

## TRIBUTE TO HON. PATRICIA M. WALD

*HON. HARRY T. EDWARDS\**

During the past forty-four years, my professional career has included time as a practicing attorney, law professor, Chairman of the Board of Amtrak, and federal appellate judge. During this time, I have never worked with anyone who is smarter than Patricia M. Wald, nor have I ever engaged with a more thoughtful, insightful, or humorous person.

I first came to know Judge Wald in 1979, when we were both being considered for appointments to the U.S. Court of Appeals for the D.C. Circuit, along with Abner Mikva and Ruth Bader Ginsburg. Judge Wald joined the court in 1979, and I followed a few months later in 1980. I then had the good fortune to work with Judge Wald for almost twenty years, until she retired from the court in 1999. During her stint on the D.C. Circuit, Judge Wald issued over 800 opinions and served as our Chief Judge between 1986 and 1991. She was revered as a great jurist by both her judicial colleagues and members of the bar. Why? Certainly Judge Wald's intellectual acuity, productivity, and unfailing commitment to her professional work can be cited. But Judge Wald's sterling reputation also has been built on her willingness to share her great gifts with the members of our profession—she is always open and engaging; tough-minded, but not haughty; probing, but never disagreeable in her inquiries; funny, but never offensive. You want to hear what Pat Wald has to say because it is bound to clear your head and improve your thinking, and often she is likely to make you laugh as well.

After retiring from the court, Judge Wald accepted an appointment to serve on the fourteen-member panel of judges of the International Criminal Tribunal in The Hague, where she spent two years hearing cases on wartime atrocities in the former Yugoslavia. This was not an easy assignment because the tribunal judges faced serious language barriers in their deliberations, and they initially

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\* Senior Circuit Judge, Chief Judge Emeritus, U.S. Court of Appeals for the D.C. Circuit; Visiting Professor of Law, New York University School of Law. B.S., Cornell 1962; J.D., Michigan 1965. Judge Edwards was a faculty member at the University of Michigan Law School from 1970 to 1975 and from 1977 to 1980, and at Harvard Law School from 1975 to 1977, earning tenure at both schools. During the past thirty years, he has continued to teach part-time, serving as an Adjunct Professor of Law at Michigan, Pennsylvania, Duke, Georgetown, and Harvard, and Visiting Professor of Law at NYU, where he has taught for the past twenty years.

worked with no uniform set of rules. Unsurprisingly, Judge Wald became a leader of the tribunal and helped to establish a standard for fairness and the rule of law. Upon her return to the United States, she served as a member and chair of the Open Society Institute's Justice Initiative Board and then was appointed a Member of the President's Commission on U.S. Intelligence Capabilities Regarding Weapons of Mass Destruction.

Last year, Judge Wald added a new role to her impressive resume: campaigning door-to-door for Barack Obama in his successful bid to become President. Her endorsement of Mr. Obama—which was issued in a powerful and pithy statement, entitled “Why This Older Woman is for Obama”—traveled around the world on Internet blogs. In her statement, Judge Wald, in her inimitable style, reported:

I have spent more than 40 years of my near-80 in public service as a federal judge, international judge, Justice Department official, and public interest lawyer. . . . [Now, with] a troop of wonderfully gritty older women, I [have] spent 8 days on the icy streets of Cedar Rapids, Iowa—with a return to the hustings in Delaware last week—campaigning for Senator Obama.<sup>1</sup>

One of my law clerks last year was a young woman from Iowa. She was utterly astonished when she learned that Judge Wald had been campaigning door-to-door in Iowa, in bitter cold and snowy weather. When I later asked Pat about this, she admitted that it was “very cold,” but she explained that she wore a heavy coat, scarf, and some snow boots and then “had a ball” seeking votes for her candidate.

As I reflect on our many years together on the D.C. Circuit, some things about Judge Wald were obvious: She was a brilliant lawyer and jurist; she was lightning fast in her work; she had an incredible memory; she missed no nuance in an argument; she was an extraordinary (and tenacious) advocate of a position once she had analyzed competing arguments; she was fair-minded; and she was gracious on the bench. The problem for some appellate lawyers was that they could not handle Judge Wald's brilliance, coupled with her tenacity, iced with her graciousness. The net result was that Judge Wald nearly killed lawyers with her kindness. During oral arguments, Judge Wald was known to offer detailed analyses of the issues and then say to counsel, very politely: “I am not saying

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1. Sam Graham-Felsen, Judge Patricia M. Wald: ‘Why this Older Woman is for Obama,’ *Organizing for America*, <http://my.barackobama.com/page/community/post/samgrahamfelsen/Cyfd> (Feb. 9, 2008) (quoting Patricia M. Wald).

that this view is the correct answer, but you might want to think about it.” In one case, counsel was so taken aback by Judge Wald’s gracious summary of the issues that he passed out and dropped to the floor before a packed courtroom. He was then carried out on a stretcher. The Deputy Marshal thought that Judge Wald had killed the attorney with her polite questions. Fortunately, the attorney recovered, but I am not sure that he ever appeared before Judge Wald again.

