

When the Chief Justice Is a Woman . . .

By Stephanie Goldberg

How does gender affect her visibility, judicial agenda, and the power she wields? In February 2005, we assembled a panel of four female chief justices who head the courts of Illinois, Massachusetts, Utah, and Wisconsin to reflect on these questions and others. The moderator was Randall T. Shepard, chief justice of the Supreme Court of Indiana. The following distinguished jurists participated in the roundtable:

Before joining the Wisconsin Supreme Court in 1976, Shirley S. Abrahamson was in private practice in Madison for 14 years and was a professor at the University of Wisconsin Law School. Chief Justice Abrahamson received her bachelor's degrees from New York University in 1953, a law degree from Indiana University Law School in 1956, and a doctorate of law in American legal history in 1962 from the University of Wisconsin Law School. As the court's most senior justice, she became chief justice in 1996.

After receiving her law degree from Duke University, Christine M. Durham practiced law in Durham, North Carolina, and taught legal medicine at Duke University Medical School. In Salt Lake City, she was a partner with the law firm of Johnson, Durham & Moxley before her appointment to the Third District Court in 1978. Chief Justice Durham has taught at Brigham Young University's law school, and the University of Utah College of Law. Appointed to the Utah Supreme Court in 1982, she was selected chief justice by her peers for a four-year term in April 2002.

A native of South Africa, Margaret H. Marshall graduated from Witwatersrand University in Johannesburg in 1966. She received a master's degree from Harvard University and a J.D. from Yale Law School. She was an associate, and later a partner, in the Boston law firm of Csaplar & Bok and a partner in the Boston law firm of Choate, Hall & Stewart. Before her appointment to the Massachusetts Supreme Judicial Court in 1996, she was vice president and general counsel of Harvard University. Governor Paul Celluci appointed her chief justice in 1999.

Mary Ann G. McMorrow, a graduate of Dominican University in River Forest, Illinois, received a law degree from Loyola University and was admitted to the bar in Illinois in 1953. After working at the law firm of Riordan & Linklater, she was appointed assistant state's attorney of Cook County and elected a judge of the Circuit Court of Cook County in 1976. Serving on the appellate court from 1985–1992, she was elected to the supreme court in 1992 and reelected for a 10-year term in 2002. Her peers elected her chief justice for a three-year term, which began in 2002. Chief Justice McMorrow recently was named a 2005 recipient of the Commission on Women's Margaret Brent Women Lawyers of Achievement Award (see page 14).

Randall T. Shepard was appointed to the Indiana Supreme Court in 1985 at the age of 38 and became chief justice in March 1987. He graduated from Princeton University and from Yale Law School, and earned a master of laws degree in the judicial process from the University of Virginia. He was a judge of the Vanderburgh Superior Court from 1980–1985. The National Association of Women Judges recently named Chief Justice

Shepard the first recipient of its Norma Wickler Excellence in Service Award. This summer, he will become president of the Conference of Chief Justices.

Randall Shepard: How did each of you come to hold your present position?

Shirley Abrahamson: I was appointed to the Wisconsin Supreme Court by Governor Patrick Lucey in August 1976, filling the vacancy of a member of the court who had died. I ran for election for a 10-year term in 1979 and was reelected in 1989 and 1999. When the prior chief justice retired in 1996, I became chief justice on the basis of seniority, as set forth in our constitution.

Christine Durham: I had been on the trial bench for four years before becoming a member of the Utah Supreme Court in February 1982. I was selected by a nominating commission and appointed by the governor. In April 2002, I became chief justice. The chief justice of Utah is the head of the judicial council and CEO of the judicial system, but is selected by the supreme court. It's an interesting partnership.

Mary Ann McMorrow: I was elected to the Circuit Court of Cook County in 1976. Then I was assigned in 1985 to the Appellate Court of Illinois and elected in 1986 for a 10-year term. In 1990, the first time I ran for the supreme court, I lost to a man who is now my colleague. It was horrible, expensive, stressful, and demeaning. I thought, "I'll never do this again." It was suggested to me that I had come so close to winning that I could receive political party support if I ran again. And so I ran again in 1992 with party support and was elected. After serving a 10-year term, I was retained two years ago with no campaigning whatsoever. My three-year term as chief justice will end in September 2005.

