

TRIBUTE TO JUDGE PAULINE NEWMAN

ALISON WALL

Thank you, Dean Morrison. On behalf of the entire *Annual Survey of American Law*, I want to welcome you to our Dedication Ceremony in honor of Judge Pauline Newman of the United States Court of Appeals for the Federal Circuit.

Each year, the journal dedicates our upcoming volume to a person who has made a significant contribution to the law. A year ago, I sat with my peers as we brainstormed the type of person we wanted to give this honor to.

We wanted someone with a passion for the law. Judge Newman's passion for the law is indisputable. As the first judge appointed directly to the Federal Circuit in 1984, she still has yet to take senior status over 30 years later. She vehemently defends and advocates for the stability of patent laws, the protection of investments and innovation, and the patent community at large.

We wanted someone we look to as a role model for the type of lawyer, scholar, or judge we will strive to become. In Judge Newman, we found more than that: we found a trailblazer for not only women's rights but for her entire field. She has advocated for a specialized court focused in patent litigation; in fact, she served an integral role in the creation of the very court she still sits on today. She continues to serve as a constant resource to younger women judges and as a source of perspective and insight among international judicial communities.

We wanted someone accomplished and brilliant. This is evidenced by Judge Newman's degrees alone, though her accomplishments and intellect extend far beyond her diplomas. She has a Bachelor of Arts from Vassar College, a Master's from Columbia, a Ph.D. in Chemistry from Yale, and an LL.B. from NYU School of Law. Moreover, she has been a loyal alumna to us at NYU, having served as an important advisor for the Engelberg Center on Innovation Law & Policy and by continuing to return to these halls for the various awards and honors she has earned.

We wanted someone dynamic, unique, perhaps a little uncommon. In Judge Newman, we found a chemist, a scholar, an IP lawyer, a judge. She is a woman who took the road less traveled. That would hold true today and it certainly held true in the 1950's and 60's. Her fearlessness and fervent pursuit of her beliefs and passions remind us all why we came to law school and where we hope to go.

Needless to say, it is no surprise that one year ago, Judge Newman's name climbed to the top of our list, and I am incredibly excited and honored to have her here with us today. With that, I turn to Dean Morrison and our wonderful speakers to expound more personally on Judge Newman's accomplishments. Thank you.

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JUDGE RAYMOND CHEN

Thank you, Dean Morrison, and thank you all for that warm NYU welcome. I'm delighted to be here tonight for many reasons. First, as the Dean mentioned, I'm a proud alum here at the NYU law school and second, Judge Newman is the most beloved colleague on our court, and so I'm very happy to represent the Federal Circuit at tonight's *Annual Survey* dedication. Another reason I'm happy to be here is because my wife Lisa Hsiao was the editor-in-chief of *Annual Survey* in 1993, so I fondly recall watching her lead the dedication of that year's volume to Justice John Paul Stevens. And Dean Sexton was there that night as well. Lisa, of course, wishes that she could be here today, but, you know, someone had to stay at home with the kids. As you can see, tonight's event resonates for me on a lot of different levels. And to me, events like this dedication are just another example of what makes NYU a great law school and community, and so I'm thrilled to see that this *Annual Survey* tradition continues, and continues to thrive. So, to the current editors of the *Annual Survey*, let me say, you've made an excellent choice by recognizing Judge Newman and her considerable contributions to American law.

While she may not realize it, my relationship with her dates back twenty-five years, starting as a student of her work on the court, then as an advocate for the court, and now as her colleague on the bench. Starting in 1992, when I was reading Judge Newman's opinions in Professor Dreyfuss's patent law class, we read many of the court's opinions, including, for example, *Paulik v. Rizkalla*,¹ which is authored by Judge Newman. It's an important en banc Federal Circuit opinion on determining which of two inventors who happen to invent the same invention around the same time should be regarded as the first inventor and thereby be awarded a patent grant. Now, Judge Newman's majority opinion reached an appropriate, common-sense conclusion that a first inventor does not "abandon or suppress" that invention, as those terms are used in the Patent Act,² if he steps away from his work for

1. *Paulik v. Rizkalla*, 760 F.2d 1270 (Fed. Cir. 1985).

