I have been asked to speak about the representation of the Portuguese-American community in the Massachusetts judiciary, focusing on why it is that there are so few Massachusetts judges of Portuguese descent.

Before I do so, we need to examine whether or not it is indeed the case that the Portuguese community is under-represented in the judiciary and to consider the appropriate means for measuring that fact.

At the outset I need to point out that when I refer to the Portuguese-American community being represented in the judiciary, I use the term “represented” in a general sense. Judges are not elected in Massachusetts but, rather, are appointed by the Governor. Thus, judges in Massachusetts do not represent the public or have constituents as do elected public officials such as state senators and representatives. Consequently, when I speak of the Portuguese-American community being represented in the judiciary I am simply referring to the extent to which Portuguese-Americans have been called upon to serve on the bench.
Now how do we measure the extent of Portuguese-American representation in the judiciary? Let’s start by looking at the total number of judges in Massachusetts. The trial court, which includes the Juvenile Court, Housing Court, Probate and Family Court, Land Court, Boston Municipal Court, District Court and Superior Court, has 378 judges. The Appeals Court, which handles all appeals from the Trial Court as well as from administrative agencies, has twenty five judges. Finally, the Supreme Judicial Court has seven judges. Accordingly, the total number of judges in Massachusetts is 410.

And how many Portuguese-American judges are there at the present time? The answer is simple. Two. In addition to myself, there is Judge Armand Fernandes of New Bedford, who sits on the Probate and Family Court. Judge Fernandes and I have a running joke that we should never fly on the same plane nor attend the same events, lest some tragedy should strike, reducing the number of Portuguese-American judges in Massachusetts to zero. But we don’t have to wait for an accident, unless it is the accident of birth. Next summer Judge Fernandes celebrates his birthday in June, when he will turn seventy, the age at which our state constitution requires judges to retire. What that means is that in approximately one year there will be only one judge of Portuguese descent in Massachusetts.

I don’t suppose much more needs to be said to suggest that the Portuguese-American community is under-represented in the judiciary, especially when one considers the size of that community in Massachusetts. Let me try to look at it from another perspective, however, comparing the extent of the representation of the Portuguese community in the
legislature with its representation in the judiciary. Before doing so I recognize that a case can be made that the community is under-represented in the legislature as well. If so, that would mean that the following analysis may be understated.

There are eight members of the Portuguese-American Legislative Caucus, a group consisting of members of the legislature who self-identify as being of Portuguese descent and many of them are with us here today. The delegation includes one member of the State Senate and seven members of the House of Representatives. Considering that there are forty members of the Senate and 160 members of the House, when you express the number of Portuguese-Americans as a percentage, 2.5% of the members of the Senate are of Portuguese-descent, with approximately 4.5% in the House. By comparison, looking at the judiciary, the percentage of Portuguese-Americans is less than one-half of one percent.

Put another way, if the Portuguese ethnic community were represented in the Judiciary to the same extent that it is currently represented in the Legislature, there would be between ten and eighteen Portuguese-American judges. Not only do we not currently approach those numbers, but we have never done so.

I have done a bit of historical research, which discloses that since the appointment in 1920 of Frank M. Silvia of Fall River as the first Portuguese-American judge in Massachusetts -- by then-Governor Calvin Coolidge, I might add – there have been eight Portuguese-American judges. The high point came in the early 1980’s when there were
Based on all of the above, I think it is fair to say that the representation of the Portuguese-American community on the bench is not only less than one might expect considering the size of that community generally, but also less than one might anticipate considering the extent of that community’s participation in other branches of government. Moreover, if there is a discernible trend, it has been in the direction of fewer, rather than more, Portuguese-American judges serving on the bench.

Now for the big question: Why is this so? I am sorry to say that the answer is somewhat elusive. And if the truth be told, it is likely that there is no one answer that will explain the situation that I have laid out. I would, however, like to use my remaining time to discuss some of the factors that apply.

