I love the law and like solving problems. And certainly for a racial minority, I think the rule of law is the way we bring about justice, equality and inclusion in the U.S. and throughout the world.

– Gabrielle Kirk McDonald

Judge Gabrielle Kirk McDonald: A Biographical Note

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Judge Gabrielle (Gaby) Kirk McDonald is an African-American woman and legal pioneer who progressively shaped the development of civil rights law in the United States, international criminal law, and international arbitration law. Whether defending civil rights statutes in the United States as a litigator or federal judge in Texas or adjudicating war crimes or arbitration awards in The Hague, Judge McDonald has dedicated her life to the rule of law and justice for all. In September 2013, she retired from the Iran-United States Claims Tribunal where she had served as one of three American Arbitrators since 2001. In November 1993, Judge McDonald was one of the first eleven judges elected by the United Nations General Assembly to serve on the International Criminal Tribunal for the former Yugoslavia (ICTY), the first international war crimes tribunal since the end of World War II, in The Hague, Netherlands, becoming its president in 1997. Whether advocating for the enforcement of civil rights as an NAACP Legal Defense and Educational Fund lawyer or as a judge with the ICTY and the International Criminal Tribunal for Rwanda (ICTR), she has blazed a dynamic trail in the defense of justice that has elevated civil rights, human rights, and women’s rights norms. Judge McDonald is the mother of a son, Michael, who is an attorney, and a daughter, Stacy, who is a screenwriter and former attorney.

Judge McDonald was born on April 12, 1942, in St. Paul, Minnesota. As a young child, she moved with her mother, Frances English Kirk, and brother, James Kirk III, to Manhattan, then Riverdale, New York, at the age of eight, and finally to Teaneck, New Jersey, following her parents’ divorce. She
graduated from Teaneck High School. Gaby McDonald was tall, athletic, and widely popular among students. She was one of only two African-American students at the school, where she played field hockey and was elected president of the girls’ leadership club. Frances Kirk worked as a secretary for several newspapers, magazines, and publishers, such as Prentice Hall. James Kirk II was a World War II veteran, and, like his father, he worked as a porter or dining car waiter for the Northern Pacific Railway. Both parents and grandparents played critical roles in nurturing a strong sense of self-esteem, motivation, pride, equality, and justice in Gaby and James. Her mother, who was a formidable influence on her, was a very light-skinned biracial woman of Swedish (mother) and African-American (father) ancestry during a time when interracial marriage was considered taboo in the United States. Judge McDonald inherited her disdain for injustice and the courage to combat it from her mother. (Frances once famously challenged a racist taxi driver who, thinking Frances Kirk was white, apologized for the scent in his car because the previous passenger was an African American.) In an article in the MPLS St. Paul Magazine, Kitty Felde noted that “[w]hen beauticians balked at working on Gaby’s hair, Frances calmly but firmly insisted. In New York, Gaby encountered the word ‘nigger’ for the first time. That led to fistfights that the mild-mannered Gaby didn’t like and didn’t win.” Her personal and family experiences and her mother’s example of hard work and audacity, combined with a solid secondary school education, inspired her to attend law school and become a civil rights lawyer.

After attending Boston University (1959–1961) and Hunter College in New York (1961–1963), Judge McDonald enrolled at Howard University Law School and earned an LL.B. in 1966. She served as research assistant to Professor Jeanus Parks in her first year, and, by her second year, she earned a tuition scholarship from the Ford Foundation. Judge McDonald served as secretary to the student bar association and Notes Editor for the Howard Law Journal before graduating cum laude and first in her class in 1966, at a time when there were only 142 Black women lawyers in the country. This ranking would be only one of the many firsts achieved during her impressive legal career. Howard University Law School was a vital think tank of national and international civil and human rights movements. She was taught and mentored by Patricia Roberts Harris, former professor (beginning in 1961) and Dean of the Howard Law School (1969–1972), former U.S. Secretary of Housing and Urban Development (1977–1979), and U.S. Secretary of Health, Education, and Welfare (1979–1980) during the Carter Administration. In 1965, Harris was appointed U.S. Ambassador to Luxembourg under President Lyndon B. Johnson, making her the first African-American woman to
represent the United States as an ambassador. Under Harris’s tutelage, Judge McDonald’s intellectual development and passions were cultivated by one of the preeminent woman lawyers and public servants of the twentieth century. She dedicated herself to fulfilling these expectations.