2. Patent Act, 35 U.S.C. § 102(g) (1952) (amended 2012).

a period of time but then returns to his work on the invention in time before the second inventor begins his work on the invention.³

When you read this opinion, you will see a judge's stubborn commitment in carefully, scrupulously reviewing all the relevant precedent, of which there was much, and after announcing the court's en banc holding, Judge Newman went on to make the following observations: "This result furthers the basic purpose of the patent system. The exclusive right, constitutionally derived, was for the national purpose of advancing the useful arts—the process today called technological innovation."⁴ Judge Newman then goes on to say, "The reason for the patent system is to encourage innovation and its fruits: new jobs and new industries, new consumer goods and trade benefits. We must keep this purpose in plain view as we consider the consequence of interpretations of patent law. . ."⁵ Judge Newman wrote the *Paulik* decision thirty-two years ago in 1985, after only one year on the court. And I think it serves as a calling card for how she has been approaching cases during her decades on the court. All along, she has consistently been able to work through the sometimes convoluted legal frameworks and technologically difficult factual records to reach wise and just decisions that always help to remind us of the core principles underlying our laws. There's a persistence, a level of scholarship, and an eloquence in her writings that are second to none. Like so many students who have studied patent law in the last thirty years, I deeply admired her work on the court while I was at NYU.

My next intersection with Judge Newman came after law school, when I joined the Patent and Trademark Office (PTO) as an associate solicitor. In that position, I had the opportunity to argue several cases at the Federal Circuit on behalf of the PTO. In these cases, the patent applicant or patent owner typically receives an adverse decision from the agency and is appealing that decision to the Federal Circuit. My office's role was to explain why the agency's decision was eminently reasonable and should be given considerable amounts of deference. Judge Newman, however, seemed to take a different view of the agency's work and she stood out as the most active and relentless questioner of PTO attorneys. In fact, after one particularly withering oral argument in front of Judge Newman in 2001 or 2002, I remember walking out of court, grumbling out loud, "My God, when is Newman going to retire?" Polly, I don't feel that way anymore and I hope we are on the court

3. *Paulik*, 760 F.2d at 1273.

4. *Id.* at 1276.

5. *Id.*

together for the next twenty years until I retire. What I came to appreciate eventually was that Judge Newman's persistent scrutiny was driven by a broader concern to ensure that the PTO, as a large bureaucracy, refrained from applying the patent laws in an overly rigid, mechanical way that would harm inventors and undermine the very purposes of the patent system. And Polly, I can tell you that the PTO lawyers would often go back and transmit your messages that you expressed during those oral arguments.

Judge Newman had a profound impact, not only through her many opinions, for example, *In re Sang Su Lee*,⁶ but also through her comments during oral arguments. Finally, I'm proud to be Judge Newman's colleague and friend, and it's been quite an adjustment for me to begin thinking of someone I looked up to for as long as I did as my coworker. But I have to say that she's been exceptionally warm and gracious in welcoming me and sharing her wisdom and experiences on the court.

As the longest serving judge on our court, she is the embodiment of the Federal Circuit, and I also think of her as the conscience of the court. More than anyone else on our court, she is sensitive to ensuring that the rights of the pro se individual are upheld and protected whether that person is an inventor or a federal employee that is seeking to invoke his or her civil service protections. Of course, we often see patent cases in which hundreds of millions of dollars are on the line, but we have other cases as well, and Judge Newman is always there, commenting on the court's draft opinions where she sees an injustice that warrants deeper scrutiny.

What I've also seen up close is the courage she has in following her convictions. There is no doubt Judge Newman is an independent thinker. I don't have any statistics with me, but I would bet that she dissents more than the average judge, and I have no problem with that. I think it's a healthy thing for a court to see and consider diverging views on an issue. Knowing when to dissent, however, is something I've had to feel my way through during my first couple years. Polly and I had a case with Judge Lourie recently called *Amgen v. Sandoz*.⁷ This is a statutory interpretation case that's now pending at the Supreme Court dealing with a very complex, new statute known as the Biologics Price Competition and Innovation Act,⁸ and when it comes to the intersection of life sciences and

6. *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002).

