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Interview with

Judge Patricia Wald

Conducted by Linda Perle

April 22, 2005

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Speaker: This interview is being conducted on April 22, 2005 at the offices of the Center for Law and Social Policy in Washington, D.C. My name is Linda Pearl, I'm an attorney with the Center for Law and Social Policy. I represent civil legal assistance programs funded by the Legal Services Corporation. I'm here today with the Honorable Patricia M. Wald. Judge Wald has a long and illustrious legal career that began when she worked as a law clerk for Judge Jerome Frank at the U.S. Court of Appeals for the Second Circuit, and an associate at the law firm of Arnold, Fortis and Porter. After taking out time to raise her five children, Judge Wald returned to her career but she took a decided less traditional turn away from private practice. She worked as a legal services lawyer and as public interest lawyer. She served as a consultant to numerous commissions, had many roles in government and worked on political campaigns. In 1979 Judge Wald was appointed by President Carter as the first woman to serve on the U. S. Court of Appeals for the D.C. Circuit. Beginning in 1986 Judge Wald served for five years as Chief Judge of that court. After her retirement from the Court of Appeals in 1999 Judge Wald was appointed to serve at The Hague as a judge on the International Criminal Tribunal for the former Yugoslavia. After she returned from The Hague she was appointed by President Bush to serve on the Commission of Capabilities of U.S. Intelligence Regarding Iraqi Weapons of Mass Destruction, better known as the WMD Commission, which recently issued its report. We appreciate Judge Wald's willingness to share her time with us and we look forward to hearing the story of the legal services lawyer who made good. Judge Wald, over the years you served

your country and indeed the world in many varied and significant roles, but for our purposes today I want to focus first on the time you spent earlier in your career as a legal services lawyer beginning with your work as a consultant to the National Conference on Law and Poverty. Can you tell us about that work and that conference that was so instrumental in launching the legal services movement?

PW: Sure. Well actually my work on the Conference on Law and Poverty is probably the first quote real job I had when I was returning from being a full-time mother for ten years. I had five kids in seven years and that kept me pretty busy and starting in the early 60s actually I did one other job but out of the house as indeed most of the work for the poverty conference so between nap times and go to bed please go to bed so I can get my work done in '63-'64. I had worked on the Bail Conference that was out of the Department of Justice criminal justice reform under Bobby Kennedy's auspices and I had written a book about bail in the United States co-authored with Dan Freed who was a classmate and was over at the Department of Justice which is how he got a part-time contract for me to do the work on the Bail Conference. So OEO well actually it wasn't OEO whatever its prior name was, was just getting started there so some of the people who knew my work in the Justice Department said well we're going to have this conference. The embryonic legal services projects which are springing up around the country and wouldn't it be a good thing if we had a conference booklet like that and so through word of mouth I got called to see if I could do that, which I did. I wrote it, this was Law and Poverty but I got some editing help both from my husband and from Jack Murphy who now teaches at Georgetown and Bruce Terrace(?) who was a public interest lawyer I think he's emigrated to Israel the last I heard, was full-time over there. But they were the kind of directors of this aspect. So I wrote the book and again at nap times and bed times and I also wrote a lot of stuff for the

Conference, press releases and things like that. Since this was kind of writing and interviewing other people it sparked my interest and I got the feeling I want to do something that is really hands-on, I had now written about what other people were doing, so after a couple of years actually there was an interlude of a couple of years when I got appointed to the D. C. Crime Commission . . . bail work and also did a lot of work for the National Commission on Law Enforcement and Criminal Justice, which was called the National Crime Commission, I did that for a couple of years, again still part-time, still but by this time some of the kids had gone to school and it was a little easier to pull out some time during the day. Then in 1968 we had a change of administration. President Nixon became President so the whole personnel in the Justice Department, not the whole personnel but a lot of the personnel, a lot of the people I worked with switched over or left the department because they were political appointees or by their own choice. So at that point I decided I wanted to go back and actually do what I wanted to do earlier and so I just applied to the local Neighborhood Legal Services program and I think I went in originally as part-time, again although part-time was more part-time now than earlier. And originally I was assigned to one of the field offices up by the Eastern Market on Capitol Hill. But it was not clear exactly how I would fit into part-time into their practice up there so gradually I began to do stuff for the Task Force for the test case task force which is out of the main operation on Fifth Street. And it was a great group. I still see the ones that are around, Florence Roisman was there then, Mary Beth Holleran(?) was there and Peter Smith, Larry Silver, Mary Ann Stein who now runs several foundations of her own, Maggie Ewing, Maggie Farrell and we had a great time and so it was there I think that I did the more significant work during my years at Legal Services.

LP: During that time you were involved in some of the most significant cases that shaped the practice of poverty law. Can you share with us some of your recollections regarding those cases?

PW: Sure. I was uniquely fortunate I think to be able to sort of drop in for the few years that I was there on some very important cases. When I got there the group on Fifth Street was working on the first test case in D.C. for free divorces for poor women. The case that eventually went to the Supreme Court was still a few years away. But in the District there was a very peculiar practice over in it was what was then I can't remember the name Domestic Relations Branch of the old Superior Court, it was before the court reorganization. And the policy there was that poor women or women who couldn't afford the fees could get a separation but they couldn't get a divorce and indeed this was true of the then Legal Aid Society would give counsel for separation but wouldn't give them counsel for a divorce, so you see we were back in some of quote you know morality play. But worse than that