Shepard: Chief Justice Marshall, I know you're the first woman chief in Massachusetts. Were you also the first woman member?

Margaret Marshall: No. There had been another woman, Ruth Abrams. Governor Michael Dukakis appointed her in 1978. I was appointed to the court by Governor William Weld in 1996 and then appointed chief justice by Governor Paul Celluci in 1999. Our constitution provides that I serve in that position until age 70.

Burdens and Advantages

Shepard: What do you think are the special burdens or advantages of being the first woman chief?

Marshall: Let me tell you an anecdote. Every morning in hundreds of courthouses in my state, jurors are shown a video that explains the process. At the beginning of the video, there is a welcome by the chief justice. Soon after I was confirmed, our jury commission started receiving many telephone calls from jurors who said, "We served on jury duty, and we were welcomed this morning by a male chief justice and we know we have a female chief justice." The video shown was not of my predecessor or of his predecessor, but of a chief justice who served decades back. No one had ever noticed it before. But everybody knew there was now a woman: For good or bad, she was different; she didn't look like all the others. That's what it's like to be the first woman.

Shepard: Meaning that there is a much higher level of scrutiny and visibility?

Marshall: Yes. Today, many more people in our state—school students, for example—would be able to name me. Because there are so few highly visible women, I routinely get inquiries from the media to participate in general-interest stories on topics such as Christmas gifts or favorite vacation spots.

Durham: You're a celebrity.

McMorrow: One of the big things that I notice is the difference in attitudes toward women compared to when I started practicing. The public has come to know that there's really no reason why women cannot do the important work of a chief justice. I will always remember being asked as a prosecutor to argue a case before the Illinois Supreme Court. As a young lawyer, I was thrilled with the opportunity. I worked very hard to prepare the brief and my argument. About two days before the big day, I was told that women do not argue before the supreme court and I could not go. I was extremely disappointed because I had so looked forward to being the first. Now I sit on the very court before which I was not permitted to argue. When I see so many women arguing and drafting briefs, I cannot help but think what a waste of talent there was so many years ago. One of the most important things I keep in mind at all times is that I have to perform well, not for my own benefit but for those who will follow me.

Durham: Something similar happened to me as a trial judge. I was called to sit for a justice who had retired from the supreme court, and it was the first time a woman had ever sat with the court. The then-chief justice said, "I certainly hope you won't bring your reporter friends with you to cover the event." And I said, "Well, they're not my friends, and I don't have any control over whether they cover me or not." And he said, "Well, I guess you're right. It's like the story about the dog and the woman preacher." It turned out he was referring to the old joke: "How is a dog that walks on its hind legs like a woman preacher?" The punch line is that it's not that he does it well; it's just so surprising that he does it at all.

Shepard: Oh, dear.

Durham: That was the environment I entered. It was very different when I became chief justice. I had been an associate justice for 20 years, so there was relatively little to do about being the first woman chief.

Like all of you, I have experienced the sensation of being subjected to a very high level of scrutiny from day one. If I had failed as a trial or an appellate judge, it would have redounded not just to my detriment but also to that of women lawyers across the board. Until two years ago when the second woman joined me on our court, I had never sat on a court with another woman. I had always been the only woman, and, frankly, it was kind of lonely.

Abrahamson: I too had been on the supreme court for 20 years, so when I became chief justice, I was a known quantity. My becoming chief was readily accepted. Like Christine's experience, it wasn't until the '90s that a second woman joined me on the bench. We met at our first dinner party for the new court. When she got up to go to the ladies' room, I quickly followed her, checked all the stalls, and said, "I've been waiting for you for 17 years."

Then a third woman came on the court: Ann Walsh Bradley, who still serves. One woman justice left us, and Diane Sykes, who just went to the federal bench, joined us. In 2003, another woman joined us. A total of five women have served and, at one point, the women outnumbered the men.

Durham: The experience of having other women on the court is very new to me, and I'm still reveling in it. I find that my level of anxiety about being a highly visible woman has gone way down. I feel much more like just one of the group.

