

11th ANNUAL SANDRA DAY O'CONNOR MEDAL OF HONOR
MARYANNE TRUMP BARRY, RECIPIENT
APRIL 16, 2004

DEAN PATRICK HOBBS: Good afternoon, everyone. I'm Patrick Hobbs, Dean here at Seton Hall, and it's my pleasure to welcome all of you to the 11th annual presentation of the Sandra Day O'Connor Medal of Honor to Judge Maryanne Trump Barry.

In Justice Sandra Day O'Connor's book, The Majesty of the Law, she posed a question: Do women judges decide cases definitely by virtue of being women?¹ She echoed the answer of another woman judge, Justice Mary Jeanne Coyne, formerly of the Minnesota Supreme Court, who said that a wise old man and a wise old woman reach the same conclusion. Justice O'Connor goes on to write, "this should be our aspiration; that whatever our gender or background, we all may become wise – wise through our different struggles and different victories, wise through work and play, wise through profession and family."²

Today, the Seton Hall Women's Law Forum, the Law Review, and the Legislative Bureau honor one of those wise people spoken of by Justice O'Connor. Judge Barry, you've seen victory; you've had to confront more than your share of struggle; you've brought dedication and energy to your work; you've brought energy and a wonderful sense of humor to your play; you are a model to our profession; and you have the love and devotion of a wonderful family. Clearly you are a wise judge that Justice O'Connor writes about and everyone here at Seton Hall congratulates you.

And now to introduce the presenter of this year's award, the president of the Women's Law Forum, Elaine Harwell. Elaine.

MS. ELAINE HARWELL: Thank you, Dean Hobbs.

In the name of Justice O'Connor, this award honors women who have distinguished themselves in the law and in public service. And

¹ SANDRA DAY O'CONNOR, *THE MAJESTY OF THE LAW* 193 (Random House 2003).

² *Id.*

the list of past recipients reads like the who's who of women's achievement. Justice O'Connor has served as an inspiration to many law students, men and women alike. She has demonstrated superior leadership, dedication, and unparalleled professionalism in legal service. We are particularly delighted during our school's 50th anniversary to have Justice O'Connor present this award.

Both Justice O'Connor and this year's honoree, Judge Maryanne Trump Barry, are accomplished individuals, both held in high regard by everyone around them. In addition, both have managed to achieve the illusive goal of having a full family life and by always being a consummate professional.

JUSTICE SANDRA DAY O'CONNOR: Thank you, thank you. Thank you, Dean Hobbs, and my fellow judges, and distinguished guests and members of Judge Barry's family, and friends of Seton Hall. Not too long ago women were considered fit only for motherhood and home life. It was men who were meant for the competition, sharp logic, and shrewd negotiation involved in litigation. These attitudes led Clarence Darrow, the famous champion of unpopular causes, to tell a group of prospective women lawyers, you can't be shining lights at the bar because you're too kind. You can never be corporation lawyers because you're not cold-blooded. You have not a high grade of intellect. I doubt you can ever make a living, he said.

Now, it's a good thing Clarence Darrow never had to appear before Judge Maryanne Trump Barry. Judge Barry turns every outdated stereotype about women on its head, and at the same time exemplifies the very best ideals of public service in our profession. In a legal career that has spanned over thirty years, she has dedicated herself tirelessly to the work of justice from both sides of the bench.

Like other pioneering women in the law, Judge Barry has always had to juggle her career with the demands of raising her family. In fact, she chose not to attend law school until her son was in the sixth grade. But when she graduated from Hofstra University School of Law in 1974, she did so with honors, and she chose the path of public service. Ignoring Clarence Darrow's advice and the belief that women are too weak for the rough and tumble world of criminal law, she became a federal prosecutor in Newark.

By that time things had changed for women in the legal

profession. A hundred years earlier, when Myra Bradwell had applied for admission to the Illinois bar, she was denied admission because of her gender. And when Miss Bradwell appealed to the Supreme Court of the United States, my very own court was no more open-minded. Three justices expressed the view that the natural and proper timidity and delicacy which belongs to the female sex unfits it for many of the occupations of civil life.

