

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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:
PORTRAIT PRESENTATION CEREMONY
:
PATRICIA MCGOWAN WALD
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A ceremony in the above-entitled matter was held on Thursday, October 16, 2003, commencing at 4:07 p.m., in the United States Court of Appeals for the District of Columbia Circuit, Ceremonial Courtroom, United States Courthouse, Washington, D.C., before:

THE HONORABLE DOUGLAS H. GINSBURG
Presiding Chief Judge

APPEARANCES:

Judge Silberman	Judge Randolph
Judge Tatel	Judge Garland
Judge Rogers	Judge Roberts
Judge Henderson	Judge Williams
Judge Edwards	
Judge Sentelle	

SPEAKERS:

The Honorable Sandra Day O'Connor
The Honorable Stephen G. Breyer
The Honorable David S. Tatel
Paul A. Engelmayer
Jenny Martinez
Gwen T. Handelman

RESPONSE:

Judge Patricia M. Wald

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P R O C E E D I N G S

CLERK: Oyez, oyez, oyez, all persons having business before the Honorable, the United States Court of Appeals for the District of Columbia Circuit are admonished to draw near and give their attention for the court is now sitting. God save the United States in this honorable court. Be seated please.

JUDGE GINSBURG: Ladies and gentlemen, welcome to the unveiling of the portrait of our former colleague, the Honorable Patricia M. Wald. It is a great pleasure for me to pay tribute to Judge Wald today and to celebrate her homecoming.

Judge Wald was nominated to a seat on the United States Court of Appeals for the District of Columbia Circuit on April 30, 1979. She served as a Judge from July 26 of that year until November 6 of 1999, when she retired from the court to become the United States Judge on the International Criminal Tribunal for the former Yugoslavia. While at the Court of Appeals, Judge Wald served as Chief Judge for five years, from 1986 until 1991.

Judge Wald is a graduate of the Yale Law School. She has had a long and illustrious career, which actually began at the Second Circuit where, from 1951 to 1952, she served as a law clerk to the Honorable Jerome Frank. She also served, among other things, as an attorney for the

1 Mental Health Law Project and for the Neighborhood Legal
2 Services. Before coming to the bench, Judge Wald was the
3 Assistant Attorney General for Legislative Affairs in the
4 United States Department of Justice. She has served as
5 first vice president of the American Law Institute and
6 currently chairs the Justice Initiative of the Open Society
7 Institute.

8 On behalf of the court, I am very pleased to
9 welcome Judge Wald and her family to this happy occasion. I
10 am also pleased to welcome many of Judge Wald's and our
11 friends and distinguished guests, my colleagues on the Court
12 of Appeals, the District Court, judges of other courts,
13 eminent members of the bar, and Judge Wald's many law
14 clerks. I would particularly like to recognize from the
15 United States Supreme Court, in addition to Justice Sandra
16 Day O'Connor and Justice Stephen Breyer, our former
17 colleague, Justice Antonin Scalia.

18 Before the unveiling of Judge Wald's portrait,
19 which will be done by Judge Wald's granddaughter, Abigail
20 Wald, there will be several tributes to Judge Wald. Our
21 first speaker will be Justice Sandra Day O'Connor of the
22 United States Supreme Court. Justice O'Connor has served on
23 the Supreme Court since September 1981. Justice O'Connor,
24 it is an honor to have you with us here today.

25 JUSTICE O'CONNOR: It's such a treat to be here

1 for a happy occasion like a portrait unveiling. Pat Wald
2 went to Yale Law School, and we'll forgive her for that I
3 guess. They don't give grades at Yale I've discovered when
4 I go around hiring law clerks. But they do produce some
5 very talented graduates, and she was one of them.

6 She served, as you've already heard, on this very
7 court for 20 years, the last five of which she was Chief
8 Judge of this court. I've always admired Judge Wald. We
9 were on similar tracks as women lawyers. She was a working
10 mother, as was I. She had a lawyer husband, as I did. And
11 each of those lawyer husbands was remarkably supportive of a
12 working lawyer wife. The similarity ceased, however, when I
13 learned that Judge Wald did not drive an automobile and they
14 didn't bother to have an automobile. Now, I couldn't have
15 survived without a car or two at hand.

16 We became well acquainted personally as we served
17 together on the Executive Board of CEELI, the Central
18 Eastern European Law Initiative, that was formed with the
19 breakup of the Soviet Union to provide technical legal
20 assistance to about 26 countries in that region. And we had
21 a small governing group, and Pat Wald and I were on that.
22 We spent lots of hours. We made many trips to places you
23 wouldn't pick as your first choice for a summer vacation.
24 And we tried to spread messages of the rule of law and how
25 to build institutions that would help these nations function

1 in a free market environment. And Judge Wald did more than
2 that. She would go off, in addition, on some missions to
3 very remote places and stay for days at a time, hands on
4 helping some of the judges and the lawyers in those regions
5 in times of real stress and hardship. We crossed the
6 Atlantic a few times with all those hours to spend on
7 airplanes. I just don't think a better role model could
8 have been found to take to other remote parts of the world
9 than Pat Wald.

10 Perhaps because of all that influence of the work
11 for CEELI, when Judge Wald decided to retire from this
12 bench, she accepted the appointment for two years as a
13 member of the War Crimes Tribunal for the former Yugoslavia.
14 She had to live in the Hague, and I think her husband had to
15 do a little commuting. But, of course, she served there as
16 she served here, with great distinction.

17 Now it's very hard to paint a portrait of a woman
18 like this. We hope the artist was able to do it, but the
19 portrait that all of us have in our minds and hearts from
20 knowing her is a very, very beautiful portrait, indeed.
21 Thank you, Pat.