7. *Amgen Inc. v. Sandoz Inc.*, 794 F.3d 1347 (Fed. Cir. 2015), *cert. granted*, 137 S.Ct. 1664 (2017).

8. Biologics Price Competition and Innovation Act, 42 U.S.C § 262 (2010).

patent law, I consider Judge Newman and Judge Lourie as the two foremost experts in our country. But for some reason, I felt differently than they did on a key issue, and I had to decide whether to dissent, and I realized even though Polly didn't agree with me on the merits, she would want me to write a dissent and express another way of thinking about the statute. So I did. Since then, I sometimes say to myself, "WWPD—What would Polly do?" And then act accordingly. After speaking to several of my colleagues on the court, I can say the court is thrilled by *Annual Survey's* selection this year. She is beloved by all of us for her collegiality, her dynamic intellect, her spirit, and her deep devotion to law and justice. The court and the country are lucky to have Judge Newman. Polly, congratulations.

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PROFESSOR ROCHELLE DREYFUSS

It's fabulous that the *Annual Survey* has dedicated a volume to Judge Newman, a very loyal alum, a great friend of the school, and a terrific and terrifically interesting judge. As Trevor said, I'm the Pauline Newman Professor of Law, so I especially wanted to say a few words about why I'm so happy to hold this chair. The first reason is this: I was appointed to the chair not all that long after I entered the academy, in a day when only very senior faculty were chaired. People were extremely impressed that I was honored so early in my career. Little did they know that Judge Newman had styled the chair in such a way that at the time, I was the only one at the entire university who met the criteria. So they had no choice, for which I thank her. And I've managed to fool a lot of people, including sometimes myself.

The second reason it's so fun to have this chair is because the Judge and I are interested in many of the same things. We're often invited to the same conferences and what's more, find ourselves on the same panel. First the audience hears from Pauline Newman and then my PowerPoint slides come up and they say, "Pauline Newman Professor," and since we often disagree with one another, the contents of those slides are often diametrically opposed to what the Judge just said. We wind up in a great dialogue, a dialogue that can only happen because Judge Newman is so gracious about, and as we'll see may even relish, disagreements. So I'm truly lucky to have her chair.

But the most important reason I love having this chair is that it's brought us close and given me a fantastic opportunity to learn from her. Like many academics, I tend to go spinning off into the world of doctrine and theory. The judge, in contrast, is eminently down to earth and practical. As you heard, she was a chemist before she became a lawyer, so she knows what it takes to work in the creative sector, to make progress at the lab bench, and to bring the products developed there to market. And as you heard, she never loses sight of the goals of intellectual property protection, which is to encourage and facilitate that kind of work. I know my students think I emphasize her cases because of our connection, but I teach them because they're in the casebook. And they're in the casebook because textbook authors recognize how often her approach is the right approach. Or I should say, the right approach normatively.

And the right approach eventually, but not always the law of the moment.

The first Justice Harlan is often called the great dissenter, but within the world of patents, that title unquestionably goes to Judge Newman. And I do have the statistics. In a recent empirical study, Daryl Lim reviewed her thirty years of work on the Federal Circuit.⁹ During that time, she wrote 202 dissents, the most of any Federal Circuit judge. She has dissented on substantive questions: patentability, infringement, inequitable conduct, remedies. She has dissented on procedural issues: reviewability, joinder of parties, evidentiary questions. And she's dissented on institutional matters, such as overreaching by the Federal Circuit into the discretionary authority of the district courts and most recently on the relationship between the Federal Circuit and the Patent Trial and Appeal Board, the PTAB. These dissents are of crucial importance. The Federal Circuit is almost unique in the federal judicial system because its jurisdiction is based on subject matter, not geography, and thus it has near plenary authority over patent law. That means there's no forum shopping at the appellate level on patent cases, which is a good thing, but it also causes a significant problem. There's no dialogue, no percolation among appellate courts, no opportunity for courts to debate open questions, distill the issues, experiment with different approaches. And there's no way to serve up a rich, detailed understanding of these issues to the Supreme Court for ultimate resolution. Instead of conflicts among the circuits, patent law relies on conflicts within the Federal Circuit. So for those of you sitting here within CA2, you should think of her as embodying the entirety of the Ninth Circuit. And she does that job brilliantly. As I said, her views tend to be the ones that ultimately prevail. Sometimes the Federal Circuit simply ignores the majority opinion and goes with her dissent in later cases. Sometimes her dissents signal the Supreme Court to intervene. That's happened nine times and in eight of those cases, the Supreme Court reversed or vacated the majority's opinion, and sided with Judge Newman.¹⁰ The only one who comes even close to that is Judge Mayer, and his dissents were sustained on certiorari only three times.¹¹

