

or to appear as a speaker on legal education panels. He listens and responds. Indeed, he does not wait to be approached by the bar, but often reaches out to make sure that lawyers understand changes in the rules or other matters of importance.

It was Judge Breyer who first suggested—and perhaps the chairman might be interested in this—that he discuss with lawyers the changes contemplated by the Judicial Improvement Act of 1990 and to alert advocates to the significant changes that were contemplated by the civil justice expense and delay reduction plans.

I know there has been testimony about the site of the new Federal courthouse in Boston, but I should say that before the site was selected, Judge Breyer approached members of the bar to ascertain our views, and as you know, he arranged for lawyers and citizens to meet with the architects and others to discuss their concerns.

In fact, Judge Breyer is always ready to talk with any group of lawyers or to appear at any event if it is helpful to lawyers or judges; and he is as thoughtful and helpful with new members of the bar as he is with established bar leaders and litigators.

I recall a talk that he gave some years ago at the American Bar Association, at its ceremony at the Franklin Flaschner Judicial Award, given each year to an outstanding jurist of a court of limited jurisdiction. Not so many attend that particular ABA ceremony each year—certainly not the many hundreds who flock to the meetings of the big ABA sections—but, as is typical of him, Judge Breyer took the assignment seriously, and he chose on that occasion to reflect on the relationship between appellate judges and those whose decisions are reviewed on appeal.

It was as thoughtful aim to meet illuminating talk reflecting real sensitivity and insight on the role of appellate judicial making delivered to judges who had a real interest in the subject. In fact, Judge Breyer has worked hard and effectively to bridge the gap that often exists between judges and lawyers, and every bar president will be fortunate to have as a chief in her circuit a judge of Judge Breyer's qualities.

As I said, I have also known Judge Breyer personally for a number of years, and let me make a few comments about him as a friend. His qualities include enthusiasm, willingness to listen, interest in a wide range of subjects, humor, and gentleness.

I think of another great first circuit judge, Calvert Magruder, the first Supreme Court law clerk of Justice Brandeis, later a close friend to Justice Frankfurter and himself a distinguished member of the Harvard Law School faculty. Judge Magruder was known for his intelligence, his fairness, his integrity and his realism, and Judge Breyer is a man I believe in the Magruder tradition, as a Justice of the Supreme Court, he would give distinguished service to this Nation, even as we in Massachusetts would regret his departure from the first circuit.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Marshall follows:]

PREPARED STATEMENT OF MARGARET H. MARSHALL

CURRICULUM VITAE

Margaret H. Marshall is Vice President and General Counsel of Harvard University. Prior to her appointment in November, 1992 she was a senior partner in the

Boston law firm of Choate, Hall & Stewart, where her practice concentrated on civil litigation.

Ms. Marshall was born in Newcastle, Natal, in the Republic of South Africa. In 1966 she received her B.A. from Witwatersrand University, in Johannesburg, South Africa. An opponent of apartheid, she served as President of the National Union of South African Students from 1966 to 1968. She came to the United States in 1968 and became a United States citizen in 1978. In 1969 she received a master's degree from the Harvard Graduate School of Education, where she also pursued doctoral studies from 1969 through 1973. She received her J.D. degree from Yale Law School in 1976.

In 1991 Ms. Marshall was elected president of the Boston Bar Association. She also serves as Massachusetts state chair of the American Bar Foundation and as a delegate to the American Bar Association.

Ms. Marshall is a member of the American Law Institute, the Advisory Committee on Rules of the United States Court of Appeals for the First Circuit, and served on the Civil Justice Advisory Group of the U.S. District Court for the District of Massachusetts.

She has served on a number of boards including the National Lawyers Committee for Civil Rights Under Law, the Supreme Judicial Court Historical Society, and the Civil Liberties Union of Massachusetts.

Ms. Marshall has also served on the boards of a number of charities. She has maintained her interest in South Africa and is a trustee of The Africa Fund and is a board member of Southern Africa Legal Services and Legal Education Project, Inc. and of Africa News. She is a trustee of Regis College, Weston.

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Mr. Chairman, Members of the Senate Committee on the Judiciary:

It is a particular pleasure for me to appear before you today to testify on behalf of Judge Stephen Breyer. I knew him first as a member of the bar, and I appeared before in the First Circuit Court of Appeals. I came to know him as well in my capacity as President of the Boston Bar Association and related bar activities. And I know him more recently as a friend.

I have a peculiar and deep respect for an independent judiciary and the role that it plays in our society. My respect stems from my perspective as an immigrant from South Africa, where in the past the judiciary too often rubber stamped apartheid's oppressive laws and failed to protect its citizens. In this country we have the protection of independent judges, women and men of integrity and courage. Judge Breyer is an outstanding example of those qualities.