22 JUDGE GINSBURG: Thank you, Justice O'Connor. Our
23 next speaker is Justice Stephen Breyer. Justice Breyer
24 served on the United States Court of Appeals for the First
25 Circuit from 1980 to 1994, when he was called to the Supreme

1 Court. We are very pleased to have him with us here today.

2 Please welcome Justice Breyer.

3 JUSTICE BREYER: I agree with my colleague,
4 Justice O'Connor. I don't think she should make cracks
5 about Yale Law School. I didn't go to Yale Law School. I
6 went to a different law school, and at that law school we
7 learned that Yale was an acronym for "Youth Against Learning
8 and Education," and that's the end of it.

9 I was thinking of the portrait as you were and I
10 thought, well what are the characteristics of Pat that we're
11 going to see in that portrait? And I thought of five quite
12 serious ones. The first, of course, is a pioneer. She is a
13 pioneer. You mentioned some of it. She went off to the
14 Tribunal against Yugoslavia. Did she speak Croatian? Not a
15 word. Bosnian? Even less. Serbian, did that stop her? A
16 little French, but she got there and really made a
17 difference. She is a pioneer. She took my law clerk, Jenny
18 Martinez, even though she realized that the training in real
19 law in the Supreme Court may be lacking.

20 But the more important part of the pioneer which
21 Sandra knows, which Judy knows, which all the women here
22 know, and we've read that from some of our classmates, was
23 in the early 1950s to be a woman lawyer. And it wasn't
24 easy. And there were special difficulties. And you read
25 what some of the people wrote at that time. They don't

1 mention the difficulties because the secret was always
2 smile, you know. Be dressed right; respond properly, etc.
3 But it was hard. And when she was clerking for Jerome P.
4 Frank who wanted to hire, I gather, Bob, too, as another
5 clerk, and then he couldn't get permission because they
6 needed at the AO to have a paycheck written to the
7 messenger. So Bob went over to Irving Kaufman who may not
8 have had the same scintillating personality as -- but in any
9 case. From there and on it was not easy.

10 But when she goes to Yugoslavia, and there are
11 those young women lawyers there, they come out and they
12 cheer. And what they're cheering for is that pioneering
13 spirit. And I always say which is true, I read years ago
14 Willa Cather, her pioneers, and she paints the life in
15 Nebraska. And what is it today? It's super highways,
16 supermarkets, nobody remembers. Well, we should remember,
17 and those women lawyers do remember. And that's one of the
18 things I hope I'm going to see right there, which I will.

19 Now the second thing about her, I think she is
20 what I call task-oriented. Now what does that mean, "task-
21 oriented"? It means just think, "What is the job? I'm
22 going to get it done." And, indeed, I gather again from
23 Bob, she was here about one week, and somebody from the
24 White House called up and said, "Will you please swear in
25 the Secretary of Energy?" and she said sure. But she didn't

1 have her robe, so she borrows one from Lou Oberdorfer, I
2 think, and then she gets into the subway. She gets out of
3 the subway at the White House and carries the robe in a bag
4 over the shoulder. You know, here she is, what Bob says
5 it's "Apple Mary." I'm not sure what he meant by that. But
6 nonetheless, knocks on the door, and they let her in. She
7 swore him in. He was a great secretary; she got the job
8 done. And that's -- read the opinions.

9 The opinions are case by case. You bring
10 intelligence, learning, and common sense, and what I call
11 common decency to bear on these cases with a certain breadth
12 of outlook that says this fits into something that works for
13 people. And that's where you get her contribution as a
14 judge to the law. And it is followed. It will be followed,
15 and that's what I call task-orientation. And what's the
16 secret behind that? It isn't modesty. I'm sorry, everybody
17 says you're very modest. Well, so am I. So are we all.
18 What I think it is, is the following. I heard Golbraith say
19 this. Golbraith comes back from India, goes across the
20 Harvard yard, somebody stops him and says, "Ken, how did you
21 enjoy that?" "Oh, I loved it," he said. "It was so
22 fabulous, so interesting. I found I did not think about
23 myself for seconds at a time." All right? Now that's not
24 so easy for a person to do. She does it seconds, minutes,
25 hours even because she's interested in the task at hand and

1 she gets it done.

2 Third, she's a leader. What does that mean, a
3 leader? I don't know. It means to me, when I'm at the ad
4 law sections and she's there -- we used to go to these
5 wonderful ad law conferences. They usually went to a nice
6 place. They had pretty good food, talked about interesting
7 issues. I mean, I'd find myself sitting there, and
8 something comes up, I'd say, "I wonder what Pat thinks? I
9 wonder what Pat thinks?" And that's how people in the
10 courts feel, lawyers feel. "What does she think about
11 this?" You see, it's this sort of example, low key, not
12 bossy, just thinking about it, you know. Thinking about it,
13 and there it is. And we find that a lot. That's, I think,
14 the leadership in this court, in the system in general.

15 And what's the fourth? I don't know if the fourth
16 is necessarily a good characteristic. But she is a genuine
17 wealth minimizer. She has taken jobs, each one pays less
18 than the last. And she started out at legal services and
19 from there on it was a steady decline in the nature of the
20 compensation. All right, we understand that. And that
21 brings us to the fifth.

22 And the fifth is what it is. I call it public
23 servant. I call it genuine public servant. I call it
24 example of a good public servant. I call it public servant
25 that ought to be. What is the public servant that ought to

1 be? The public servant that helps the public, that's
2 thinking about how to help the public, that's effective in
3 helping the public, that takes one job after another
4 designed to help the public, and that's Pat Wald, all right.
5 So, there we are. Great person. We all think that.

