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## TRIBUTE TO COLLINS J. SEITZ: A KIND MAN

DOLORES K. SLOVITER\*

I believe that every judge fortunate enough to have served with a paradigmatic chief judge will never again comfortably be able to view anyone else in that role. At least it has been that way for me. When I came on the Third Circuit in 1979 Collins Seitz had already been its chief judge for eight years, and he would continue to serve in that role until 1984. I was fortunate that the statute that now limits the chief's tenure to seven years did not apply to Collins, because I would have missed the opportunity to see a master leader at work. That would have been an incalculable loss.

Most knowledgeable laypeople, lawyers, and even judges who do not know Collins Seitz well may associate him primarily with his landmark civil rights decisions. In the first, *Parker v. University of Delaware*,<sup>1</sup> issued when Seitz was Vice-Chancellor of Delaware, he held that the facilities at Delaware State College, attended by black students, were unequal to those available to white students who were able to attend the University of Delaware.<sup>2</sup> Cognizant that unless a remedy was provided promptly it would not be effective for those currently in school, Vice-Chancellor Seitz used the power of the Chancery Court to issue an injunction enabling the black students to enroll.<sup>3</sup>

The next year, Seitz, by now Chancellor of Delaware, followed *Parker* with the even more far-reaching decision in *Belton v. Gebhart*<sup>4</sup> requiring certain segregated Delaware public schools to admit black children, and once again brooked no delay. Those who have approached the law in the period following *Brown v. Board of Education* cannot fully appreciate the sweeping changes presaged by the *Parker* and *Belton* decisions, but they are an important part of this country's march toward the goal of equal rights through law.<sup>5</sup> No less a civil rights authority than Justice William J. Brennan has written that we can be assured that Judge Seitz's views in *Belton* played

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\* Chief Judge, United States Court of Appeals for the Third Circuit.

1. 75 A.2d 225 (Del. Ch. 1950).

2. *Id.* at 231-34.

3. *Id.* at 234.

4. 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).

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

“a persuasive role” in the Supreme Court’s reaching a unanimous decision in *Brown v. Board of Education*.<sup>6</sup>

Thus, when I joined the court, I knew that in the Court of Chancery he had earned a nationwide reputation by his decisions on civil rights and the law of equity and corporations. On the Third Circuit, I was to become familiar with other equally important but less publicly acclaimed aspects of Collins Seitz as chief judge, judge, and friend.

Judges who have come to our court and lawyers who have come to the bar in the period when Collins was no longer chief judge may not be aware of the significant administrative innovations made in his thirteen-year tenure as chief judge. During that period, which preceded the now prevalent E-mail and internet, the Third Circuit became the first court to experiment with the use of electronic mail for the circulation of draft opinions.<sup>7</sup> He takes justifiable pride in the fact that we were the first circuit to prepare and publish our court’s internal operating procedure, an action now required by statute. Under his guidance, we also implemented the recommendations of a national commission<sup>8</sup> for establishment of a lawyers’ advisory committee and appointment of a circuit executive.<sup>9</sup> He encouraged and guided the development of a satellite library system, spreading the facilities of the central circuit library for the first time to court centers outside of Philadelphia.<sup>10</sup>

Some of the changes he instituted were highly unpopular then, and some still are. Chief among those were the decisions that not every appeal requires oral argument and not every court of appeals judgment merits a written opinion.<sup>11</sup> He led the court in this direction even though he knew that it would bring him considerable criticism from members of the bar.

If asked to pass on advice to a future chief judge, Judge Seitz would probably tell you that the secret of administration is to anticipate a problem before it arises. He moved the court to limited oral arguments and streamlined dispositions because he realized, before

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6. William J. Brennan, Jr., *Collins Jacques Seitz*, 132 U. PA. L. REV. 1275, 1280 (1984).

7. See generally A. Leo Levin, *Collins J. Seitz: Creative Judicial Administrator*, 70 VA. L. REV. 1551 (1984).

8. Commission on Revision of the Fed. Court App. Sys., *Structure and Internal Procedures: Recommendations for Change*, 67 F.R.D. 195, 251-53 (1975).

9. *Third Circuit’s Collins J. Seitz: From Chancery Court to Third Circuit Chief—Recollections of 38 Years on the Bench*, The Third Branch, Sept. 1984, at 1, 4.

10. *Third Circuit’s Collins J. Seitz*, *supra* note 9, at 8.

11. Warren E. Burger, *Collins Seitz and Judicial Administration*, 132 U. PA. L. REV. 1275, 1284 (1984).

many others, the inevitable effect of the growth of the federal dockets and the geometric increase in the number of appeals and merits decisions per circuit judge. If appellate judges were burdened with responsibility for more opinions than they could reasonably handle, they would either lower the standards of written opinions that serve as court precedent, a step he found distasteful, or lengthen the time for disposition of the cases, an alternative he found even more unacceptable.

He has always stressed the importance of the prompt delivery of justice, believing that “the uncertainty generated by prolonged delay seriously undermines our *raison d’être*.”<sup>12</sup> It is a measure of Collins Seitz’s view of the personal responsibility of the appellate judge that he never considered adopting the practice followed elsewhere of having opinions prepared by central court of appeals staff. In holding firm on this point, he solidified the Third Circuit tradition closely followed today — that of having opinions prepared in the judges’ own chambers and under their personal supervision.

