

US Women Federal Court Judges Appointed by President Carter

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Abstract There is considerable disagreement as to whether any gender differences on the bench are symbolic, substantive, or both. This paper, based on never-before published surveys and personal interviews conducted in the early 1980s, contributes to that discussion by describing what women appointed to the federal bench by President Carter between 1976 and 1980 had to say about gender differences in their first years in office. I conclude that these early experiences and comments by women on the bench are still relevant today and presage much of the research on judicial gender which has followed.

Keywords Judicial interviews · Judicial selection · Gendered judging · US federal courts · Women judges

Introduction

When President Carter took office in 1976, only eight women had ever sat on the federal bench in the history of the United States, all of them since 1934. Each of the eight women who were appointed to the federal bench by six Presidents in that 42 year span was a singular case, and did not establish a precedent to pave the way for other women. Women were routinely barred from law school on the basis of their gender until the 1960s, so there were few women lawyers from whom to choose federal judges until the 1970s (Clark 2003). Thirty-two years ago, President Carter nominated the first of his women judicial candidates. Elsjane Trimble Day took office in November 1977 as District Court Judge in Arkansas. Thirty-nine women were to follow in her footsteps to the federal bench before Carter left office in 1980. The 40 women appointed by Carter were the opening wedge in a drive that

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succeeded in breaching the wall of prejudice that had prevented women from attaining the federal bench in any meaningful numbers for nearly 200 years. In the next three decades, 215 more women, out of a total of 1,214 judicial appointments by four different Presidents, followed in their footsteps. As of June 2007, 263 women had served on the federal bench in the United States.

Multiple factors were at work, of course, in creating Carter's historic first. Much has been written (see, e.g., Clark 2002, 2003; Wald 2005) about the changes Carter made in the federal selections process and his open call for affirmative action for the judiciary. His efforts to appoint more women were assisted by the creation of 152 new seats in the Omnibus Judgeship Act of 1978. But the women appointed by Carter must share some of the credit for the success of his affirmative action efforts for their willingness to be pioneers. Many were trail-blazers, willing to be not only the first woman in their federal districts or circuits, but also among the first women in their law school class, in their first jobs out of law school, on their state court benches, and in their local bar associations.

My focus is on the women judges themselves, and their stories of how they came to the forefront and how they viewed themselves as role models on the bench. My research question is very straightforward: "Does the presence of women judges make a difference in the quality of American justice, and if so, in what way?"

I will argue that the presence of Carter-appointed women judges has made a difference in a variety of ways: (1) because they took a career path to the bench that was different from their male colleagues, they diversified the perspectives represented on the bench beyond their gender; (2) because their life experiences had much in common with that of other women, it seems reasonable to conclude that they brought a gendered perspective to the federal bench that might have served as a counterbalance to the white, male perspectives historically represented on the bench; (3) probably because of the institutional constraints of the judiciary and the strong traditions of judicial restraint in making new policy, the bulk of their case decisions do not differ much from that of their Democratic men colleagues also appointed by Carter and presumably sharing many of the same liberal values; however, there are gender differences in a narrow range of cases related to women's rights and gender bias. In addition, women judges may very well have had a profound effect on the views and decision making of their male colleagues by their mere presence; and (4) they have impacted the justice system through their activities off the bench through such efforts as gender bias task forces. In conclusion, I will argue that studies of the Carter women judges are still relevant today, because the women judges who have followed them to the state and federal benches have much in common with them.

My support for these assertions will come through a review of the relevant literature and with previously unpublished material from surveys and interviews of Carter-appointed women judges.

My background information on each of the women judges comes from a variety of complementary sources: Senate Judiciary Committee files from 1976 to 1980; a mail-out survey I conducted in 1981; and a set of interviews I conducted in 1983. More recent information on career highlights comes from law review articles, newspapers, and the Federal Judiciary Biography website.