6 These characteristics and many others in that
7 portrait, if they're all in the portrait, but I think they
8 are. Anyway, it's just what Sandra said. They're in here,
9 they're in here, we know them. Wonderful, Pat.

10 JUDGE GINSBURG: Justice Breyer, I'm going to
11 treat that as a concurrence. I'd like now to introduce our
12 esteemed colleague, the Honorable David Tatel. Judge Tatel
13 has served as a judge on this court since 1994.

14 JUDGE TATEL: Chief Judge Ginsburg, Justices
15 O'Connor, Scalia and Breyer, my fellow judges, Judge Wald,
16 Bob, your wonderful family and many friends.

17 I was deeply touched when Pat asked me to speak
18 here today, not just because she's a friend and a treasured
19 colleague--whom I miss very much--but because this gathering
20 celebrates the accomplishments of one of America's finest
21 judges.

22 From 1979, when Pat Wald took a seat on the D.C.
23 Circuit—the first woman ever to serve on this
24 court—through her five years as our Chief Judge, to the day
25 she left two decades later for the International Criminal

1 Tribunal for the former Yugoslavia, Pat was a widely
2 respected intellectual leader of this court and a special
3 colleague to us all.

4 Judge Wald's contributions to the D.C. Circuit and
5 to the rule of law are so numerous that I hardly know where
6 to begin. Let's start with her enormous contribution to
7 legal doctrine: over 800 opinions, including a healthy share
8 of en bancs, address a breathtaking range of subjects. In
9 the area of administrative law, for example, her 99-page,
10 540-footnote opinion in *Sierra Club v. Costle* set the gold
11 standard for judicial review of the scientifically and
12 technically complex administrative records that make up our
13 court's standard fare. In *Farmworker Justice Fund v. Brock*,
14 she applied her usual careful analysis of agency action—in
15 this case, agency inaction—and ordered the Labor Department
16 to issue regulations setting fundamental health and
17 sanitation standards for farmworkers. Judge Wald also
18 tackled some of the most critical questions of executive
19 power that this court has faced. She defined the scope of
20 the Presidential communications and deliberative process
21 privileges, remaining, as she wrote, "ever mindful of the
22 dangers involved in cloaking governmental operations in
23 secrecy" while, as she also put it, "preserving the efficacy
24 and quality of presidential decisionmaking."

25 Appellate judges are often evaluated in terms of

1 their records in the Supreme Court. In Judge Wald's case, I
2 prefer a slightly different perspective: What's the Supreme
3 Court's record with her decisions? Not bad. The Justices
4 got six right and only four wrong.

5 Pat is a member of that great generation of
6 lawyers--many of whom are in this courtroom today--who
7 understand that the legal profession has a special
8 responsibility to ensure that the Constitution protects
9 everyone and whose careers stand as shining beacons for
10 those of us who seek to follow in their footsteps. I first
11 met Pat in the early 1970s when she was at the Center for
12 Law and Social Policy litigating landmark cases involving
13 mental health and special education. Years later when I
14 joined the court, I learned that Pat played a special role
15 for us new judges. In fact, Pat was my own personal on-the-
16 job trainer. It was Pat who helped with those perplexing
17 questions that confront all new judges: how to write a
18 critical yet respectful memo to a colleague, when to
19 dissent, which cases are worthy of en banc review.

20 Pat helped in many other ways as well. Although
21 we rarely disagreed, her first dissent from an opinion I
22 wrote came with the following note: "David: Here is my
23 dissent. It'll do wonders for your reputation." It was
24 also Pat who taught me how to deal with the occupational
25 hazard that faces every appeals court judge: Supreme Court

1 reversal. Here is how she put it to her oral historian,
2 Steve Pollak: "The first time I was reversed, I felt
3 absolutely crushed. I thought, how am I going to go in the
4 next day? People will look at you and say, 'Oh my, she was
5 reversed!' To my pleasant surprise, nobody said a word, and
6 I learned that that is the unwritten law. Nobody talks
7 about the reversals and that's just fine by me." That
8 advice came just in time. Pat was absolutely right: no one
9 said a word.

10 Speaking of Pat's oral history, which I highly
11 recommend--it's on file at the D.C. Circuit Historical
12 Society--I love the story she tells of the first time she
13 dissented from an opinion by Judge Bazelon and its
14 relationship to the Milton Kronheim Liquor Warehouse
15 lunches, a D.C. Circuit tradition that unfortunately ended
16 before my time. Having told Judge Bazelon of her decision
17 to dissent, she knew that he was, to say the least, not
18 pleased. After that one disagreement, she explained, "I
19 didn't get invited to the Kronheim Warehouse for lunch
20 anymore."

21 Re-reading Judge Wald's beautifully written
22 opinions, I was struck by their extraordinary judicial
23 craftsmanship. The careful and honest application of
24 precedent, the respect for constitutional and statutory
25 text, the understanding of the distinction between judging

1 and policy-making, and the crisp, analytical reasoning.
2 Holdings emerge not from her personal preferences, but from
3 the faithful application of legal principle to record
4 evidence. In every one of her hundreds of opinions, she
5 approaches her task carefully and seriously, whether the
6 issues are of major national importance or involve just one
7 person's effort to seek the law's protection.