After graduating from Howard, Gaby accepted a position as staff attorney with the NAACP Legal Defense and Educational Fund Inc. in New York. For three years, McDonald canvassed Alabama, Mississippi, and Georgia to assist local residents and lawyers with issues involving school desegregation, equal employment, housing, and voting rights. Moreover, she worked on some of the first plaintiff employment discrimination cases asserting violations of Title VII of the Civil Rights Act of 1964. In 1967, for example, she was the lead Legal Defense Fund (LDF) staff attorney in the suit against Philip Morris Companies Inc. for its discriminatory seniority system. It was the first significant plaintiff victory under Title VII.

In 1969, Judge McDonald established a private practice with her husband, Mark T. McDonald, in Houston, Texas. For nearly a decade, she secured numerous victories against firms such as the Monsanto Company and the Union Carbide Corporation. Her largest negotiated settlement of $1.2 billion from the Lone Star Steel Company provided salary arrears to 400 African-American steel workers. During this time, Judge McDonald had two children and taught labor law at the University of Texas. In the 1970s, she also taught several courses at the Texas Southern University Thurgood Marshall School of Law. Two years later, at the age of 37, President Jimmy Carter named her to the U.S. District Court in Houston, thus making her the first African-American woman on the federal bench in Texas history and the third African American to be appointed to the federal judiciary in the United States. During her tenure on the bench, Judge McDonald ruled, often quite controversially, on a wide variety of constitutional cases. In SDJ Inc. v. City of Houston, she ruled that a local ordinance regulating the location of strip clubs did not abrogate the Freedom of Expression clause of the Constitution. In another case, Judge McDonald dismissed a plea agreement for a three-year sentence between the U.S. Attorney and a sheriff who plead guilty to violating the civil rights of prisoners. In 1984, in the Le Roy v. City of Houston case, she refused to recuse herself on racial grounds after the Houston City Council asserted that, as a Black woman, she was a member of the class that would benefit from the suit (her decision was upheld by the Fifth Circuit Court). Judge McDonald stated that “if my race is enough to disqualify me hearing this case, then I must disqualify myself as well from a substantial portion of cases on my docket ... an action that would cripple my efforts to fulfill my oath as a federal judge.” There were also instances when discrimination cases
appeared on her docket, and she entertained various motions to recuse herself. For example, in *Vietnamese Fishermens Association v. The Knights of the Ku Klux Klan*, the movant in that case, the Grand Dragon, argued that her race would prevent her from being impartial. In this case, the Klan was interfering with and harassing Vietnamese fishermen. Even with the Grand Dragon’s claims and death threats to her and family, she refused to back down. She not only ruled in favor of the fishermen and determined that the Klan had interfered with their right to free competition, but she also ordered the Klan to close its paramilitary training camps. Concurrently, the former U.S. attorney in Houston, Daniel Hedges, praised her for “not permitting her civil rights background to cloud her judgment as a federal judge. She was always evenhanded.”

In 1988, she decided to retire from the bench. While maintaining a practice in Austin, Texas, she taught at Texas Southern University Thurgood Marshall School of Law and at St. Mary’s University School of Law. She taught courses in federal jurisdiction and procedure and various civil rights law seminars. In 1993, immediately after accepting a distinguished professorship at the Thurgood Marshall School of Law, the U.S. Department of State nominated her to serve as a judge for an international war crimes tribunal that was being formed by the United Nation’s Security Council. After she agreed, the UN General Assembly elected Judge McDonald by the largest number of votes of all judges of the newly formed ICTY. She would be the sole American on the court and one of only two women. In a few months, she was off to The Hague to help create the fledgling court. Not only did the ICTY have the barest of facilities and a budget of only $250,000, but its entire legal framework also needed drafting. As the only American judge on the world’s first truly international criminal court, Judge McDonald and ten other colleagues drafted the Tribunal’s rules of procedure and evidence. By 1997, the Tribunal’s budget had grown to $48 million, a legal framework was in place, and more than 70 indictments had been handed down.