A final comment about the interviews...back in the Dark Ages of the 1980s, little was known about women in politics, mostly because there were so few women in politics and even fewer scholars interested in studying them. The same was true of women judges, only more so. In those days, as I struggled as an untenured assistant professor to publish my research on women judges, the reviewer comment that most enraged and depressed me was the criticism that I had too few respondents to make any worthwhile conclusions. Since I had response rates close to 75% of the entire universe of women federal court judges, and about two-thirds of all federal, state, and local women judges in the country, the only way to fix this methodological “problem” was to wait until there were more women judges—something I wasn’t willing to do. As it turned out, I had quite extraordinary success in getting responses to lengthy questionnaires and requests for interviews. Most of the women I talked with or wrote to understood that they had made history and were willing to contribute to the historical record. Over the years, I did publish much of the material I gathered, but not all. Although I have sometimes used individual quotes from my interviews of Carter women judges in other articles, the full results of the interviews have never been reported. The interviews played an important role for me over the years in developing my research questions and theories about gender and judging.

Literature Review

Career Paths

An examination of the career backgrounds and experiences during the recruitment and selection process of Carter-appointed women judges reveals that because they took a path to the bench that was different from their male colleagues, they diversified the perspectives represented on the bench beyond their gender. Women judges appointed by Carter were both like and unlike other political women of their time. They were younger, better educated, probably more ambitious, and had more continuing child care responsibilities than the typical political woman. On the other hand they were like other women in that they did not have the same career patterns as their male counterparts. They were younger, less likely to have attended Ivy League law schools, less likely to have worked for large law firms, and much less likely to have extensive partisan political experience. Moreover, they were more likely to have been sitting judges or law professors when nominated, and were more likely to have received law school honours. They were recruited, despite their deviation from the traditional career patterns of federal judges, because of changes Carter made in the selection process and his overt call for more women judges.

The Senate Judiciary Committee, under the Chairmanship of Senator Ted Kennedy, administered extensive questionnaires to all Carter nominees. When this data was used to compare the social and background characteristics of the women federal judges appointed by Carter to similar data published on men judges, women showed several marked differences (Martin 1982). Their median age was 46, four years younger than men. They were as equally well-educated as men in that they

had graduate law degrees, but they were less likely to have attended the prestigious Ivy League schools. On the other hand, they received more academic honours than did Carter's male appointees. They did, on the whole, have less trial experience than did men, but they had more judicial experience. They were far more likely to have been sitting judges at the time of their appointment and far less likely to have been working for a large corporate law firm, a traditional route to federal judgeships. These differences varied in one important respect according to whether appointees sat on the appellate or district courts. Women district court appointees had more judicial experience than men, and women appellate court appointees had less. Women appellate court nominees were more likely to be outstanding scholars than men appointees from both Carter's administration and previous administrations. Standards of merit for appellate court appointments emphasise high levels of intellectual achievement. District court standards place more emphasis on prior judicial experience. Thus, in terms of some of the key standards used to judge merit, women were easily equal to comparable men, although in one important respect, they lacked the experience and career patterns generally found among men federal judicial appointees. They were far less politically active. In fact, the majority of them reported that they viewed themselves as political "outsiders" in their home states. It has been argued that these career differences from men judges have helped to diversify the perspectives represented on the bench (Martin 1982).

Despite women's qualifications, the American Bar Association (ABA), a non-government legal association important in the establishment of merit in judicial appointees, rated women nominees significantly lower than they did men nominees. Although 62.5% of Carter's appointees received either a rating of "well-qualified" or "exceptionally well qualified", only 29.7% of the women Carter appointed did so (Martin 1982). Only one woman, Ruth Bader Ginsberg, who later was appointed to the US Supreme Court, received an "exceptionally well qualified" rating.

Many of these differences can be explained by the different economic, political and social roles men and women played in American society during that time period. In 1976 when Carter took office, 15% of new law school graduates were women and 9.2% of all lawyers (Epstein 1981, p. 4). By 1980, when Carter left office, 33% of students in law schools were women, and 12.4% of all lawyers were women (Epstein 1981, p. 5). This exponential growth of women in the law led to significant increases in the number of women in the eligible pool for judgeships, but with several key differences from eligible men. The women naturally were younger and had fewer years of legal experience, having more recently been admitted to law schools. Their relative lack of years of experience clearly impacted their ABA ratings. Men were more heavily drawn from the ranks of corporate lawyers and political activists—which is just as well since there were very few women in those positions.