8 Judge Wald's opinions bear a striking resemblance
9 to those of two other D.C. Circuit legends, Carl McGowan and
10 Harold Leventhal. All three served together for a brief
11 period in the late '70s-- imagine a court with Leventhal,
12 McGowan, and Wald, the judicial equivalent of the '56
13 Dodgers, Robinson, Koufax and Campanella. Not only did Pat
14 speak at Judge Leventhal's and Judge McGowan's portrait
15 ceremonies, but I wasn't at all surprised to discover how
16 well her eloquent descriptions of her two colleagues capture
17 her own judicial career. What she said of Judge McGowan's
18 opinions, for example, applies to hers as well: "illuminated
19 by a clarity of reason, a lucidity of expression, an
20 undeniable logic, a total lack of arrogance, an open
21 mindedness, a disarming directness, and a subtle wisdom."

22 Of course, many judges write fine opinions, but
23 Judge Wald's are special. She understands that opinion
24 writing is not just an intellectual exercise. As she
25 explains in her oral history, "Judges can never completely

1 distance themselves from the world around them." In her
2 view, opinions accomplish much more than provide
3 explanations for legal conclusions. As she explains in the
4 University of Chicago Law Review, they "demonstrate our
5 recognition that under a government of laws, ordinary people
6 have a right to expect that the law will apply to all
7 citizens alike." Even her reason for getting opinions out
8 on time, which pounding away on her ancient typewriter she
9 always did, reveals her sensitivity to the people whose
10 lives are affected by the decisions we write. "These are
11 real life people that need a real life issue settled. They
12 need to go on with their lives, and it is important to them
13 that they know what the answer is, be it a little case or be
14 it a big case."

15 Judge Wald approached her work here with
16 refreshing humility. "The longer I'm at this," she explains
17 in her oral history, "the more humble I am as to what we can
18 really do, and when we just spin our wheels, and when we
19 make things worse." She continued, "Are we just creating
20 impossible obstacles either for people or for the agencies
21 and just indulging ourselves in our theoretical preferences?
22 It's kind of a tension between thinking there are some
23 issues that it's very good we're here to look at and some
24 issues maybe we ought to leave alone."

25 Let me conclude with the quotation from one of

1 Judge Wald's dissents. Consensus, of course, is important,
2 and no one built it better than Pat Wald. But as judicial
3 biographers tell us, it's through dissents that judges often
4 bare their souls. This dissent challenges the
5 constitutionality of "don't ask, don't tell" and recalls
6 Pat's own words about her friend, Harold Leventhal. This
7 dissent shows that she, too, is "a shining example of a
8 judge who could comprehend the deepest problems of our
9 society, feel strongly about them, explore the universe of
10 options and act with courage on the right one." Here is
11 what she said: "For the Government to penalize a person for
12 acknowledging his sexual orientation runs deeply against our
13 constitutional grain. It has no precedent or place in our
14 national traditions which spring from a profound respect for
15 the freedom to think and to be what one chooses." Referring
16 to what she called "the injustice that lies at the heart of
17 this case," Judge Wald concluded, "In years to come, we will
18 look back with dismay at these unconstitutional attempts to
19 enforce silence upon individuals of homosexual orientation.
20 Pragmatism should not be allowed to trump principle or the
21 soul of a nation will wither."

22 This court is hardly the same without Pat Wald,
23 but we treasure her legacy and special friendship. And now,
24 we will treasure her portrait that will hang in the
25 courtroom where she served with such courage and dignity and

1 distinction. Thank you.

2 JUDGE GINSBURG: Thank you, Judge Tatel. Paul
3 Engelmayer is a partner of the law firm of Wilmer, Cutler &
4 Pickering in New York. Mr. Engelmayer served as a law clerk
5 to Judge Wald from 1987 to 1988. Mr. Engelmayer.

6 MR. ENGELMAYER: Thank you, Chief Judge Ginsburg.
7 When you stop and think about it, the relationship between
8 judge and law clerk requires quite the leap of faith. For
9 an entire year these two people share close quarters, and
10 for five or six or even seven days a week they work
11 intimately together on highly confidential matters,
12 sometimes of great public importance. It is such a
13 relationship of trust and confidence that there is case law
14 that accords a qualified privilege to communications between
15 judge and law clerk. But, unlike your relationship with
16 your spouse or your therapist or your cleric, this
17 privileged relationship is forged during a frenzied and
18 bizarre ritual known as clerkship week, after maybe a half-
19 hour interview between two total strangers in which neither
20 party really knows much of anything about the other and
21 which may well conclude with one party making an exploding
22 offer of employment to the other.

23 Not unlike an arranged marriage. It is for both
24 parties a step into the breach. When it works out, and
25 somehow it usually does, the judge-law clerk relationship

1 combines some of the best elements of the teacher-pupil,
2 mentor-mentee and even parent-child relationships. At its
3 worst, it can be a disaster of thermonuclear dimension.

4 From the judge's perspective, having a bad law
5 clerk can be like having the au pair from hell. They are a
6 danger to everything around them, but you can't really send
7 them back home. From the clerk's perspective, working for a
8 difficult judge can be a little bit like being a hostage or
9 a prison inmate. You are stuck, and there is no realistic
10 chance of rescue, parole or time off for good behavior.

11 I know that I speak for all 73 of her former D.C.
12 Circuit law clerks in saying that the experience of clerking
13 for the Honorable Patricia M. Wald fell emphatically on one
14 side of that divide. Have no fear, Judge. I'm, of course,
15 talking about the good side. In all seriousness, a
16 clerkship with Judge Wald was an incredible way for a young
17 lawyer to begin his or her career. The Judge was a
18 phenomenal mentor, teacher and friend during the clerkship
19 year and beyond. And what a spectacular role model!

20 For a young lawyer with an interest in public
21 service, here was a person who had chalked up an astonishing
22 record of service long before assuming the bench.

