



LIFETIME ACHIEVERS 2021

**SETH WAXMAN**

## An Advocate in His Element: Seth Waxman Is at Ease on the Legal Profession's Biggest Stages

BY DAN PACKEL

*Editor's note: Seth Waxman is among the recipients of this year's Lifetime Achievement Award from The American Lawyer. They will be recognized at The American Lawyer Industry Awards in New York on Dec. 2.*

It took Seth Waxman 15 years as a lawyer to land his first case in front of the U.S. Supreme Court, but only 30 seconds into that first oral argument to discover that he loved the experience.

Waxman was appointed by the justices to argue *Withrow v. Williams*, a case that turned on whether federal courts could reverse a state court conviction based on Miranda rights violations. He got the opportunity because of his long record of pro bono work, largely representing capital defendants in habeas cases. But when the case was heard in 1992, most of those efforts, as well as his primary work representing white-collar defendants at Washington, D.C., firm Miller Cassidy Larroca & Lewin, had been at the trial court level.



Photo: Diego M. Radzinski/ALM

**Seth Waxman**, partner with WilmerHale in Washington, D.C. October 18, 2021.

Arguing against future Chief Justice John Roberts, at that time serving as deputy solicitor general, Waxman feared he would be nervous, even if he was usually at ease in court.

“Luckily, before I had a chance to obsess about that manifesting, I was immediately interrupted by Justice Scalia, who was, at the least, skeptical about the argument I was making,” Waxman

recalls. “He stated a premise and asked me to respond to a question based on that premise, and I took a deep breath and I said to him, ‘Justice Scalia, it’s with the greatest trepidation that I want to suggest to you that the premise of your question is mistaken, and therefore, the correct question which I’ll pose is easily answered.’”

“Go on, let us have it,” Scalia responded, prompting chuckling from elsewhere on the bench. And soon after, Waxman’s comfort with the justices earned more laughter when, answering a question, he said a review of the court’s Miranda jurisprudence had turned his brain into a bowl of noodles. “How do you think we feel?” responded Justice Byron White, spinning his chair directly toward the advocate.

Former U.S. deputy attorney general Jamie Gorelick, who later hired Waxman to work at the Department of Justice and now works alongside him at Wilmer Cutler Pickering Hale and Dorr, was there to watch. She’d attended Harvard University with Waxman, and at the time was a colleague at Miller Cassidy. She would have expected these exchanges from someone who had been doing this work for 20 or 30 years, not a Supreme Court novice.

“This is a man who is at ease with people who would otherwise be intimidating to mere mortals, and that ease of conversation makes him an unbelievably effective advocate, because the justices are willing to prod and poke and engage in a way that they often are not,” Gorelick says.

Waxman won that case, and he’s since argued 83 more before the justices, including a slew while serving as the U.S. solicitor general from 1997 to 2001. But he still thinks of himself as a generalist, rather than as an appellate specialist. That’s in keeping with the statement the editors of his high school yearbook placed under his photo: “Jack of all trades, and master of none.”

“It does seem to be the way I’ve led my life,” Waxman says. “There are a lot of strengths that come from not becoming a particular expert in any form of procedure or any substantive area of the law, but being able to essentially put yourself in the role of the judge, or the justices, or the jurors. The decision-makers in these cases almost always are not specialists.”

In 2019, Waxman worked alongside his Wilmer partner Bill Lee in successfully defending Harvard at trial against allegations that the university’s diversity policies intentionally discriminated against Asian American students. He then handled the First Circuit appeal that led to the verdict being affirmed in November 2020. The case is now awaiting the justices’ review.

“He’s just gifted intellectually and gifted analytically, and he’s combined the intellectual and analytical abilities with terrific judgment,” says Lee, who also attended Harvard with Waxman.

Waxman’s prodigious research isn’t limited to his cases. He officiated the wedding of Lee’s daughter on Martha’s Vineyard, and when Lee arrived half

an hour before the start of the event, he found his friend sitting under a tree on the computer. Lee first scolded him for working, and then, learning that Waxman was instead laboring over the service, reminded him that he'd handled 75 high court oral arguments.

"He said to me, 'No, this is my first wedding ceremony, I'm going to get it right,'" Lee recalls, adding that Waxman had researched how he and his wife, along with their future in-laws, had met, using the details to design his own service.

Waxman is no less solicitous with his own family. His wife, Debbie, attends nearly all of his Supreme Court arguments, and regardless of his client, the pair has lunch together afterward. Gorelick, meanwhile, had to reproach him for his zealous cheering every weekend when his daughter Sarah, the goalkeeper for the University of Pennsylvania lacrosse team, led the Quakers to two consecutive Ivy League titles.

"Every Monday he would come back to the firm with no voice," she recalls. "I said, 'Dear friend, you are an oral advocate. You have to find some different way of supporting your daughter.'"

Regardless of the quality of his voice, that advocacy has been felt in some of the most politically significant cases of the past two decades. One standout was Waxman's successful defense of the Bipartisan Campaign Reform Act of 2002, popularly known as McCain-Feingold, before the high court. Arguments were broken into

two parts, with Solicitor General Ted Olson and deputy Solicitor General Paul Clement splitting the Federal Election Commission's case, while Waxman took on both.

"The brief and oral arguments were the best I've ever seen in campaign finance law," says Fred Wertheimer, the founder of reform group Democracy 21, which played a role in both the legislative and court fights over the law. "There's no other lawyer than Seth that I would want to be working with to defend our democracy and the integrity of our political system. He is the classic example of the super lawyer. The only thing he can't do is put on a cape and fly."

That work to preserve the fabric of American democracy hasn't ceased in recent years. In 2020, Waxman assembled a team of several hundred lawyers focused on ensuring the integrity of the most recent presidential election, both before and after votes were cast. He estimated that he personally put 1,000 hours into the fight last year. And the stakes continue to grow, giving Waxman pause at the notion of receiving a lifetime achievement recognition.

"A significant part of my immediate past lifetime and future lifetime is directed at making sure our system of elective participatory democracy continues to be available to people who are eligible to vote and that the votes, as accurately tabulated, truly determine the outcome of elections," he says.