Judge McDonald first served as presiding judge in the tribunal’s Trial Chamber II. In the role of presiding judge, she not only conducted evidence and deferral hearings in a number of cases, but she also heard the historic case of one of Bosnia’s most notorious criminals, Duško Tadić (pronounced Doosko TadiCH), the first trial of the ICTY (May 1997 verdict) and the first war crimes trial since Nuremberg. The rulings she made there as presiding judge helped establish the precedents and thus the policy, procedure, and

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1 The Nuremberg Trials were a series of military tribunals held by the victorious Allied forces of World War II that prosecuted, in 1945–46, members of the political, military, and economic leadership of defeated Nazi Germany.
practice of the ICTY, ICTR, and future international criminal courts, including the International Criminal Court (ICC). Judge McDonald’s experience as a civil rights lawyer and her emergence as an advocate during legal segregation in the United States prepared her to substantively confront the political and legal complexities inherent in establishing an international court charged with adjudicating terrible crimes birthed in the ethnopolitical conflict and carnage in the former Yugoslavia.

As presiding judge over Trial Chamber II, Judge McDonald directed proceedings over several high-profile cases including the Rajić case (September 1996), the Lasva Valley case (May 1995), and Erdemović case (May 1996), as well as preliminary motions in the Blaskić (July 1997), Dokmanović (July 1997), and Celebići cases. She is most famous for being the presiding judge in the Tadić case, which she ruled on after a year of reviewing thousands of documents and hearing hundreds of witnesses. In 1992, Tadić was found guilty of crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws and customs of war for the systematic beating and killing of Muslims in a Serb-run prison camp, among other places. He was sentenced to twenty years in prison. International commentators noted that, as presiding judge, Judge McDonald skillfully balanced her concern for the victims of the war crimes, especially rape victims, with scrupulous fairness and respect for the rights of the defendants. The ICTY’s findings in the Tadić case were significant in that they proved under international law the Serb policy of “ethnic cleansing” and set a precedent for further war crimes prosecutions and courts, including the ICTR and ICC. On May 20, 1997, Judge McDonald was re-elected for a second term on the tribunal and, on November 19, 1997, was nominated and elected by the judges on the court as the President. As President, she also presided over the Appeals Chamber, which also served as the Appeals Chamber for the ICTR in Arusha, Tanzania. The ICTR was modeled after the Yugoslav Tribunal to bring to justice those responsible for the Rwandan Genocide and other serious violations of international law in Rwanda.

As presiding judge of the Appeals Chamber, Judge McDonald ruled on several interlocutory appeals from the Yugoslavia and Rwanda Tribunals. Most notably, the Bagasora case highlighted the very different roles of the

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2 The Rajić case represented the first Rule 61 hearing that considered the agency concept for a finding that an armed conflict is international in character.

3 In the Blaskić case, a series of hearings on the subpoena issue led to a groundbreaking Decision by the Appeals Chamber regarding the authority of the Tribunal to issue binding orders to States. During preliminary hearings, the first challenge to the arrest of an indictee was made in the Dokmanović case. Preliminary hearings in the Celebići cases interpreted and applied major rules of procedure and evidence of the Tribunal.
Office of the Prosecutor and the Chambers, and, in the Barayagwiza case, the Trial Chamber was directed to release one of the accused because he was held in illegal provisional detention by the ICTR for eleven months without being formally charged and an additional three months awaiting his arraignment. During her term as president, Judge McDonald consolidated the operation of the Tribunal, making it more effective and efficient. She led efforts to add two new courtrooms to handle the increased number of ongoing trials, and additional trial and appeal chamber judges were added to the ICTY by the UN Security Council. She also launched a public outreach campaign to educate the global public, especially Yugoslavians, about the ICTY. She established a vibrant Outreach Program aimed at informing the peoples of the former Yugoslavia of the work of the Tribunal and to contest propaganda and misunderstandings about its mission and activities.

