 650 F.3d 1 (1st Cir. 2011) (Thompson, J., dissenting) (declining to join majority decision affirming immigration judge's adverse credibility determination and denial of appellant's asylum claim; finding that "the degree of deference the majority exercises 'turns our review function into a hollow exercise in rubber-stamping'" (quoting *Cuko v. Mukasey*, 522 F.3d 32, 41(1st Cir. 2008) (Cyr, J., dissenting))).

<sup>11</sup>*Loprera v. Town of Coventry*, 640 F.3d 388, 404-412 (1st Cir. 2011) (Thompson, J., dissenting) (majority found that police officers were entitled to qualified immunity for searching all members of a mostly

Hispanic visiting soccer team to look for items allegedly missing from the mostly white home team's locker room because the police obtained the consent of the visiting team's coach; Judge Thompson disagreed, finding that such consent, obtained in the presence of an unruly crowd yelling racist epithets, was coerced, and expressing "grave concern that our case law is treading terribly close to creating 'an impenetrable defense for government officials'" and a "significant risk that qualified immunity will always attach." (quoting *Savard v. Rhode Island*, 338 F.3d 23, 41 (1st Cir. 2003) (equally divided *en banc* court) (Bownes, J.)).

<sup>12</sup>*Igartua v. United States*, 654 F.3d 99, 115 (1st Cir. 2011) (Thompson, J., dissenting) (in action to determine whether the Constitution prohibits U.S. citizens residing in Puerto Rico from voting for representatives in the U.S. House of Representatives, Judge Thompson joined in calling for rehearing *en banc*, stating: "I frankly cannot fathom how anyone could conclude that the denial of

such a fundamental right to such a significant number of people is anything less than exceptionally important.").

<sup>13</sup>*Lawson v. FMR LLC*, 134 S.Ct. 1158, 1165 (2014) (quoting Judge Thompson's dissent with approval and holding that the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 extend not merely to employees of a public company, but also to employees of a public company's private contractors and subcontractors).

<sup>14</sup>Kimberly Thorpe, *Newest voice on 1st Circuit making herself heard clearly: Thompson gaining reputation for no-holds barred dissents*, MASS. LAWYERS WEEKLY, Nov. 16, 2011.

<sup>15</sup>Jena McGregor, *Maya Angelou on leadership, courage, and the creative process*, WASH. POST, May 28, 2014, [www.washingtonpost.com/blogs/on-leadership/wp/2014/05/28/maya-angelou-on-leadership-courage-and-the-creative-process/](http://www.washingtonpost.com/blogs/on-leadership/wp/2014/05/28/maya-angelou-on-leadership-courage-and-the-creative-process/).

<sup>16</sup>Maya Angelou, *AND STILL I RISE* (1978).