LP: But if you had money it was moral

PW: Oh yes, if you had money you could get a divorce. We're talking about poor people. In Superior Court there was a rule that it wasn't just the fees the normal fees for filing, etc. but if you were going to try for a divorce then you had to plunk down \$100, now \$100 in 1968 or '69 was a lot more than it is today. You had to plunk down \$100 which was a guarantee of the fee of the opposite party that you were seeking a divorce from in case they won or it was some kind of guarantee of their fee. Why I don't know, that wasn't true of other kinds of cases but it was true. There was some suspicion that the Chief Judge of the Superior Court had a strong personal philosophy against divorce. There appeared to be no way to at that time to get away from that, so we were challenging that and in those days also it's interesting, it was before the

court reorganization of 1970 and so you had to bring the case of course over in the local courts and go up through the local appellate court equivalent but it didn't have the same power as the D.C. C.A. now as the District of Columbia Court of Appeals but it didn't have the kind of final power for the District that it had at that time. It had to go through them and then you did the equivalent of petitioning for certiorari to get over to the Court of Appeals in the federal system because they had supervisory authority over the District of Columbia courts but they didn't take every case that came up. They had the same kind of discretion that the Supreme Court has over federal courts now to take it . . . it cannot. But the two benches were quite different in their orientation. The local courts were considered to be very conservative not every single judge but certainly when you got up to the local equivalent of the Court of Appeals we never expected Legal Services to win any case and we never did win any case over there. It was always a pass-through, as it were, to try to then get over to the U.S. Court of Appeals, which was at the time, this is the late 60s, extremely liberal or extremely open. It had judges on the court like Bazelon and Spotswood Robinson and Skelly Wright and Howard Leventhal and Carl McGowen

LP: It was amazing

PW: It was amazing because even though they sat in panels of three as they still do, your chances statistically of getting you know a very good panel were great and even the Nixon appointees by the time I was arguing cases over in the Court of Appeals we already had some Nixon appointees they tended to be old-fashioned conservatives like Ed Tam or George McKinnon, Malcolm Wilkie, so anyway to get back to this particular case, I worked with the other people in the office on the briefs but I don't remember the exact details but whoever was going to argue it because remember I had never argued a case in the Court of Appeals in my life and or any place basically, something happened and they couldn't do it. So I got Peter Smith I

think it was that pushed me to argue this and it was scary was but it was one of those things that you just do. And I'm sure now the Legal Services lawyers do it all the time but I had really been away from I had been away from any kind of courtroom experience, not necessarily from the law since the early 50s. But I did do it. I got a panel of as I recall it was Judge McGowen, Judge Robinson, Judge McKinnon and some of the moot court lawyers had mooted me before and they were afraid of McKinnon because he was a Republican appointee and so and they were hopeful about Spotswood Robinson McGowen and you couldn't be absolutely sure. The argument, as I recall, went quite well. I don't recall a lot of details about it. But we waited and waited and waited and the longer we waited, well I suppose it was really only a matter of four months or so but it wasn't so bad but the longer we waited the more worried they got. So the surprise was when that we won the case and they say you can't do that . . . equal protection or whatever that was sort of the banner in Legal Services in those days, everything was equal protection. But they did say we can't have that kind of ban to stop . . . and McKinnon wrote the opinion which was a surprise because actually I got to know George later on a couple of decades later when I was on the Court of Appeals for several years before he left us and he was as I say one of those old-fashioned conservatives. He did have strict views on law and order but on social matters he was really quite flexible. And his daughter is Katherine McKinnon who is certainly a very ardent feminist. Her views are anything but conservative on these lines so clearly he was on our side on that. So that was very great for us and you know a few years later the case wound its way up to the Supreme Court from some other circuit and came out the same way. So that was the one I remember. That was my introduction. I did work on several other interesting cases. Florence Roisman was the housing person in there and she did a lot of stuff in landlord/tenant. Landlord/tenant court was it was pretty much the pits at the time. The one judge that everybody

sort of dreaded was . . . I can't remember his first name but he was the son of the big liquor dealer and he had very little sympathy for tenants. So there were all sorts of cases that were being brought based on conditions were so bad that you can't possibly pay rent for a rat-infested apartment. There were constructed eviction cases, there were rent strike cases and there was one landlord who . . . owned a lot of properties turned out to be the defendant and . . . was the lawyer for all the landlord in these cases and I can't remember his name. He was a little man, little in stature and he was not a sophisticated lawyer so again what everybody did was just get these cases through the lower local courts get over the important ones, get them over to the U.S. Court of Appeals. The one that I remember working on, I didn't argue it but I worked on the brief with Florence, was I think it was Edwards v. . . .but it was the warranty with habitability case which turned out to be one of your law school textbook kind of cases. We worked on the brief and then I don't remember . . . but I remember going to the argument and it was so clear that this little man sitting before Leventhal . . . most vocal and he was a brilliant, brilliant judge and a U.S. Court of Appeals and sympathetic to most Legal Services cases. And he just sort made mincemeat of the guy. This guy had been appearing for all his life before landlord/tenant branch of the Superior Court, he didn't have a clue about doctrine or how to answer the questions. And the person who represented Legal Services, who sorry I don't remember, you know was good. So that was another case in which it was very useful to . . . I made a note of a few others. Other cases I should remark Legal Services in those days did not have any of the inhibitions or the restrictions on what kinds of cases they could bring which later acts have imposed upon. For instance, we could get involved in criminal cases, didn't very much, but I do remember one that I got very much involved in at the trial level with John Roany(?), who was the he had one of the branches out of Southeast and it was a rape case but it was a juvenile case and that . . .the

defendant was a juvenile, the victim was not. It was an interracial case, black young man accused of raping a very upwardly economic married woman in her 20s who was . . . the allegation was that she invited him in to give him some lemonade and took advantage . . . The interesting thing was that at that time again we're back in juvenile court over in D.C., they had juries