But in the end, sometimes it takes an act of Congress to get where she wants to go, but she does tend to get there. So the best current example here lies in the recent set of Supreme Court cases

9. Daryl Lim, *I Dissent: The Federal Circuit's 'Great Dissenter,' Her Influence on the Patent Dialogue, and Why It Matters*, 19 VAND. J. ENT. & TECH. L. 1 (2016).

10. *Id.* at 51.

11. *Id.*

stripping patent eligibility from a whole slew of technical advances.¹² At the Supreme Court, the effort began with a cry of anguish from Justice Breyer that sometimes patents can impede rather than promote the progress of science. Now he thought that for a specific reason. He thought that because the Federal Circuit had significantly compromised the ability of scientists to build on one another's work.¹³ In a series of cases, it narrowed nearly to extinction the experimental use defenses in both common and statutory law. Judge Newman dissented every time she had the chance. She knew as a former scientist just how important experimentation is to pushing forward the frontiers of knowledge. Take, for example, *Integra v. Merck*, where the Federal Circuit majority narrowed the scope of the statutory experimental use defense.¹⁴ Judge Newman dissented. "The purpose of the patent system," she said, "is not only to provide a financial incentive to create new knowledge and bring it to public benefit through new products; it also serves to add to the body of published scientific/technical knowledge. The requirement of disclosure of the details of patented inventions facilitates further knowledge and understanding of what was done by the patentee, and may lead to further technologic advance. The right to conduct research to achieve such knowledge, need not, and should not, await expiration of the patent."¹⁵ Now she was right. The Federal Circuit's *Integra* decision was vacated and remanded nine-zip by the Supreme Court.¹⁶ Unfortunately, that reversal failed to solve the larger problem of experimentation. The statutory exemption sustained by the Supreme Court in *Integra* applies only to research in the life sciences, and then only for work required to secure FDA approval of new drugs and medical devices.¹⁷ To prevent patents from impeding, rather than promoting the progress of science elsewhere, what the Supreme Court has done is to categorize many important advances in genetics, biotechnology, and computer sciences as simply non-patentable.¹⁸ Great, perhaps, for

12. See, e.g., *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012); *Ass'n for Molecular Pathology v. Myriad Genetics*, 569 U.S. 576 (2013); *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014).

13. *Lab. Corp. of Am. Holdings v. Metabolite Labs., Inc.*, 548 U.S. 124, 132-33 (2006) (Breyer, J., dissenting).

14. *Integra Lifesciences I, Ltd. v. Merck KGaA*, 331 F.3d 860, 867 (Fed. Cir. 2003), *vacated*, 545 U.S. 193 (2005).

15. *Id.* at 873 (Newman, J., dissenting).

16. *Merck CGaA v. Integra Lifesciences I, Ltd.*, 545 U.S. 193 (2005).

17. *Id.* at 208.