The apparent explanation for the sudden increase in the number of federal women judges lies very simply in Carter's call for women candidates, his changes in the selection process, and the role of lobbying by groups interested in women's candidacies, especially the National Association of Women Judges (NAWJ) (Sloviter 2005; Clark 2002, 2003). There is clear evidence that Carter re-defined the eligible pool in a manner designed to increase the number of women in the eligible

pool of lawyers (Martin 1987). He even went so far as to pressure the ABA to back off from their traditional emphasis on extensive trial experience in their ratings (Clark 2003). That is not to say that Carter weakened standards or appointed unqualified women, rather he shifted emphasis. There is little doubt that Carter appointments favoured women with judicial experience for the district courts, probably because they had thereby demonstrated competence for the job of trial court judging. By the same token, women appellate court nominees had demonstrated their intellectual competence for the job of appellate court judging, through their superior scholarship and backgrounds in academia as law professors.

Gendered Life Experiences

Because their life experiences have much in common with that of other women, it seems reasonable to conclude that Carter women judges brought a gendered perspective to the federal bench that could serve as a counterbalance to the white, male perspectives historically represented on the bench. An examination of their gendered life experiences as wives and mothers suggests that much like other women of their generation they experienced more responsibilities as spouses and parents than did men (Martin 1990). Many also experienced discrimination in their education and careers. For example, the prevalence of discriminatory law school admissions policies account for women's late entrance into the field of law and accounted for Carter women judges' relative youth and fewer years of legal experience than men (Martin 1982). Indications are that gendered life experiences may have led Carter-appointed women judges to have strong feminist views. In one study >95% of Carter women judges supported the 1970s women's movement, and in another study almost 90% showed some degree of commitment to women's issues, ranging from giving speeches to taking sex discrimination cases to being delegates to the International Women's Year Conference (Martin 1987, 1993b).

Ninety-six percent of the women judges appointed by Carter were married, divorced or widowed. Ninety-one percent had children. A study of Carter judges and sex role conflicts (Martin 1990) was based on a mail-out survey in which judicial respondents were asked a series of questions about personal experiences of conflict between family roles and career roles. Seventy-five percent of women and 42% of men appointed by Carter completed the survey. Of those respondents, women had 2.4 children and men had 3.2. Half of the women judges had children under 18, compared to only 28.5% of men. Three women had children under the age of six!

A clear majority of both women and men judge respondents rarely felt any conflict between their careers and their role as spouses, and both women and men experienced more conflict from their roles as parents than as spouses. However, even though men had more children, they were much less likely than women to feel conflict between their careers and their roles as parents, even when their children were younger. Few judges, men or women, were the primary person to do housework. However, women were much more likely to have hired help and men were much more likely to have spouses who did the housework. When it came to running the household, there was again a stark contrast. No men judicial

respondents took primary responsibility for a well-run household, two-thirds of women judges did.

In other words, judicial women were much like other working women in their obligations to their children, their spouses, and their households, with the exception that their careers gave them the money to hire help with housework. It seems reasonable to assume that these experiences heightened their awareness of the difficulties that are faced by aspiring working women. In American society in the 1950s when many of the Carter judges were growing up, women were socialised to assume a subordinate position in their relationships with men (Friedan 1963). It is not a very big leap to assume that the Carter-appointed women, at the very least, had to be willing to defy sex role stereotypes in their aspirations to the federal bench. One is reminded of US Supreme Court Justice Sandra Day O'Connor's advice to the graduating class of a women's college: You can have both a family and a career, but it will take "a great deal of stamina and strength" (Johnston 1983).

Indications are that gendered life experiences, in combination with Democratic political party ideology, may have led Carter-appointed women judges to have strong feminist views. An examination of the Senate Judiciary Committee question, "How have you contributed to equality of justice?" reveals that all of Carter's women appointees gave some indication of support for feminist issues and/or minority rights. Many had published articles or given speeches on women's rights (Martin 1982). In a survey, both men and women Carter judges were asked about their interest in seeing more women in public office, about their support of the women's movement, and about putting more women on the Supreme Court (Martin 1990). About 90% of the women judges supported all three ideas, compared to about 60% of men. The role of political party in the views of women federal judges is also evident. Carter women judges were found to be more strongly feminist than women judges appointed by the Republican President Reagan (Martin 1987). For example, >95% of Carter-appointed women supported the women's movement compared to only 37.5% of Reagan-appointed women.

