

93RD ANNUAL MEETING
AMERICAN LAW INSTITUTE

MAY 18, 2016

THE RITZ-CARLTON HOTEL
WASHINGTON, DC

presentation of

Henry J. Friendly Medal

to

Patricia M. Wald

remarks by

**The Honorable Harry T. Edwards
Senior Circuit Judge
U.S. Court of Appeals for the D.C. Circuit**

The Henry J. Friendly Medal is a fitting tribute to one of the greatest jurists in American history. And the Medal is appropriately *reserved for those who can be described as truly distinguished in the tradition of Judge Friendly and the ALI*. Patricia M. Wald easily meets this standard.

I have been a member of the legal profession for just over 50 years. And I have had the good fortune to work with some extraordinary practitioners, academics, and judges. I have known Judge Wald as a colleague and friend for over 35 years, and I can honestly say that I have never worked with anyone better. During her time on the D.C. Circuit, Judge Wald issued over 800 opinions and served as our Chief Judge between 1986 and 1991. She was acclaimed as a *great jurist* by both her judicial colleagues and members of the bar. And she was (and still is) revered as a member of our profession because of her willingness to share her great gifts with others.

Judge Wald modeled excellence in all of her work on the D.C. Circuit. She was always open and engaging; tough-minded, but not haughty; probing, but never disagreeable in her inquiries; and funny, but never offensive. My colleagues and I always wanted to hear what Judge Wald had to say, because it was bound to clear your head and improve your thinking; and, often, she was likely to make you laugh as well.

She was lightning fast in her work, but she never short-changed the parties in her preparations; she had an incredible memory; she missed no nuance in an argument; she had an awe-inspiring ability to reach coherent and sound judgments after analyzing case records and reflecting on the competing arguments in a case; and she was eminently fair.

Unlike one of her former judicial colleagues – a short, bald, African American, male – Judge Wald was always patient when questioning counsel during oral arguments. Often, to assist an attorney, Judge Wald would give a detailed analysis of the issues in the case being heard, proffer her tentative conclusion, and then say to counsel, very politely, “I am not saying that this is the correct answer, but you might want to think about it.” As you can imagine, Judge Wald’s mastery of the case was sometimes very disconcerting to counsel. In one case, an attorney 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.

Judge Wald never had any interest in being a legal academic; but, make no mistake about it, she was a *great* judicial scholar by any measure. She was an artist in crafting opinions. If you need an example, look at her opinion in *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir. 1981). It is a *tour de force* – in examining the authority of the President to control and supervise executive policymaking; in cabining the grounds upon which an administrative rulemaking can be overturned on a claim that Congress unduly pressured the agency; and in crafting one of the greatest administrative law opinions ever issued by the D.C. Circuit.

She was uniquely adroit in reflecting on the judicial enterprise. If you need an example, look at her wonderfully insightful article, entitled *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, published in the Chicago Law Review in 1995, explaining both why judges write and the constraints on judicial rhetoric.

And she was masterful in calling out injustices that she perceived in cases that she heard, but without ever straying beyond the strictures of appellate decision making. If you need an example, look at her brilliant dissenting opinion in *Stefan v. Perry*, 41 F.3d 677 (1994), which involved a challenge to the military's then-established policy of discharging any person who acknowledged his or her homosexual orientation. In the conclusion to her dissent Judge Wald said:

For the government to penalize a person for acknowledging his sexual orientation runs deeply against our constitutional grain. It has . . . no precedent or place in our national traditions, which spring from a profound respect for the freedom to think and to be what one chooses and to announce it to the world. The majority [opinion] cannot disguise the injustice that lies at the heart of this case. In years to come, we will look back with dismay at these unconstitutional attempts to enforce silence upon individuals of homosexual orientation, in the military and out. Pragmatism should not be allowed to trump principle or the soul of a nation will wither.

In my view, Judge Wald's accomplishments as a jurist, without more, would make her a worthy recipient of the Henry J. Friendly Medal. But there is so much more. What makes Judge Wald so very special is the extraordinary range and consistent high quality of her work over the past 65 years, made possible by her unparalleled talents, her selfless commitment to the public good, and her innate goodness and integrity. She is someone who has really made a difference in this world.

Judge Wald's path to prominence was challenging. She was raised by her single-parent mother, who worked in a factory to support her daughter and make sure that she was the first one in the family to attend college. Judge Wald won a scholarship to Connecticut College for Women, graduated Phi Beta Kappa and finished first in her class. She then attended Yale Law School, where she was one of only eleven women in her class. After graduating from Yale Law School and then clerking for Judge Jerome Frank, Judge Wald briefly worked at Arnold & Porter 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, and raise a family.