18. See, e.g., *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 595 U.S. 66 (2012); *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2357 (2014).

fundamental scientific advances, but not so good for firms that want to invest in bringing things like new diagnostics and computer technology to market. So Judge Newman has continued to dissent. In *CLS Bank v. Alice* on the patentability of computerized business methods, she opined as follows: “This [issue on patentable subject matter] appears to have its foundation in a misunderstanding of patent policy. For the debate about patent eligibility . . . swirls around concerns for the public’s right to study the scientific and technological knowledge contained in patents. The premise of the debate is incorrect, for patented information is not barred from further study and experimentation in order to understand and build upon the knowledge disclosed in the patent.”¹⁹ She went on to suggest that the problem of destroying patentability along with incentives to innovate would fade away with clarification on experimental use. And you know what’s happening? The patent industries can’t live with the current state of affairs so they’re lobbying Congress and their proposal is to couple reform of patentable subject matter to restoration of the experimental use defense.²⁰ Exactly Judge Newman’s point.

We’ve had a very patent-heavy discussion so far tonight, but the Federal Circuit also has jurisdiction over appeals from the Trademark Office, so I’ll give as one last example a trademark case: *In re Bayer*, a case that nicely demonstrates the difference between a theoretical or purely doctrinal approach and the hardcore, practical common sense views of Judge Newman.²¹ The issue there was whether Aspirina, a trademark for Bayer Aspirin in almost the entire world, is generic and therefore un-protectable here in the United States. The majority opinion by Judge Moore is a ton of fun. To see what the word means in the U.S., she Googled it. She then wrote an extremely learned opinion on what one can deduce from Google. Judge Moore was a professor before she went on the bench. She’s an academic at heart and wrote the kind of opinion that, I have to confess, I aspire to write. In the end, she decided Aspirina was generic and could not be protected as a trademark.²² Judge Newman’s dissent, I’m paraphrasing, is basically this: everyone who has travelled anywhere in Europe or South America knows

19. *CLS Bank v. Alice Corp.* 717 F.3d 1269, 1321 (Fed. Cir. 2013) (*en banc*) (Newman, J., dissenting).

20. *See*, IPO Daily News, INTELLECTUAL PROPERTY OWNERS ASSOCIATION (Jan. 31, 2017, 1:40 PM), https://www.ipo.org/index.php/daily_news/31-january-2017/.

21. *In re Bayer Aktiengesellschaft*, 488 F.3d 960 (Fed. Cir. 2007).

22. *Id.* at 970.

Aspirina is Bayer's trademark. The use by anybody but Bayer will be confusing. The goal of trademark law is to protect against consumer confusion. So why in the world would we want to let anyone but Bayer use the mark?²³ Now that was a dissent. Aspirina didn't get registered per Judge Moore's opinion on genericity. But, you know what? The notion that we should pay more attention to what words mean abroad is becoming the law. Bayer won its next case about the trademark for an analgesic based on knowledge of the mark in Mexico.²⁴ That case, decided by the Fourth Circuit, is now on appeal to the Supreme Court.²⁵ We'll see who it is the Supreme Court agrees with this time.

I should add that Judge Newman is an independent thinker in real life as well as in her opinion writing. My husband and I once took her from NYU, from an NYU event, to her hotel, and on the way we passed Hogs and Heifers, a sleazy bar in what was, at that time, a sleazy meatpacking district. As we passed, she rolled down the window and called out, "Hogs! Heifers! Hogs! Heifers!" I said, "Judge Newman, do you know that's a biker bar?" She said, "Of course I know it's a biker bar. I was a biker."

NYU has been amazingly lucky having Judge Newman as our grad. She has taken time to be in residence and taught classes. She has done fireside chats, often with Judge Dyk, whose opinions often provoke her dissents. She has given many of our students a leg up in the profession by hiring them as clerks. We'll have one of them speaking soon. And she's been involved in many alumni programs. It's hard to think of anyone more deserving of this award, so, congratulations.

23. *Id.* at 972.

24. *Belmora LLC v. Bayer Consumer Care AG*, 819 F.3d 697 (4th Cir. 2016).

25. On February 27, 2017, the Supreme Court denied the petition for *writ of certiorari*. *Belmora LLC v. Bayer Consumer Care AG*, 819 F.3d 697 (4th Cir. 2016), *cert. denied*, 37 S.Ct. 1202 (2017).