Although things were different in 1974, it was hardly smooth sailing for Judge Barry. As one of only two women among sixty-two lawyers at the U.S. Attorney's office for the District of New Jersey, her trademark toughness and resolve were put to the test. Judge Barry, of course, rose through the ranks at the U.S. Attorney's office, becoming, over time, Chief of the Appellate Division, Executive Assistant U.S. Attorney and, finally, First Assistant U.S. Attorney.

Recognizing these accomplishments, President Ronald Reagan appointed her as a federal district court judge in 1983, on a post she filled with great distinction. She earned a reputation as a razor-sharp trial judge with a willingness to preside over a wide range of difficult cases in the District of New Jersey, from organized crime trials to environmental disputes between New Jersey and the City of New York.

Her no nonsense approach with a witness has become somewhat of a legend in the local bar. In 1995, when dealing with a threatened strike by New Jersey Transit workers, she issued a temporary restraining order backed up by the following words: "There will be no strike, the trains will run. Anyone who violates this order had better have a toothbrush handy."³

Judge Barry's steely approach is tempered with more than just humor. She also has a strong sense of compassion and a willingness to act swiftly when necessary. I'm told that the decision of which she is most proud in her twenty-one years on the bench came in a case involving a girl named Tishna Rollo. When Tishna first appeared before Judge Barry in 1990, she was only eight years old. She had a deadly form of kidney cancer and had been given one year to live.

Tishna's insurance company had refused coverage for bone marrow transplant treatment on the ground that it was experimental. Judge Barry recognized immediately the child had very little time,

³ Robert Hanley, *Judge Warns N.J. Transit Engineers Not to Strike*, N.Y. TIMES, June 28, 1995, at B6.

and that the normal course of claims litigation would take far too long. After reviewing medical opinions and scientific literature on the subject, she concluded that the insurance company was simply wrong. The treatment Tishna needed had become medically accepted and was performed at prestigious hospitals throughout the country. She wrote that the treatment produced children who now live, when before they would surely die, and closed with the words "[m]ay Tishna be one of those children."⁴ Fourteen years later, Tishna is alive and well. And I'm told every year she sends Judge Barry a picture of herself and an update on how she's doing.

After sixteen years as a district court judge, Judge Barry was elevated to the United States Court of Appeals for the Third Circuit by President Clinton in 1999. In these days of difficult judicial confirmations, the fact that she was nominated to her two judicial positions by presidents from different parties, that confirms each time, with overwhelming support, the testament to the breadth of the respect she commands from those who appear before her.

She is known by her colleagues on the bench for being extraordinarily hard working and phenomenally well prepared, but she still somehow manages to continue a tradition beyond the bench that she began long ago. Back in 1993, my colleague Chief Justice Rehnquist appointed Judge Barry to Chair of the Conference on Criminal Law. There she brought her experience and insight as a prosecutor to bear on the tough questions that confront Congress and the courts.

In 1998, the Chief Justice called on Judge Barry again, this time to serve as a commissioner of the Supreme Court Fellows Program, a position in which she continues to serve. As if that weren't enough, she has served on the board of the American Judicature Society, on the Judicial Advisory Group of the United States Sentencing Commission, and she recently finished a term as chair of the New Jersey Chapter of the Fellows of the American Bar. Take that, Clarence Darrow.

Judge Barry's exceptional work on the bench and her selfless record of public service stand as shining examples to everyone in the legal profession. It makes me very proud to present to her the medal that bears my name.

⁴Rollo v. Blue Cross/Blue Shield of New Jersey, No. 90-597, 1990 WL 312647 at *9 (D. N.J. Mar. 22, 1990).

JUDGE MARYANNE TRUMP BARRY: Justice O'Connor; distinguished members of federal, state, local judiciaries; reverend clergy; Dean Hobbs and the Seton Hall community who have made this possible for me; my lovely family from the Trumps, Barrys, and Desmonds; friends and students, if anybody had told me that today I would be standing on the same stage as Justice O'Connor and breathing the same air as Justice O'Connor and receiving an award which bears her name, I would have said, "that is ridiculous."

You see, this Justice O'Connor is one of the very most brilliant and respected jurists in the nation. Her opinions are strong, careful, and elegant. This Justice O'Connor is one of the most respected women in the nation, a woman of personal courage of the highest order and of enormous integrity.

