

INTRODUCTION TO CHIEF JUSTICE MARGARET H.  
MARSHALL

*Mary Lynch\**

I considered it a very great honor to have been asked by the *Law Review* to introduce our next speaker, Chief Justice Margaret Marshall.

Chief Justice Marshall has led an extraordinary life both in and out of the law, and both on and off the bench.

Born into segregated South Africa, Chief Justice Marshall can recall how her family's morning paper, *The London Times*, arrived with gaping holes due to government censorship. She can remember a time in her native land when being black meant having no right to own property or go to school or vote or travel freely in the country. She remembers and lived during the time when South Africa's Prohibition of Mixed Marriages Act and Immorality Act forbade legal marriage between people of different races and all sexual relations between whites and non-whites.

Margaret Hilary Marshall did more than just recognize the de jure and de facto discrimination all around her, she employed her highly analytical mind, her courage, her empathy, and her intellectual independence to affect change. She actively opposed the Apartheid Regime and served as the President of the National Union of South African Students, a leading anti-Apartheid organization.

Chief Justice Marshall graduated from the University of Witwatersrand . . . with a Bachelor of Arts. Awarded an academic scholarship, she traveled to the United States and frittered away those years getting a Masters of Education at Harvard University, and a J.D. at Yale.

She became a partner in a well regarded Boston law firm, and served for four years as the V.P. and General Counsel at Harvard University.

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\* Clinical Professor of Law; Director, Center for Excellence in Law Teaching; Director, Domestic Violence Prosecution Hybrid Clinic; J.D., Harvard Law School; B.A., New York University.

She is here today at this symposium because of her judicial legacy. In her fourteen years on the bench she demonstrated those same characteristics which defined her early life; intellectual independence, courage, sharp analysis and empathy. And she demanded the legal system afford all litigants appropriate process and justice.

In 1999 she was appointed the first female Chief Justice on what is not only the highest court in the great State of Massachusetts, but also the oldest continuously functioning Appellate Court in the western hemisphere. Yeah, pretty big shoes there to fill. Sure enough she's got large, large bold shoes.

During her tenure on the bench she presided over many notable cases such as *Salvas v. WalMart*, upholding employees' rights to bring class action suits; *Commonwealth v. Woodward*, ensuring that the results in every criminal case are consonant with justice; cases extending broader rights to persons with disabilities under the Massachusetts Anti-Discrimination Statute, just to name a few.

But she will always be known to both her admirers and her detractors as the jurist who wrote *Goodridge v. The Department of Public Health*, declaring that the Massachusetts Constitution does not permit the State to deny citizens the right to same-sex marriage.

The girl and young woman who protested Apartheid in Africa became the U.S. jurist whose insightful analysis pointed out another form of de jure discrimination.

Always a doer as well as a thinker, Chief Justice Marshall brought her form zeal to the administration of the Massachusetts Courts themselves. She assembled lucrative management panels, inviting in ABA consultants; worked to implement web-based case management systems; instituted a comprehensive program of judicial evaluation; implemented several acts of the justice initiatives; and championed civil and law-related education for the public and for students.

Beyond Massachusetts, she lent her vision nationally to several significant endeavors. In 2002 she was appointed to the ABA Commission on the 21st Century Judiciary, and assisted in producing *Justice in Jeopardy*, a landmark analysis on the threats to the independence of state courts. From 2008–2009 she served as President of the National Conference of Chief Justices, and as chair of the Board of Directors of the National Center for State Courts.

This past July when she stepped down from the court, a normally self-reserved colleague pronounced, “[h]ow will we go on without her

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leadership, she is an amazing jurist, she is an amazing leader.”

Those who had opposed her non-discrimination efforts and decision in *Goodridge* declared that they were happy to be out from under Marshall Law. And what is Marshall Law? Governor Weld called it justice for everybody.

The Massachusetts Bar President said, “[s]he’s a judge who broke out of the ivory tower to put a human face on the court.” The *Boston Herald* has simply summed up, “[c]hief Justice Margaret Marshall’s intellectual integrity never wavered.”

Our own in-house expert on same-sex marriage, Professor Stephen Clark, tells me that some of her most significant words are both eloquently prophetic and fiercely analytical, and he pointed me at a couple of her words. She wrote in *Goodridge*, “[i]t is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the sine qua non of civil marriage.” And she pulled no punches by further stating, “[i]t is circular reasoning, not analysis, to maintain that marriage must remain a heterosexual institution because that is what it historically has been.”

Finally, she is a voice for and symbol of judicial independence. After *Goodridge* she said, “I worry when people of influence use vague, loaded terms like ‘judicial activist’ to skew public debate or to intimidate judges.”

Marshall said, “I worry when judicial independence is seen as a problem to be solved and not a value to be cherished.”

So I introduce and call up to speak someone whose independence we cherish and honor her today, Chief Justice Margaret Marshall.