The significance of feminist views in the decisions of judges is apparent in a 1987 study of federal, state and local judges across the country, of both political parties and both men and women, that used simulated cases to assess the correlation of personal identification with feminism to decisional outcomes. The cases raised issues of divorce, abortion, domestic violence, maternity leave, and sexual harassment. Controlling for judicial role orientation, political party and gender, the study found that women feminists were most likely to be actively pro-woman in their decisions, women non-feminists and men feminists were very similar, and men non-feminists were least likely to be activists (Martin 2001). The overall probability that a non-feminist, non-activist Republican male judge would vote to support the woman plaintiff was 52%. The probability for a feminist, activist, Democratic woman judge was 89%.

Case Decisions

Perhaps because of the institutional constraints of the judiciary and the strong traditions of judicial restraint in making new policy, the bulk of the case decisions

by Carter-appointed women do not appear to differ much from that of their men colleagues also appointed by Carter and presumably sharing many of the same liberal values. However, it may be that their presence has heightened consciousness of their male colleagues to issues of gender bias, leading to less gender disparity in judicial decisions.

Two major studies of Carter judges, one of the federal district courts (Walker and Barrow 1985) and one of the appellate courts (Gottschall 1983) failed to find any important differences in case decisions by judicial gender. One explanation for this failure that has been proffered is that all Carter judges, men and women, tended to be liberal, Democratic and somewhat feminist, therefore gender differences are minimal (Martin 1987, 1991).

Subsequent studies conducted since 1990, have included federal judges appointed by Carter and other presidents, as well as state supreme court justices (Davis et al. 1993; Allen and Wall 1993; Songer and Crews-Meyer 2000; Segal 2000; Martin and Pyle 2000). Although some of these studies tested a theory drawn from the field of psychology that women judges would speak in a unique, feminine, “different voice” (Gilligan 1982; Goldstein 1992), their results failed to support the theory. Despite this failure to support different voice theory, researchers often found differences between men and women judges in their decisions on such gendered issues as sex discrimination, family law and sexual harassment (Martin 1993a). For example, a study of state supreme courts found that gender was more important than race or party affiliation in predicting judicial votes in divorce related cases (Martin and Pyle 2005).

Studies focusing less on statistical analysis of decisions and more narrowly on the individual experiences of women judges often conclude that women’s gendered experiences impact their judicial behaviour (Tacha 1995; Werdegar 2001; Elliott 2001; Beiner 2005; Kruse 2005). Although some women judges deny that women reason any differently from men, a number of prominent women judges (including those appointed by Carter) have been quoted as supporting the view that women judges have a distinctive perspective to contribute. For example, Judge Marilyn Patel, appointed by Carter to the federal district court, has said: “What being a woman judge means is that those of us who have been a part of the discriminated-against classes understand that it happens” (Kay 1989; see also Feenan, this issue).

Judicial Behaviour

There are a variety of ways in which an increasing number of women judges can have an impact on the justice system other than through decisional output. These ways include conduct of courtroom business, especially as regards sexist behaviour by lawyers and other courtroom personnel; an influence on sex-role attitudes held by their male colleagues, especially on collegial appellate courts; administrative behaviour, for example, in hiring women law clerks; and collective actions, through formal organisations, undertaken to heighten the judicial system’s response to gender bias in the court systems (Martin 1990, 1993a, b).

Jennifer Peresie (2005), in her study of federal appellate courts, has examined the role of women judges in influencing their male colleagues to more liberal decisions

in cases of gender bias. She concluded that women federal judges, in cases of sex discrimination and sexual harassment, were more likely to find in favour of the woman plaintiff, and that in the presence of a woman colleague in three-judge panels, men judges were also significantly more likely to find in favour of the plaintiff. These findings are extremely provocative and suggest that one of the reasons why more gender differences in judicial decisions have not been found is that women judges, either by their mere presence or through their efforts of persuasion, cause their male colleagues to vote *with* them.