LP: That is interesting

PD: They had juries in juvenile court. We had a regular D.C. jury and Orrin Patchen(?) who was the guy that was one of the juvenile court judges for years and years trying the case. I remember he called John and I in before and he said I'm going to tell you this in case you want me to recuse myself. The victim's father and I were at Princeton together. At that point we did not want him to recuse himself because he was a fair judge and we wouldn't do any better. And so we went through a couple-day, three-day trial which I have you know mixed feelings about in retrospect but maybe that's why I never should have become a criminal defense lawyer. We were able to get an acquittal and it was almost an entirely black jury . . . but you know in retrospect . . . my favorite kind of case, but you know we played it fair and square. So that was an interesting experience at trial practice because up to that time I had never been in a trial unless it was . . . juvenile court . . . I also did some cases on the kind of procedures necessary in revocation of parole and that went up to the Court of Appeals that the federal Court of Appeals and we won that so we had due process before revocation . . . and let's see a few others I was there. We worked on an appeal with Florence Roisman again to get transcripts for indigents in civil cases. At that point if you couldn't pay for a transcript on appeal in a civil case not a criminal case, then you couldn't get a transcript, couldn't get a free transcript. All that would go up to the Appeals Court would be some kind of summary of the record. The court reporter or somebody would just

do a summary of the record, you couldn't get an actual transcript and of course we all know if you had any shot at appeal or you think you do unless it's a straight legal question, then you need the transcript. So we did give we won that case on appeal. The great thing about it I think was there were so many issues out there that lingered for so long as the first wave of this almost too rich a diet, you could pick and choose. The other thing I would mention was apart from being allowed to take criminal cases although we didn't take a huge number, you could do a lot of testifying and I ended up doing an awful lot of testifying for Legal Services and Legal Services you had to get it okayed by the head of Legal Services but the working head of Legal Services at the time was Larry Silver, a very, very talented guy who went out to the Sierra Club afterwards. There was always some sort of OEO not OEO but a UPO type person who was titular head of it you pass things through. They weren't the everyday

LP: Not the actual executive director

PW: That's right, I can't remember the title was but we always had somebody who was from UPO

LP: Now what does UPO stand for

PW: UPO was United Planning Organization, it was the big recipient from the major OEO and money trickled down that way at least the years I was there.

LP: There was also some foundation funding for NLSP wasn't there

PW: Yeah, but anyway this fellow and it varied from time to time and I don't remember names had an office there and run thing through and didn't really get much input. So I can remember at the time Senator Tydings, Noah Tydings, Joe Tydings, Joe Tydings was the head of the Senate Judiciary Committee and McC. Mathias was the leading minority and they were great you know kind of committee and so I did a lot of testifying on all sorts of things. Later on as the

Court Reorganization bill of 1970 began to come through that was when I especially did a lot of testifying on everything from preventive detention to no-knock rules to conditions in which people were held in St. Elizabeth's, to you know all kinds of sorts of issues which we defined as being relevant. I'm sure that these days they would not pass the relevancy test. But for the District they were important as well as the basic reorganization of the courts which was going to create an independent set of courts for the District over which the feds would have no kind of supervision and that was a very dramatic change in practicing law in the courts here because now anything that was in the District the District appointments became much more important, that was the final authority and set up of course the council or whatever it is that passes on at the appointments for the local courts. But then if you cut off any kind of federal and they did it purposely they didn't like the Bazelon court's orientation and their reversal especially in the law and order area because this was the period in which Bazelon court was bringing down like the Warren Court above it very liberal criminal justice requirements. So one of the main purposes of the whole '70 reorganization bill was to get the local courts out from under that kind of federal supervision. That of course left the federal area if they weren't doing that then it left a big hole as to what they were going to do and that's the hole into which all of the administrative law which is now 90 percent at the U.S. Court of Appeals docket came in, this is the period when the environment statutes in the early 70s began to be passed, Clean Air, Clean Water, Consumer Protection, Endangered Species, you know all of these major things so they gave them they wrote into them special roles for the U.S. Court of Appeals . . . you can go through the District court supervision of the ruling and so that what made the current court, the one on which I worked for 20 years, a premier administrative law review court in the country. That only came about as a result when they took away . . .

LP: You also I understand during that period NLSP also engaged in some which I think you described as acrimonious wrangling with the District of Columbia government. Can you give us a flavor of what that was like and what the issues were that caused all the consternation?

PW: Well the one that I remember most was welfare we did a lot of representation of there was an organization of welfare recipients whose name I don't remember, it was both a national organization and a local branch and then there was something welfare mothers organization and we were kind of their counsel. And so issues that they wanted raised if they were legal issues we raised which brought us into a lot of conflict with the local welfare department. Now I'm trying to remember the name of the fellow because he's still around . . . Duga, I don't remember his first name but anyhow the welfare department was predictably the old fashioned welfare department and the recipients were at least the ones who were active in the organizations always felt at a great disadvantage and that the welfare people were being unduly restricted. The two things I can remember most was one was a big fight we had over whether or not Medicaid which was then also . . . program whether Medicaid as administered by D.C. I don't remember the exact provisions how much discretion they had but was refusing to honor Medicaid for emergency room services in a hospital. In other words you could go to the doctor if you met the other Medicaid requirements that sort of thing but the use of an emergency room would not be covered which was fairly the welfare mothers were right about this was quite ridiculous because a great deal of you know poverty medicine is because people don't have doctors, it's not like you and me we've got a pediatrician, we've got an obstetrician, we got etc. etc. So when something happens what do you do, you rush to the emergency room of the nearest hospital and they were saying that those services weren't covered by Medicare so we fought in the District of Columbia council and the welfare department. We didn't do that one in court we

