



Ted S. Warren/AP photo

MARY FAIRHURST

“BELIEVE IN MIRACLES”

There’s a Ruth Bader Ginsburg bobblehead and a bowl of “Believe in Miracles” wristbands on Mary Fairhurst’s desk at the Temple of Justice in Olympia. A butcher-paper banner that says “Sending BIG Hugs!” is taped to a wall. It’s from the Girl Scouts who sold the Chief Justice a lot of cookies.

Robe on or off, Mary Fairhurst is not the chief justice you’d expect from Central Casting. A large woman with a lovely smile, she radiates openness. It’s in her gene pool. Her father, Stan Fairhurst, a former Jesuit seminarian, is remembered with affection by hundreds of students he befriended during his years as a teacher and vice president for business and finance at Gonzaga University. Her mother, also a Mary, was the first lay chaplain at Spokane’s Sacred Heart Medical Center. Her grandfather, Tacoma lumberman Cyril Jackson Fairhurst, also a Zag, was one of the nation’s leading Roman Catholic laymen.

When the chief justice says, “I’m alive for a reason” it’s an article of faith as well as a mission statement.

Mary Elizabeth Fairhurst, 62, is the oldest of seven uncommonly bright, competitive kids. As a volleyball player, she was a fierce competitor who won or lost with a grace that inspired admiration. A magna cum laude graduate of Gonzaga’s School of Law, she became the youngest ever president of the State Bar Association. Her cliff-hanger election to the Washington Supreme Court in 2002 created its first female majority. Now, as chief justice, Fairhurst’s colleagues call her the conciliator—someone with “a sense of being at peace with her place in the world,” as Justice Debra Stephens, a fellow Zag, puts it. “In tense situations, I’ve heard her say to everyone in the room, ‘Let’s just breathe.’



The wristbands say: “Believe in Miracles.”

Laura Mott

She’s not lecturing; she’s counseling. It’s ‘Calm down. Be civil. Respect one another’s perspectives.’ Not many people could do that and come off as effectively as Mary.”

With a 6-3 female majority, including the chief justice, Washington is one of 10 states with female high court majorities.* Oregon and California also have female chief justices, and 40 of the 50 states have had female chiefs. Yet America’s courtrooms still fall far short of mirroring the nation’s diversity.

Undeniably, however, times have changed.



UW Law School class of 1953. Carolyn Dimmick is front row, third from right. *University of Washington*

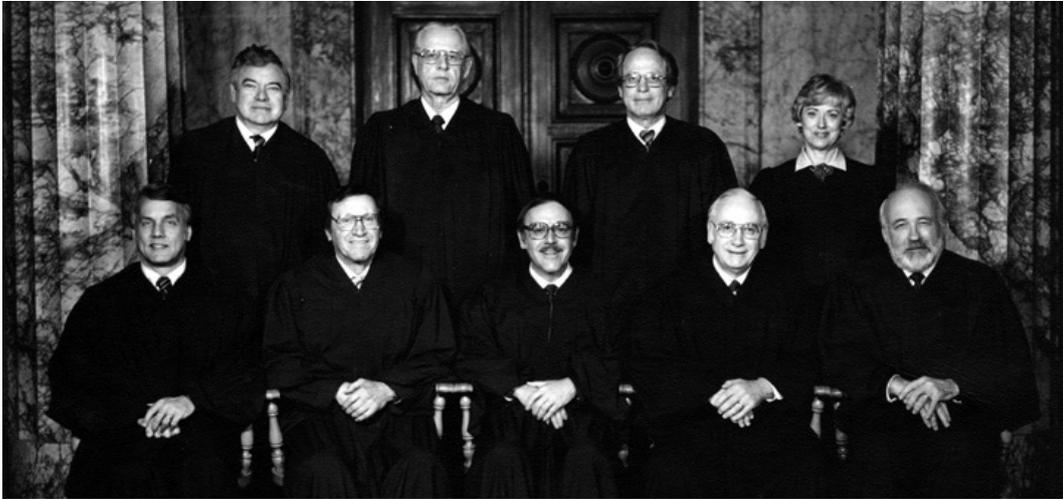
When Carolyn Dimmick, the first woman to serve on the Washington Supreme Court, passed the bar exam in 1953, the *Seattle Post-Intelligencer’s* headline epitomized *oh là là* sexism: “Pretty Blonde Water Skier Qualifies As Attorney.” Noting that she was one of only three women in the Class of ’53 at the University of Washington’s Law School, the story continued in that vein:

