

# Judge Wilkey's Contributions to International Law and the Foreign Relations Law of the United States

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Many federal judges treat international law like many historians treat military history: as "law" or "history" in name only, comprising "great" works not worth knowing and arcane intricacies not worth understanding. But not Malcolm Richard Wilkey. During his more than fourteen years in judicial robes, Judge Wilkey spent nearly as much time learning and loving international law as he spent learning and loving military history. And when he retired from active service on the United States Court of Appeals for the District of Columbia Circuit in December 1984 (only to be called from retirement less than a year later to serve as United States Ambassador to Uruguay), Judge Wilkey left behind a reputation as one of the foremost students of international and foreign relations law ever to have graced the federal bench.

Looking back, one cannot be surprised by Judge Wilkey's legacy, for few federal judges have assumed office so heavily steeped in international law and lore. Even before he took the bench, Malcolm Wilkey had enjoyed not one, but three, legal careers, having split twenty-two years almost evenly among private practice in Houston, the Department of Justice, and the general counsel's office at Kennecott Copper Corporation. In these prejudicial incarnations, Judge Wilkey had practiced both public and private international law. As assistant attorney general in charge of the Office of Legal Counsel, he had represented the United States at the 1959 United Nations Conference on Judicial Remedies Against Abuse of Administrative Authority and as Reporter to the Commission on International Rules of Judicial

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Procedure.<sup>1</sup> At Kennecott, General Counsel Wilkey had not only worked on the Rule of Law and International Law Committees of the Association of the Bar of the City of New York, but had also served as secretary of the ABA's Section of International and Comparative Law and corporate affairs editor of the section's journal, *The International Lawyer*, signaling a commitment to international legal scholarship that would span his lifetime.<sup>2</sup>

Tempered by these international experiences, and blessed with an equally impressive background in public and private *domestic* law,<sup>3</sup> the future judge came to the bench in March 1970 with an unusually coherent world view about world law. In Judge Wilkey's view, humankind lives in a global community characterized by economic and political interdependence and regulated by law. In a stream of scholarly opinions written during the next fifteen years, Judge Wilkey honed and polished that world view, and in the process, helped shape the evolution of

1. Others of Judge Wilkey's accomplishments at the Office of Legal Counsel are recounted in Olson, *Judge Wilkey and the Office of Legal Counsel*, 1985 B.Y.U. L. REV. 607.

2. One measure of Judge Wilkey's devotion to international legal scholarship is that more than sixteen years separate his first contribution to *The International Lawyer* from his most recent. Compare Wilkey, *The Deep Ocean: Its Potential Mineral Resources and Problems*, 3 INT'L LAW. 31 (1968), with Wilkey, *Transnational Litigation—Part II: Perspectives from the U.S. and Abroad: United States of America*, 18 INT'L LAW. 779 (1984). In addition to his teaching and lecturing in international law, his writings in the field have been voluminous, running the gamut from comparative law, see Wilkey, *Juridical Background and Decision-making*, JURIDISKA FÖRENINGEN I FINLAND, reprinted in 51 DEUTSCH RICHTERZEITUNG 293 (1973); to transnational litigation, see Wilkey, *Transnational Litigation—Part I: Transnational Adjudication: A View from the Bench*, 18 INT'L LAW. 541 (1984); to the law of the sea, see Wilkey, *The Deep Ocean: Its Potential Mineral Resources and Problems*, 3 INT'L LAW. 31 (1968); Wilkey, *The Role of Private Industry in the Deep Ocean*, in PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS IN 1969, at 55 (1969); to the *Restatement of the Foreign Relations Law of the United States (Revised)*, see Wilkey, *Sections of the Revised Draft Restatement Arousing Interest, Comment, and Controversy*, 1983 PROC. AM. SOC'Y INT'L L. 77; Letter from the Honorable Malcolm R. Wilkey to the Chief Reporter, reprinted in Maier, *Resolving Extraterritorial Conflicts, or "There and Back Again,"* 25 VA. J. INT'L L. 7, 43 app. (1984); to international antitrust, see Wilkey, *American Antitrust: Adjusting Conflicts with Other Legal Systems*, in PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS IN 1985, at \_\_\_\_ (1985) (forthcoming).

