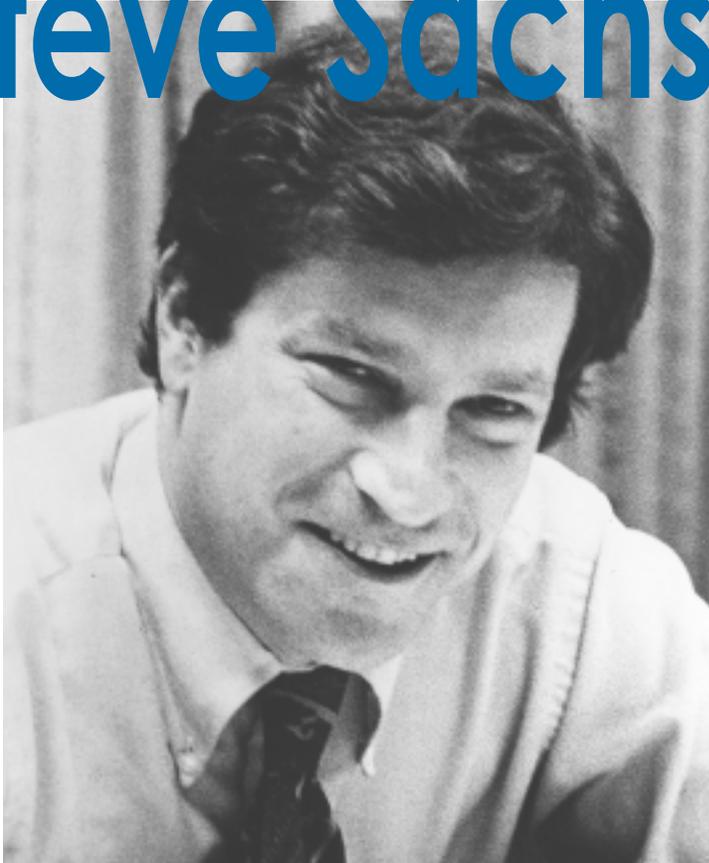


A Conversation With Steve Sachs



By Douglas D. Connah, Jr.

In the pressure-cooker working legal world, a commonly held stereotype equates “retirement” with playing endless rounds of golf or just sitting around the house. Retirees are inured to hearing a question from former colleagues that often takes a form such as: “What do you *do* with yourself, anyway?” or “How could you just *walk away* from your career?”

Grappling with this complex question brings us to a lawyer who recently retired after a high-profile career both in public life and in private practice, Stephen H. Sachs of Baltimore, Maryland. Sachs, a 1960 graduate of Yale Law School, was an assistant United States attorney from 1961 to 1964, and served as U.S. attorney for the District of Maryland from 1967 to 1970 and as Maryland Attorney General from 1979 to 1987. After a spirited but losing run for governor of Maryland in the 1986

Democratic primary, Sachs spent 13 years commuting to Washington as a criminal and civil trial lawyer at Wilmer, Cutler & Pickering.

As assistant U.S. attorney, Sachs prosecuted public officials, including the speaker of the Maryland House of Delegates, in a notorious savings and loan scandal. As U.S. attorney, he prosecuted the “Catonsville Nine”—Vietnam War protesters led by the Catholic-priest brothers Daniel and Philip Berrigan, who in 1968 invaded a draft board in suburban Baltimore, burned records in the parking lot with what they called napalm, then stayed to pray while awaiting the police. In private practice, Sachs defended ABC News in a closely watched libel suit brought by Philip Morris, Inc., and represented McDonald’s in big-dollar intellectual property and commercial litigation. As Maryland Attorney General, he argued and won three cases in the United States Supreme Court, including *Maryland v. Louisiana*, 451 U.S. 725 (1981), an original-jurisdiction action that challenged the constitutionality of Louisiana’s “first-use” tax on natural gas taken from the outer continental shelf. (That state had exempted local users and, as Sachs says, “passed the tax up the pipeline.”)

With this as introduction, the following is our conversation as it took place January 31, 2001, in Baltimore.

Today’s your birthday?

Today’s my 67th birthday. You want proof that I’m old, there it is.

When did you officially retire?