McMorrow: In Illinois, I was the only woman on the supreme court for 10 years. Two years ago, another woman was elected to the court. I have difficulty imagining that, for 173 years, Illinois had never had a woman on the supreme court. Even though the majority of the population were women, there were no women on the court to express a view about the issues that so profoundly affect us.

Marshall: Ruth Abrams, the first woman on the Massachusetts Supreme Judicial Court, was appointed in 1978. She was a real leader and chaired the Gender Bias Task Force. There was a real push at that time to promote women. There were barriers, but there were also opportunities. Many of us benefited from those efforts. At a time when I was feeling very ambivalent about submitting my name, I had a telephone call from Justice Abrams, whom I didn't know, almost reprimanding me: "If women don't step forward, how can we keep appointing women?" Today, I think there's an assumption that women will rise to the top automatically. But while the numbers are better, we have to keep making sure that women are being encouraged to apply as judges. One can't assume a bench reflecting the full diversity of the population will just happen automatically.

Seeking More Women Judges

Shepard: What's the most difficult part of expanding the number of women on the bench?

Abrahamson: I think it's a matter of persuading women to look to the bench. I find when I go around and talk to people about being judges, a lot of women say, "Oh, I can't do that," or they wonder if they're good enough. Yet I find a lot of men don't have any qualms about their ability.

Marshall: Shirley, I agree. I can absolutely confirm that when I served on the judicial nominating council, there were always fewer women applicants. I would ask judges, "Who are the great women lawyers that you've seen appear in front of you?" I would telephone those lawyers and say, "You must file an application." Many women would say, "I don't think I'm qualified enough." Women still are reluctant to suggest they're qualified for a trial or appellate court seat, let alone the highest court in the state.

McMorrow: In Illinois, approximately 35 percent of our judges are women. Men are so fearful of running against a woman that two or three men I know have changed their names to very feminine names. Now that's a complete reversal from prior years, so I'm not complaining. All things are not yet equal, but we have come a long way. But I really look forward to the time when no one will notice if there's a man or a woman sitting on the bench.

Shepard: What sorts of qualities are most important for a good chief justice?

McMorrow: Well, of course, I think a chief justice should be a strong leader and not let anybody intimidate her. It is my responsibility to prepare the agenda for the court and, because of that, I control, to some extent, the direction that the court will be taking. I would like the court to be a progressive court, and I have taken on issues that previously were not considered simply because the chief didn't want to get into them. So there's a lot of power that goes with the job, but it must be used very carefully.

Marshall: The demands are extraordinary. I still carry my regular caseload in addition to all the administrative responsibilities. Finding sufficient time to think through and write complex judicial decisions is difficult.

The demands on one's time are absolutely endless. There's an expectation that, as a woman chief justice, I will be able to speak at every gathering. If I decline an invitation,

people are incredulous. It's as if I've let them down because they needed a woman speaker.

Durham: Yes, the symbolic function has a downside.

Shepard: As chief, you have the chance to exercise some authority that really makes a difference. How would you describe that part of your role?

Abrahamson: I think it is very important to encourage all judges to deal with administrative issues such as interpreters, self-representation, and court security because different communities may deal with them differently. It's also important to empower trial judges to act in a creative manner with domestic violence courts, drug courts, and mental health courts. Interesting, good things can then be replicated in county after county to make the courts operate better for the public. The chief justice can be a spokesperson and a leader who encourages innovation.

McMorrow: The supreme court, at least in Illinois, has a mystique about it, and I think that's because of our own choosing. We wanted the supreme court to have this mystique; indeed, I think there are many people, including lawyers, who don't know what the supreme court does. I've been told that I put a face on the court, and I think it's important that it's a progressive one. Many men are so accustomed to just having things remain the same. A woman chief justice can bring innovations to the court. For example, we initiated a new program on having child custody cases proceed without delay. We have a new model judicial education program. We have established a new set of rules for a settlement program at the appellate level—something that's been on the plate for more than 10 years. We were the only state in the union that didn't eliminate vicarious liability for lawyers. Those issues were before the court before, but the male chief justices just sort of cast them aside in favor of other important issues. I think women can bring a lot of new initiatives to the table.

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