3. Other articles in this tribute testify to Judge Wilkey's extraordinary versatility in domestic law. E.g., Ayer, *Judge Wilkey's Contributions to Criminal Law*, 1985 B.Y.U. L. REV. 635; Matthews, *Judge Wilkey's Contributions to the Cause of Justice Through Improving Competence in the Federal Forum*, 1985 B.Y.U. L. REV. 657; Rosenthal, *Judge Wilkey's Decisions on Administrative Law, The Freedom of Information Act, and The Relations Between the Three Branches of Government*, 1985 B.Y.U. L. REV. 613.

that restless body of jurisprudence now styled the "foreign relations law of the United States."

Judge Wilkey's world view incorporates four simple, but fundamental, tenets: (1) domestic courts have a crucial role to play in the resolution of transnational disputes; (2) in resolving such disputes, conscientious "transnational adjudicators"<sup>4</sup> must seek guidance in international as well as domestic law; (3) such adjudicators must understand and accept the limitations placed upon their role by the inherently political nature of many transnational disputes; and (4) notwithstanding these limits, federal judges adjudicating such disputes are duty-bound to uphold the United States Constitution as well as the rule of law.

Although these four strands run throughout the corpus of Judge Wilkey's opinions on international and foreign relations law,<sup>5</sup> they emerge most powerfully from his three most exhaustive, and perhaps best-known, international law opinions: *FTC v. Compagnie de Saint-Gobain-Pont-a-Mousson*,<sup>6</sup> *Laker Air-*

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4. The phrase is Judge Wilkey's. See Wilkey, *Transnational Litigation—Part I: Transnational Adjudication: A View from the Bench*, 18 INT'L LAW. 541 (1984).

5. During his judicial career, Judge Wilkey wrestled with some of the most vexing international law issues of our time, surveying such diverse topics as conflicts of jurisdiction (or "extraterritoriality"), the law of executive agreements, the act of state doctrine, the immunity of international organizations, and the application of the doctrine of forum non conveniens in transnational litigation. See, e.g., *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500 (D.C. Cir. 1984) (en banc), *vacated and remanded for reconsideration in light of subsequent legislation*, 105 S. Ct. 2353 (1985) (act of state doctrine, political question doctrine, equitable discretion in enjoining U.S. military training activity on foreign soil); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909 (D.C. Cir. 1984) (international conflict of antitrust jurisdiction and antisuit injunctions); *Mendaro v. World Bank*, 717 F.2d 610 (D.C. Cir. 1983) (immunity of international organization); *Collins v. Weinberger*, 707 F.2d 1518 (D.C. Cir. 1983) (relationship between federal regulation governing employment on U.S. overseas military bases and executive agreement); *Tahan v. Hodgson*, 662 F.2d 862 (D.C. Cir. 1981) (enforcement of foreign judgment); *Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n*, 647 F.2d 1345 (D.C. Cir. 1981) (separate opinion) (extraterritorial application of U.S. environmental laws to export of nuclear reactor); *Pain v. United Technologies Corp.*, 637 F.2d 775 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981) (standard to be applied on forum non conveniens dismissal of transnational products liability suit); *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300 (D.C. Cir. 1980) (relevance of international law to extraterritorial service of agency subpoena); *Radlinska v. Secretary of Health, Educ. and Welfare*, 454 F.2d 1043 (D.C. Cir. 1971) (entitlement of foreign mother to pension award upon death of American-resident son).