I found a quote, and I think it must have been, Justice, when you had completed your confirmation hearing and you said, "My hope is that ten years from now, after I've been across the street at work for a while, they'll all be glad they gave me that wonderful vote."⁵ Well, it's been about twenty-three years that you have been across the street at work, and I for one today am enormously glad that they gave you that wonderful vote.

You have honored me, you have honored my family, and you have honored this school by coming here today. And I must thank Dean Patrick Hobbs. He is the man who will lead Seton Hall to yet the next level. I have enormous respect for this man and what he has accomplished thus far, and you have my enthusiastic support in the future. And I must thank Elaine Harwell and all the women in this law forum who have been so good to me over the years, and the Legislative Bureau and the Seton Hall Law Review for making this award possible.

Now, I know you have a reception to go to, but you see when you go on to the appellate court, all of a sudden your priorities change and you say, "oh, issues, cutting edge issues in law, issues of first impression, arcane issues – these excite me now." And I know they will excite you. And, actually, I'm working on one right now. Let me just titillate you. Now, does Pennsylvania Rule of Civil Procedure 238, a rule of procedure, also give a statutory right?

⁵ Linda Greenhouse, *Senate Confirms Judge O'Connor; She Will Join High Court Friday*, N.Y. TIMES, Sept. 22, 1981, at A1.

See, this is exciting, and I knew you would be excited. And so when I spoke to Dean Hobbs and I told him that I wanted to share my preliminary research with you, he was excited, too. And he said, well, actually I think the students would rather throw it open for questions. Disappointed as I am, I guess you're going to have to wait either for the opinion or the movie on Rule 238.

And I will take questions, but first let me quickly wrap my hands, my arms, around the students of Seton Hall for just a moment. I say to the women of Seton Hall, remember how difficult it was for women such as Justice O'Connor starting out. Remember that even though she graduated with top grades from law school, she had to take a job as a legal secretary -- remember how far you have come. Remember what you and I owe to so many of those women of the bar.

And I say to the men and women of Seton Hall, remember certain other things. Remember the critical importance of integrity. Remember the critical importance of good old-fashioned hard work. Be determined, be enthusiastic, believe in yourself, and believe that you can do more than perhaps you think you can. But it doesn't come without trying. And even if you don't succeed in reaching every goal, you grow from the reaching, you learn from the trying.

You are so lucky in entering this profession at this time. It will not be easy all the time, particularly for those of you who will try to balance family and profession. But if you ever feel a little sad, if you ever feel you can't make it, there were those of us who have done so, just call us. We'll buck you up.

I can't thank you enough for this wonderful honor you have given me. I, again, thank Justice O'Connor for having graced this university and this state with her presence here today and for honoring me as eloquently as she has.

Now, we will take questions for as long as Dean Hobbs let's us take questions.

MS. ELIZABETH NUTTYCOMB: Judge Barry, you just mentioned the difficulty of balancing a career with family life. Do you have any advice for those of us who would like to attempt to raise a family and have a successful career at the same time?

JUDGE TRUMP BARRY: I can remember when I started work,

my David, my doctor, my son, the doctor sitting there, he was thirteen, and I used to commute from Queens to Newark. This was not easy by train. I mean, that was like going by mule. It took an hour and forty-five minutes each way.

Now, I was in the Civil Division, because women didn't do criminal work in those days, but I had a boss who rarely showed up, but who told me if you didn't work until nine o'clock at night, you were working half a day, and would leave at a reasonable hour. And the thing I remember most vividly, I felt so guilty. I should be home with David. What am I doing here?

I hear people talk about the confidence you have and how confident I was. I was scared to death when I started, scared to death, feeling guilty. My family was home and here I was on some road or some train trying to get home to make dinner. It's not easy.

They say you can have it all, and you can, but it takes a toll, and recognize that. Maybe the job will suffer at times, maybe the family will suffer at times, maybe you will suffer at times. At the end of the day it will work out, but it's not easy. And, you know, I was a full-time mother for thirteen years and I think that was great, too. Just do the best you can. That's all I can advise you to do.

MS. MARGARET SKARBEEK: Thank you for being here, Judge. My question is what is your greatest joy sitting on the bench and what is your greatest complaint sitting on the bench?