Carolyn Joyce Reaber, 23, blonde and beautiful Seattle water skier with the Ski-Quatic Follies on Lake Washington, will be sworn in as an attorney-at-law this Monday. Last Friday, the day she waited for the bar examiners to announce whether she had passed or not, was the worst day in her life, Miss Reaber said, a lot worse than the day she went up Hell’s Canyon Rapids on water skis with a movie camera trained on her.

Fast forward to 1968. The headline this time was “Woman Wields the Gavel.” *Post-Intelligencer* reporter Kay Kelly noted that most people would expect a judge to be a solemn, white-haired, 60ish man. But Dimmick—“blonde, attractive, young, pleasant, fun, fashion-conscious and the proud mother of two”—was “a surprise and a treat” on the Northlake Justice Court. She was “also a very competent judge,” according to colleagues, one of only three women on the bench statewide. Nevertheless, Dimmick was “reluctant to talk about herself, reluctant to consent to publicity. But why should Kirkland keep her to itself?”

It could not. Few in the Seattle legal community were surprised when

* The other states with female high-court majorities are Oregon, Nevada, New Mexico, Ohio, Minnesota, Vermont, Arkansas, Tennessee and Wisconsin, where six of the seven justices are women.



Dimmick in 1981 as the first female member of the Washington Supreme Court. Back row, from left: Fred Dore, Floyd Hicks, William Williams, Dimmick; front row, from left: Robert Utter, Hugh Rosellini, Robert Brachtenbach, Charles Stafford and James Dolliver. *Washington State Archives*

Governor Dan Evans appointed Dimmick to the King County Superior Court bench in 1976.

In 1981, when Governor Dixy Lee Ray's appointment of Dimmick to the Washington Supreme Court made history, her old boss, former King County prosecutor Charles O. Carroll, introduced her as "the prettiest justice on the Supreme Court." Justice Jim Dolliver, who received his law degree from the University of Washington a year before Dimmick, knew she was a lot more than just a pretty face. Dolliver, famous for his wry humor, passed her a note on their first day together on the bench: "Which do you prefer: 1) Mrs. Justice. 2) Ms. Justice. 3) O! Most Worshipful One, or 4) El Maxima?"

"All of the above!" Dimmick wrote back.

NINETEEN-EIGHTY-ONE, the year Mary Fairhurst enrolled in law school at Gonzaga, was a landmark year for women and the judiciary. President Reagan's nomination of Sandra Day O'Connor of Arizona to the United States Supreme Court was confirmed 99-0 by the U.S. Senate. In Judge Dimmick's office at the Federal Courthouse in Seattle, there's a framed photo of her with Justice O'Connor. Born a few months apart, they have a lot in common, including sagacity and a reluctance to be labeled.

Reagan named Dimmick to the federal bench for the Western District of Washington in 1985. Nearing 90 today, her legacy as one of the most respected and influential judges in Northwest history is secure. Mary Fairhurst and Debra



Carolyn Dimmick is now a senior judge on the U.S. District Court in Seattle. *U.S. Courts*

Stephens marvel at the “She’s-a-woman-and-a-judge—imagine that!” stereotypes Dimmick endured and the grace with which she handled the pressure and chauvinism, not to mention her formidable intellect.

Judge Dimmick says the idea of appointing a woman to an important office simply because she is a woman is demeaning. That her career path is unremarkable by today’s standards prompts this verdict: “That’s progress. ...It’s just been so heartening to see how it’s developed. ...You’re a lawyer. You’re not a ‘woman lawyer’ or a ‘lady lawyer.’ You’re just a lawyer.”