23 For a young lawyer concerned about balancing life
24 as a lawyer with family life, here was a woman who had
25 stepped off the career escalator to raise five children,

1 only to resume a career rich in success and contribution.

2 For a young lawyer looking for signs of humanity
3 in a profession that sometimes can be cold, here was an
4 appellate judge who always treated advocates with absolute
5 dignity and respect and grace while never shying from asking
6 the hard questions. And she accorded the same dignity and
7 respect to everyone she met, including courthouse employees
8 whose consistent advocate she was.

9 There are certain things that will stand out
10 forever in the memory of any former Wald clerk. There was
11 Judge Wald's total commitment to deciding every case right,
12 down to every last detail. This manifested itself in a
13 ferocious work ethic. For every oral argument, there was
14 meticulous preparation. For every tentative holding, there
15 was an insistence on repeatedly playing devil's advocate.
16 And for every draft opinion, there was a commitment to
17 questioning every proposition, checking every fact and
18 verifying every last citation.

19 For a newcomer to the profession there could be no
20 better embodiment of the axiom that the three keys to
21 success are preparation, preparation and preparation.

22 Then there was the Judge's scary ability to
23 remember the facts of the many cases before her and to cut
24 to the heart of case after case after case. Probably every
25 Wald clerk had the experience while researching a bench memo

1 of pouring through a bulging, mind-numbing administrative
2 record only to be left with no particular recollection of
3 the facts, let alone any useful insights. But then the
4 Judge, who remember had responsibility for three or four
5 times as many cases as each of her clerks, would barge into
6 your office to discuss the case. And I say "barge"
7 advisedly. Because as any former law clerk will attest,
8 Judge Wald tended not to abide by the Fourth Amendment's
9 "knock and announce" rule.

10 The Judge had also read the record, but it stuck
11 to her mind as if by velcro. And in case after case in a
12 few sentences, Judge Wald would spotlight for you exactly
13 what the nub of the controversy was. She would explain, for
14 example, what the FCC's questionable assumption had been in
15 denying that satellite frequency license. And always, she
16 would be right on target.

17 To her immense credit, the Judge took her job
18 equally seriously even in cases lacking any public
19 importance. I can remember working on an appeal of a no-
20 liability tort verdict relating to a minor mishap involving
21 a District of Columbia bus and having the Judge call me into
22 her back office. There on the table were a series of pieces
23 of paper torn out of a legal pad, and on the paper, the
24 Judge had sketched out her own reconstruction based on the
25 trial record of exactly where at each relevant point in the

1 accident the plaintiff's wounded foot and the bus's
2 offending tire had been.

3 No account of being a Wald clerk would be complete
4 without saying a few words about the Judge's peculiar
5 relationship to modern technology. Judge Wald had no
6 relationship to modern technology. She could not drive a
7 car. She could not operate a fax machine. And the
8 computers in chambers might as well have been high speed
9 centrifuges because she could not use them either.

10 The latter condition was a source of some hilarity
11 within the former law clerk's network when a few years ago
12 the Judge was assigned to the *Microsoft* panel. On the
13 occasions when the Judge tried her hand at typing an insert
14 to an opinion, her output visually resembled a pro se habeas
15 petition. And when a fax got stuck inside the fax machine,
16 there she was, the Yale educated Chief Judge of the United
17 States Court of Appeals for the District of Columbia
18 Circuit, bent forward, hands on her knees beseeching the fax
19 to "come on out right now because I know you're in there."

20 I have a personal revelation relating to the
21 Judge's famous inability to drive, famous enough to have
22 reached Justice O'Connor. As happened almost every year to
23 one clerk who owned a car, I became the Judge's designated
24 driver. This meant that from time to time I would be asked
25 to drive her from the courthouse to some function within the

1 District. This was actually a labor of love because it gave
2 me a chance to get to know her better and to talk law or
3 politics or life.

4 Years later after I got married, I happened to
5 mention this to my in-laws, who by coincidence are good
6 friends of the Walds from Yale Law School. My mother-in-law
7 explained that long ago Judge Wald had grazed a tree while
8 trying to drive and promptly threw-in-the-towel on driving,
9 which thereafter became solely Bob Wald's responsibility
10 within the family. However, my source reliably informs me
11 that this has not stopped her, always the Article III judge,
12 from offering advisory opinions on her husband's driving.
13 These usually consist of, "For Christ's sake, Bob, watch
14 where you're going."

15 One of the trademark qualities that we clerks
16 enormously admired about the Judge was her acute sense of
17 mercy and compassion and her willingness to show it. In the
18 context of resolving cases, that manifested itself in the
19 uncommon sensitivity she showed to claims by socially
20 powerless litigants -- for example, the prisoners at Lorton
21 who sued to put an end to overcrowded prison cells. This
22 trait also led the Judge, I think, to be uncommonly
23 reluctant to deny litigants their day in court on the ground
24 of waiver. Before Judge Wald would avoid resolving a claim
25 by finding a waiver, a litigant had to have really gone the

1 extra mile and waived the living daylight's out of it.

2 Thank goodness the Judge showed the same sense of
3 mercy within chambers. My year, one of my co-clerks fell in
4 love with a law clerk in a distant city and spent what some
5 might regard as an excessive amount of time in his office
6 with the door closed on the phone with her. The rest of us,
7 aided and abetted by Estelle, the Judge's legendarily
8 awesome secretary, decided to pull what we thought would be
9 a harmless prank on him. We had Estelle hand-deliver him a
10 facially ridiculous letter from a fictitious circuit
11 security executive whom we had ludicrously named Ryah
12 Strimir. The letter told our co-clerk to please account for
13 the volume of calls, and it gave him a phone number to call
14 which was actually the number of a friend of ours. But the
15 prank got away from us. Before we could stop him, our
16 co-clerk, his career flashing before his eyes, had marched
17 into the Judge's office, letter in hand, closed the door and
18 confessed his phone-calling sins.