won it by wrangling with the Council. Florence Roisman used to be great because she would go to Council meetings and she would, this is the early 70s, late 60s, the whole . . . is different, she would go and she would stand up and at one point she had to be taken out by the police, etc. but at any rate and we made our case in the media and we went to the Mayor and all kinds of things so eventually we won that particular case, but there was a general feeling that the welfare department because I remember we started to bring a test, this was one of the and everything wasn't glory days, we had downs as well as ups. Another Legal Services lawyer Carol we had a test case . . . which was challenging a welfare regulation which as best I remember said that if you got any kind of a part-time job or any kind of a this is the old welfare department didn't want you to work, if you got any kind of supplementary work then all of your benefits got cut off and it wouldn't be proportional but all of your benefits got cut off so it was a complete discouragement to people trying to earn a little money. So we had a test case, a great problem in retrospect was it was a class action, we really only had one class member but no there was a class but we only had one plaintiff . . . So we got all the way into court, we hadn't actually began a trial hearing but we had all our papers done and it was a pretty case as I recall . . .the D.C. regulation wasn't really authorized by . . . overall umbrella of federal programs and then just through one of those kind of when you're talking to a client and they say something suddenly this guy tells us that all through this he's had an extra job you know he's our only plaintiff, he's challenging the regulation and he had signed affidavits so it was technically perjurious. So it was a huge ethical dilemma. We consulted ethical people first of all in relationship to the client and secondly on the other hand we certainly can't go forward with a perjurious affidavit so in the end we just withdrew the complaint I mean we just pulled the case back without disclosing

LP: So it wasn't all glory.

PW: No, it wasn't all glory, at least the effort sometimes

LP: Sometime after you left NLSB you joined the staff at Center for Law and Social Policy, where I work now, and I know here you worked on mental health issues and later left CLASP to join the spin-off mental health Law Project, which is a national public interest law program now known as the Bazelon Center for Mental Health Law. How did you first get interested in mental health issues and what were the cases you worked on there?

PW: Well at the time that I was in Legal Services although I didn't get involved in litigation, I was aware, one couldn't help but be aware of the many of the poor families who had children who were mentally challenged is the word now but you know mentally retarded or mentally ill. And they were receiving no education at all. At that time there was a small amount of in the budget in the D.C. budget but very small and they ran one or two I think special education classes and if you just if there were too many and you weren't within the number they could handle, which I think was only a couple hundred or maybe not even that much, then you just didn't get any at all. I remember one of the clients we had later on like her child was like 380 on the list or something, he had never been to school and he was 12 years old. But I knew about those but we didn't actually have a case. When I went over to CLASP Michael Wald, no relation, but is out at Stanford now, but Michael Wald was working in public defender, we had a very close relationship and there weren't that many NGOs around, there was the Public Defender, Barbara Babcock . . . and Norm Lefstein, Public Defender, NLADA had an office a test case office here Stan Hare and Julian Tepper(?) and so we all sort of knew each other and very often we worked on cases together. So in this particular instance Mike Wald came to have a client representing public defender but who also had this problem so he worked with us and we brought a test case. It started when I was at CLASP but then we also worked with the NLADA and then .

. . . mental health law began . . . for a series of years but it was the second case in the United States and the broadest which challenged the school policy of not providing individualized education program for children who were disabled. The first case had been brought, the *Park* case up in Pennsylvania, that dealt with, as I recall, only mentally ill children, maybe retarded, yes it was the Pennsylvania Association of Retarded Children . . . it dealt only with retarded children but it came to a good result but I think even before it came to that result or simultaneously we began a very, very broad class action here in the District which applied not only to retarded children and mentally ill children but physically disabled children and even although it sometimes got out of hand even that amorphous class of quote emotionally disturbed who were discipline problems . . . kicked out of school for that reason for disruptive behavior. So we had this very, very broad theory that every child regardless of what was causing their not getting an education there had to be some kind of education and we got all kinds of expert opinions, etc. and we went for the highest level of individualized educational program. This was before there was any legislation, there was not yet, in fact it was our case and the Pennsylvania case that led to the adoption of the first one which was the Education for all Handicapped Children . . . which was a grant program in the mid-70s federal aid to schools to use for this purpose later became Individualized Developmental Education Assistance . . . but anyway it's still around. But this was *Mills v. Board of Education*. We had Judge Waddy(?) who was an elderly African American District Court judge not at all noted for being an activist or forward-looking but certainly a kindly and it turned out an understanding judge, so Julian Tepper. Stan Hare and I did this case. Late Bob Plotkin came in on it and we did a lot of work to get a lot of expert opinion, etc. We went in on summary judgment. Actually what we had there was there was a D.C. statute, we got the big constitutional argument basically the same argument used in Pennsylvania, but we also had a

local statute which read literally did say . . . [phone call] although we made a broad constitutional argument akin to the one in Pennsylvania there was also a statute on the books which said I don't have the exact wording in my mind but basically that the public schools should be open to all children so but it was the kind of wording which conceivably a court could have said hey that's aspirational you know resources are too important for that but Judge Waddy literally maybe preferred to go a statutory route to a constitutional route and said that does guarantee each child and so we did have a plan, we had a plan about individualized hearings and the whole process one would have to go through, it was fairly ambitious but it was based upon expert opinions that we had gotten from educators. There were people like the Urban League and other groups parent groups . . . so we won that on a summary judgment in the District Court. And interestingly enough the board of education in D.C. didn't really want to be sued on this basis. They were really with us at least the majority were with us. In fact I remember getting phone calls from Polly Shackleton who was a great lady and other people too, there was another woman who was very instrumental in this . . . her name escapes me, an African American woman, but anyway I remember getting a phone call from one of them saying what can we do to get out of this they wanted to do the right thing and so they didn't appeal the summary judgment. So we assisted them and they went to they used it as a leverage in the budget process in D.C. to get money and so within a couple of years the amount of money which was allowed for special ed went from I don't have the figures I'm just trying to give you a range, something like \$38,000 to a couple hundred thousand so I mean it locked it up and so this plan went into effect. Now the plan had a lot of we were not the world's greatest makers of an educational bureaucracy, I mean I worked on implementation of the plan for a couple of years until I left the public interest area which was way up into '77 when I went to the Carter administration I went to a lot of these hearings and