Perhaps the touchstone of our analysis should be the nature of the judicial position. What is the process for becoming a judge and how does that process affect the degree of ethnic representation on the bench? In setting out these factors, by the way, I do not mean to suggest that they pertain exclusively to the Portuguese-American community. They likely apply to other ethnic groups that are similarly under-represented in the ranks of the judiciary.
First, as I have already mentioned, judges in Massachusetts are not elected. They are appointed by the Governor. This fact alone has a tremendous impact on the topic before us. Although a candidate for elected office can urge his ethnic community to support his candidacy and to vote for him, the selection of a judge is not subject to the same form of direct public participation. An ethnic community’s political involvement can nonetheless be significant, if only indirectly, when it comes to the appointment of judges. I say this because if the appointing authority, in this case a Governor, views an ethnic community as being engaged in civic affairs and likely to participate in the political process, that perception will make it more likely that the concerns of that ethnic community will be addressed. And if one of those concerns is to see that it is better represented in the judiciary, then that will be a matter that a Governor is more likely to consider. In sum, those who vote have a voice and it is one capable of being heard at the highest levels. Thus, to the extent that the civic and political involvement of the Portuguese-American community becomes more widely appreciated, the consequences should be more favorable in terms of judicial appointments.

I must add a point here, especially in the presence of so many distinguished Portuguese-American members of our state legislature. The voice of the Portuguese-American community is heard through them as well and, in my mind, they have an important role in helping to advance this objective. I know that their voices are respected at the highest levels and they can be strong and effective advocates for more Portuguese-Americans in the judiciary.
Second, the universe of people who can serve as a judge is necessarily small. There is the legal requirement that to be appointed a judge you must be a citizen of the United States and a resident of Massachusetts, have both an undergraduate degree and a law degree, and be a member of the Massachusetts bar in good standing. It is also a requirement that a judicial candidate have at least ten to fifteen years of legal experience and training. Moreover, to be a serious candidate for a judicial position and not simply satisfy the minimum requirements, an attorney must have distinguished himself or herself in some way either in the form of professional accomplishment or through some other form of public or community service. All this necessarily limits the pool of potential candidates because developing such a resume takes time and effort. But my sense is that, with respect to the Portuguese-American community, this situation has improved and will continue to do so over time. The number of Portuguese-Americans attending college and law school continues to increase, which expands the number of people who can pursue advanced opportunities, including those to be found in the judicial system. My own experience tells me, and this is necessarily anecdotal, that we have a growing number of young, new Portuguese-American lawyers who provide a significant pool from which future judges may come. Needless to say, this is a step in the right direction.

Third, Even though an individual may amply satisfy the requirements for judicial appointment, that fact alone does not mean he or she will become a judge. It is important to note that if an attorney wishes to serve on the bench he must first apply for a judgeship. The Governor does not have a roving commission wandering the state looking for good lawyers who would make good judges. You do not get a call in the middle of the
night telling you that you are going to become a judge. The bottom line is, no one can be appointed unless they first apply and, this, of course, is another factor for us to consider. I have no way of estimating the number of Portuguese-American lawyers who have actually applied for judgeships. While there have been some (and I know many of them), I do believe that the number of Portuguese-American judges in this state has been limited, at least in part, due to the number of qualified candidates willing to put their names forward. There may be several factors that have brought this about, including the obvious fact that once a lawyer is appointed to the bench he must give up his legal practice and all the opportunities and financial rewards that it may involve. The relative success of many Portuguese-American lawyers may be one factor why at least some of them are not yet prepared to pursue a judicial career.

Fourth. I think it is fair to say, not just for the Portuguese, but for other ethnic groups as well, that before coming to the bench many judges have had political careers or have otherwise been considered persons of stature in the community. By way of example, at least four of the Portuguese judges in recent memory held public office of some sort before being appointed to the bench. August Taveira was a member of the New Bedford School Committee and a member of the Democratic State Committee before he was appointed first to the District Court and later to the Superior Court. George Ponte was chief legal counsel to Governor Endicott Peabody, who subsequently appointed him to the Superior Court. Both Milton Silva and Antone Aguiar were state representatives before they were appointed to the District Court bench. In recent years, however, there has been a general trend across the state for fewer lawyers to seek public office. Of
course there are still many who do, but the numbers are down, perhaps due to the fact that lawyers can now advertise their services and no longer need to run for office to put their names in circulation. While lawyers are still well represented in the legislature, the number is lower than in the past and I note that currently only one member of the Portuguese-American legislative delegation is an attorney. Again, this fact alone does not decide the issue, but it is one of the factors affecting the present situation. One can only assume that with a new crop of young Portuguese-Americans entering the legal profession, in time they will not only distinguish themselves as lawyers, but also will participate more broadly in political and community affairs, perhaps laying the groundwork for those of them who may be interested in a judicial career.