Women now make up around 52 percent of law school students in the U.S. and approximately 36 percent of the justices on state courts of last resort. However, they occupy only three of the nine seats on the U.S. Supreme Court. And state supreme courts remain overwhelmingly white and male. On that score, Washington is again ahead of the curve. Two of its newest Supreme Court justices—Mary I. Yu and Steven C. González—personify diversity. Justice Yu, the daughter of immigrants, grew up on the South Side of Chicago and graduated from Notre Dame’s Law School. She is the first Asian, the first Latina and the first member of the LGBTQ community to serve on the court. Justice González, an award-winning former assistant U.S. attorney, received his law degree from UC, Berkeley. He is Latino from his father’s side of the family tree, while his mother’s branches are Eastern European Jewish “and a little Yankee.” He speaks Spanish, Japanese and some Mandarin Chinese.

IF THE ARC of the moral universe is long but bends toward justice, as the Rev. Dr. Martin Luther King Jr. posited, there have been bends and roundabouts on the road to judicial diversity in Washington.

Barbara Durham, a distinguished appellate court judge with a law degree from Stanford, became the second female member of the Washington high court in 1985 and the first female chief justice 10 years later. Her judicial career was cut tragically short by early-onset Alzheimer’s.

In 1992, “The Year of the Woman,” Barbara Madsen became the third woman to serve on the court—and the first to gain her seat by popular election. The former public defender, special prosecutor and Seattle Municipal Court judge narrowly outpolled another highly regarded female attorney, Elaine Houghton, who went on to serve on the Court of Appeals. A record-breaking four female newcomers were elected to the U.S. Senate that year, including Patty Murray, Washington’s “Mom in

Tennis Shoes.” Future senator Maria Cantwell and Jennifer Dunn were among the 24 female freshmen in the U.S. House, while future governor Chris Gregoire was elected attorney general.

By 2002, when 44-year-old Mary Fairhurst announced her candidacy for the court, Justice Madsen had acquired three female colleagues—Faith Ireland, Bobbe Bridge and Susan Owens. Fairhurst had never been a judge, but she was a widely experienced assistant attorney general. And she knew her way around the Temple of Justice.

AFTER HER GRADUATION from law school in 1984 Fairhurst spent two years as a judicial clerk, working first for Chief Justice William H. Williams and then for Justice William Cassius Goodloe. It would have been difficult to have found two more temperamentally different justices. Williams, a former longtime Spokane County Superior Court judge, was an avuncular fellow Gonzaga Law School graduate who leaned liberal, often casting the swing vote. Goodloe, a former Republican legislator and GOP party chairman, was an avowed conservative. He resigned before the end of his first term to run for the U.S. Senate against fellow Republican Slade Gorton, whom he viewed as too moderate. Working for Goodloe after Williams was an eye-opener for someone like Fairhurst, with her strong Jesuit social-justice upbringing. (Her dad often took homeless men to Denny’s; her mom famously instructed one of Mary’s six sibs to surrender a pair of brand-new Christmas mittens to a homeless woman dragging a cart down a snowy street in Spokane.) Diplomatic as ever, Fairhurst says Williams and Goodloe were two bright men who had spent decades as trial court judges. “Comfortable in his own skin,” Williams instinctively shifted gears to the appellate level, she says, exerting a moderating influence on the court, while Goodloe loved his years as a trial court judge. “I got to see the benefit of the best of both of them.” What’s more, during Fairhurst’s years as a clerk, four new justices came on board, including Barbara Durham. Fairhurst worked with a dozen justices in all.