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RACHEL ELSBY

Thank you for the introduction and for having me here today. If you Google “Pauline Newman”, you’ll find the judge shares her name with a famous labor activist. And if you read some of the articles, you’ll find that many of the attributes used to describe Pauline Newman the labor activist are also synonymous with Pauline Newman the judge. An educator, an organizer, an expert, a writer, a mentor: all words that aptly describe Judge Newman. Both women also achieved remarkable firsts as females, but also more broadly as leaders in their respective fields. And both women could undoubtedly be described, as Judge Newman’s namesake once was, as capable of smoking a cigar with the best of them.

Throughout her career, Judge Newman has found success both in science and law. But the thing that impresses me most, the thing that I’m going to attempt to talk to you about today, is who Judge Newman is as a person. Those who know Judge Newman well know her to be incredibly humble and modest. She’s very quick to recognize the achievements of others, but much more reserved when it comes to her own accomplishments. Once a year, she gathers her clerks together for a reunion, and as part of the gathering we stand in a circle and talk about what’s going on in our lives and our careers. But the judge has never touted a single one of her accomplishments at these events, including the one that was specifically intended to celebrate her thirty years on the bench. Instead, she typically ends the conversation by encouraging her clerks to be leaders and by reminding us, to borrow her words, of the enormous amount of work that remains to be done.

Another thing you learn quickly as a clerk for Judge Newman is that she has a very good sense of humor and a quick wit. She also enjoys pranks. For most of my clerkship, we had two girls and two guys in chambers. And the two girls were “disorganized”, not totally unlike Judge Newman. And the two guys were “particular” about their space. And so every once in a while, Christine, my co-clerk, and I would go over to the guys’ desks when they were out of chambers and reorganize them for them just to play a prank. Judge Newman always got a great laugh out of this. And, like any good boss does, she would offer suggestions about which articles might look best upside down.

Judge Newman also possesses a tremendous sense of adventure, and I'm not just saying that because she regularly orders the cheesesteak sandwich from the deli next to the court. I don't think it's an understatement to say she's lived five lives. She's built and driven fast cars, as well as the occasional tank. She's flown airplanes and jumped out of them. She's traveled extensively and met many world leaders, including the Queen of England, who once complimented her curtsy. She's even judged a science competition with Steve Jobs. And as a clerk, this leads to the occasional unexpected interaction. I remember driving with the judge to court one day and asking her what she'd done the night before. She responded that she was reading *Wired* magazine. She said, "Rachel, did you know all those new millionaires in Silicon Valley are buying Ferraris?" I said, "Yes, Judge, I think I heard that." To which she responded, "In my opinion, the Lamborghini and Maserati are far superior cars." I think she still laments not having a Maserati.

This, of course, was not her first dissent, as you have heard tonight. The judge has, throughout her career, not shied from expressing her opinion, either in majority or dissent, and has always done so with the singular objective of promoting a strong patent system. But despite being steadfast in her convictions, and from time to time at odds with her colleagues, Judge Newman harbors no animosity and bears no grudges. Instead her opinions, like herself, are forward-looking, sincere, and always cognizant of the need to strive for excellence. The words "we must do better" are not uncommon in a Judge Newman opinion, but when used they are couched in a respect for both the judges with whom she works and the institution she represents. But the thing that might be most remarkable about Judge Newman is that, despite her many accomplishments, she's approachable and able to interact with all sorts of different types of people. To get a sense of this, you can look at her clerk family. No two are alike. Judge Newman's clerks come from every background, with varied experiences in law and life, and yet she runs a chambers in which everyone is equal. There is no favorite clerk or special treatment. Her only expectations of her clerks are that they work hard and think critically. And, although she would never say it, I suspect this is because the Judge can do most of the work herself. But the Judge has no ego. In fact, it's not uncommon for a clerk and the Judge to exchange up to twenty drafts of an opinion before it leaves chambers. The Judge editing the clerk, and the clerk editing the Judge, exchanging ideas openly and without criticism. Judge Newman has a patience and a respect for others that make her truly unique. In conclusion, I just want to say: con-

gratulations, Judge Newman. I'm grateful for the opportunity you gave me as a clerk, and I thank you for being a role model, a mentor, and a friend.