there is no question there were a lot of snags and they are still going on, and there is still even though we now have the federal a lot of the suits are brought under federal funding there are still suits by people saying that special ed program is not being that they don't get the full benefits, etc. The biggest fights appear to have been because I hit some of them when I was working on the Court of Appeals are still going on, would be because we had this thing in the plan if the public school couldn't provide the right services for a child they would get basically a voucher to go to a private school. Quite frankly because this was not a suit brought for poor children, it was being brought for all children who were disabled, many middle class . . . middle class and upper class people were bringing suits to get private education for their mentally disabled children at the District's expense so maybe that's okay, that's a public policy question, whether it's right or not, but it was providing a certain amount of drain of the resources and I know I have friends, two friends who are mediating a big class action suit so there are still

LP: This is still going on

PW: And it isn't just us, it's a big problem in New York public school and various other schools certainly what I would say is what I draw from this experience is things are a lot better now than they were before. I mean you really had had these kids who had never been inside a school but I think that it is still very hard if you really wanted to attain the ideal and give some of these children many of whom are very disabled and need one-on-one in some of these cases gone up to the Supreme Court, what do you do when a child is physically disabled so that he or she has to have practically a nurse in the classroom and there was one about a child who had to be catheterized you know couldn't go to the bathroom by himself or herself and can we do that in public school classrooms, do you have to provide the full-time companion. If you wanted to attain what you wanted to attain for each child it's going to enormously expensive and inevitably

the argument is going to be that money is drained off the regular school system. The other argument is was mainstreaming, which is still going in, mainstreaming versus special ed. The schools had a tendency and this is true in the District too, this was way back when I was doing work in that, if the child's trouble is either disrupts the class either because the child is emotionally disturbed or maybe just attending to the child's physical needs means the teacher is taken away from the other children, etc. the tendency of the school is to want to push them off in to a special class where they can get them all together and assign somebody there and let life go on. On the other hand a lot of the educators and I've seen this at the documentaries on TV it's still a dispute going on in major school systems saying no the best education is to mainstream these kids even unless they are total . . . because that is life and this is the way they are going to cope and that is the way they are going to interact with children without disabilities and they are not going to be so stigmatized but you know the whole thing and so mainstreaming there have been a lot of law suits which insist that mainstreaming is the way so this is a very it's an unsolved area of the law still. What you can say is what I used to say about a lot of law suits is a law suit it's kind of like a stick of dynamite, you can break a log jam but you can't always control where the logs go after that and I think it taught lawyers that there are powers are limited in these law suits. We may be okay about setting the legal principles but we are not always so great in implementing or telling other bureaucracies how to solve the problems that our law suit has to move in a context of lots of other things that are going on in a particular field . . . education

LP: You mentioned lot of our colleagues. Were there any other people that you worked with that stand out particularly in your mind?

PW: Well, sure well Julian Temper and Stan Hare, Stan died about a year ago and he eventually he taught at the University of Maryland Law School for many years in this area . . . Those two Julian Temper I think is still in private practice but there were just the three of us. Later on when Stan left Bob Plotkin who . . . ran the ACLU for a while, most of these people kind of stayed in the general area. But we were basically the only people who were working on these law suits on our law suits since then other people have come into it. There are a couple of law firms actually because I would see these people Maggie Cohen I think is one who were here in the second or third generation law suits when I was on the D.C. Circuit so whole law firms devoted to these and I know that a friend the wife of one of my husband's partners is mediating one of these law suits now.

LP: Were you at all involved in the effort to create the Legal Services Corporation?

PW: Not directly. I mean I knew about it and I got to know Clint Bamberger who was one of the first heads of it. I don't think . . .

LP: Did you have any role in the Legal Services programs since you left the mental health law program?

PW: Well, when I left the mental health program it was late '76 so in '77 I went into the Carter administration so on the legislation as assistant Attorney General so during that period and the next 20 years when I went on the D.C. Circuit I couldn't have any litigation role or even any lobbying role. I did run into some of these suits on the D.C. Circuit and then I only came back here three years ago so the quick answer would be no but it wasn't from lack of will so much as the fact that I was prohibited in both those roles. Since I came back I have joined the board of Mental Disabilities Rights Link which is doing . . . Eric Rosenthal . . . trying to do a lot of the same thing for the institutionalized mental health population in countries which come to our even

to our point of recognizing the need for community services for many of the inhabitants rather than being institutionalized . . . follow through . . . One thing I did forget, while I was in the mental health law practice there were two other law suits . . . one was somewhat similar one was . . . which was a big law school against all the Texas juvenile delinquency institutions that were only half dozen through the state of Texas. We were in the law suit provided the kind of we represented the . . . mental health organizations. . .it was thought to be a fairly brutal program and certainly some of the institutions were . . . and that was borne out and we had a five-year trial before the a famous Judge Justice and aptly named out of Tyler, Texas. And in that we and the Department of Justice, this was in the 70s, the Department of Justice Civil Rights Division then had this special section which dealt with institutional conditions so they were on the side then too and as I say it was a very interesting experience. Some of the institutions were terribly, terribly brutal. Some were just especially the girls' institutions where they picked up an awful lot of what we used to call PINS persons in need of supervision who hadn't committed any actual crime, parents couldn't cope with them and blah, blah, and so they generally turned them over to the state. They were sent off to these institutions in rural parts of Texas where it was just absolutely barren, it's not that they we starved but there was no attempt at rehabilitation, a certain amount of very negative culture in there and so we brought a big law suit against all of the institutions, very in the beginning very strongly fought by the state of Texas. I remember we would fly down there I used to spend a lot of time down there both in the discovery period and in the actual trial somewhat later in the implementation of the decree from Judge Justice. The state of Texas fought it, we were sort of pariahs there and I remember in the city of Tyler so was Judge Justice and everybody knew we were suing the state and so it's a dry town, we couldn't get any . . . it was funny period, if we wanted to have a drink during the week we had to bring all