A year ago. One is eligible at Wilmer, Cutler & Pickering to retire on January 1 the year after reaching one’s 65th birthday; in my case that was January 1, 2000. I retired on the first second of the first minute of the first hour of the first day of the millennium. My daughter, Elisabeth, who is a new mother and lives with her husband and young son about six blocks away, was happy to acquire a part-time babysitter. If I had to say what the best part of the first year of retirement was, it’s been the time with little Jack, who will be two this March. What happened was, my daughter lost her babysitter,

who became ill. Elisabeth works three days a week at the attorney general's office of Maryland, and my wife, Sheila, is a full-time practitioner, so I did three days a week, 8 to 6, minding Jack, and that has been terrific. I think it's fair to say I know my grandson and he knows me in a way that could not have happened had I not had the opportunity to spend that much time with him.

Should we put the word "retired" in quotation marks?

Yeah. I'm now of counsel to the firm. In the important financial sense I am retired. I receive the firm's retirement benefits, which would be the case if I were wholly unrelated to the firm anymore. But the of counsel status has meant a continued relationship to finish up some leftover legal work, as well as to use the firm as a vehicle through which I do part of the pro bono work I'm doing, which also adds to the Wilmer pro bono hours, if I may say so, without cost to Wilmer, Cutler & Pickering.

You've had a long, active, often public career, one that many would call distinguished. I'll ask what some lawyers might be thinking, particularly ones who really can't fathom not practicing law: How could you turn your back on all that? How could you throw away your career?

Well, I of course disagree with the premise. I haven't thrown away anything. My work for the Public Justice Center is the real answer to the professional aspect of your questions. I consider it moving from one chapter to another in a life of advocacy and, I hope I'm not being self-congratulatory when I say, in a life of service. It's simply a different way to do what I've been doing, admittedly somewhat less intensely and with more opportunity for private time.

Describe the Public Justice Center.

The Public Justice Center is a Baltimore-based nonprofit organization that furnishes legal services to the poor. It is free from the strictures of Legal Aid and can afford to be much more "proactive," to use a buzzword. A great deal of its funding comes from private sources such as the Open Society Institute and the Abell Foundation here in Baltimore. There are only about nine or ten lawyers, and one of

the things that drew me to them is that these are excellent lawyers, a small band of very, very qualified lawyers. The cases the center specializes in are housing, developmental disabilities, employment, and civil rights matters. One of the attractions of adding this chapter to my career is that there's a human face on these issues that is often not the case in the big litigation—whether it's a woman who's just been evicted or a child with multiple disabilities whose foster-care arrangements have been abused and distorted by the state. What the center has sought to develop, and what I was invited to come and be a part of, was an appellate capacity, not only the writing of briefs and the arguing of cases, either directly for clients or as *amici* in interesting and important issues, but actually to try to shape where the appellate courts of Maryland and the relevant federal courts might go. What cases can be chosen to put some firepower behind? That's not always so easy these days, especially in the federal courts, especially in the Fourth Circuit. But one does one's best. I have no title but like to think of myself as a kind of unofficial solicitor general, not so much that I argue every case—I don't—but I participate in the development of the strategies as to which case we should be involved in.

How much time do you spend on Public Justice work?

Last year, in 2000, in cases in which I was officially appearing on the briefs or in court as of counsel to Wilmer, something approaching maybe 300 hours. But I spend a lot more time in strategizing generally and kibitzing with them, and I also do, and did yesterday for example, participate in moot courts for our lawyers before they go down and argue.

What institutions typically are the adversaries? Who are you fighting?

So far, in the cases I've been most directly involved with, it's been government bodies. It's been the City of Baltimore, it's been the Department of Social Services. But not always. We're *amicus* in a major contest between two medical institutions in which the racially discriminatory provisions of a will are being litigated. We are also now working on—this is to me the most exciting thing that

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we're doing—a Maryland version of what many would call the “civil *Gideon*” issue, namely when and under what circumstances is there a right to the appointment of counsel in civil litigation. We are exploring with some optimism the ability to bring such a case, at least in areas that are the most compelling. Could be family law, could be custody issues, termination of parental rights, as well more broadly as perhaps employment and others. When we finally bring it, I think there will be significant public interest. I don't think it'll be universally applauded, but that's okay, that's part of the challenge.

One other case worth mentioning is a medical malpractice suit brought on behalf of a young man with multiple handicaps. The issue is whether the plaintiff has a right to be present in the courtroom during trial, specifically during the liability stage of trial. The lower courts held that the presence of the young man, whose condition is so pitiful, would be unduly prejudicial—notwithstanding, mind you, that he's the plaintiff. It's now in the Maryland Court of Appeals, and we got in it at that level to address not only the due process issues but also the special implications of the Americans with Disabilities Act. I look at the representation of underprivileged poor people as a branch of law enforcement. It sometimes surprises people when I tell them the quick answer to “What are you doing now?” is “I'm just doing a different branch of law enforcement.”