Next stop was the Office of the Attorney General, working for Republican Ken Eikenberry and his successor, Democrat Chris Gregoire—16 years in all. It was wide-ranging experience: criminal justice, transportation, revenue, labor issues. Fairhurst was chief of the Revenue, Bankruptcy and Collections Division when she ran for the Supreme Court in 2002. The mandatory retirement at 75 of the court’s first ethnic minority, Charles Z. Smith, had created an open seat.*

“It was like a 2x4 hit me,” Fairhurst remembers. “My mom had died of breast cancer; my dad’s living with me. He’s reading in the paper that Justice Smith is retiring. ‘Oh Mary,’ he says, ‘when are you going to run for the Supreme Court?’ Then my phone starts ringing. Justice Madsen and other justices are calling me saying,

* Justice Smith was born in the segregated South in 1927, the son of a Cuban auto mechanic and a restaurant cook whose grandparents were slaves.



Justice Charles Z. Smith. *Josef Scaylea photo*

‘Mary, are you going to run?’ I had been Bar Association president and sort of had a statewide reputation. Finally, I said, ‘I’m running. I have to run.’ I cared so deeply about the court, and I felt that you can’t complain about the choir unless you’re willing to try out.’ ”

Fairhurst entered a crowded and competitive field of candidates vying for Justice Smith’s seat. Michael S. Spearman, an African American serving with distinction on the King County bench, appeared to be the frontrunner, with Fairhurst neck-and-neck with Jim Johnson, an attorney who had defended Tim Eyman’s anti-tax initiatives. Johnson, a Harvard Law School graduate, also had drawn the ire of the tribes for his role as point man for then-Attorney General Gorton during the fallout from the Boldt Decision on treaty fishing rights.

Spearman finished a close third in the primary. Johnson and Fairhurst were headed for a photo-finish.

The State Republican Party, Gorton and the deep-pocketed Building Industry Association of Washington backed Johnson. So did the Farm Bureau and NRA. Fairhurst was supported by the Washington State Labor Council, the Washington Education Association, Governor Gary Locke and former governors Dan Evans, Booth Gardner and Mike Lowry, as well as five members of the Supreme Court and Judge Spearman. On the campaign trail, Johnson and Fairhurst emphasized that the office is nonpartisan, sidestepping the transparent fact that this race was about perceived ideology. “Gender is not the issue I’m hearing,” said Cathy Allen, a political consultant.

Come November, Fairhurst was elected to the court with 50.1 percent of the vote—a margin of 3,377 votes out of 1.4 million cast. Crucially, she carried King County by 41,719 votes. “I believe it was helpful to be a woman,” she says, “and to be willing to give everything during the campaign—leave it all on the field.”

The hard-fought Fairhurst-Johnson race—harbinger of several tight Supreme Court races to follow—italicizes the pros and cons of an elected high-court judiciary. Candidates are constrained from promising, if elected or re-elected, to vote one way or another on hot-button issues. Yet they accrue supporters with clear agendas (and checkbooks). As they woo voters, taking care to sound judicious and comply with the canons of ethics, their campaign committees do the fundraising. The candidates aren’t even supposed to know who gave or how much—or personally solicit donations, with the exception of contributions from committee members or family. But unlike federal judicial appointees who enjoy lifetime appointments, Washington’s Supreme Court justices serve six-year terms. The voters can render their own verdicts at the ballot box.

Presently the longest-serving member of the court is Associate Chief Justice Charles W. Johnson (no relation to Jim Johnson), who paid for law school by working at a Tacoma lumber mill. Johnson had no judicial experience in 1990 when he ousted Chief Justice Keith Callow. Running as a “blue-collar attorney” with a one-man practice, Johnson was given little chance. After the shocking upset, some pundits said the 39-year-old challenger had the advantage, especially in a low-turnout primary, of being named Johnson in a state with deep Scandinavian roots. What’s more, another Charles Johnson was a respected King County Superior Court judge and yet another was an anchorman for a Tacoma TV station. “The timing was impeccable,” the justice-elect observed, “and my opponent did exactly what he had to do for me to win—exactly nothing.”* Callow’s overconfidence became a cautionary tale.

