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## THE COURAGE OF COLLINS SEITZ

WILLIAM J. BRENNAN, JR.\*

**C**OURAGE. It is one of those words that has almost lost all meaning today. But it is the word that best exemplifies Collins Seitz.

A youthful Collins Seitz first wore judicial robes in 1946 as Vice Chancellor of the Delaware Chancery Court. Judge Seitz, who was elevated to Chancellor in 1951, authored numerous opinions that reflected his mastery of corporate law. He was later appointed to the federal bench where he served with distinction. One could fill a book with descriptions of his accomplishments both on and off the bench. Today, however, I want to focus on Judge Seitz's rulings in civil rights cases while on the state court. The story of Collins Seitz and the rights of black children in the days before *Brown v. Board of Education*<sup>1</sup> has been told many times.<sup>2</sup> I too have recounted these events before.<sup>3</sup> But this is a story that bears repeating for the benefit of a new generation of lawyers who have never seen de jure segregation first-hand. A generation that, thank goodness, may scarcely comprehend the concept of segregated restaurants, hotels, and water fountains. Indeed, I doubt that many of these young Americans understand what it was like in a world where the government forcibly separated its own citizens on the basis of race. I doubt that many of these young Americans are aware of the debt that they owe to people like Collins Seitz.

Vice Chancellor Seitz was the first state judge to desegregate a state-financed undergraduate university by court order. He issued that order in *Parker v. University of Delaware*<sup>4</sup> while still bound by rubric of "separate but equal" set forth in *Plessy v. Ferguson*.<sup>5</sup> Judge Seitz recognized that under the Supreme Court's then-controlling interpretation of the Equal Protection Clause, he was not "entitled to conclude that segregation alone violates that clause." But Collins Seitz had visited the state's white and black colleges and found the

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1. 347 U.S. 483 (1954).

2. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE* (1976).

3. William J. Brennan, Jr., *Collins Jacques Seitz*, 132 U. PA. L. REV. 1279 (1984).

4. 75 A.2d 225 (Del. Ch. 1950).

5. 163 U.S. 537 (1896).

black one "woefully inferior." On the basis of that finding, he ordered the university to admit the black plaintiffs. Simply rendering that decision was in itself a brave act. The courageousness of this decision can only be understood when one remembers that in 1950 the Delaware constitution required separate schools for black and white students.<sup>6</sup> Segregation was very much the order of the day. Vice Chancellor Seitz had the courage of his convictions and did what he thought was right in the face of a less than receptive public.

The *Parker* decision was not an isolated display of courage. In June of 1951, barely ten months after *Parker*, Judge Seitz's nomination to the post of Chancellor was pending before the integration-hostile Delaware State Senate. Collins Seitz continued to do what he thought was right. That June he gave a spellbinding commencement speech at the Salesianum School for Boys in Wilmington in honor of Father Thomas A. Lawless, who had worked to bring black students to that school. Vice-Chancellor Seitz's speech focused on the condition of blacks in Delaware and the nation. He asked:

How can we say that we deeply revere the principles of our Declaration and our Constitution and yet refuse to recognize those principles when they are to be applied to the American Negro in a down-to-earth fashion? During election campaigns and in Fourth of July speeches, many speakers emphasize that these great principles apply to all Americans. But when you ask many of these same speakers to act or vote so that those great principles apply in fact to Negro-Americans, you may be accused of being unfair, idealistic or even pro-Communist.

. . . A person has real moral courage when, being in a position to make decisions or determine policies, he decides that the qualified Negro will be admitted to a school or nursing [as had recently been done at St. Francis Hospital in Wilmington]; that the Negro, like the white, will receive a fair trial no matter what the public feeling may be; that every Catholic school, church and institution shall be open to all Catholics — not at some distant future time when public opinion happens to coincide with Catholic moral teaching — but now. Are these requests of our business, governmental and religious leaders too much? I think not.<sup>7</sup>

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6. Delaware Constitution of 1897, art. X, § 2, *reprinted in 2 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS* 260 (William F. Swindler ed., 1973).

7. KLUGER, *supra* note 2, at 433.

There were many members of the State Senate who disapproved of both the *Parker* decision and such public statements in favor of desegregation. Nevertheless, the State Senate, after some dramatic maneuvering, finally approved Collins Seitz's nomination.