6. 636 F.2d 1300 (D.C. Cir. 1980). More than a score of subsequent state and federal court decisions have cited Judge Wilkey's opinion in this case, which has also attracted extensive law review analysis. See, e.g., Gordon, *Current Legal Developments: International Law in American Courts: Some Highlights of 1980*, 15 INT'L LAW. 265, 267-77 (1982); Oliver, *International Law and Foreign Investigatory Subpoenas Sought to Be Served Without the Consent or Cooperation of the Territorial Sovereign: Impasse or*

*ways Ltd. v. Sabena, Belgian World Airlines,*<sup>7</sup> and *Ramirez de Arellano v. Weinberger.*<sup>8</sup>

*Accommodation?*, 19 SAN DIEGO L. REV. 409 (1982); Note, *United States Foreign Subpoena Power Subdued: The Case of the Federal Trade Commission v. Compagnie de Saint-Gobain-Pont-a-Mousson*, 8 BROOKLYN J. INT'L L. 499 (1982); Note, *Federal Trade Commission v. Compagnie de Saint-Gobain-Pont-a-Mousson: International Service of Administrative Process*, 16 GEO. WASH. J. INT'L L. & ECON. 119 (1981); Note, *Extraterritorial Extension of FTC Subpoena Power: F.T.C. v. Compagnie de Saint-Gobain-Pont-a-Mousson*, 7 N.C.J. INT'L L. & COM. REG. 143 (1982); Recent Developments, *International Trade: FTC Service of Subpoenae Abroad*, 22 HARV. INT'L L.J. 458 (1981); Recent Decision, *Extraterritorial Service of Administrative Subpoenas: F.T.C. v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 13 LAW & POL'Y IN INT'L BUS. 847 (1981); Recent Developments, *Service of Process Abroad—Investigatory Subpoena Served by United States Agency on French Corporation in France Constituted a Violation of International Law*, 16 TEX. INT'L L.J. 565 (1981); Recent Decisions, *Trade Regulation—Use of Registered Mail by Federal Trade Commission to Subpoena Foreign Citizens Abroad Violates International Law*, 14 VAND. J. TRANS. L. 663 (1981).

7. 731 F.2d 909 (D.C. Cir. 1984). Although of more recent vintage than *Saint-Gobain*, *Laker* has also begun to arouse extensive scholarly commentary. See, e.g., Beckett, *Transnational Litigation—Part II: Perspectives from the U.S. and Abroad: United Kingdom*, 18 INT'L LAW. 773 (1984); Leigh, *Judicial Decisions*, 78 AM. J. INT'L L. 666 (1984); Maier, *Resolving Extraterritorial Conflicts, or "There and Back Again,"* 25 VA. J. INT'L L. 7 (1984); Meessen, *Antitrust Jurisdiction Under Customary International Law*, 78 AM. J. INT'L L. 783 (1984); Rogers, *Still Running Against the Wind: A Comment on Antitrust Jurisdiction and Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 50 J. AIR L. & COM. 931 (1985); Note, *Holding the Antitrust Line: Laker Airways v. Sabena, Belgian World Airlines*, 10 N.C.J. INT'L L. & COMP. REG. 251 (1985); Note, *Injunctions Against the Prosecution of Litigation Abroad: Towards a Transnational Approach*, 37 STAN. L. REV. 155, 160-62 (1984); Note, *Antisuit Injunctions and International Comity*, 71 VA. L. REV. 1039 (1985).

8. 745 F.2d 1500 (D.C. Cir. 1984) (en banc), *vacated and remanded for reconsideration in light of subsequent legislation*, 105 S. Ct. 2353 (1985); see also *Ramirez de Arellano v. Weinberger*, 724 F.2d 143, 156 (D.C. Cir. 1983) (Wilkey, J., dissenting from panel opinion).