Mary Fairhurst’s 2002 victory created the first female majority (she joined Madsen, Ireland, Bridge and Owens) in the 113 years since the founding of the court in 1889. The men in the minority were Chief Justice Gerry Alexander, Charles W. Johnson, Tom Chambers and Richard B. Sanders, the court’s libertarian maverick. Two years later Faith Ireland did not seek re-election and was succeeded by Jim Johnson—victorious in his second try. Men reclaimed a 5-4 majority.

In 2010 Barbara Madsen succeeded Alexander as chief justice after he stepped down with two years remaining in his term. Alexander, the court’s gentlemanly, longest-serving chief (nine years), was nearing mandatory retirement age. “I knew Justice Madsen would be elected, and I told her I would support her,” Alexander says. “I wanted to aid in the transition to a new chief.”

Madsen was re-elected to the court without opposition earlier that year, while Charles K. “Charlie” Wiggins, an ebullient former appellate court lawyer and judge, defeated Justice Sanders in a cliffhanger.

Two years later, with the election of Sheryl Gordon McCloud, a fearless appellate lawyer, Washington’s Supreme Court for the first time boasted a female majority *and* a female chief justice. And in 2015, when Mary Yu joined the court,



Fairhurst’s election in 2002 created the court’s first female majority: sitting from left, Bobbe Bridge, Barbara Madsen, Faith Ireland; standing Susan Owens and Fairhurst. *Washington Supreme Court*

* The lanky, affable new justice quickly demonstrated he was not in over his head. Charles W. Johnson became a constitutional law scholar and adjunct professor, receiving a national award in 2012 for “a lifetime of dedication to the principles and ideals of integrity, compassion, courage and professional service.”

female justices achieved the 6-3 majority that still exists at this writing in 2019 on the eve of the centennial of women’s suffrage in America. It’s notable that Justice Owens, a former District Court judge on the Olympic Peninsula, also served as a chief judge in tribal courts for more than a decade.



Retiring Chief Justice Gerry Alexander Alexander swears in Madsen as the new chief. *Washington Supreme Court*

JUSTICE MADSEN, reflecting on her 26 years on the court, makes no bones about the attitudes she says she and her female colleagues once endured, and how things have changed:

It was when there were finally three women on the court that I actually was listened to. I lived through the era where what I said five minutes ago was now being said by the guy down the bench—and everybody was paying attention to him. But when I said it, it was like maybe I hadn’t spoken. I started second-guessing myself. But with three women it was different. It was different because the other women paid attention to what I said and what I said resonated with them. As more women joined the room, suddenly I started to be heard by everyone—and not just the women.

It was 18 years before I became chief justice so I had seen many chiefs. Prior to 1996 the chief was rotational. We’d have a new chief every two years.* I noticed the way I was treated as chief was very different from prior chiefs. I was challenged constantly. That was not true of my male colleagues who served as chief. That said, I was a long serving chief, so I had things I wanted to accomplish. Perhaps I was treated differently, in part, because of that. But I think it was more about gender, since it was the same thing I experienced when I started on the trial court. As a trial judge I was challenged by male attorneys frequently. I had been a trial lawyer myself. I had been a public defender and a prosecutor and was in court practically every day. I saw how attorneys treated judges. That was *not* how I was treated. Later, when I became chief judge I did not have those same challenges. I believe it was because the bench that elected me was evenly divided between men and women.

* By secret ballot, Washington Supreme Court justices now choose a chief to serve a 4-year term.

I've done a lot of diversity training. These patterns I just mentioned seem to be similar for all people of minority communities. It might be a woman of color. It might be a man of color. It might be a person with a disability—the walls you have to climb are higher.

So now, with six [female justices], I don't have to prove anything. With more women at the table I can just be who I am; my ideas are judged on the merits. Making sure women's voices were heard is the chief reason I ran for the Supreme Court.

I really do believe women bring more collegiality to a concerted effort—whether it be a committee or a board or, in this case, an appellate court.