of our liquor with us because nobody would serve us and we were sort of huddled in our ratty hotel in very much the outskirts of town because we didn't have much money needless to say for expenses. But Judge Justice was great and he brought down a very elaborate decree about the way the kids had to be treated. That led to the resignation of all the top echelon in the Texas Youth Authority putting in what has turned out to be I'm told . . . institutions something about them creates their own problems but I am told it's much better. The other law suit was the law suit again here you say later on you didn't do that much good or . . . we brought here in the District to de-institutionalize at St. E's trying to get out of St. E's the cases that didn't need to be institutionalized and the creation of community services. We did get a decree to that effect from Aubrey Robinson, Ben Heineman who is now the general counsel of General Electric, brought the law suit and we did get a decree but it's gone through 20-30 years of masters, compliance decrees and I have to honestly say I'm not sure how much better it is now because if you create the community services and it's somewhat counter good to de-institutionalize and the District never seems to have gotten its act together to create the facility services. Other places have been better. The same theory, for instance was used by the Mental Health Law Project the New York office for retarded children up in . . . in New York and they actually did, books have been written about it, they have a bureaucracy in New York that somehow took hold of it and actually did create all kinds of community homes which more or less . . . certain parent organization that worked there, that didn't happen here. [Several minute gap in recording]

LP: I think people would be interested in hearing about your experiences on the court and some of the more interesting cases that came before you. Obviously we would be interested in any important cases that were brought by Legal Services lawyers but people would be interested in hearing about other significant cases that came before the court as well.

PW: Well that's a tall order.

LP: Whatever part of that you want to talk about.

PW: Right, right. Well overall let's say I enjoyed my 20 years on the Court of Appeals very much. I left in '99 because of an opportunity to serve on the War Crimes Tribunal in The Hague. I would have liked to come back again actually but I couldn't because it's already been decreed up to the Judicial Conference, etc. that if you leave Article III to go into another court system you can't come back you have to resign and do a leave of absence the way for instance many states will allow you to do. And that's fair enough that's been . . . I didn't seek to get any special exception nor could I have, I think. But the Court of Appeals, U.S. Court of Appeals as I said before by the time I got there in '79 had more or less made this transition over to becoming primarily an administrative review court. And it sounds a bit dull but it wasn't really because we had first cut at many of the most fascinating cases in all kinds of areas. I especially like the environmental cases because I decided it was terribly important to get principles established clean air, clean water, those kinds of things which benefit all people, rich and poor alike. The court went through several incarnations. When I got there, there was much of the old court I talked about before whom I had appeared many of the same judges, Bazelon, Wright, Robinson, Leventhal for just a few months because he died of a heart attack the first year I came on the court, McGowan, and then it gradually changed in the 80s during the Reagan and Bush administrations so that we had more people of a more conservative bent including on the court, Bob Bork, Nino Scalia before he went up to the Court of Appeals, Doug Ginsburg who is now the Chief Judge, Clarence Thomas was on for a year and a half. And then in the mid- 90s up to the time I left we got a few more infusions from the Clinton administration, Judy Rogers who had been the Chief Judge of the local Court of Appeals before she came over and . . . and David

Teitel. Now as you know from reading the paper it looks like it may get several new appointments coming from the Bush II administration so it was different, the dynamics of the court changed over the period 20 years I was there. For a while it would be very receptive to the kinds of cases we've been talking about, less so as time went on possibly beginning to come back, I'm not sure where it will be. But I didn't have many Legal Services cases because it's very hard I'm trying to remember if we ever had any . . . I think by the time I got onto the court and this is just my impression, that first wave of cases which was so apparent by the time I got there the first wave of victories for Legal Services the cases which were sitting there just waiting to be brought and won were over and one was into the sort of second wave of cases which I think were much harder and many cases I think some of these later cases required more factual records than just a legal argument about equal protection, sort of harder to bring. Legal Services had some hard times and . . . I'm not sure why lot of those cases actually survived the fact were either brought at all in the federal courts. I remember lecturing or talking to a group that Florence Roisman asked me to talk about in a training program about why there is a decrease, I don't know if that's changed or not, this would have been in the early 90s why there had been such a decrease in the number of federal cases being brought by Legal Services attorneys. So I didn't actually as I say I just sort of kept track from afar and kept up some of my relationships with people like Florence and did a few lecture stints for her to training groups. I was more involved in the administrative, although on second thought we did get some we did get cases which while they weren't Legal Services cases involved Medicaid, Medicare and some of those kinds of programs, hospital services and those which I assume would have effects down the line for poor people.

LP: I don't know if you are interested in sharing with us anything about your experience at The Hague. I think people might be interested in getting some sense of the difference between the system for trying war crimes