19 Characteristically, the Judge's reaction was the
20 humane and balanced one. Apart from telling him that it was
21 high time that he learned not to believe everything he read,
22 her response was to pat him on the back, to tell him not to
23 worry and that he was doing just a great job as her law
24 clerk, but also to suggest that perhaps in the future he
25 should confine his personal phone calls to when he was at

1 home.

2 Judge, for myself and for your other D.C. Circuit
3 law clerks, thank you. Thank you for giving us the
4 experience of a lifetime. Thank you for your friendship and
5 warmth and good humor and your enduring commitment to us.
6 Thank you for your profound belief in the law and our system
7 of justice and your abiding optimism in that system. And
8 thank you for being a model of everything that a lawyer and
9 a judge and a committed public servant should be. Thank
10 you.

11 JUDGE GINSBURG: Thank you, Mr. Engelmayer,
12 particularly for reminding us of Judge Wald's unfailing
13 courtesy in the courtroom both to colleagues and to counsel.
14 I single that out only because, if any rumor to the contrary
15 got started, I want to squelch it; I refer, of course, to
16 the time when Judge Wald, presiding, asked a lawyer a
17 particularly penetrating and central question, upon which
18 the lawyer keeled over with an apparent heart attack. The
19 court has maintained a defibrillator in the courtroom ever
20 since.

21 I'd like now to introduce Professor Jenny Martinez
22 of the Stanford Law School. Professor Martinez, after
23 clerking for Judge Guido Calabresi of the Second Circuit and
24 Justice Stephen Breyer, served as a legal assistant to Judge
25 Wald at the Hague. Welcome, Professor Martinez.

1 PROF. MARTINEZ: Thank you very much. I'm
2 extremely honored to be speaking today at this ceremony in
3 honor of Judge Wald. As you know, it was my great privilege
4 to serve as her legal assistant during her first year at the
5 International Criminal Tribunal for the former Yugoslavia.
6 And I'm going to say a few words about Judge Wald's work in
7 the Hague.

8 So, as you've already heard, I arrived at my
9 clerkship with Judge Wald fresh from some stateside
10 clerkships. And, indeed, we both arrived in the Hague on
11 the same day with our suitcases in hand. And I think it's
12 safe to say that we both found it quite a bit of a culture
13 shock compared to our previous places of employment. So let
14 me start on the lighter side by telling you a few things
15 about the differences between the International Tribunal and
16 the D.C. Circuit.

17 To begin with, the accommodations were quite a bit
18 more Spartan. As you know, Judge Wald had four law clerks
19 when she worked on the D.C. Circuit, and in the Hague she
20 had only one. And so the only people in this room who can
21 truly appreciate what that means are the other former Wald
22 clerks who can imagine how daunting it was to try to keep
23 pace with her alone. So Judge Wald is not only the hardest
24 working person that any of us have ever encountered, she is
25 also probably the fastest. And so I frequently had the

1 experience as the lone law clerk trying to keep up with her,
2 laboring for hours over a complicated bench memo or draft to
3 deliver it to her office and then begin walking back towards
4 my own desk ready to take a breather, and as I walked down
5 the hall, would hear my phone ringing. Judge Wald, of
6 course, had already read and corrected what I had written,
7 and in that short span of time had seen complicated legal
8 arguments and issues that I had missed in my hours of labor.

9 Now, you may be thinking Judge Wald is fast, but
10 she's not that fast. How could she really finish reading
11 the whole bench memo by the time you got back to your desk?
12 And that would be true if you were talking about her offices
13 here in the D.C. Circuit where she enjoyed a cozy den of
14 offices with her law clerks and secretary right nearby. But
15 that was not the situation in the Hague where in the dank
16 former insurance building that housed the court, the judges
17 were left to their own little ghetto in one wing and their
18 tiny offices with their secretaries down the hall and the
19 law clerks in another wing of the building entirely. So it
20 actually took quite a while to get back to the law clerks'
21 wing.

22 And Judge Wald was the only judge there who put in
23 an appearance in the law clerks' part of the building, and
24 also the only judge who ever appeared in the staff
25 cafeteria, which endeared her to everyone as they saw this

1 judge puzzling over the strange Dutch delicacies that were
2 on sale.

3 So there was the lack of law clerks and the poor
4 office layout and the weird cafeteria food. If that weren't
5 enough, then there were the French. Now Judge Wald's last
6 encounter with the French language had been, I believe, in
7 high school. And as part of a nefarious European plot, she
8 was assigned to the trial chamber with two other judges who
9 spoke mainly French and a staff of legal assistants who also
10 spoke mainly French. And, of course, there were supposed to
11 be translations of everything, but this being the UN, that
12 never really quite happened.

13 And so it was often our experience on many days
14 that Cecil or Olivier or one of our French friends would
15 show up in the Judge's office with a lengthy opinion -- 12,
16 15 pages long -- and written entirely in French. And they
17 would usually say something helpful like, "Well, it says the
18 defendant's motion is granted because that evidence is
19 inadmissible." And Judge Wald with her meticulous attention
20 to detail would look through the page after page of French
21 opinion and say, "I think it looks like it says more than
22 that. Could you please tell me what it says?" And so it
23 would go.

