A round the time this edition of the Boston Bar Journal is released, Margaret Marshall will have concluded her tenure as Chief Justice of what she is fond of describing as the oldest court of continuing existence in the western hemisphere. She leaves a remarkable legacy.

Marshall’s appointment as Chief Justice on October 14, 1999, made her the first woman to hold that position in the history of the Court. That first was a culmination of the steady progress of women in the Commonwealth’s judicial branch. Indeed, until the retirement of Justice Ruth Abrams, Chief Justice Marshall presided over a Court on which the majority of justices were women. That benchmark achieved, Marshall was able to observe that in making a nomination to the SJC, a governor need not consider whether it would maintain or increase the number of women on the Court. “The important point is that you appoint the very, very best.”

Chief Justice Marshall often refers to her experience growing up in South Africa under apartheid as the source of her appreciation of the importance of civil rights, and of an independent judiciary to protect them. An examination of her judicial writing reflects that sensibility.

She wrote frequently on the subject of discrimination and civil rights. For example, in Dahill v. Police Dept. of Boston, 434 Mass. 233 (2001), the Court

Reflections on the Legacy of Chief Justice Margaret Marshall

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adopted a broader definition of the term “handicap” under G. L. c. 151B, the Massachusetts anti-discrimination statute, than the United States Supreme Court had held protected under the Americans with Disabilities Act. In re Ruby McDonough, 457 Mass. 512 (2010), protects the right of disabled witnesses to testify if they may do so competently with the assistance of reasonable accommodations. In Buster v. George W. Moore, Inc., 438 Mass. 635 (2003), Marshall wrote that economic coercion alone can constitute “threats, intimidation or coercion” under the Massachusetts Civil Rights Act. In Gasiol v. Massachusetts General Hospital, 446 Mass. 645 (2006), the Court concluded that an employee’s claim under the Massachusetts anti-discrimination statute for wrongful dismissal or failure to reinstate survives the employee’s death. In Commonwealth v. Bernardo B., 453 Mass. 645 (2006), the Court allowed a juvenile to pursue discovery to substantiate his claim that the Commonwealth had engaged in gender discrimination by selective prosecution of statutory rape.

Much of Chief Justice Marshall’s attention has been directed to changes in societal conditions affecting family law and the protection of children. So, for example, in Youmans v. Ramos, 429 Mass. 774 (1999), the Court for the first time recognized the status of a “de facto parent” in affirming a visitation order between a child and a maternal aunt who had been the child’s sole caretaker. In Adoption of Vito, 431 Mass. 550 (2000), the Court confirmed the authority of a court to order visitation of a child after termination of a parent’s rights for abuse or neglect, if visitation is in the best interests of the child. In Doe v. Senechal, 431 Mass. 78 (2000), the Court resolved a tension between the support interests of a child and the privacy interests of a putative parent by affirming an order requiring the putative father to submit to a paternity test. And in L.W.K. v. E.R.C., 432 Mass. 438 (2000), Marshall, writing for a divided Court, held that a parent’s obligation to pay child support survives the parent’s death.

Much as a parent is unwilling to designate a favorite child, Chief Justice Marshall steadfastly has deflected attempts to designate a favorite opinion. But whatever thoughts she may hold privately, there is little question that the opinion with which she is most widely identified is Goodridge v. Department of Pub. Health, 440 Mass. 309 (2003). The opinion in fact reflects an almost perfect union of the two themes we have just discussed: civil rights and discrimination and changing conditions of families and protection of children. First, she recognized the pernicious effects of discrimination:
“The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason. The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual. ‘The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.’ Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.” (footnotes and internal citations omitted)

Then, in rejecting the claims of those who argued that sanctioning same sex marriage would threaten children, she responded:

“No one disputes that the plaintiff couples are families, that many are parents, and that the children they are raising, like all children, need and should have the fullest opportunity to grow up in a secure, protected family unit. Similarly, no one disputes that, under the rubric of marriage, the State provides a cornucopia of substantial benefits to married parents and their children … In this case, we are confronted with an entire, sizeable class of parents raising children who have absolutely no access to civil marriage and its protections because they are forbidden from procuring a marriage license. It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents’ sexual orientation.”

All chief justices write significant opinions. Beyond leading the appellate business of the court and leaving her own distinguished decisional legacy, Chief Justice Marshall, in her role as the presiding officer of the judicial branch, has distinguished herself in four areas: court management, access to justice, public education, and serving as a national leader and advocate for the role of state courts.

In the field of court management, Chief Justice Marshall’s establishment of the Visiting Committee on the Management of the Courts — the “Monan Committee” — spawned a revolution in the management culture of the Massachusetts State courts. As a result of the Visiting Committee’s report, the Massachusetts
courts have implemented radical changes in management practices, including greater accountability, the adoption of objective measurements of performance, the development and monitoring of time standards, the development of a staffing model for the courts, and the development of oversight mechanisms (including external surveys and the Court Management Advisory Board) to ensure continuing progress.

In the arena of access to justice, Chief Justice Marshall established the Steering Committee on Self-Represented Litigants, chaired by Appeals Court Justice Cynthia Cohen. Among other initiatives that followed the Steering Committee’s work, the Court promulgated an order permitting limited assistance representation in all trial courts statewide, which allows a lawyer and client to agree that the lawyer will assist the client with part of a legal matter while the client self-represents on other aspects of the case. The Court also promulgated guidelines for judges and court staff to assist them in their interactions with self-represented litigants. To ensure continuing progress on these initiatives and the continued development of more, the Court appointed Judge Dina Fein to the newly-created position of Special Advisor for Access to Justice Initiatives, and established the Access to Justice Commission, now co-chaired by Justice Ralph Gants and David Rosenberg, Esq.

In the area of public education, Chief Justice Marshall has thrown open the courthouse doors, literally and figuratively. Since 2005, in partnership with Suffolk Law School, all SJC oral arguments are available, live and archived, over the internet. In partnership with Discovering Justice, countless groups — in ages ranging from elementary school students to senior citizens — have toured the renovated John Adams Courthouse to learn about the judicial system and the rule of law. The Supreme Judicial Court website now offers a user-friendly portal for information about the courts to attorneys, self-represented litigants, students, and the general public.

Marshall stumped the Commonwealth and — as President of the National Conference of Chief Justices — the country, describing to audiences in countless venues how the state courts pull the laboring oar in administering justice in civil and criminal cases.

Finally, Chief Justice Marshall passed up no opportunity to remind the entire Massachusetts judiciary and the public that a democratic society cannot thrive without justice — equal, fair, accessible, and prompt — and that an independent judiciary is indispensable to providing justice of that quality. She led the courts into the 21st century, she challenged the judiciary to do better, and she led by example. Her energy and electric persona made us believe in ourselves.