In the field of transnational litigation, a fourth Wilkey opinion, *Pain v. United Technologies Corp.*, 637 F.2d 775 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981), has gained a prominence that perhaps rivals that of the three discussed above. In *Pain*, Judge Wilkey set forth a four-part test to govern forum non conveniens motions in suits involving foreign and American plaintiffs suing American manufacturers in United States courts for torts occurring overseas. See *id.* at 784-85; see also *Nalls v. Rolls-Royce Ltd.*, 702 F.2d 255 (D.C. Cir.) (statement of Wilkey, J., as to reasons for voting for en banc consideration, clarifying how the *Pain* test should be applied), *cert. denied*, 461 U.S. 970 (1983).

A computer-assisted search reveals that the *Pain* test, or its underlying reasoning, has been cited in more than 50 subsequent state and federal decisions, most prominently by the Supreme Court in its leading recent decision on forum non conveniens, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250, 256, 259 (1981). Recent litigation spawned by mass air disasters and the deadly emissions from Union Carbide's factory in Bhopal, India has enhanced *Pain's* significance. See, e.g., Dhavan, *For Whom? And For What? Reflections on the Legal Aftermath of Bhopal*, 20 TEX. INT'L L.J. 295, 304 (1985); Tompkins, *The Doctrine of Forum Non Conveniens in the Litigation of Foreign Aviation Tort Claims in the United States*, 2 NOTRE DAME INT'L & COMP. L.J. 19, 36-38

The first two principles surfaced in *Saint-Gobain*, which arose from a French holding company's challenge to the Federal Trade Commission's use of registered mail to serve an investigatory subpoena upon the company's Paris headquarters. Despite the company's claim that Congress had not authorized this method of overseas subpoena service, the commission successfully petitioned the United States District Court for the District of Columbia for orders enforcing the subpoena.<sup>9</sup>

In an opinion vacating the enforcement orders, Judge Wilkey acknowledged that "on the surface this question appears to rest solely upon statutory interpretation."<sup>10</sup> But rather than analyzing that question purely in terms of domestic law, Judge Wilkey's "answer to it [was] primarily guided by [a] recognition of established and fundamental principles of international law,"<sup>11</sup> which, his research showed, "disfavor methods of extra-territorial subpoena service circumventing official channels of judicial assistance, oppose judicial enforcement of investigatory subpoenas abroad, and prohibit the particular method of subpoena service employed here."<sup>12</sup> Construing the FTC's subpoena service provision in light of these principles of international law, Judge Wilkey concluded that Congress had not intended to authorize the FTC to serve investigatory subpoenas directly on citizens of other countries by registered mail.<sup>13</sup>

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(1984); Weinberg, *Insights and Ironies: The American Bhopal Cases*, 20 TEX. INT'L L.J. 307, 313-15 (1985); Note, *Forum Non Conveniens: Limiting Access to Federal Courts for Transnational Disputes*, 10 DENVER J. INT'L L. & POL'Y 379 (1981); Note, *Forum Non Conveniens and Foreign Plaintiffs: Addressing the Unanswered Questions of Reyno*, 6 FORDHAM INT'L L.J. 577, 579 (1983) (discussing *Pain*).

9. *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, No. 78-0194 (D.D.C. Feb. 14, 1980) (order enforcing subpoena as modified); *FTC v. Compagnie De Saint-Gobain-Pont-A-Mousson*, No. 78-0194 (D.D.C. Sept. 29, 1978) (order enforcing subpoena as modified).

10. *FTC v. Compagnie de Saint-Gobain-A-Mousson*, 636 F.2d 1300, 1304 (D.C. Cir. 1980).

11. *Id.*

12. *Id.* at 1310. In reaching this conclusion, Judge Wilkey's opinion canvassed opinions of the Permanent Court of International Justice, Oppenheim's *International Law*, the *Recueil des Cours*, and various reports of Conferences of the International Law Association. See *id.* at 1313-18. *Saint-Gobain* was also the first American judicial opinion to analyze a question of international jurisdiction in terms of the tripartite distinction between jurisdiction to prescribe, jurisdiction to enforce, and jurisdiction to adjudicate that was later enshrined in § 401 of *Restatement of the Foreign Relations Law of the United States (Revised)*. Compare *Saint-Gobain*, 636 F.2d at 1315 & n.78, 1318 & n.97 with RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) § 401 (Tent. Draft No. 6, 1985).