24 But in all seriousness, despite the everyday
25 annoyances and hardships, I think working at the war crimes

1 tribunal was a life-changing experience for Judge Wald and
2 for myself and for everyone else who was there. Judge Wald
3 sat on several of the most important cases to come before
4 that new court, including the trial of General Krstic, a
5 Bosnian Serb general who was charged with genocide and
6 crimes against humanity for one of the worst massacres of
7 the war in Bosnia. Over the span of a few days a town
8 called Shrebenica was ethnically cleansed. Thousands upon
9 thousands of inhabitants were pushed out of the territory
10 and 7,000 men and boys were led out into the woods with
11 their hands behind their backs and shot in cold blood.

12 This case was one of the first important genocide
13 cases to be heard by this new tribunal and presented many
14 novel questions of law that no court had decided since the
15 Nuremberg Court after World War II on the definition of
16 genocide, the scope of responsibility for military
17 commanders for crimes committed by their subordinates and
18 other complicated issues. Judge Wald sat for day after day
19 in this trial over the span of more than a year listening to
20 most horrific testimony you could ever imagine from the
21 victims of this conflict. And with her constant attention
22 to the law and the facts, the world could have had no better
23 judge sitting on that case. The opinion that was finally
24 issued convicted General Krstic of genocide and sentenced
25 him to 46-years imprisonment, and is a landmark case in

1 terms of the definition of these very, very serious crimes.

2 There were other cases too in which Judge Wald
3 showed her courage and fairness. In one appeal over which
4 she presided at the international court, the conviction of
5 two brothers from Bosnia, defendants who had been convicted
6 of very serious crimes in the ethnic cleansing of a village
7 on the basis of the testimony of one eyewitness who was
8 quite unreliable. Judge Wald presided over that appeal and
9 voted to reverse those convictions, which was a very
10 unpopular and courageous thing to do -- to look at this case
11 in which there was so much pressure to come out one way and
12 yet to recognize the fair thing to do -- and I think that's
13 a hallmark of Judge Wald's entire career of being willing to
14 stand up for what she thought was right.

15 After her 20 years on the D.C. Circuit, Judge Wald
16 could easily have just taken senior status and settled to a
17 comfortable retirement here in Washington. But she chose to
18 do something new and difficult and important. And the world
19 is a better place for it. And again, after she left the
20 Hague, she again could have enjoyed a well-earned
21 retirement, and yet she continues to do vital and important
22 work around the globe with the Open Society Institute. And
23 who knows what she'll come up with next.

24 Like all of her former law clerks, I felt that
25 working for Judge Wald was a tremendous honor and privilege,

1 but it was also a tremendous pleasure. And I am grateful,
2 along with all of her other law clerks, not only for her
3 mentorship and professional guidance, but also for her
4 friendship, warmth and good humor. I think I speak for all
5 your former law clerks, Judge, when I say that to us you
6 represent the ideal of the best of what a lawyer can be and
7 can do for the world. We're happy to be here today with you
8 to honor your achievements here in this courthouse, and we
9 look forward to hearing, preferably in one of your wickedly
10 funny e-mails, about whatever amazing things you do next.

11 JUDGE GINSBURG: Thank you, Professor Martinez.
12 Our next speaker is Gwen Handelman, another of Judge Wald's
13 former law clerks. Ms. Handelman served during the 1981-82
14 term. On behalf of Judge Wald's clerks she will present the
15 portrait, which will be unveiled by Abby Wald. Ms.
16 Handelman.

17 MS. HANDELMAN: It's been a long time since I was
18 a young law clerk. I'm one of 20 years worth of Patricia
19 Wald's law clerks making a gift of this portrait to our
20 Judge and to the court we were honored to serve. We offer
21 this gift with gratitude for the opportunity to have been
22 part of this court's great tradition and as a tangible
23 representation of our respect, often bordering on awe, and
24 our affection for Judge Wald. This gift reflects our pride
25 in being associated with a career committed to public

1 service that has been described in terms like path-breaking,
2 brilliant and luminous.

3 Judge Wald contributed over 800 opinions to the
4 jurisprudence of this court, each exhibiting her
5 extraordinary intellectual integrity and passion for getting
6 it right. It's no surprise that she inspired so many clerks
7 to follow her into public service. But she has expressed
8 surprise that so many of us became academics. It should be
9 no surprise really. She inspired that too. Yes, she is
10 totally lacking in the pretension and self-importance that
11 characterizes so many academics. And she has a keen
12 understanding of how the real world works that academics
13 typically lack. Yet we know her to be a true scholar, a
14 truth seeker. She is a scholar in the public interest, and
15 it is that image, a scholar for the people, that looks out
16 from that portrait. I'd like to join now Judge Wald's
17 granddaughter, Abby, in the long awaited unveiling.

18 JUDGE GINSBURG: Thank you, Ms. Handelman, and
19 thank you, Abby. On behalf of the United States Court of
20 Appeals for the District of Columbia Circuit, I would also
21 like to thank all Judge Wald's clerks for the gift of this
22 magnificent portrait. We gratefully accept the portrait,
23 which will hold a place of prominence in our courtroom. I
24 would also like to acknowledge and thank the Historical
25 Society of the District of Columbia Circuit, which under the

1 leadership of E. Barrett Prettyman, Jr. and Stephen Pollak,
2 assisted the clerks in handling the financial aspects of the
3 portrait project.

4 And now, Judge Wald, we welcome you to share some
5 reflections with your friends and colleagues.

6 JUDGE WALD: Thank you. Thank you, Sandra and
7 Steve and David; you overwhelm me. But then, you always
8 have. And Paul and Jenny and Gwen, who are old friends now.
9 And Abby, your grandmother's special agent.

