

In Memoriam: Patricia M. Wald

September 16, 1928 – January 12, 2019

On January 17, 2019, the following Minute in Remembrance was read at a meeting of the ALI Council by ALI Secretary Paul L. Friedman of the U.S. District Court for the District of Columbia:

Last Saturday, January 12, 2019, Patricia McGowan Wald died at home peacefully in her sleep. She was 90 years old. Judge Wald was an iconic judge here and abroad, a trailblazer and role model for women lawyers, and our beloved colleague on this Council.

As most of you know, Pat Wald was a woman of many “firsts.” She was the first female Assistant Attorney General for Legislative Affairs at the Department of Justice; the first woman ever appointed to the United States Court of Appeals for the District of Columbia Circuit; the first (and thus far only) female Chief Judge of the D.C. Circuit; and (except for the four-month term of Judge Florence Allen as Chief Judge of the Sixth Circuit decades before), the first woman Chief Judge of any U.S. Court of Appeals for any Circuit.

Judge Wald was a giant in the law, with a powerful intellect, a get-to-the-heart-of-the-matter approach to legal problems, and a simultaneously elegant and down-to-earth writing style. She had a largeness of vision that is all too rare in our profession. When she spoke and when she wrote, everyone paid attention – because her reasoning was so clear, her ideas so right, her thoughts so well-articulated. Yet, she was a person with little ego, genuine humility, and a great sense of humor. As our former president, Michael Traynor, put it: “Pat [was] unassuming, unpretentious, modest, approachable and open, as all of us who have worked with her in the ALI have come to appreciate.”

The breadth of the topics on which she wrote and spoke with substance and clarity – both in her prolific scholarly writings and in her judicial opinions – is staggering: bail reform,

poverty and criminal justice, children's rights and juvenile law, mental health law and drug abuse, environmental regulation, the judicial process, the administrative process, morality in judging, and women in the law.

All of this is well known. What many people may not know about Pat Wald, however, is that she never knew her father. He left their home when she was two. She was raised by her mother and her aunt and uncle in the factory town of Torrington, Connecticut. She was the valedictorian of her high school class and the first ever in her family to go to college. She attended Connecticut College for Women and then Yale Law School entirely through scholarships and by waiting tables and working summers in the ball-bearing factory that employed her mother. She graduated from college Phi Beta Kappa and was Order of the Coif and a member of the law review at Yale Law School. Happily, she also met Bob Wald at Yale, and they married in 1952. After law school, Pat obtained a clerkship with Judge Jerome Frank on the United States Court of Appeals for the Second Circuit, one of the very few women of her generation to have had such an opportunity.

After a short stint as the first woman associate at Arnold, Fortas & Porter, she left the practice of law for ten years to raise her five children. She believed that women could have it all, but – in her own case, at least – not necessarily simultaneously. As she wrote in a 1983 article: “Each of us, in our personal life, has choices to make. We are not likely to get back more than we put in. Neither families nor careers flourish on neglect, and everyone strikes the balance differently.”

A decade later, she returned to the law, first part-time and then full time, devoting herself to public interest law and to those least able to help themselves. She worked at Neighborhood Legal Services, the Mental Health Law Project (now the Bazelon Center for Mental Health Law),

and the Center for Law and Social Policy. With Daniel Freed, she wrote “Bail in the United States, 1964,” a book rightly credited with spurring the Bail Reform Act of 1966, which largely eliminated money bail in the federal courts. For decades, Pat Wald was at the cutting edge of virtually every legal inroad to justice for children, the poor, the mentally ill, the drug addicted, those accused of crime, and women.

When she came to the Bench, Pat necessarily was less proactive but no less influential. At her portrait ceremony in the D.C. Circuit in 2003, Judge Wald’s former colleague and good friend Judge David Tatel took note of what Pat had said years earlier at a similar ceremony for her late colleague, Judge Harold Leventhal, a personal hero of Pat’s. Her description of Judge Leventhal, Judge Tatel said, applied to Pat’s approach to judging as well: a “shining example of a judge who could comprehend the deepest problems of our society, feel strongly about them, explore the universe of options, and act with courage on the right one.”

Judge Wald wrote over 800 opinions as a D.C. Circuit judge. Time will not permit me to discuss or even list the most significant of her many, many important opinions for the court. For that I refer you to the obituaries in the *New York Times* and the *Washington Post* and to Judge Harry Edwards’ remarks at the Henry J. Friendly Medal presentation at the ALI Annual Meeting in 2016. Judge Edwards characterized Judge Wald’s 1981 opinion in *Sierra Club v. Costle* as still “one of the greatest administrative law opinions ever issued by the D.C. Circuit.” And at Judge Wald’s portrait ceremony, Judge Tatel – noting that “it is often through dissents that judges bare their souls,” – quoted from Judge Wald’s dissent from an *en banc* decision in 1994, an unsuccessful challenge to the constitutionality of “don’t ask, don’t tell,” *Steffan v. Perry*, where she wrote:

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. . . . Pragmatism should not be allowed to trump principle or the soul of a nation will wither.