Justice Madsen leans forward, clearly relishing the chance to say some things that have been percolating for a long time:

When a group of women come together they seem very much task-oriented and solution oriented—always bending toward finding a workable solution and less concerned about saying “It was my idea.” It's a collaborative effort as opposed to a “me” effort. Of course, it's not true of every woman; it's not true of every man. But my experience is that women are more collaborative, and if it's a whole room full of women, that's more so. When it's a male-dominant room, you see men wanting to stand out as the leader. Women are more inclined to credit someone else's ideas and not reject or ignore them.

Madsen says today's historically diverse court, with an array of intellectual firepower but an abundance of collegiality, is one of the best on which she has served:

I am privileged to serve on the Supreme Court. The best part of the job is when I can really engage on the issues—to debate with other highly intelligent people who have different life experiences. Somehow the answer is better, richer. And then there's the awesome responsibility of putting those decisions into writing that becomes the law. It's really important that there be women and people of color on this court. When C.Z. Smith left there was a deficit.

DEBRA L. STEPHENS, at 54 the youngest justice, entered Gonzaga Law School in 1990 when her daughter was only five weeks old. A former community college debate coach, she is one of the court's most agile debaters and persuasive writers. Writing for the majority in 2012, Stephens authored the landmark, 79-page McCleary Decision that found the Washington Legislature had failed to uphold its



Susan Owens, Debra Stephens and Steven Gonzalez listen to oral arguments in a 2019 case. *The Columbian*

constitutionally mandated “paramount duty” to adequately fund basic education.

Stephens and Fairhurst look to Barbara Madsen as “the senior Zag”—deeply appreciative that she, like Carolyn Dimmick, poked holes in the judicial glass ceiling. Stephens also points out that Madsen was chief justice during the depths of the Great Recession. “I’ll never forget her great quote that ‘the animals around the watering hole were starting to eye one another searchingly as the water grew scarce.’”

Stephens, the first Eastern Washington woman to serve on the Supreme Court, is an avid proponent of judicial diversity, adding:

But the reality is that no more than when there were nine men here do we six women think alike. We’re just very different people, and gender is not necessarily defining some personality trait or leadership style or approach to the work. We also come from different experiences. Generationally we’re not super far apart—a 16-year gap from me, the youngest woman, to Susan Owens, the eldest, who is also a great friend.

When people ask me what it’s like with six women on the court, I always say, “Did anyone ask the men, ‘What’s that like with nine guys?’”

I think it’s equally important that we have people of color on our court. And it’s also important to have people from different generations in the room because it makes you ask questions and probe things you might otherwise take for granted. And that holds true on a court. I’m adamant that coming from a different part of the state matters. Coming from Spokane, my sense of what Washington is, is quite different from someone who grew up in Seattle.

EXHIBIT A that not all female justices think alike is the Washington Supreme Court's 5-4 decision in 2006 upholding the Defense of Marriage Act, which denied marriage licenses to same-sex couples. Barbara Madsen and Mary Fairhurst, two Roman Catholic graduates of a Jesuit university law school, held strongly different views. Justice Madsen, writing for a plurality of the majority, wrote that the act was constitutional "because the legislature was entitled to believe that limiting marriage to opposite-sex couples furthers procreation, essential to the survival of the human race, and furthers the well-being of children by encouraging families where children are reared in homes headed by the children's biological parents." Madsen also stressed the limited nature of the court's ruling. There was a rational basis to conclude that the 1998 law passed constitutional muster, she said, adding that the judges should not dictate public policy. The law banning gay marriages might yet change, she said, but not "because five members of this court have dictated it. ... We see no reason, however why the Legislature or the people acting through the initiative process would be foreclosed from enacting the right to marry to gay and lesbian couples in Washington."

In a forceful dissent, Justice Fairhurst called the majority's opinion "blatant discrimination," adding: "There is no rational basis for denying same-sex couples the right to marry. ... Unfortunately [those in the majority] are willing to turn a blind eye to DOMA's discrimination because a popular majority still favors that discrimination."

Fairhurst says her decision weighed heavily on her because of pressure she was feeling "from the church and from my parish. But I just had to do what I thought was correct under the law. [Afterward] I had people make comments like, 'Well, how can she do that and she's Catholic?' Well, how can I not do it if I'm a judge and it's the right thing?"