10 There are two portraits here in the courtroom
11 today. One is the work of Peter Stevens, a talented artist
12 who became a friend over the past two decades but sadly died
13 last year, shortly after the portrait was finished. He is
14 already well represented in this courthouse, having early
15 memorialized our esteemed colleagues, Skelly Wright, Harold
16 Leventhal and Abner Mikva. The other portrait is the
17 panorama I see around me today, the portrait of my life in
18 the law and out. This is a work of many hands.

19 First of all, my loyal and infinitely supportive
20 family. My husband Bob, the family caretaker before that
21 became politically correct, who I think you all know has
22 played the impresario in so much of my professional and
23 personal life. My five wonderful kids launched now on
24 careers of their own, who have given me ten gorgeous
25 grandchildren headed toward greatness, just like all of

1 yours. Somehow my kids survived the scorched TV dinners,
2 the last minute improvised Halloween costumes, the ever
3 tardy mom at school plays and celebrations to become steady,
4 sane, contributing adults whose lives are my great pride.

5 In the courtroom today, too, I see old friends
6 from Yale Law School and friends from Legal Services in the
7 '60s when we were young, feisty, heady and luckily oblivious
8 to the near impossibility of our reformist dreams.

9 There were test cases before giants of the law
10 like David Bazelon and Skelly Wright and Carl McGowan and
11 Harold Leventhal and Spotswood Robinson, some of whose
12 spouses honor me with their presence here today. There was
13 the irrepressible, embryonic public interest bar overlapping
14 the Kennedy and Johnson and Carter administrations; the
15 Center for Law and Social Policy and the Mental Health Law
16 Project and all the lawyers' committees reproducing like
17 amoeba; the poverty programs and crime commissions; the
18 Bobby Kennedy and Griffin Bell Justice Departments. I'm
19 very honored to have Ben Civiletti, who was the Attorney
20 General when I came on the bench here today, as well as
21 Judge Webster who was the head of the FBI at that time.

22 Some of these stalwarts are here today, and I'm
23 grateful for that. And, of course, this court, the D.C.
24 Circuit past and present, the centerpiece of my professional
25 life, 20 years and 800 opinions, at least some of which I

1 hope will have a persistent half-life. I still miss it
2 enormously, the dissents as well as the concurrences, the
3 instantaneously empathetic colleagues and the sleepers, the
4 ones who became true and treasured colleagues only after
5 years of mutual labor and tolerance.

6 Cardoza said the great tides and currents which
7 engulf the rest of men and women do not pass the judges by.
8 And, of course, he was right. There were so many highlights
9 in those 20 years. I was the first woman member of the
10 court gallantly served by her colleagues. I cannot even
11 remember a possible slight nor, I would add nostalgically,
12 could there have been a more courtly group than the old
13 school judges who first welcomed me here in 1979. National
14 crises and wars came and receded and re-emerged. Four
15 Presidents placed their mark on the times. This court
16 changed in composition and direction but, in my view, never
17 wavered from the standards of excellence and integrity and
18 oversized influence that have been its historic hallmark.
19 As a depression kid in upstate Connecticut, I could not ever
20 have imagined being one of you.

21 A special word now about the remarkable legions of
22 Wald clerks. I had over 70 over the years, many here today.
23 They shared my life to overflowing with total fidelity and
24 energy and discretion and never even a whispered leak
25 afterwards. Without them, my years on the court would have

1 been far less productive and far less fun, and my
2 contribution to the jurisprudence, such as it is, would have
3 been far more vulnerable. I worked them rigorously and
4 hard, and sometimes I'm sure inconsiderately, and gauging
5 their successes today, they plainly thrived. They have
6 donated more than this portrait to the court. They have
7 molded a judge for which my gratitude is limitless. During
8 all that time, the indomitable Estelle Chichester, my
9 secretary for 19 years, tended us. Tough love was her
10 credo, and it worked.

11 Lastly, just a word about the afterlife. During
12 the '90s, I was fortunate to visit, and hopefully to assist,
13 Central and Eastern Europe's fledgling democracies, write
14 new laws and set up new judicial systems. I had the unique,
15 and I hope continuing, privilege of sharing overseas trips
16 and strategies with Justice O'Connor from Prague to
17 Bratislava to Kiev to Belgrade. I left this court at the
18 end of the '90s to serve at the Yugoslav War Crimes
19 Tribunal. In perverse recognition of my long appellate
20 career, as Jenny said, I became the Tribunal's junior trial
21 judge in the French chamber. I was, in fact, actually
22 immensely favored by this assignment for I had to face not
23 only the horrors that civilized men can wreak upon one
24 another in societies that go bad, but the daunting task of
25 conducting trials in an untested, sometimes make-shift legal

1 system deciding ultimately what makes a trial fair and
2 justice achievable. It was unexpectedly a rewarding close
3 to a judicial life.

4 So the portrait is pretty well done now. Only a
5 last brush stroke or two or as Holmes called them, finishing
6 cantors. But I also remember he said the work itself is
7 never finished. And to everyone here and many not here, my
8 everlasting thanks for this day and for both portraits.
9 Thank you.

10 JUDGE GINSBURG: Thank you, Judge Wald. Ladies
11 and gentlemen, in a moment, the court will be in recess.
12 The members of the court now sitting on the bench will come
13 down to greet the Wald family and to view the portrait. We
14 ask that all our guests proceed to the reception on the
15 fifth floor, where the Wald family and the judges will join
16 you in just a moment. Thank you very much.

17 CLERK: The court now stands adjourned.

18 (Whereupon, the proceedings concluded at 5:06
19 p.m.)

20