In 1999, at the end of her tenure as president of the ICTY and ICTR, Judge McDonald argued that a permanent court with stronger backing from the UN would have brought war criminals to trial more quickly than had been the case in Serbia and in the similar tribunal dealing with atrocities in Rwanda. Such insights informed her role as presiding judge of the Women’s International War Crimes Tribunal for the Trial of Japanese Military Sexual Slavery, established by a group of non-Western, regionally based nongovernmental organizations to account for the abhorrent treatment of Korean women and girls (aka “Comfort Women”) held as sexual slaves by the government of Japan during World War II. The Women’s International War Crimes Tribunal for the Trial of Japanese Military Sexual Slavery seemingly influenced the ICC drafters of the Rome Statute to include sexual slavery (although its definition is unnecessarily narrow) as a war crime and a crime against humanity, as well as shaped the international law principle of continuing harm. Judge McDonald was greatly moved by the courage of all of these women and civil society organizations that advocated for an ad hoc quasi-judicial process to address monumental historic injuries to themselves and their families and friends. The establishment of the ICC in 2002 crystallized Judge McDonald’s ideals about criminal justice.

Two years after she left the ICTY, she was called to serve on another historic tribunal, the Iran-United States Claims Tribunal, as one of three American Arbitrators and the only woman. She served as a judge on the Claims Tribunal until September 2013. The international tribunal, also based in The Hague, was established by agreement between Iran and the United States in 1981, and it has, since then, adjudicated claims by American and Iranian nationals for compensation for confiscated assets and claims by the governments against each other.
Judge McDonald resides in New York and remains steadfast in her support of international justice. In November 2011, at the ICTY annual Global Legacy Conference, she emphasized the importance of ensuring fairness in international prosecutions. Throughout her tenure on the ICTY and Iran-United States Claims Tribunal, Judge McDonald was committed to protecting the rule of law. As Matt Stearns of The Netherlander stated, “the law never let her down. It’s her talisman and her companion.” As Judge McDonald herself further reiterated, “I believe in the rule of law not just intellectually. It’s visceral for me, it’s in my heart and soul. … It’s what protects people from anarchy.” As far as her accomplishments in The Hague, the late Antonio Cassese, her colleague and the first president of the ICTY, wrote in the War Report, that she “is the best that America can offer: she is straightforward, direct, intelligent and hard-working; … she is firm in her conviction; she is principled but she is not jingoistic.” Secretary of State Madeleine Albright echoed Cassese at a dinner honoring Judge McDonald, stating that she was “one of the pioneering civil rights litigators in our country. And she has since become a pioneering justice for international war crimes law. … I am confident that she will continue to be a voice for justice wherever she goes.”

Judge McDonald has raised the consciousness of the American public about the workings of international tribunals, and her civil rights experience always comes into play, neatly joining her various professional accomplishments. “One of my major goals as an American,” Judge McDonald explained, “is to point out the obvious: these are groups of people, whose differences are based on ethnicity and religion, engaging in atrocities because of those differences. … We [Americans] have such seeds of divisiveness present in our society. … It calls to my mind, as a racial minority, things that have happened in the United States, including a failure to account for past events.”