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DANIEL KLEIN

Thank you for the introduction. As the fourth speaker up here tonight, you've heard all the high notes about the remarkable person that is Judge Newman. I should say that when I initially was invited to speak, it was somewhat lost on me the magnanimity of this event until I saw who the previous years' dedicatees were and that I would be standing up here with Judge Chen, Professor Dreyfuss, Judge Worth, and Rachel. It is humbling to be up here alongside them, but an even greater honor is standing up here to pay tribute to Judge Newman, a person who in my opinion has made a bigger impact on our country than anyone I have personally ever met, and she could not be more deserving of this honor.

The theme of my comments are Judge Newman the patriot, and I will get into how I came to that in a minute, but before I do, I would like to spend just a moment on the human being, the Judge. When I started clerking for Judge Newman, I had only a cursory understanding of the internal machinations of the judiciary, and I had virtually no opinions on how I thought judges should judge or courts should rule. I could, if asked, tell you what I thought should be the qualities of a good judge: integrity, fidelity, honesty, intellect. But these were just abstract ideas, disembodied from concepts and attributes that we hope apply to all our sacred institutions, not just our judges and courts and civil servants. Once I started clerking for Judge Newman, the view I quickly developed was that she defined my notion of the ideal judge. I'm quick to note, however, that with Judge Chen being in attendance, this is not intended as a comparison to him or any other judge at the Federal Circuit. Judge Chen truly is a remarkable jurist and an undeniable asset to the court. Judge Newman is unwavering in her sense and pursuit of justice through her judicial opinions. She's impervious to grandstanding and rhetoric, and her integrity is beyond question. Her commitment to the judicial process is evident in all of her opinions and particularly so in her dissents, which give the Bar and the Supreme Court a window into the different interpretations on a particular issue. But quote Judge Newman's dissents to her at oral argument, and she will quickly tell you that her dissents are not the law.

Now, Judge Newman the patriot. I thought this theme might capture just some of the essence of Judge Newman, a lens through

which I think we can view a lot of aspects of her life. For it is a deep-rooted sense of patriotism and civic commitment that I think informs Judge Newman's journey to the bench, her judgeship, and her jurisprudence. To hear her speak or read her opinions, one is likely to see Judge Newman refer to the nation, the important role innovators and patents have in it, and the impact courts have on civil society when they interpret the law. It was not out of a sense of aggrandizement, self-aggrandizement, or simple corporate protectionism that Judge Newman in the early '80's testified before Congress in support of a bill that would create the Federal Circuit, to which she would be the court's first direct appointee just a few years later.²⁶ Although if that had been the case, a better example of manifest destiny I've never seen. Asking Congress to create a new court for you and then appoint you to it is not a realistic life goal for anyone. Rather, her testimony to Congress was on the heels of her work on the advisory committee of President Carter's domestic policy review, which was tasked with finding ways to pull the country out of its deep economic recession.²⁷ Unpredictability in the application of patent law was seen as frustrating the recovery by encumbering innovation and investment, and it was the committee's proposal to create a uniform appellate court to administer these laws.²⁸ So it was with her understanding of how patents can help a nation thrive that Judge Newman joined the bench in 1984. Judge Newman believes strongly in the founding principle that the framers memorialized in our Constitution that an industrial nation depends on the system of protecting its dreamers' intellectual property.²⁹ But it is not, I think, simply because the framers provided for a patent system in the Constitution that Judge Newman holds this view. Rather, it is because of the essential role innovation plays in our society. When we interpret the law, when we apply the law to a new set of facts, we should be mindful of where these laws stand in relation to the nation that they serve. This, I believe, is Judge Newman's judicial philosophy. Judge Newman's civic commitment extends far beyond her support for a robust patent system. Her thoughtful judicial writings in cases involving veterans' benefits and government employees are a hallmark of her judgeship. Re-

26. Hearings Before the Subcomm. on Courts, Civil Liberties, and the Admin. Of Justice of the Comm. on the Judiciary H.R., 97th Cong. 1 (1981) (statement of Pauline Newman, Witness, H. Comm. on the Judiciary).