13. Congress has now expressly provided the missing authority in a statute enacted

If *Saint-Gobain* revealed Judge Wilkey's convictions that federal judges should not only decide transnational cases, but should also bring international legal analysis to bear upon such decisions, *Laker* evinced the third aspect of his world view: his awareness of the limitations inherent in that judicial role. In *Laker* the liquidator of Sir Freddie Laker's now-defunct "Sky-train" air service brought an antitrust suit in the United States District Court for the District of Columbia against competing American and foreign airlines, alleging that defendants had engaged in predatory pricing designed to destroy Laker's low-fare transatlantic service. The foreign defendants countersued in the United Kingdom's High Court of Justice and obtained an injunction and a series of restraining orders against Laker's interference in their English proceedings. Laker in turn secured a protective injunction from the United States district court, preventing the foreign defendants from acting abroad to interfere with the district court's jurisdiction over Laker's suit.<sup>14</sup>

Writing for the District of Columbia Circuit majority, Judge Wilkey affirmed, concluding that the district court was entitled to issue the injunction both to preserve its rights to exercise United States antitrust jurisdiction as well as to prevent evasion of public policies important to the United States.<sup>15</sup> Although he recognized that "in the interest of amicable relations [with the United Kingdom], we might be tempted to defuse unilaterally the confrontation by jettisoning our jurisdiction," Judge Wilkey announced that "we could not, for this is not our judicial role. The problem in this case is essentially a political one . . . ."<sup>16</sup> Judge Wilkey's analysis led him to conclude that domestic judges cannot resolve true conflicts of international jurisdiction by attempting to weigh and balance two nations' competing regulatory interests, for such determinations are essentially political. "Judges," he wrote,

"are not politicians. The courts are not organs of political compromise . . . . [B]oth institutional limitations on the judicial

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after the issuance of the subpoena disputed in *Saint-Gobain*. See Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-252, § 13, 94 Stat. 374, 380-85, cited in *Saint-Gobain*, 636 F.2d at 1325 n.140.

14. *Laker Airways Ltd. v. Pan American World Airways*, 559 F. Supp. 1124 (D.D.C. 1983).

15. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927-33 (D.C. Cir. 1984).

16. *Id.* at 953.

process and Constitutional restrictions on the exercise of judicial power make it unacceptable for the Judiciary to seize the political initiative and determine that legitimate application of American laws must evaporate when challenged by a foreign jurisdiction."<sup>17</sup>

Even as *Laker* was stating this principle of deference, however, a case simultaneously under submission was clarifying its reach. The third case in the trilogy, *Ramirez de Arellano v. Weinberger*,<sup>18</sup> provided Judge Wilkey with the fourth and final precept of his world view: that in adjudicating transnational disputes, federal judges must never allow the doctrine of judicial deference to outweigh their duty to uphold the United States Constitution and the rule of law. Ramirez, a United States citizen, claimed that the United States government had established and was unconstitutionally operating a military training center for Salvadoran soldiers on his private cattle ranch in Honduras—activities which, if his allegations were true, would essentially “[destroy] his life’s work.”<sup>19</sup> When Ramirez sought to en-