When asked how she reentered the legal profession after ten years at home raising five children, Judge Wald explained, that:

[w]hen 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.

I should add that, in 1964, before Judge Wald returned to full-time employment, she also co-authored a book, *Bail in the United States*, which helped to reform the nation's bail system. How many stay-at-home parents can manage a schedule of this sort?

I asked one of Judge Wald's daughters how she felt when her mother decided to go back to work full-time. She said that, at first, she resented it because she felt it was an imposition. But she explained that, as she got older, she came to understand the importance of her mother's career. And she felt great pride when she heard other women say that "*Pat Wald was my role model.*" Women and minorities who have been stymied in their attempts to advance in professional pursuits often remind us that "if you can't see it, you can't be it." Judge Wald's stunning accomplishments, both when she was at home and when she returned to work full-time, made her an inspiration to women who sought to follow in her footsteps in their family lives and professional careers.

The truth is that Judge Wald has been a role model for more than just women because she has done so much good for so many in her professional pursuits. In 1971, after stints at the Department of Justice's Office of Criminal Justice and as an attorney in the Neighborhood Legal Services Program, she joined the Center for Law and Social Policy, one of only two public interest firms in existence at the time. She worked on cases primarily involving children, mental health, and disability rights. By 1977, Judge Wald was so well known and greatly respected for her public interest work that she was appointed Assistant Attorney General for Legislative Affairs at DOJ.

In 1979, President Jimmy Carter nominated Judge Wald to fill a newly created seat on the D.C. Circuit, and she became the first woman ever to sit on our court. When she later served as Chief Judge, she did a terrific job in establishing strong internal operating procedures that are still in effect today.

When Judge Wald retired from the court in 1999, some naive folks thought that she would relax, read a lot of books and see old movies (her hobbies), spend time with her kids and grandchildren (which she likes to do), and, as her daughter said, hang out with "some of her younger women friends" sipping some good wine. However, those of us who know Patricia Wald well, and have had the honor and pleasure of working with her, knew that retirement was not in the cards. Patricia Wald is always full steam ahead. So, unsurprisingly, she accepted an appointment to serve on the International Criminal Tribunal in the Hague. It was a challenging assignment because of language differences among the judges and the failure of other judges to appreciate rule of law principles that are common to us. Unsurprisingly, Judge Wald quickly assumed an important leadership role on the court and performed sterling work.

When she returned from the Hague, Judge Wald became board chair of the Open Society Justice Initiative. In 2004, she was appointed to be a Member of the President's Commission on the Intelligence Capabilities of the U.S. Regarding Weapons of Mass Destruction. In 2006, she worked with the Inter-American Commission on Human Rights, to address the crack cocaine disparity as the most egregious example of mandatory minimum sentencing in our criminal justice system. In 2010, she agreed to serve on The Constitution Project's Guantanamo Task Force. In August 2012, she was confirmed by the Senate to serve as a member of the Privacy and Civil Liberties Oversight Board. And last, but not least, Judge Wald has been a faithful member of the ALI since 1973, serving variously on the Council for 31 years, on the Executive Committee for 15 years, as an Officer for several years, and now as Adviser on the "Model Penal Code" and "Principles of Law" projects.

When someone like Judge Wald – who has served society selflessly and with extraordinary distinction – receives the public recognition and acclaim that she is due, we know that justice has been served. So how nice it was in November 2013, when Judge Wald was awarded the Presidential Medal of Freedom. It was a beautiful occasion, and President Obama's words were such a fitting tribute to Judge Wald. He said that the Medal of Freedom

goes to men and women who have dedicated their own lives to enriching ours. [The] honorees have been blessed with extraordinary talent, but what sets them apart is their gift for sharing that talent with the world.

No better words could be spoken about Patricia Wald. And it is only fitting that Judge Wald will now receive the Henry J. Friendly Medal.

Before I close, let me tell you one last tale about our honoree:

Some of you may recall that during her confirmation hearings before the Senate in 1979, Judge Wald was attacked for having written a law review article about children's rights. I am told that the Rev. Bob Jones testified against Judge Wald and called her an "instrument of the Devil." After the hearing was over and Judge Wald was leaving with her family, Rev. Jones asked Judge Wald's son Tom what he thought about his mother being an instrument of the devil. Tom replied, "well, she sometimes burns the lamb chops, but I don't think she is an instrument of the devil."

Fortunately, Judge Wald, we are sure that you have richly earned the Henry J. Friendly Medal whether or not you burned the lamb chops.