The Gender Bias Task Force Movement is one of the most important court reform movements of recent decades and is probably the clearest and most dramatic demonstration of the influence that the presence of women judges has had on the administration of justice in the US (Schafran 2005). Several researchers, most notably Lynn Schafran (1990) and Norma Wikler (1989), have detailed the history of this Movement. The task forces were spearheaded by the NAWJ, which was dedicated to increasing the number of women judges, and to eradicating bias against women in court systems. The majority of women judges appointed by Carter are decades-long members of NAWJ, and many have been active in that organisation as well as federal court task forces. For example, Judge Dorothy Nelson, appointed by Carter to the appellate bench, wrote the introduction to the Ninth Circuit Gender Bias Task Force Report (Nelson 1994).

As of May 2005, 44 states and eight federal circuits had completed the Herculean task of studying and reporting on the existence of gender bias within their respective systems (Schafran 2005). These task forces have documented discriminatory court decisions, policies and practices and made recommendations to eradicate these barriers to equal justice. Women judges, often members of the NAWJ, worked tirelessly to see that task forces were formed in their own states. Many simply worked behind the scenes; others served on, or chaired, task forces. The essence of the approach was that a group of distinguished people in each state or circuit would use traditional social science methodology to gather data about the influence of gender in their court system. If any problems were discovered (and they always were), recommendations would focus on judicial education. The organisational features of the Movement explicitly recognised that prevailing sexist attitudes deny credibility to women claiming gender bias in the courts (even women lawyers and judges), so powerful judicial authorities (mostly men) were persuaded by judges and lawyers within the court system (mostly women) to sponsor the task forces (Swent 1996).

In Sum

Much in the literature points to the expectation that Carter-appointed women federal judges have a unique perspective to contribute to the US justice system. They have taken different paths to the bench than their male counterparts; they have been recruited from a different eligible pool; they have gendered life experiences more in common with other women than with their male colleagues; they appear to have brought these gendered experiences to bear on cases raising issues of gender

fairness and in the Gender Bias Task Force Movement; and they appear to have had an influence in raising awareness of gender bias among their male colleagues.

Interviews

For 2 months in the spring of 1983, I travelled over the United States to interview ten of the 40 women appointed by Carter, six of 29 from the district courts and four of 11 from the appellate courts (25% of the total number of judges appointed by Carter).

The interviews typically lasted about two hours and took place in their judicial offices. I took notes, but all interviewees agreed to be taped although they insisted on absolute confidentiality. The interview questions were open-ended and grouped roughly into four overlapping subject areas, all of which contained questions on gender-related experiences or perceptions. The first set of questions had to do with the judicial selection process and asked the judges to evaluate the contribution of personal, political and social factors to their success in securing their appointments. The second series of questions related to their socialisation experiences after reaching the bench. For instance, I asked who helped them to make the initial adjustments to their new positions, and how. I next asked questions about their perceptions of their roles as judges. For example, I wanted to know if they felt it appropriate to allow their personal values to influence their judicial decisions and under what circumstances. In the final set of questions I focused specifically on gender roles. I inquired into their relationships with their male colleagues, other judges and lawyers, law clerks and courtroom personnel. I asked them if they thought more women should be on the bench and why. I explored their attitudes towards the (1970s) women's movement.

In general, I wanted to know how they had gotten where they were, whether they thought their presence made any difference in the quality of American justice, and what they thought the chances were that more women would follow their lead. Ultimately, I hoped to be able to surmise if they would advance the cause of women's rights in their judicial behaviour, either on or off the bench.

I opened with one or two very broad, unstructured questions, and then proceeded to more specific points in the same area. Thus, after general questions about the "circumstances that led to your nomination," I asked more specifically what effect they thought the use of merit commissions, affirmative action and ABA ratings had on the appointment of women judges in the Carter administration.

The Selection Process

They told me, to a woman, that they would never have made it without the changes in the judicial selection process instituted by President Carter.

I think I would have never been on the bench if judicial nominations Commissions had not been instituted by President Carter, and the Commissions told specifically to go and seek women and minorities.

Considering the fact that I was not active in partisan politics at all, I think I would have had no chance whatsoever.”

It never occurred to me to aspire to a federal judgeship, why would it? It wasn't a path that seemed open to women, until Carter came along.