PW: Okay, I'll do it very briefly. As you undoubtedly know, the International Criminal Tribunal for the Former Yugoslavia was set up in '93 while the Bosnian war was still going on. It was set up by the Security Council on the theory that by having a place where war crimes war criminals could be brought to tried might have a deterrent effect on what appears to be and was in fact some terrible, terrible atrocities that were being committed primarily against women and children who are the civilians who were most often the victims in these countries but there were concentration-like camps which were being held there were just random atrocities bringing down Muslim villages and there was some by Muslims against by the Serbs it wasn't completely a one-sided affair but primarily violations were by the Serb against the Muslims. So the court was set up in '93. I actually began trying cases in '95 or '96. I didn't go over till '99 but what its jurisdiction was the universal crimes of war crimes as defined basically by the Geneva conventions and by the Nuremberg Tribunal crimes against humanity and genocide and individuals will be tried, we didn't try states. Individuals would be tried criminally and there was the power to bring down prison sentences but not capital punishment. By the time I got there there were at least 40 or more people awaiting trial and the trials were immensely complicated, complex and long. The two main trials, I was assigned to the trial chamber, although I sat on several appeals because somebody was always being disqualified in the appeals chambers because they had been around when the trial was around or something so I ended up doing both, not on the same case. The two very long fascinating but very, very disturbing trials that I sat on was one of the general who was in charge of the area, the Bosnian Serb general who was in

charge of the area where the Serbănesti massacres occurred, this was a very wrenching enormously important genocide trial and it went through everything that happened when the Bosnian Serbs took over the U.N. enclave that people attempted to flee, some to the nearby U.N. base, some through the woods and to Muslim-held territory and the Serbs basically engaged in the genocide in the sense that they captured the men one group of men going toward Muslim territory and that's okay it was war, it's perfectly okay to capture people but under the Geneva conventions you're not supposed to execute them after they are captured, you know they go to prisoner of war camps . . . instead this one week that killed 8,000 young men in one week, mass graves they buried them, hid them, later on tore up those mass graves and went farther north and interestingly enough the ones that fled toward the U.N. base in . . . they put the women and children, there was this in between group of young men some of whom got thrown with the men and the younger men with the women, they bussed them in 24 hours 2,400 or something like that women and children they bus out of Serb-held territory in the Muslim-held territory and except for the . . . conditions on the bus basically didn't harm them. But the men they wouldn't let get on the bus, the men they all took over to holding stations and all over this so called . . . territory they were then merged with the men who were captured who then . . . Muslim territory and they were all taken out and executed in these mass executions so it was one of the most efficient operations I mean to get thousands of women and children out of there within 24 hours they basically mobilized every bus in the whole area and then to get all of the men killed . . . taken out and shot. Anyway that was a big, big genocide trial which lasted almost a year and then the other trial that I sat on was five of the prison guards or staff commanders in the notorious . . . prison camp, this was a prison camp which got sort of exposed to the world in 1992 by Roy Gutman who won a Pulitzer prize for his he got over there and took pictures and it looked like something

out of Dachau the concentration camp. So we had we didn't have the chief of the camp because he hadn't been caught yet. He's since been caught and he's now being tried in Bosnia. But at that time we had people like you know shift commanders and deputy . . . So that had some very interesting it had some interesting legal problems in international law. You have to remember that except for Nuremburg there had never been an international criminal court in the history of the world Nuremburg had its own peculiarities because it was basically a military court and the judges on it, four of them were representatives of the Allies, Great Britain, the United States, Russia and France, so while they ran it for that time in a very laudable way, I mean it was open, transparent, people had counsel, etc. etc., it was till basically many called it a victor's justice I think that's an unfair appellation because they really gave them for that time in the 40s pretty much not everything there were a few things, they did have a trial *in absentia*, they have no appeal and they were executed within 11 of them were executed within 24 hours or 48 hours of the verdict coming out. But between that time and the time of this tribunal there was no international criminal court so you have all of these rights stuff in the Geneva convention and I hate to mention no application so there was myriads of questions that had to be answered of how you interpret even the genocide convention, nobody except national courts, there had been some prosecutions brought in national courts, they didn't . . .the Eichmann case in Israel . . . in France, but there was no basic international court interpretations so all of these questions came up well what does this mean, what does this mean, it's been around in the Geneva genocide convention for 50 years but no court has ever applied it to the situation. So it was a fascinating couple of years. I wouldn't have trade it for anything.

LP: In recent years since you came back from The Hague you have done a lot of things, one of which was chair the Open Society Institute's justice initiative. Can you tell us something about that?

PW: Yeah, it's going great guns I hope while I was there but I know since I left this was something new that I think probably largely the inspiration of . . . as executive director of OSI wanted to set up an actual on-the-ground operating human rights rule of law operation abroad. Jim Goldston who was and is the executive director was himself a veteran who ran some litigation operations that focused on . . . abroad. But they've done I think is you know . . . the areas they specialize in still and I did it for two years, I left when I went on the Intelligence Commission, are in the area of they do immense amount of legal education setting up clinical law programs all over Africa and eastern Europe, Latin America. They also worked with the international courts not just the Yugoslav tribunal or the . . . Tribunal but they do a lot of work with the new International Criminal Court and the war crimes court in Sierra Leone and East Timor. Then they do worldwide freedom of information act is news to me sort of that there are like 40 countries . . . have a freedom of information act but getting the networking and working on two ends countries can pass acts and then nothing can happen. You have to have two forces going, one the bureaucrats in the place have to be trained and also have the will to make it happen, which is a hard enough job in the United States for us to do that but some of these countries that don't have any tradition to speak of and governments telling people what's going on and also mobilizing citizens to demand the . . . that was a great part in our own freedom of information people bringing law suits to demand they get the information. So that was the other area. There was also to be working on problems of citizenship which is certainly a very interesting area in Africa and in eastern Europe where people have lived a long time thinking

they are citizens and all of a sudden the government comes down and says oh no, no, we're defining citizens, you're not citizens at all. So they lose all their rights. And there are other kinds of reforms. For instance a very interesting juvenile justice project in Kazakhstan where they passed what the U.N. . . . all kinds of U.N.-endorsed rights and protocols and it all looks wonderful they pass it, you go there and nothing is happening. So for a couple of years now they have the police and they did get the endorsement of the judges on the high court in Kazakhstan and have actually set up a project where in the capital city where the juveniles are brought in they actually get counsel and decisions are made whether they can be released back to their parents and something approaching the kind of juvenile justice system we have here, which isn't perfect you know but there is some kind of regularized procedures . . . I think pretty well along there. And they've also set up a public defender or they helped set up a public defender system in Lithuania which had nothing like that before which is as I understand from reading the reports is much better at getting counsel for criminal defendants and getting some of them actually out on release conditions than before which has sort of taken root and some countries around Lithuania are very interested in doing something similar so I think in general they get good grades.