Our fellow Baltimorean H.L. Mencken once said, “The average man spends his leisure as a dog spends it.” I don't expect to hear that's true of you.

To the extent Mencken was referring to the fact that dogs snooze a lot, there is some application here. It's the occasional, and I want to stress the word occasional, nap in the afternoon. That is a wonderful thing I've discovered. I want to be very careful not to suggest that it's a daily occurrence, but when I can snooze for an hour or so in the afternoon, that's just a wonderful break. Well, I read a lot more than I was able to, I mean I read a great deal. It's eclectic and one might even say chaotic, but it does tend to focus on modern history.

I've become a bit of a World War I buff. We've visited Verdun, we've visited the Somme, so I read a lot of this stuff, and like it. But other stuff, too. Right now I'm reading two things, the Philip Hamburger collection of essays from *The New Yorker* and Arthur Schlesinger's first volume (hopefully there'll be another one) of his autobiography.

And I write, although here I have to be careful not to overstate, because this may turn out to sound more significant than it so far is. I'm sure you're aware of Baltimore's institution of law clubs, groups of lawyers who meet typically once a month, and there's a paper and conviviality and lubrication. I've written a few papers for some of these law clubs that I'm pleased with, one about growing up as a lawyer in Baltimore, and one about my political years, not intended to be dreadfully serious, but I enjoyed doing them. I'm very hesitant to use the word “memoirs” here because my wife's voice haunts me when I mention it, because she quickly asks, “Well, who will read that?” What I answer is, perhaps no one, but I will have written them, and there are children and grandchildren. I would never do a vanity press thing, but still and all, it's chilling to have your best friend and life's partner ask the most important question, who will read it?

Do you do any teaching or course taking?

No teaching. Sheila and I did a course together at Johns Hopkins, “Paris in the 20s,” and we're talking about some more of that. I did have a French tutor from a sabbatical time in 1996 all the way through until 2000. She was at Hopkins as a graduate student and had the good fortune, which turned out to be my bad fortune, that she got hired to go to Harvard to teach, so she's now on the faculty at Harvard and I'm without a tutor. And I had intended to continue during the retirement time, but that hasn't happened, and I don't know whether I'll be able to pick it up again. I mean I'm pretty good, I'm more or less fluent, but if you don't keep it up, it obviously goes away.

Tell us about the sabbatical.

In my years there, Wilmer had a very generous sabbatical program. Every seven years a partner was eligible for a six-month sabbatical at full draw. In 1996 I

took the six months, although I had to break it up a little bit because I had to try a case in the middle. But the centerpiece of that six months was French. The Army, God bless it, put me in France for 20 months back in the mid-50s. I made French friends, I'd had enough school French so that it was easy to get better, and by the end I was sort of an ersatz interpreter—that's what I did for the Army, that was my job. That was a long time ago, but the interest remained, and then got revived, especially when my son, Leon, who is now a Ph.D. candidate at Yale in French literature, became for reasons of his own drawn to the language and the country. So with my sabbatical year, the idea was to get back in shape, and I was fortunate enough to be introduced to this wonderful young woman, and then our families became friendly, we were at her wedding in Lyon, and her parents when they visited here were guests of ours. That six months was quite intense, I mean, it was three days a week.

Did that sabbatical influence your decision to retire?

It's very close to the heart of the matter. I'd never had anything even remotely resem-

bling a sabbatical before, and what it really did underscore for me was what I knew intellectually but had never really experienced, and that is that there's a whole world out there. Fill in the blanks. It's difficult to talk about this without clichés, but the idea that I could grow in other ways than just as a lawyer was palpable. And so, yes, I think it's fair to say that at the end of '96, knowing that I could retire at the beginning of 2000, I decided I was going to do that. This Public Justice thing didn't materialize until just on the eve of retirement, and as you will note, except for a lot more time to read and go to the theatre and to perhaps write, I'm practicing law. But I'm doing it in a different way, at my own pace and for causes that animate me. I enjoyed most of the private practice that I was engaged in. I enjoyed representing almost all of the clients that I represented, but I do have to say that when you've done it for as long as I did, sometimes there are clients who demand that you be sort of an appliance, a tool, and that offended me, and the idea that I don't have to worry about that anymore is important.

One last question. Do you play golf?

Monosyllabically speaking, no. ■

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