The issue of qualifications is a troubling one and one that has been used persuasively to undermine affirmative action efforts. The ABA's Standing Committee on the Federal Judiciary rated the qualifications of Carter's nominees using four ratings: not qualified, qualified, well qualified, and exceptionally well qualified. The bulk of the women appointed by Carter, slightly over 70%, received only qualified ratings. One woman (Ruth Bader Ginsberg) received an exceptionally well qualified rating; the remaining women, <30%, received well qualified ratings. Yet, about half of the men appointed by Carter and his three predecessors received either well qualified, or exceptionally well qualified, ratings. The same women who received only qualified ratings from the ABA generally received noticeably higher evaluations by the merit commissions who recommended them using the competence criteria developed by the Justice Department, US Senators and Executive Order 12097¹ (Berkson and Carbon 1980).

With the ABA ratings in hand, I bluntly asked the subjects of my interviews to account for them. Many felt that the ABA's standards for judicial qualifications relied too heavily on the typical, male-model, high-powered, corporate lawyer career pattern. They felt that women were disadvantaged by this emphasis, but that it was not a deliberate act of sex discrimination. They definitely felt that the lower ratings from the ABA were not a fair indication of the abilities of women appointees. These are some of the replies I got:

I was a state judge with 8½ years of experience, a good reputation, and number two in the state bar polls. I was really angry... I resigned from the ABA.

The ABA representative interviewed me for 20 minutes. During that short time he asked me how I was going to take care of my children and handle this very responsible job.

I don't understand it. I really don't understand it—I was very chagrined.

Another woman federal judge said of the ABA Committee:

I looked them all up. Except for one woman, they were all over 55, white, male, trial lawyers....these were the people that were rating me!!

A woman appellate court judge I spoke with, who had graduated at the top of her Ivy League law school class and gone to work in the 1960s for a large, legal firm commented:

¹ In Executive Order 12097, President Carter authorised his Attorney General to recommend candidates for seats created by the Omnibus Judgeship Act only after ascertaining that an affirmative active effort was made to identify women and minority candidates.

When I went to work...I asked if I could go in the litigation section. They said, no they were not prepared to put a woman in the trial courtroom...and that was not unusual in those days. It was very ironic to have (the ABA representative) come along 17 years later and say, we have this problem, you don't have enough litigation experience.

The issue, of course, is not simply whether the ABA notions of a well qualified judge may have eliminated many potential women applicants or under-rated successful candidates. The issue is whether or not the emphasis by the ABA on a single career pattern to the exclusion of others more common to women and minorities produces better judges than would otherwise be the case. I asked my interviewees to comment on the ABA standards on the basis of their own experiences, thus far, as federal judges. The general consensus seemed to be:

What makes super trial lawyers does not necessarily make good judges.

Instead, they felt that a variety of backgrounds should be represented on the bench.

I would place the greatest emphasis on a variety of experience—there is more understanding of issues if (judges) have played other roles.

From an appellate judge:

I would have to say that I would want one judge with extensive trial experience on a panel of three. I would also have to say I bring something they don't have and that is useful.

From a district court judge:

We are called on to hear so many different kinds of cases that there is no way any individual on our bench can have an experience broad enough to prepare them for all the cases they'll hear.

Socialization to the Federal Bench

Most found their jobs to be lonely ones, with little interaction with other judges and lawyers, but few attributed this to being women. Rather, the job itself is so demanding that little time is left for interaction.

I'm very people-oriented, it took me months and months to get used to an awesome silence. (appellate court judge)

I sat on a three-judge panel my first year on a very difficult school busing case, but I loved it because I got a chance to get to know other judges. (district court judge)

Yet, many also felt that it was important to make time to develop relationships with colleagues, and some thought that they felt it to be more important than their male colleagues did. Few received any help from their colleagues in adjusting to their new positions, although none were refused such help. Those who were most

assertive in seeking out information and advice seemed to have been most successful in getting help.

I'm not one of those people who is afraid to ask for help.

When I came to the (appellate) court, there was little social interaction among the judges. I started inviting out-of-town judges to my home for dinner parties. They were just sitting in hotel rooms! Now, others do also.

Most felt that things were much the same for new men judges. However, those who were fortunate enough to have on their circuit other experienced women judges found them to be sources of great help and sensitivity in learning about their new duties. Nearly all had attended the special seminars created by the US Judicial Conference for new judges and found them very useful.

Just being with other Carter appointments who were just like me was very supportive. I had begun to wonder, what in the world am I doing here?