27. Pauline Newman, *The Sixth Abraham L. Pomerantz Lecture: Commentary on the Paper by Professor Dreyfuss*, 61 Brook. L. Rev. 53, 55-56 (1995).

28. S. REP. NO. 97-275 at 2 (1981).

29. U.S. CONST. art. I, § 8, cl. 8.

ardless of the outcome on the merits, Judge Newman's writing is mindful and sensitive to the sacrifices veterans and government workers make for their country. I think it is with this devotion to the country that Judge Newman has served tirelessly on the bench for over 30 years. Why, when I served as her clerk, she took my calls late on the weekend to discuss a case, and why it was not uncommon to receive emails from her at three in the morning. Why, just two years ago, Judge Newman embarked on a new endeavor to create an organization that would teach science to judges, with the view that it would help them across the entire spectrum of their dockets, from forensic issues in criminal cases to technical product warranty disputes.

In short, Judge Newman has not devoted the latter part of her life to the improvement of the law and judiciary as an ends in and of itself, although, if she had, it would be a more noble endeavor than most. Rather, Judge Newman has devoted herself to the betterment of the nation through improvements to the judiciary, our nation's capacity to lift up explorers and inventors, and our system of governing rules we call laws. She's a constant inspiration to me, and I thank her from the bottom of my heart for letting me serve as her law clerk. Congratulations.

TRIBUTE TO JUDGE PAULINE NEWMAN

JAMES A. WORTH

Good evening Dean Morrison, Judge Newman, Judge Chen, Professor Dreyfuss, assembled guests. This is a really nice occasion. I'm honored to be a part of it. It's great to be back here at NYU.

NYU is really lucky to have Judge Newman and to call her one of its own. I know the Judge has made great contributions to the nation. She has also made great contributions to this institution, the NYU School of Law. NYU can certainly be very proud to have her on their rolls of this institution and to call her an alumna.

Judge Newman has had a great impact, not only on patent law, but on the wide-ranging jurisdiction of the Federal Circuit on takings law, tax law, trade law and international trade, trademark law, contract law, federal labor law, and veterans' law. Plus, Judge Newman has shown us that to be a good patent attorney you have to be conversant with a wide-ranging interconnecting range of discipline.

Judge Newman is a great writer. We've heard some of her own writing tonight. Her opinions are polished and many read like the spoken word. It's in a style all of her own. I can tell you that Judge Newman has had a tremendous impact, not only on the court system, not only on patent law and the other areas of the court's jurisdiction. I can tell you that Judge Newman has had a tremendous impact on me.

Pretty much every day I ask myself, what would Judge Newman do? Although I can tell you the answer to that question is not always obvious. This isn't about legal analysis either. One occasion had a profound impact on me, and I remember it well. There was a pro se litigant, a woman who requested oral argument but became choked up, was crying, and couldn't get a word out. Judge Newman reached out her hand from the bench with a glass of water and just asked her if she would like to have some water. Now at the court, the parties have their own water, not just the judges. But here, Judge Newman leaned over the bench and offered her some of hers. That gesture by the Judge won't be in an opinion, but, as they say, it speaks volumes.

Judge Newman also has incredibly high ethical standards. I remember one day it was raining, and I had more than one umbrella to choose from. Judge Newman suggested that I use one without a logo, just in case some day the entity on that logo might become a

party. That's just one example of how Judge Newman takes her work seriously and applies it to her own life.

I can tell you that as her former clerk, research had to be thorough. What did Jefferson say? What did Blackstone say? What did the Supreme Court say over the last 200 years? What did the English courts say at common law? My wife says that Judge Newman lit the fire of curiosity in me to get to the bottom of the issue. Judge Newman was a great boss. Sure, we worked hard. Sometimes we worked late. But Judge Newman frowned on working on weekends, if you can imagine. Except one time she gave me an assignment, one weekend in April. Homework, if you will. I was ordered to visit the cherry blossoms in the D.C. area, and you know you have to comply with the Judge's orders.

Judge Newman works incredibly hard, you may have gathered. She was a pioneer in the law, and that might have been enough for some, but she continues to work hard day in and day out. She definitely has a vision for the law and she works to carry it out.