Self-described as a less committed Catholic, Madsen was largely immune to church pressure. That said, she quite agrees with Fairhurst on the latter point: "I concluded the law was constitutional. ... I'm a judge and I believe I was doing the right thing."

When the fallout cleared, they were still collegial colleagues. Madsen and Fairhurst emphasize that an appellate judge's job is to weigh what the laws say and how they should be applied to the cases at hand. The ambiguities inspire the nuances of dissenting—or concurring—opinions. In the Defense of Marriage Act ruling, "There were so many opinions among the justices that we had to refer to each other by name rather than just by opinion," Fairhurst remembers. "People thought we were really getting in each other's faces. People were like, 'Oh my gosh, they all are falling apart!' Well, we had already gone through whatever sort of emotional roller-coaster experience we were feeling as we were writing and re-writing and editing and amending. So by the time it came out it was all behind us, whereas other people were reading it for the first time and concluding the court was in a crisis. *We weren't*. We

were just doing our job. But this case came with a lot of emotion—big crowds in the courtroom. And they’re wearing buttons [supporting their passionately held views]. You have to sort through all of that.”

“I think Mary is the peacemaker,” Madsen says. “She really tries to make sure everyone is comfortable with positions we’ve taken. And that’s not always easy, especially when you’re the chief justice.”

Gerry Alexander says Fairhurst’s “fortitude and faith tell us a lot about who she is as a person and as a judge. Even when I disagreed with her, her arguments were thoughtful and well-reasoned. She has a very good judicial temperament.”

The former chief points to Fairhurst’s wide-ranging experience with the Attorney General’s Office and as president of the State Bar Association. “She was one of the first women to head the bar and its first public sector president,” Alexander notes. “Being Bar Association president is a *tough* job, but the members had a lot of respect for her.”



Justices Madsen and Fairhurst. *Washington Attorney General’s Office*

THOUGH FAIRHURST’S calendar is overflowing right now, she smiles broadly when she talks about being chief justice:

I love being chief. It’s a perfect job for me. But it’s a very hard job, as Justice Madsen knows. There are a lot of administrative and public outreach duties. As chief, I’m the spokesperson for a non-unified court system. I’m a co-chair of the Board of Judicial Administration. I run all the meetings of the court conferences. I run the department meetings and the *en banc* meetings where we decide what cases we’re going to do and what we’re going to decide. Separate and apart from being chief, I’m chair of the Judicial Information System Committee. I speak in many settings—from statewide conferences to the annual State of the Judiciary address. I convene work groups and task forces. I’m dedicated to increasing access to the justice system and working to promote better understanding of the foundations of our democracy. The YMCA’s Youth in Government program is very important.

Fairhurst is also dealing with Bar Association discontent over the approval of Limited License Legal Technicians to improve access to the justice system. Madsen



Justice Mary Fairhurst with the Mariner Moose in 2011 after she threw out the first pitch at a Mariners game to celebrate her birthday. *Spokesman-Review*

championed the plan during her term as chief justice. “It was like throwing a hand grenade in the middle of a bowl of soup because it gives people who have legal training but not a full legal degree the right to practice law in a limited scope,” Madsen explains. “And why do that? It’s because over the years it had become clear to me that the average person cannot access the justice system because they can’t afford the cost of legal services and they can’t navigate the system without some help from a legally trained person. I wanted to expand the resources

available for people who can’t afford to access the system, or even are so fearful of lawyers that they wouldn’t go to see a lawyer even if they knew they needed a lawyer! I am proud that the court adopted the rule.”

Fairhurst agrees: “We’re talking about all the people who go into court without assistance, having to be on their own. They have no idea how things work. Sometimes it takes them six or seven times because they don’t know how it has to be done. . . . Then you have all the people who never even had civics in school, and are [susceptible] to people who are purposefully trying to undermine the foundations of democracy.”