The main benefit seemed to be that they developed personal relationships with other women federal judges sitting in other courts and stated repeatedly that they could pick up their telephone at any time to call on these other women for advice or information, or simply moral support.

I was very lucky, (woman judge) was just across the hall from me, and she was extremely helpful.

Judicial Role Orientations

I asked if they agreed that it was not proper for them, as judges, to allow their own values to influence their decisions. I followed up by asking: what if law or precedent is not clear? All pointed out the constraints of the system often leave little room for the exercise of judicial discretion or innovation. A few illustrated this point by citing cases in which they had made decisions not in accord with their own personal preferences, but where the Congress had left little doubt as to its intention. In those few instances where the law is not clear, and the judge must breach the gap, they readily acknowledged that their personal values and background had an impact on their decisions. Most initially agreed that they must absolutely set aside personal values unless the law or precedent was not clear.

No way around it.... Constraints are omnipresent.

Where (the law) is really clear it is improper not to follow it, but you can say in the opinion that you don't like the law!

However, many also went on to discuss the complexities of context when deciding cases.

It is all very well to state general principles (of setting aside personal values), but it is not necessarily much help in specific cases...exigencies of the moment generally take over.

Part of my job is to give *my* input, to take the law as I find it, apply it to the facts and *decide*.

Gender Roles

Most felt that their judicial decisions were not much different from those of male judges, although many felt that they arrived at those decisions somewhat differently. Although many stressed the differences between the perspectives that men and women judges bring to this process, several also mentioned that many of their male colleagues held similarly supportive views of women's rights. Most felt that their presence, as women, alters the *process* by which judicial decisions are reached, especially on multiple judge courts. Several specifically mentioned instances in which sexist language was no longer used in chambers or in the courtroom since their arrival. Many pointed out the increased numbers of women law clerks since their appointments. One suspected that she had more women jury chairs than did male judges. All agreed that the impact of their presence was both a complex and subtle one that would be difficult to measure by simply looking at case decisions.

Asked why it was important to have more women represented on the federal bench many women again emphasised the notion of diversity:

Women are different from men and it's important for that difference to be represented.

The bench without women does not reflect the total fabric of society.

We took different routes to get here and that affects us.

All of the women I spoke with were firmly united in their desire to see more women appointed to the federal judiciary, and spoke often of the justice of equal representation.

Until you have a situation in which you can have more than one woman, you haven't really opened up the profession to the full range of opportunity that women ought to have.

For women who are struggling, trying to achieve, in this day and time, it's important there be women at every stage that are highly visible. When I came along, that wasn't true, and I felt that pretty keenly.

In 1983, over 12% of lawyers in the US and over 30% of students enrolled in US law schools were women, and their numbers were growing (Epstein 2001). I asked my interviewees if they thought this upcoming increase in the number of women eligible for judicial office would do away with the need for affirmative action efforts in federal judicial selection. I received a resounding "no" as my answer.

Some judges pointed out that the Reagan administration's slowness to appoint women judges could not be explained by a lack of qualified women.

There are plenty of women there if they want them. They don't have to go digging in the bushes. I'll send them a list!

Other judges feared an era of tokenism was beginning.

When will we get a *second* woman on the Supreme Court...probably when Justice O'Connor retires.

One judge's wry comment sums up the real obstacle to increasing the number of women judges:

Affirmative action is alive and well in this administration...for white males!

Summary

There is nothing particularly new or startling revealed by my interviews of Carter-appointed women judges. What is perhaps most salient is the fact that most of their comments support the findings of the research that only came later. They clearly recognise that Carter's intent to appoint women was the most important factor in their selection. We have seen, through hindsight, that presidential intent is still the most important factor in women being selected as federal judges (Martin 2004). Women lawyers and women judges continue today to have different career patterns than do the men lawyers who are selected as federal judges, and it takes a deliberate choice to recruit women. Carter-appointed women judges had the same gender-related experiences as wives and mothers that most working women have had and continue to have. They were well socialised to the legal profession and the traditional roles of judges, and didn't expect to make decisions much differently from their male colleagues across the hall. On the other hand, they held feminist views and many had personally experienced gender bias. Given the right opportunity to make new law regarding women's rights, they seemed poised to act, and, indeed, many have done so. They uniformly supported an increase in women on the bench and thought it was important, not only for the sake of fairness, but also because women would present a different perspective from men.