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17. *Id.* at 953-54. Judge Wilkey’s critique of judicial interest balancing in *Laker* also fueled an ongoing scholarly debate over § 403 of the *Restatement of the Foreign Relations Law of the United States Revised*. See RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) § 403 (Tent. Draft No. 6, 1985). That section declares that the reasonableness of a nation’s exercise of prescriptive jurisdiction should be judged by evaluating and weighing “all the relevant factors, including, where appropriate” the competing interests of the concerned states in regulating a given activity. *Id.* § 403(2). By questioning the propriety of judicial interest balancing, one commentator has noted, Judge Wilkey’s *Laker* opinion provided “[a] principal impetus” to revisions made to § 403 of the *Revised Restatement*, Maier, *supra* note 7, at 33, and “exerted a major influence on the current form and substance of section 403.” *Id.* at 36; see also *id.* (“Judge Wilkey’s analysis [in *Laker*] is absolutely accurate.”). In the process, another commentator has asserted, *Laker* “seriously challenged” the status of *Timberlane Lumber Co. v. Bank of Am.*, 549 F.2d 597 (9th Cir. 1976); the “classic” U.S. opinion on judicial interest balancing, as the “leading precedent” on national conflicts of prescriptive jurisdiction. See Meessen, *supra* note 7, at 783.

While Judge Wilkey’s jurisdictional analysis in *Laker* remains controversial, subsequent events in that case have vindicated his judgment protecting United States jurisdiction. Acceding to American jurisdiction, the British House of Lords ultimately allowed *Laker*’s appeal and discharged the injunction against *Laker*’s prosecution of the United States litigation, holding that only the United States courts were competent to decide the merits of the antitrust claim. See *British Airways Bd. v. Laker Airways Ltd.*, [1984] 3 W.L.R. 413 (H.L.). In response, the United States district court issued another injunction prohibiting British interference in the litigation, which the parties ultimately settled. See *Laker Airways Ltd. v. Pan American World Airways*, 596 F. Supp. 202 (D.D.C. 1984).

18. 745 F.2d 1500 (D.C. Cir. 1984) (en banc), *vacated and remanded for reconsideration in light of subsequent legislation*, 105 S. Ct. 2353 (1985).

19. *Id.* at 1505.

join the secretary of defense and other executive branch officials from their Honduran activities, the district court dismissed his complaint as raising a nonjusticiable political question.<sup>20</sup> A District of Columbia Circuit panel initially affirmed, holding declaratory and injunctive relief to be inappropriate,<sup>21</sup> but Judge Wilkey's impassioned dissent<sup>22</sup> provoked reversal upon rehearing en banc.

Judge Wilkey's en banc opinion demonstrated that his years in government service had neither lessened his commitment to constitutional rights nor inspired in him blind deference to executive prerogative. Declaring that "[t]he Executive's power to conduct foreign relations free from the unwarranted supervision of the Judiciary cannot give the Executive *carte blanche* to trample the most fundamental liberty and property interests of this country's citizenry,"<sup>23</sup> Judge Wilkey found "[t]he Judiciary . . . fully empowered to vindicate individual rights overridden by specific, unconstitutional military actions."<sup>24</sup> Although the Supreme Court ultimately vacated and remanded the en banc judgment for reconsideration in light of subsequent legislation,<sup>25</sup> the Pentagon's decision to shut the military training center in the summer of 1985 disclosed that Judge Wilkey's voice had not gone unheard.<sup>26</sup>

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20. *Ramirez de Arellano v. Weinberger*, 568 F. Supp. 1236 (D.D.C. 1983).

21. *Ramirez de Arellano v. Weinberger*, 724 F.2d 143 (D.C. Cir. 1983).

22. *Id.* at 156 (Wilkey, J., dissenting).

23. *Ramirez*, 745 F.2d at 1515.

24. *Id.* at 1543. Responding to the dissenters' claim that his opinion erroneously assumed that "[t]he judiciary . . . has some *special* charter to keep the Executive in line," *id.* at 1566 (Scalia, J., dissenting) (emphasis in original), Judge Wilkey replied: "[T]he Judiciary does operate under a '*special* charter' to help preserve the fundamental rights of this nation's citizens. That charter is commonly known as the United States Constitution." *Id.* at 1543-44 (emphasis in original).