Judge McDonald’s experience as a Black American woman has provided her with the insights, fortitude, intelligence, wisdom, and determination to be an international pioneer. She has received numerous awards and honors. The National Bar Association presented her with its first Equal Justice and Ronald Brown International Law Awards. The American Society of International Law honored her with the Goler Teal Butcher Award for Human Rights, and she received the 2001 Human Rights Award from the Minnesota Advocates for Human Rights. She was also presented with the American Bar Association Commission on Women in the Profession Margaret Brent Women Lawyers of Achievement Award. In 2007, she was a recipient of the first Women Groundbreakers in International Justice Award from the Open Society Institute. In 2008, Judge McDonald received the Dorothy I. Height Lifetime Achievement Award. She has received the Doctor of Law Honoris
Causa from various institutions, including the Georgetown University Law Center, the University of Notre Dame, Howard University, the Stetson College of Law, and Amherst College. She was a member of the board of trustees of Howard University, her alma mater, for 23 years and continues to be a trustee emerita. She was on the board of the American Bar Association Human Rights Center and the Genocide Prevention Task Force. She is a member of the board of directors of the American Arbitration Association and honorary president of the American Society of International Law. She is admitted to practice law in the states of New York and Texas.


She has never held political office. She is not the head of a multimedia entertainment empire. Yet, Gabrielle Kirk McDonald may be the most powerful African American women in the world.

Reflections on My Journey for Justice
Gabrielle Kirk McDonald

Black History means different things to Americans. Black Americans look to this occasion as a time to remind us of the rich heritage we have inherited. And, all Americans benefit from learning that African Americans have made so many contributions to this country and that our very diversity is a treasure. That is what the Black scholar and professor, Carter G. Woodson, intended when he established Black History Month.

Yet, annual events are not sufficient to bridge racial barriers that still exist. As U.S. Attorney General Eric Holder said in a Black History speech at the Department of Justice, if we are to get past the racial divide, we must make a conscious effort to discuss and understand it and, when needed, to confront it. And, we will not accomplish this unless we stop being cowards, as he put it, about discussing racial matters.

Black women have been trailblazers in the country since America’s founding. Our history dictates that from the sweltering heat of cotton plantations to the air-conditioned corridors of the White House, Black women have anchored their families while simultaneously surpassing racial and gender stereotypes to assume leadership positions throughout our society. We have done so even when it seems we are ignored; too often, it is to Black men that we turn for the story of Black America, and it is White women who are listened to on issues of gender equality.

African Americans have a tradition of telling stories from one generation to the next. It began at a time when it was a crime to teach a Black slave to read or write. It was the way we kept our history. I want to do that today. I want to speak to the life and work of two African-American women judges – first,
Constance Baker Motley played a pivotal role in this nation’s quest for justice and equality for African Americans. She was a generous friend and role model. After graduating from Columbia University School of Law, she joined the NAACP Legal and Educational Fund Inc. (LDF). She became the associate director-counsel under Thurgood Marshall and helped successfully wage a campaign to end officially mandated racial segregation in schools, buses, and lunch counters. She drafted the original complaint in Brown v. Board of Education, and gained the admission of James Meredith to the University of Mississippi – with the support, I should add, of 5,000 federal troops sent by President Kennedy. She argued a total of ten cases before the Supreme Court, winning nine of them. She visited the Reverend Dr. Martin Luther King in jail in Americus, Georgia. In her autobiography, Equal Justice Under Law, she wrote that she then realized, “that we did indeed have a new civil rights leader – a man willing to die for our freedom.”

President Johnson appointed her to the Southern District of New York in 1966; she was the first African-American woman to become an Article III judge. Judge Motely became Chief Judge in 1982. She passed away in 2005 at the age of 84.

Even after Judge Motley assumed the bench, however, she found that some doors were still closed to Blacks and women and that, for her, the position did not guarantee respect. I had similar experiences some thirteen years later. For example, in her autobiography, Judge Motley recounts that, in 1966, the U.S. Attorney’s office in the Southern District of New York had never assigned a woman to handle criminal cases. The only woman employed was limited to handling civil matters. When I joined the bench in 1979, there were no women Assistant U.S. Attorneys in our District. Times have certainly changed. Women have been appointed U.S. Attorneys throughout the Nation. Black women sit at the forefront of the American judiciary as judges and litigators, but more must be done to ensure African-American leadership in the justice system.