Judge Wald is also known for her sharp wit, a trait that was aptly put on display during the 1988 D.C. Circuit Judicial Conference. Judge Wald, who was then the Circuit Chief, introduced Justice Antonin Scalia who was our banquet speaker that year. Here are a few snippets from Judge Wald’s introduction of Justice Scalia:

CHIEF JUDGE WALD: We are very pleased that our former colleague and present Associate Justice of the United States Supreme Court Antonin Scalia has consented to share some remarks with us tonight. I am especially grateful—in light of what goes on [at the Supreme Court during] oral argument—to get a word in edgewise before he begins. As an old parochial school graduate myself, I’m not so naive as to buy that line on the PBS show that “the devil makes him do it.” In my days the nuns and a bar of soap were a match for the devil any time. . . . On the Circuit, we came to relish or to dread—depending on which side we were on—Nino’s sharp but friendly salvos in conference. His legendary Ninograms often set the stage for months of combat. In a burst of nostalgia I leafed through a few of the 1985–86 term opinions when we disagreed so amiably together. In one he accused me of “suck[ing the APA] dry of its content.”<sup>2</sup> I countered by charging him with perpetrating “rank judicial interference with a reasonable statutory interpretation . . . .”<sup>3</sup> So intimidated was Congress by our jousting that they mooted the case by passing a new law. In another sentimental exchange [of opinions], Judge Scalia lamented that [one of the points made in my opinion] was “a promise kept to the ear but broken to the heart;” worse still, he accused me of “fragmenting a unitary claim”<sup>4</sup> (He really knew how to hurt a girl!). Thus, we became friends . . . . Even his consistent reversals of our opinions now

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2. *Gott v. Walters*, 756 F.2d 902, 910 n.8 (D.C. Cir. 1985).

3. *Id.* at 929 (Wald, J., dissenting).

4. *Beattie v. United States*, 756 F.2d 91, 120 (D.C. Cir. 1984) (Scalia, J., dissenting).

cannot entirely erase those fond memories . . . . Welcome Justice Scalia.

Justice Scalia then took the podium and said: “Thank you, Pat. That was really gutsy.”

Apart from her sense of humor, Judge Wald is a woman of great substance. I will only offer two examples from her extraordinary resume of work. Her ninety-nine-page, 540-footnote opinion in *Sierra Club v. Costle*,<sup>5</sup> is a *tour de force*, surely one of the greatest administrative law opinions ever issued by the D.C. Circuit. And her article on judicial opinion writing, published by the Chicago Law Review in 1995, is a stunningly good discourse on the subject.<sup>6</sup> The article is not just insightful; it is also fluid. Each time I read the piece I remain amazed at Judge Wald’s ability to decipher and describe all of the nuances of our work without trivializing or overstating any of it, and in a way that even uninitiated readers will understand what we do.

One of Judge Wald’s greatest accomplishments has been to achieve stardom as a mother, spouse, and professional. I often talk with my law clerks about the difficulties of raising a family in a two-career family when both the wife and husband are highly motivated to reach the highest ranks of professional success. That is no mean feat. Yet long before it was fashionable to even try, Pat and Bob Wald set off on a course to make it happen. After graduating from Yale Law School and then clerking for Judge Jerome Frank, Judge Wald worked at the Arnold & Porter law firm in Washington, D.C. She left the firm when she was eight months pregnant because she wanted to be with her husband who was in the Navy and stationed in Norfolk, Virginia. Judge Wald says that it was not difficult to leave the firm because she and her husband wanted to have more children—they have five—and she did not want to rush back to work. Asked if she enjoyed motherhood, Judge Wald said:

Yes, I really wanted to be a mother. I wanted to be the person who had responsibility for the children. I can’t say that every moment brought unmitigated joy, but being with the children when they were young was a priority well worth making. I’m glad I don’t have to look back and regret not having been there.

When asked how she reentered the legal profession after having five children, Judge Wald explained that:

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5. 657 F.2d 298 (D.C. Cir. 1981).

6. Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371 (1995).

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When the youngest child started going to kindergarten so that all five of them were in school, I began working part-time in a series of jobs that allowed for a flexible schedule. I had a consultant's contract with the Justice Department, and I worked on the Kerner Commission Report, the Report on the Causes and Prevention of Violence, on the President's Commission on Crime in the District of Columbia, and I was co-director of the Ford Foundation's Drug Abuse Research Project. Then in 1968 I joined Neighborhood Legal Services as a litigating attorney. That was when I began taking on full-time responsibilities again.

Judge Wald's ascendancy in our professional ranks upon her return to practice is now history. No one has done it better.

I always have been inspired by Judge Wald. She has reigned as a model of the very best that the legal profession has to offer. And she has worn her crown with dignity and humility. It is an honor for me to pay tribute to my esteemed colleague and friend.