JUDGE TRUMP BARRY: Well, I'll be quite candid, I think it was a different kind of work. I had more joy on the district court because you had the ability to affect people's lives in an immediate and important way.

You have heard the story of Tishna Rollo. That gave me great, great satisfaction every year. On the anniversary of an opinion, I get a copy of -- a letter, a copy of a picture, and she's graduated now from college. That's joy, that is joy. There's another kind of joy. Though some of you maybe think I was a pretty hard-nosed criminal judge, I probably gave as much probation as any judge on the district court. And one of the things that made me happiest was to see mostly men coming in to report to probation on Tuesday night and saying thanks, Judge, for giving me another chance. I know you could have put me in jail for another year, but thanks for giving me a chance. I

have a new child, I have a job, everything is going well. That's a kind of a joy.

What do I -- what is the pain? Well, pain isn't a word you used. I think that what pains me is seeing terrible papers. Instead of saying American jurisprudence, it's misspelled as American Jewish prudence; that is the kind of sloppiness I cannot abide.

Now, on a scale of the important things in the world, I suppose it isn't very important, but as lawyers you should know this sends a signal to the reader that you're not careful. It's a very bad thing to start out doing. What I really cannot abide by is sloppy papers.

Now, I can think of other things, I suppose, if you gave me more time, but I know I don't have more time. The hook is coming out. I can feel it, I can feel it. But that's one of the things I have a lot of trouble, problems with.

MR. JAMES JOHNSTON: What was the greatest thing about working at the U.S. Attorney's Office?

JUDGE TRUMP BARRY: It was a completely different job than it is today. I can't speak to the job that it is today, but we were a small office, and at that time some of the great law was made. You had cases such as *U.S. v. Kenny*,⁶ *U.S. v. Addonizio*.⁷ You had so many important cases being made. To me, it was an opportunity for someone who just came out of law school, who didn't know anything, who really didn't -- don't tell anybody this -- who didn't know what circuit New Jersey was in; to learn, and to learn with other people who all had the same goal, to represent the United States of America. There was no jealousy, there was no backbiting.

⁶ *Kenny v. United States*, 103 F. Supp. 971 (D. N.J. 1952) (citing *Mississippi Valley Barge Line Co. v. United States*, 292 U.S. 282, 286-87) (holding that so long as the Interstate Commerce Commission had a rational basis for concluding that the tariff in dispute was "just and reasonable" as per the requirements of the governing statute, the court would not "substitute its judgment for that of the Commission upon matters of fact within the Commission's province."). In this case, the record provided ample evidence that the administrative body based its decision on comprehensive factual findings and, thus, had a rational basis for its conclusion. *Id.*

⁷ *United States v. Addonizio*, 313 F. Supp. 486 (D. N.J. 1970), *aff'd* 573 F.2d 147 (3d Cir. 1978), *rev'd* 442 U.S. 178 (1979). A famous racketeering case which held, after looking at changes in Parole Commission procedures, to change a final sentence under § 2255 to make sure the petitioner would serve no more prison time than the court had originally sentenced him. *Id.*

It was people banding together for a client we all respected.

And I owe almost everything, from my initial training, to what I learned there, and, of course, to what I learned from my late husband, who was my boss, and who taught me not everything he knew, but everything that I learned. That's three questions. Yes, is there one more?

MS. HEATHER FINK: By now you can say that you have achieved greatness. Were there ever times in your life, considering comments from men, or other pressures and adversity, when you felt like you weren't able to do what you wanted to do, or felt like you just wanted to quit everything?

JUDGE TRUMP BARRY: You know what, you can't ever let them see you sweat. But, yes, of course, everyone of us, we wouldn't be normal if we didn't have self doubts on occasion. We wouldn't be normal if it and they didn't get you down on occasion. Sometimes you have to show that you're competent even though your knees are shaking and even though you really aren't sure what you're doing. You have to appear to be in control. But, oh, yes, oh, yes, there are many times when you say to yourself, and I have said to myself, this is tough, I don't know if I can do this anymore.

Hang in there. It's kind of like giving up smoking. After you've given it up and you get that urge, it comes back but it's only for a little while. And then you just keep punching and you'll be okay.

Anyway, I don't want the hook to come out. I just thank you all so much for your warm, warm welcome, and I thank all of these wonderful people who made it possible. Thank you.