First, as a lawyer appearing in the Federal Circuit it is always a pleasure to draw Judge Breyer as a member of the panel. Any appellate advocate wants to believe that oral argument before a court *can* make a difference, and that is so with Judge Breyer. One feels as if he has focused on the issues, and that he sees a case not as an abstraction but as a reality for the parties involved. In his questioning he can be serious and attentive, but also witty. To appear before Judge Breyer is to appear before a "hot" bench; the questions are many, and demanding. One is both relieved when argument draws to a close, but also disappointed that his questions do not continue.

With so many women now admitted to the bar, permit me to add one historical observation. A decade and more ago there were not many of us who appeared in court. I could always sense when a judge was really listening, even though a woman was speaking. Long before I knew Judge Breyer personally, I recognized him as someone who did listen to women, who did not permit bias to influence his decisions, and who could be persuaded to change his mind by skillful advocacy.

As an officer and later President of the Boston Bar Association, I had many occasions on which to observe Judge Breyer in a different role. First he is an admirer of lawyers. (Not all judges evince the same view). He welcomes their participation in the judicial process. He wants them to be well informed. Judge Breyer is generous with his time, always willing to meet with Bar representatives or to appear as a speaker on legal education panels. He listens and responds; indeed, he does not wait to be approached by the Bar but often reaches out to make sure that lawyers understand changes in the rules or other matters of importance. It was Judge Breyer who first suggested that he discuss with lawyers the changes contemplated by the Judicial Improvements Act of 1990, and to alert advocates to the significant changes that were contemplated by the civil justice expense and delay reduction plans. Before the site of the new Federal court house in Boston was selected, Judge Breyer approached members of the Bar to ascertain their views. He arranged for lawyers and citizens to meet the architect to discuss their concerns.

Judge Breyer is always ready to talk with any group of lawyers or to appear at any event if it is helpful to lawyers or judges. He is as thoughtful and helpful with new members of the bar as he is with established Bar leaders and litigators. I recall a talk that he gave some years ago at the American Bar Association at the ceremony of the "Franklin Flaschner Judicial Award" given each year to an outstanding jurist of a court of limited jurisdiction. Not so many attend that particular ABA ceremony each year—certainly not the many hundreds who flock to the meetings of the big ABA sections. As is typical of him, Judge Breyer took the assignment seriously, and chose on that occasion to reflect on the relationship between appellate judges and those whose decisions are reviewed on appeal. It was a thoughtful and—to me—illuminating talk, reflecting real sensitivity and insight on the role of appellate judicial making, delivered to judges who had a real interest in the subject. Judge Breyer has worked hard and effectively to bridge the gap between judges and lawyers. Every bar president would be fortunate to have as the Chief in her Circuit a judge of Judge Breyer's qualities.

I have known Judge Breyer personally for a number of years, and let me make a few comments about him as a friend. His qualities include enthusiasm, willingness to listen, interest in a wide range of subjects, humor, gentleness. In a crowded room he will notice who is excluded, and move to include them. I have been taken aback at the suggestion that Judge Breyer lacks passion: one senses always his enthusiasm, and his intensity. It is true that one sometimes has to run to keep up with him, but the attempt to keep up is a pleasure.

I think of another great First Circuit Judge, Calvert Magruder, the first Supreme Court law clerk of Justice Brandeis, later close to Justice Frankfurter, and himself a distinguished member of the Harvard Law School faculty. Judge Magruder was known for his "intelligence, fairness, integrity and realism."<sup>1</sup> Judge Breyer is a man in the Magruder tradition. As a Justice of the Supreme Court he would give distinguished service to this Nation, even as we in Massachusetts would regret his departure from the First Circuit.

The CHAIRMAN. Thank you, Ms. Marshall.  
Ms. Corrothers.

#### STATEMENT OF HELEN G. CORROTHERS

Ms. CORROTHERS. Yes, Mr. Chairman and members of the committee. It is so good to see you again. I still remember and appreciate the support that you and this committee rendered for our efforts on the Commission.

The CHAIRMAN. We appreciate the work you did. It was heavy lifting.

Ms. CORROTHERS. That is right. Thank you.

I appreciate the opportunity to appear before the committee today to support the nomination and recommend confirmation of the chief judge of the U.S. Court of Appeals, first circuit, Stephen Breyer, for the post of Associate Justice, U.S. Supreme Court.

I would like to offer what may be for you a different kind of testimony. You have no doubt been inundated with opinions attesting to Judge Breyer's important educational and professional credentials, with statements about his wit, keen intelligence and knowledge. And I agree with all of these assessments.

But I invite you to share my perspectives concerning Steve Breyer as an associate and fellow human being in a professional setting. Steve and I were colleagues at the U.S. Sentencing Commission, and I am going to address the qualities and traits that I observed during that period.

It is important to consider the fact that, at the beginning of our work effort, it was necessary for us during a short period of time to find office space, hire staff, develop an organizational structure,

<sup>1</sup>Dargo, George "A History of the United States Court of Appeals for the First Circuit: Volume 1, 1891-1960," p. 216.