In presenting the Friendly Medal to Judge Wald at our 2016 Annual Meeting, her friend and former colleague Judge Harry Edwards called her “an artist in crafting opinions” and “masterful in calling out injustices that she perceived in cases that she heard, but without ever straying beyond the strictures of appellate decision-making.” In 2013, when President Obama awarded Judge Wald the Presidential Medal of Freedom, the nation’s highest civilian honor, he called her “one of the most respected appellate judges of her generation.”

And the global reach of her influence was only enhanced after she left the D.C. Circuit in 1999 and became a judge on the International Criminal Tribunal for the Former Yugoslavia. Among other decisions, she wrote the landmark judgment in the case of Bosnian Serb General Radislav Krstic, which found that the massacre of 8,000 men and boys in Srebrenica constituted genocide. Remarking on her work, our colleague Harold Koh described Judge Wald as an “exuberant pioneer” as a judge in both the United States and abroad and said she “fought for human rights and civil liberties everywhere long after many others would have laid down their pens.” But she was not done. Upon her return from the Hague in 2002, she served first as a member of the bi-partisan Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, appointed by President George W. Bush, and then as a member of the Privacy and Civil Liberties Oversight Board, appointed by President Barack Obama. And in both roles, she was an important voice and a difference-maker on significant issues of public policy and national concerns at critical moments in our history.

While the terms “role model” and “mentoring” have in some ways become cliches, they hold real meaning when one thinks of Pat Wald. As one of her longest standing friends put it, before there was a women's movement there *was* a women’s movement – a women’s movement led by Pat Wald. Women's rights may have come to the forefront in the 1980's, but Pat was there much earlier, first carving out her own non-traditional path and then showing the way for others. She was never too busy to share her insights and experience, never too tired to listen, too self-concerned to consider the problems of others, or too preoccupied to offer wise counsel to women facing difficult career or personal choices. For women lawyers and women judges, she was a source of leadership and a symbol of possibilities.

When Pat Wald was elected to this Council in 1978 – over 40 years ago – she was not the first woman. Shirley Hufstedler was. Pat was the second. (Justice Ginsburg was elected at the same time.) But Pat Wald *was* the first female officer of the ALI, elected as Second Vice President in 1987 and then as First Vice President beginning in 1993. She brought great leadership skills to those positions, as well as her usual good judgment, analytical ability, and remarkable insight. As a member of the Nominating Committee for 25 years, she worked hard and successfully to increase the number of women and minorities serving on the Council – though I am happy to say that she, along with Vester Hughes, was largely responsible for my own election to the Council as well. Over the years, Pat also served this Institute in so many important ways in its substantive legal work – as an Adviser to the Federal Judicial Code Revision Project; the Principles of the Law, Election Administration; and, with utmost dedication, the Model Penal Code Sentencing Project. I can tell you, from being at many Advisers meetings and Council meetings with her on the Sentencing Project – and she never missed a Council meeting when Sentencing was on the agenda – that her good judgment and

unique national and international perspective made Pat an immensely important and influential contributor to the work of that Project. Her insistence that we include collateral consequences as an essential part of the Sentencing Project and that the concept of general deterrence *not* be endorsed by the ALI carried the day with the Council and later the membership – in large part because it was Pat Wald who was making the arguments. As our president, David Levi, recently put it, in all of her work for the ALI, Pat “had a way of disagreeing or making a point persuasively but without in any way diminishing those who disagreed with her. We need that!”

Pat Wald died last Saturday of pancreatic cancer. Almost to the very end, she was still generously giving wise counsel and encouragement to the many friends and colleagues who counted on her over the years and loved her. She had decided over a year-and-a-half ago to undergo a regimen of radiation and chemotherapy, but no surgery. She was, she said at the time, 89 years old and had had a great life: a wonderful husband – the late, great Bob Wald – wonderful children and grandchildren, and a very satisfying life in the law. As she put it when accepting the Friendly Medal:

I have been privileged to have a great run in my professional as well as my personal life, due in greatest part to a supportive husband and tolerant kids. I have worked in the government, in the executive branch and with Congress, on the courts, here and abroad, in legal services and public interest law, a short turn in private practice. In all of that, my judicial service – here and at the international court at The Hague – were the best part. That was largely because the courts were peopled by strong, but certainly not always moderate or even tightly restrained, intellects. It was the struggles and often the dissents that breathed life into decisions aimed at governing a heterogenous world out there.

Finally, as Pat said in 2015 at the Yale Law School Annual Dinner in Washington:

After sixty years I have come to the conclusion that no matter what the pattern of a lawyer’s career, she learns early on how modest is the niche in history she inhabits, and how limited the sphere of events she can influence. A big world out there is constantly

interconnecting and reinventing itself, and the best she can do is grab hold of a few or even a single issue or movement she thinks is headed in the right direction, and then hang on and try to make a tangible difference in advancing its course. This holds true whether you are a storefront legal services lawyer or a Supreme Court Justice. Looking back, I do not regret the times I stuck my neck out or departed from the prevailing view. My regrets are confined to the times I didn't.

We will miss you, Pat. Rest in peace.