LP: That's great. I know you want to wrap things up. I just am curious whether you wanted to talk at all the last time we talked you were very forthcoming about your views about changes in the legal profession especially in the role of women and you've done everything in your career, you worked for a law firm

PW: Not everything

LP: Well and you raised a family and worked in public interest and government and served in the judiciary just about everything. Do you have any sense of you know during your career how things have changed or what you might like to still see change more

PW: Well I'll just speak very broadly. I think I was very lucky timing wise with me when I got out of law school there were some women lawyers around it really wasn't sometimes it seems to be written like pre-Columbian, we all have our experiences, like I don't think said it this time, I may have mentioned it last time when I went in one of these class action suits in the District court here, it was on residency for treatment at St. Elizabeth's . . . the then judge put me through this very embarrassing ordeal where lawyers get up in court and you say Your Honor my name is so and so and I representing X and we have this class action for elderly people being held at St. Elizabeth's who are being shipped back to where they came from because they didn't meet the residency and I had a really good expert witness, Bob Butler, who became the head of the NIH subsequently, and used to do a lot of good work free for us in those days, he became the leading geriatric expert in the country and ran wherever the NIH branch that deals with aging is, and he was sitting and getting ready to testify and so the judge said so what's your name, I repeated it, he was one of the elderly judges who doesn't always hear correctly, and he said no I want you to tell me your real name, and I could not figure out whether he was . . . what he was saying, and I said I'm sorry Your Honor I am not understanding, my name is, he said are you married and I said yes I'm married and then he said what's your real name he wanted me to go up and say Mrs. Robert Wald

LP: Amazing

PW: And then after about five minutes of argument he said ah you people find constitutional problems under the rug, dismissed, he didn't even listen to the argument. So what we did was I took the transcript, we just got that awful transcript and sent it up along with an appeal petition but before you could get up on appeal one woman died and one of the other women anyway so we started all over again and brought a three-judge court action and won in

the District court subsequently because a three-judge court action you get an appeal judge and the appeal judge was Judge Bazelon and Judge Gesell . . . so we were home free. But as I say you know there were those kinds of obstacles but by the 60s when I was ready to go back to work even though it was part-time there was beginning of the women's movement, I mean it was a beginning of an appreciation especially during the later Kennedy and Johnson years that we need to get some women and there wasn't that big a pool of women who had actually been through law school and had a little bit of practice. So I was lucky I got picked on the D.C. Crime Commission and I did stuff . . . and there were other people. When I went into Legal Service in '68 it was if anything a woman's a test case office was Florence, Mary Beth Holleran, Maggie Farrell, myself, Mary Ann Stein, there were a couple of men too but it was not that kind of dearth admittedly we weren't aiming to become partners at major law firms but as far as the and that was the period when law schools went from having you know half a dozen women in the class up to the exploded now as I understand women make up more than half of most law schools. My understanding, and I have a daughter who is in the area lots of women law clerks over the years . . . three women law clerks during the period I was on the court and I tried to keep in touch with as many as I can. Nowadays it isn't a question of getting in the door, into the law firms, into the government, you all read about the glass ceiling but I think it's very hard based on what I know about my own . . . my own daughters to still to be able to make that balance between having a private family life and doing what you think is necessary to and that what to do especially when you have children and pursuing a career. My daughters tell me about that all the time. It's okay I mean they talk about firms and industry and they talk a good game, you know fine you want to have children okay but when push comes to shove and in a period of choice assignments or the period of how many hours you have to put in a year not to be fired but you won't really get the

good opportunities, that problem is still there, still not solved because they want you when they want you and in many ways I think I was lucky, I just took the 10 years off and so by the time I went back my guilt was . . . I mean I was able to spend enough time by that time but I'm not sure I could have run the marathon which some of my daughters are doing when the children are much younger in trying to sort of give every . . .the amount of time you think that they want and you want to give them and still be able to pursue this and it seems to me there ought to be a solution because if you're lucky enough to keep your health you've got by the time you get out of law school a potential of 40 years, more in my case, 40 years of work time and the notion that somewhere you can't get five or six of those years or seven in which you can do less but not thereby bar yourself forever from reaching the higher echelons because those five or six years you can't there ought to be ways for law firms to stretch it out. Of course government is in some ways a little easier because government people assume at least in the higher echelons you're going to go in and out and so sometimes . . . take the time in which you really are available to do

LP: Is there anything else that we haven't already covered that you want to share with us?

PW: I don't think so. We've covered a lot. You know how to get in touch with me. I can't believe we that we left out anything. I still have very fond memories of Legal Services, I still have some friends we still get together occasionally left over and I think of that as a kind of exciting period. My own feeling looking back over everything I've done is the times you are happiest in your work are the times when you see a direct connection between what you're doing and something you think is worthwhile doing. Don't always have that feeling when I'm writing law review articles. I realize and it's probably one reason I never went into the academic area, not that they aren't doing great things in teaching but I have always like the praise in my life

when you have laying on of hands whether it's as a lawyer or litigator or a judge you see you see the tangible results of the work you're doing. Sometimes you don't win but while you're doing it you see the tangible goals which you are seeking. At Legal Services I think those were fun, exciting, worthwhile years to be around.

LP: Well Judge Wald, I really want to thank you for taking the time out of our very busy schedule to talk to us today. I really enjoyed it and thank you so much.

PW: I enjoyed it too. It's a nice stage of life where you know wandering down memory lane is actually enjoyable so thank you

LP: Thank you very much. **[END RECORDING]**