

Justice & Gender

An interview with Mary Schroeder

Judge Mary Schroeder is the chief justice of the nation's largest judicial circuit, the 9th Circuit Court of Appeals, which encompasses nine western U.S. states and two island territories. Schroeder will visit the UO on Feb. 16 at the Knight Law Center, 1515 Agate St, Room 175. At 5 pm, Schroeder will sit on a discussion panel with local female judges, and at 6:30 pm, she will deliver a speech entitled, "Whatever Happened to Diversity?" The free public event is sponsored by the UO School of Law and the Women's Law Forum. EW spoke with Judge Schroeder by phone from Tuscon, Ariz.

Have the courts played a significant role in enforcing the civil rights of women and minority populations?

Absolutely. I don't know where women and minorities would be without them. We've made tremendous progress through the courts.

Are the civil rights laws expansive enough to protect the rights of the "new minorities," such as Arab Americans, Muslims, and gays and lesbians?

I don't think we know yet, as far as the latter. I don't see any fundamental changes to civil rights laws to broaden them in the near future. I think lawyers will work well with what we have.

In 1987's *Hirabayashi v. The United States*, you ruled that the internment of Japanese Americans during World War II was unconstitutional. Why did it take 40 years before that case was ruled upon?

The Supreme Court turned down

Hirabayashi during the war. A researcher, Peter Irons, uncovered materials 40 years later that showed that there was no basis for any of the fears of the Japanese [Americans] that led to the internment. Historical research made that possible.

Is there a pattern of delay in civil rights cases?

The Japanese internment is, in that sense, unique. But there was also too much time that passed between *Plessy v. Ferguson* [the 1892 case that racially segregated schools] and *Brown v. The Board of Education* [the 1954 case that overturned *Plessy*].

Why do you oppose the proposal to divide the 9th Circuit into three jurisdictions?

Basically because none of the proposals to divide the circuit improve the administration.



Judge Mary Schroeder

We are in a period now of an extreme budget squeeze, and having to build courthouses and cope with staffing in three jurisdictions doesn't make much sense. My mind is not closed to a restructuring of the circuit if it was shown that there was some problem with the existing circuit that could be solved by that. But there is a feeling that the people attempting to divide the circuit simply don't like the decisions coming out of it. The solution, if you don't like the decisions, is to fill the vacancies that exist with people who they think will do a good job.

Is the proposed split an attempt to make the 9th Circuit, viewed by Washington as the nation's most liberal judicial branch, more conservative?

This issue comes up every so often, and it's always in response to particular decisions. In the '60s there was a reaction to fishing rights decisions that favored Native Americans. In the '80s, there was a reaction to the spotted owl decision. Then [California] Gov. Pete Wilson coined the term "environmental gerrymandering" to describe the efforts to split the 9th Circuit. It did raise some questions about the Court of Appeals and the way it functions.

As a young lawyer in the late 1960s, you had a hard time finding a job because of your gender. Do you believe that women have finally achieved parity with men in the nation's legal system?

We've made tremendous progress. But in

all parts of the system, there is an under-representation of women and minorities in the higher ranks of law firms and the judiciary, in state legislatures and in Congress ... The National Association of Women Judges identified patterns in the treatment of females in the courtroom, such as calling them "little girl" or "honey." There are certain areas where we know what demeaning conduct can mean in the courtroom or in the law, and we try to eradicate it.

Does mandatory sentencing deny judges the discretion to factor compassion into their decision-making?

There are certain issues which give some leeway for a factoring-in of compassion — for example, "cruel and unusual punishment." One can say that a life sentence for stealing videotapes is cruel and unusual. One of our panels did that; another court took a different view. There are some cases where you do take into account the possible injustices and misfortunes of a strict application of the law. There are other times when you are very limited. Most of the time, it doesn't matter how harsh it is; the statute of limitations is the statute of limitations.

You're now four and a half years into your seven-year term as chief justice. What's next?

I'm not eligible to take senior status until next year, so I will wait until then to take a deep breath and see what happens next. I think I will do something in the area of human rights. I was appointed by Jimmy Carter, after all, and this is a chance to come full circle. **EW**

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