Conclusions

Where are They Now?

Two of the women federal district court judges appointed by Carter were subsequently elevated to the appellate courts, where they are still active judges. Susan Black was moved to the Eleventh Circuit in 1992 by George HW Bush. Diana Murphy was moved to the Eighth Circuit in 1994 by Bill Clinton. Ruth Bader Ginsberg was elevated from the DC Circuit to the US Supreme Court by President Clinton, where she still sits. Three of the women Carter appointed to the district courts served a relatively brief time before resigning: Patricia Boyle served only 5 years on the federal district court before resigning to join the Michigan Supreme Court. Susan Getzendanner served 7 years, and Shirley Jones only 3 years before they resigned to return to private practice. Two women, Gabrielle McDonald (federal district court) and Patricia M. Wald (federal appellate court) resigned after

many years of service, and became judges of the War Crimes Tribunal at the Hague (the International Criminal Tribunal for the former Yugoslavia). Sixteen women served as Chief Judge at some point during their judicial tenure. Six are still active appellate court judges (including Justice Ginsberg, and Judges Black and Murphy). Seven district court judges are still active. A total of sixteen of Carter's appointees have taken senior status. Four have died.

Contemporary Relevance of the Experiences of Carter Women Judges

Are the experiences of Carter women judges relevant today? I think so—primarily because, although the number of women lawyers and women judges has greatly increased, their status within the legal profession hasn't changed much. Women lawyers, even today, are far less likely to be partners in large, prestigious law firms and women lawyers are clustered in the lower status ranks of their profession, such as public sector employment, making less money and having less opportunity for advancement (ABA Commission on Women in the Profession 2002). Women's paths to the federal bench have not changed much since the Carter days either. Most tellingly, the career variables of women appointees from the Reagan, GHW Bush and Clinton administrations still resemble those of the Carter administration (Martin 2004). That is, women are more likely to have prior judicial experience than men appointees, and much less likely to come from private law practice. The usual explanation for this phenomenon is that women must prove their judicial abilities and philosophy with a 'paper trail' in a way that men do not. The chief difference between Carter's judges and more recent appointments is the increase in women's experience as prosecutors and government attorneys. This change reflects the tendency mentioned above for women lawyers to cluster in public sector employment.

Directions

There remain many research questions to be answered, moving into an era when there are enough women judges to allow for sophisticated methodology. Can the 'difference' that women judges make be defined? If women judges have a special perspective not shared by men, does it operate on a broad spectrum of cases, or just those raising issues of gender fairness? Based on my interviews, I suspect that special perspective is limited to gender fairness issues. Must we go beyond case outcomes in our examination of gender differences and look at judicial behaviours off the bench, in organisational behaviour, in court administration, in hiring courtroom personnel? Again, based on my interviews, I think so. Researchers in the 1980s presumed that any gender differences that existed among judges would ease over time as more women entered the law, and traditional sex role expectations of women altered. That doesn't seem to have happened. Is it too soon? Perhaps, but it seems more likely that despite the entrance of more women into the law, old stereotypes die hard.

Then there are the normative questions. Are these possible gender differences a good or a bad thing for women's interests, in the long-run? On a more practical level, will too much emphasis on gender difference hamper the efforts of aspiring

women lawyers to reach the bench? I don't know the answers to these questions, but I am afraid the answer is, yes.

I leave you with a story told to me by several of the women judges whom I interviewed that captures some of the atmosphere within which they had to perform their judicial duties, and suggests that change is coming, however slowly.

The United States Judicial Conference conducts periodic seminars for new federal judges. During these seminars, it is customary for the new judges and their spouses to have dinner at the United States Supreme Court building with the Justices. At the first such dinner after Carter's appointment of a number of new women judges, the women judges were split off from the main party for a special tour and photo op session with then Chief Justice Burger. As he guided them through his chambers, he announced (in all seriousness): "You ladies will be particularly interested in this" and pointed, with pride, to his *kitchen*!

You will be glad to hear that the reaction of the "ladies" was sufficiently negative, that all subsequent tours neglected the kitchen. So some things do change!

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