Chancellor Seitz presided over two consolidated Delaware cases in which the NAACP sought to test the legality of segregated schools. In *Belton v. Gebhart*,<sup>8</sup> Judge Seitz once again grappled with the Equal Protection Clause and ordered that the segregated white schools admit black children. To Judge Seitz, the injustice was plain. He would later comment that he "found it inexcusable that the state would lend its support to dividing its citizens this way."<sup>9</sup> Chancellor Seitz followed his conscience and the law as far as it would take him. He gracefully brushed aside claims that Delaware was not "ready" for integrated education. "The application of Constitutional principles is often distasteful to some citizens, but that is one reason for Constitutional guarantees. The principles override transitory passions."<sup>10</sup>

Judge Seitz reached the factual conclusion that "State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated."<sup>11</sup> But he was still constrained by *Plessy* and its progeny. No doubt reluctantly, he had to conclude that the Supreme Court of the United States had implicitly recognized that there could be separate but equal elementary school education under the Constitution. Nevertheless, Collins Seitz let his feelings be known.

Of course, this could not be true were my finding of fact given Constitutional recognition, but if it were, the principle [of separate but equal] itself would be destroyed. In other words, by implication, the Supreme Court of the United States has said a separate but equal test can be applied, at least below the college level. This Court does not believe such an implication is justified under the evidence. Nevertheless, I do not believe a lower court can reject a principle of United States Constitutional law which has been adopted by fair implication by the highest court of the land. I believe the "separate but equal" doctrine in

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8. 87 A.2d 862 (Del. Ch.), *aff'd*, 91 A.2d 137 (Del. 1952), *aff'd sub. nom.* *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

9. KLUGER, *supra* note 2, at 447.

10. 87 A.2d at 865.

11. *Id.*

education should be rejected, but I also believe its rejection must come from that Court.<sup>12</sup>

Collins Seitz then moved forward and resolved the *Belton* cases under the prevailing doctrine of separate but equal. He found that the “cold, hard fact is that the State in this situation discriminates against Negro children.”<sup>13</sup> What made Chancellor Seitz’s decision so very remarkable, however, was not only his conclusion about the inequality of the schools, but the remedy he imposed.<sup>14</sup> “[W]hen a plaintiff shows to the satisfaction of a court that there is a violation of the ‘separate but equal’ doctrine, he is entitled to have made available to him the State facilities which have been shown to be superior.”<sup>15</sup> This too seemed quite obvious to Judge Seitz. “To do otherwise is to say to such a plaintiff: ‘Yes, your Constitutional rights are being invaded, but be patient, we will see whether in time they are still being violated.’”<sup>16</sup> For this, Collins Seitz would not stand. So he issued what was the first order that integrated an elementary school in the United States of America.

*Belton* was a ruling of monumental importance. My dear friend and colleague Thurgood Marshall, then an attorney for the NAACP, called Collins Seitz’s decision “the first real victory in our campaign to destroy segregation of American pupils in elementary and high schools.”<sup>17</sup>

The Delaware Supreme Court affirmed Chancellor Seitz and the Supreme Court of the United States included these cases among the group that was argued with *Brown*. On May 17, 1954, the Supreme Court decided the *Brown* cases. Only Chancellor Seitz’s rulings were affirmed. I once wrote that we “cannot know how influential Judge Seitz’s views were in bringing the Court to its unanimous result in *Brown*; we can only feel assured that they played a persuasive role.”<sup>18</sup> There can be no doubt, however, that Collins Seitz’s acts of courage provided a critical foundation for the

12. *Id.*

13. *Id.* at 868.

14. *Compare Briggs v. Elliott*, 98 F. Supp. 529, 537 (E.D.S.C. 1951) (“In directing that the school facilities afforded Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort.”) (citations omitted).

15. 87 A.2d at 869.

16. *Id.* at 869-70.

17. KLUGER, *supra* note 2, at 449.

18. Brennan, *supra* note 3, at 1280.

further realization of the equal protection guarantees of our Constitution.

And now, I end where I began — with courage. Justice Benjamin Cardozo could very well have been describing my friend Collins Seitz when he wrote the following:

“[T]he courage of adventurous youth. There are some unquenchable spirits who never lose it, though the calendar may say that they have left their youth behind and reached manhood or old age.”<sup>19</sup>

Our nation has been well served by Judge Collins Seitz for the past fifty years. I trust that there are many more years of such noble service yet to come from this man of unquenchable spirit and unstoppable courage.

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19. BENJAMIN N. CARDOZO, *LAW AND LITERATURE* 171 (1931).