**Fifth.** The last factor that I would like to mention is similar to the one I have just noted concerning participation in political and community affairs. It involves participation in the many professional activities relating to the practice of law, such as bar associations, other legal organizations, law foundations and the like. These various groups, and their members, often constitute both the formal and the informal networks that can influence the appointment of judges. For example, the screening of judicial candidates is done by a judicial nominating committee appointed by the Governor and its membership is drawn from organizations of the type that I have mentioned. If members of an ethnic group do not participate fully in such underlying activities, it amounts to a lost opportunity to engage in, if not influence, the judicial selection process. It is thus significant with respect to the selection of our judges that there are numerous specialized bar associations representing a variety of groups based on gender, race, ethnicity and
other factors. Indeed, our state has a number of ethnic bar associations including groups organized by lawyers from the Hispanic, Italian and Greek communities, among others. There was, briefly, a Portuguese-American Bar Association, which has since passed from the scene, along with the corresponding opportunity to promote the appointment of Portuguese-Americans to the Massachusetts judiciary. It is thus an open question whether Portuguese-American lawyers have done the same kind of groundwork that we see lawyers from other ethnic groups performing around the state.

There are, no doubt, other factors that we could discuss, but I set out the few that I have mentioned in the hope of prompting discussion about the topic. I would like to conclude my remarks with the following question: What difference does it make? What difference does it make that we don’t have more Portuguese-American judges on the bench? Let me answer plainly: It makes a big difference. It makes a big difference, but not merely for reasons of ethnic pride. There is no doubt that those of us who are Portuguese-Americans want our fair share of the American dream, the same as do members of other ethnic groups. For many of us it is thus simply a matter of equity and taking pride in the accomplishment of our peers and perhaps there is no need to go further than that. The profile of our ethnic group is no doubt enhanced by the accomplishments of its members. Service in the judiciary is a significant achievement and each member of an ethnic community stands a little taller when one of its members becomes a judge. I understand that view and I do not disagree with it.
But as a judge, I say there is another, equally significant reason to hope that more Portuguese-Americans will be called to judicial service. In order to do justice -- and to be seen by the public as doing justice -- our courts and the judges on them should reflect the communities they serve. This is part of the bedrock upon which public confidence in our judicial system rests. When judges are appointed, the public has the right to expect that they will bring to the bench not just their education and training, but their whole being, meaning who they are and their entire experience in life. Judges are the face of the community in the courthouse and while we want judges who are legally skilled, we also want men and women on the bench whose judgment will be informed by a firsthand understanding of the public that they serve. Trust me: it makes a big difference to many of those who come before the courts in this area to know that the judge in the courtroom is named Aguiar or Fernandes. That is not to say that cases are or should be decided based on ethnic favoritism. Far from it. Rather, it underscores the fact that the judiciary upon which we all rely must understand the community of which it is a part. And it is that understanding that can make the difference between a simply good decision and a truly wise one. With respect to the Portuguese community, anyone who has sat in a courtroom over which Judge Taveira or Judge Silva has presided knows what I am talking about.

But at the end of the day, the issue is not just a Portuguese-American issue, although it manifests itself clearly in the experience and life of our community. It is an issue that affects all ethnic and racial groups in this nation and in this state. In a society as diverse as ours, there should be ample room for everyone at the table and when we speak of the judiciary, ample room at the judge’s bench as well.
Today, we address this issue as it relates to the Portuguese community, as well we should. If we do not examine ourselves and commit to our own advancement, we cannot expect others to do the job for us. But we should recognize that when we do this we serve as an example for others. In striving for a fuller participation of Portuguese-Americans in the Massachusetts judiciary, our community has the opportunity to lead the way not only for ourselves, but also for others. As a result, we will not simply be serving our fellow Portuguese-Americans, but also strengthening the judicial system itself, which clearly will benefit from our participation in it, if we are only given the chance.