25. *See* 105 S. Ct. 2353 (1985) (directing the D.C. Circuit to reconsider its opinion and judgment in light of § 127 of the Foreign Assistance and Related Programs Appropriations Act, 1985, Pub. L. No. 98-473, 98 Stat. 1884, 1893-94 (1984), and other events occurring since the date of the en banc judgment). Congress enacted the cited legislation, a proviso to the 1985 continuing appropriations measure, at least partially in response to the *Ramirez* litigation. In relevant part, that law provided that the president could not expend or obligate any of the funds made available in the appropriations measure for construction or operation of the Honduran military training center until he had provided the House and Senate Appropriations Committees with "a determination that the Government of Honduras recognizes the need to compensate as required by international law the United States citizen [Ramirez] who claims injury from the establishment and operation of the existing Center." 98 Stat. at 1894.

26. *See* Omang, *U.S. to Shut Honduras Training Site*, Wash. Post, Mar. 16, 1985 at A24, col. 1. On remand, the United States government asserts that this decision has



In each of these three opinions, Judge Wilkey applied his world view to guide the bench, bar, and academia to a fuller understanding of how transnational legal principles—the body of law that encompasses international and foreign relations law—properly apply to private and governmental litigation before United States courts. Yet Judge Wilkey provided that guidance not only publicly, in the pages of the *Federal Reporter Second*, but also privately, in the halls of the American Law Institute, where he aired his views at meetings of the board of advisers of the *Restatement of the Foreign Relations Law of the United States (Revised)*. As the only sitting judge advising that *Restatement*,<sup>27</sup> Judge Wilkey exerted unusual influence, for he offered the reporters a unique perspective on theory—how his own decisions best fit within the jigsaw puzzle of existing precedent—as well as practice—how transnational adjudicators like himself would likely apply the *Restatement's* text in future cases.<sup>28</sup>

Following his farewell to Washington, Judge Wilkey passed most of 1985 as a Visiting Fellow at Wolfson College, Cambridge University. But to many of his admirers, the placid groves of academe seemed too small a stage for a man of his adventurous leanings, just as judicial robes sometimes seemed too confining for someone of his boundless energies. It therefore seems fitting that Judge and Mrs. Wilkey should now embark on yet another international law career, not as transnational adjudicators, but as transnational actors, with the United States Embassy in Montevideo as their stage.<sup>29</sup>

Judge Wilkey did not know that he was addressing himself

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mooted the case. See Appellees' Supplemental *En Banc* Brief on Remand From the Supreme Court of the United States, *Ramirez de Arellano v. Weinberger*, No. 83-1950 (D.C. Cir.).

27. Judge Wilkey's prominence as a transnational adjudicator prompted not only his appointment to the *Restatement's* board of advisers, but also President Reagan's April 1981 decision to appoint him as one of the three original American arbitrators on the United States-Iran Claims Tribunal. After evaluating the effect his absence would have on the D.C. Circuit's caseload, Judge Wilkey withdrew from the appointment without serving on the tribunal.

28. One example of Judge Wilkey's influence on the *Restatement* is discussed in Maier, *supra* note 7, at 36 (*Laker's* "influence was not lessened by the fact that Judge Wilkey was also one of the official ALI advisers to the Revised Restatement."). See also *supra* note 17. For samples of Judge Wilkey's written critiques of the *Restatement*, see sources cited in *supra* note 2.

29. After the Senate unanimously confirmed Judge Wilkey's nomination as Ambassador to Uruguay on October 25, 1985, Chief Justice Warren Burger swore him in to that post on November 8, 1985.

when he wrote in *Laker*: “[D]iplomatic and executive channels are, by definition, designed to exchange, negotiate, and reconcile the problems which accompany the realization of national interests within the sphere of international association. These forums should and, we hope, will be utilized to avoid or resolve conflicts . . . .”<sup>30</sup> As he begins his fifth career in international law, we can expect Ambassador Wilkey to take Judge Wilkey’s wise words to heart, and to write many more chapters of contributions to international law and the foreign relations law of the United States.

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30. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 955 (D.C. Cir. 1984).