MAJOR CHALLENGES REMAIN, but in her State of the Judiciary address to a joint session of the 2019 Legislature, Fairhurst was upbeat:

- The justices of the Washington Supreme Court have adopted a new court rule—“the first of its kind in the nation”—making it more difficult to dismiss racial and ethnic minority jurors from a jury panel.
- A new statewide case management system has been implemented for the superior courts and county clerk’s offices, “completing a statewide modernization of the state’s diverse courts that began with planning in 2005.”
- Two reports by the Gender and Justice Commission outline the need for important changes in domestic violence court procedures and treatment “as a guide for addressing the problem of repeat, escalating domestic violence.”

More money is sorely needed for court interpreters, Fairhurst emphasized,

noting that the number of languages spoken in the state’s courtrooms has dramatically increased. Courthouse security, an escalating worry, should be addressed by a task force, she said.

But all things considered, “We’re getting better all the time. We’re a beacon of hope.”

“I want to remind you that time is precious,” the chief justice told the crowd of lawmakers and elected officials. “For whatever reasons this is our individual and collective time and place. It is when and where we are serving in the three branches of government. It is when we are deciding what government looks like in *our* Washington. None of us know how many days we have to make a difference. This is again especially true for me.”

Then she revealed she is once again fighting cancer—her third bout since an initial diagnosis of colon cancer in 2008. Round two, after the disease spread to a lung, ended in a miraculous victory in 2014. But now, the beast was back—in her lungs and liver. In the parlance of oncology, this is “Stage 4,” with five-year survival rates a daunting mixed-bag of maybes.

Fairhurst surveyed the hushed gathering, and in a voice resonant with optimism, she italicized her faith and underscored her determination:

I am currently undergoing treatment. I will continue working. I still believe in miracles. As Albert Einstein said, there are only two ways to live your life: One is as though nothing is a miracle; the other is as though everything is a miracle.

Everything is a miracle. Every day is a miracle. Let’s not waste the days we have. Working individually and together on behalf of those that we faithfully serve, we can and are making a difference. Together we will not fail. We *can* change the world to be what we want it to be. And we must ensure that all who seek justice find it.

I would like to close with what my family calls “The Joy Pose.” This is what we often do when we are overwhelmed with happiness. Because I am overflowing with happiness, hope and gratitude for you, for me, for us and for the State of Washington.

She raised her arms in a pose of exultation—at being alive and being able to make a difference—and kept them there during a prolonged standing ovation.

Many wept.

But Mary Fairhurst’s smile was luminous.

“I don’t see it as a death sentence,” she said. “I see it as a license to live. “I’m alive for a reason.”



The Washington Supreme Court in 2019: Front row (from left): Susan Owens, Charles W. Johnson, Chief Justice Mary Fairhurst, Barbara Madsen, Debra Stephens; back row (from left): Sheryl McCloud, Charles Wiggins, Steven Gonzalez and Mary Yu. *Washington Supreme Court*

TEN MONTHS LATER, after an exhausting round of chemo, Fairhurst announced “with a clear head and a sad heart” that she had decided to retire from the court to focus on her health. “I don’t believe I’m dying. I believe I’m living. You know we’re all going to die. The question is ‘How are we going to live?’ ...I want to live every day to the fullest.”

Fairhurst said she is not battling cancer. Rather she is embracing it as part of her journey—one she hopes to continue long after she leaves the bench on January 5, 2020.

“It’s been my highest honor to serve the people of the state of Washington as a justice ... since 2003, particularly as the Chief Justice for the past three years.

“I’m not going away to die. I’m going away to live.”

John C. Hughes Legacy Washington



This is what Fairhurst (center) calls the “Joy pose” with (from left) Sheryl McCloud, Susan Owens, Barbara Madsen, Debra Stephens and Mary Yu.

Laura Mott

MARY FAIRHURST SOURCE NOTES

“a sense of being at peace,” Debra L. Stephens to author, 5-21-2019
“Pretty Blonde Water Skier Qualifies As Attorney,” *Seattle Post-Intelligencer*, 9-21-1953
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