I have previously described Collins Seitz’s leadership qualities in the words of George Bernard Shaw as leading with “velvet paws.”<sup>13</sup> He is a consummate diplomat and has followed Jefferson’s advice to “take things always by their smooth handle.”<sup>14</sup> When interviewed at the conclusion of his term as chief judge, he reported that his “greatest accomplishment in [his] thirteen years as chief judge was to generate a genuine spirit of mutual respect and friendship in the circuit.”<sup>15</sup> And he did.

The focus on Collins Seitz’s early Delaware civil rights opinions has tended to overshadow the numerous significant opinions he authored on the Third Circuit. Often he presaged new legal trends, not only for this circuit but for the whole nation. It was his opinions dealing with the rights of the mentally retarded and mentally ill, although different from the position of the majority of the *in banc* court, that were adopted by the Supreme Court of the United States.<sup>16</sup> Significantly, the Court quoted approvingly the language of Chief Judge Seitz that a mentally retarded person, involuntarily committed to a state institution, has a constitutional right to mini-

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12. *Third Circuit’s Collins J. Seitz*, *supra* note 9, at 2.

13. Remarks of Dolores K. Sloviter, Chief Judge, *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, 35 F.3d LXXIII, LXXXVII (1994).

14. Letter from Thomas Jefferson to Thomas Jefferson Smith (Feb. 21, 1825), in *Writings of Thomas Jefferson*, at 341 (Paul L. Ford ed., 1899).

15. *Third Circuit’s Collins J. Seitz*, *supra* note 9, at 4.

16. *See, e.g.*, *Halderman v. Pennhurst State Sch. & Hosp.*, 451 U.S. 1, 10-11 (1981) (quoting 612 F.2d 84, 119 (3d Cir. 1979) (Seitz, C.J., dissenting)).

mally adequate care and treatment.<sup>17</sup>

In a case arising out of the media's effort to secure access to in camera pretrial hearings arising out of the Abscam prosecutions in Philadelphia, Seitz authored the court's opinion holding that the public has a First Amendment right of access to pretrial suppression, due process, and entrapment hearings in criminal cases.<sup>18</sup> With this opinion, he started the line of Third Circuit cases that have applied a broad view of the right of public access to judicial proceedings and documents filed in connection therewith.

Even more influential to me than his substantive opinions is his style of writing. He is the master of the clear thought and unpretentious phrase. And his collegiality is incomparable. Because he is always conscious that opinions are published as "opinions of the court," he is willing to listen to the views of other members of the panel and, when possible, to accommodate his own opinion to meet their concerns. Yet the intellectual honesty that is at the core of his judicial philosophy is unparalleled in my experience. Years ago, he subjected me and a colleague to a two hour grilling before he would join us in affirming a decision of the district court by judgment order. I still do not know whether he was in true doubt about the outcome or wanted to assure himself that we had each fully considered the issues. His sense of the obligation of each panel member to the ultimate opinion of the court is so strong that I have known him recently to spend a week exploring every alternative to the result I had reluctantly reached before he would send me his approval. Although he would be the first to admit that was a luxury that not every judge could give to every case, it was an object lesson in judicial commitment.

I think I know him well enough to be able to say that his administrative skills, as admirable as they were, succeeded because of the simple humanity that underlies his dealings with others. By now there are many published tributes to Collins Seitz,<sup>19</sup> as befits

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17. *Youngberg v. Romeo*, 457 U.S. 307, 318-19 (1982) (quoting *Romeo v. Youngberg*, 644 F.2d 147, 176 (3d Cir. 1980) (en banc) (Seitz, C.J., concurring)).

18. *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982).

19. *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, 35 F.3d LXXIII (1994); Arlin M. Adams, *Collins J. Seitz*, 132 U. PA. L. REV. 1275 (1984); William J. Brennan, Jr., *Collins Jacques Seitz*, 132 U. PA. L. REV. 1275 (1984); Stephen B. Burbank, *Collins Seitz: A Noble Career*, 132 U. PA. L. REV. 1281 (1984); Warren E. Burger, *Collins Seitz and Judicial Administration*, 132 U. PA. L. REV. 1284 (1984); Mortimer M. Caplin, *Judge Collins J. Seitz*, 70 VA. L. REV. 1543 (1984); Edmund N. Carpenter, II, *Collins J. Seitz*, 132 U. PA. L. REV. 1286 (1984); William Duffy, *Collins J. Seitz*, 132 U. PA. L. REV. 1288 (1984); Ernest L. Folk III, *Judge Collins J. Seitz*, 70 VA. L. REV. 1555 (1984); James Hunter III, *Judge Collins J. Seitz*, 70 VA. L.

someone who has spent fifty years as a judge. All of them have been characterized by his enthusiasm for the law and his patience with human beings and their frailties. He has been variously described by friends and colleagues as gracious and understanding,<sup>20</sup> decent and clear-thinking,<sup>21</sup> and modest and unassuming.<sup>22</sup> All of it is accurate, but none of it captures the essence of the man. Perhaps my husband, an inveterate admirer of Collins Seitz, sums it up best. He said, when I told him I was about to start drafting these comments, "Tell them he is a kind man."

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REV. 1547 (1984); A. Leo Levin, *Collins J. Seitz: Creative Judicial Administrator*, 70 VA. L. REV. 1551 (1984).

20. Hunter, *supra* note 19, at 1547.

21. Burbank, *supra* note 19, at 1283.

22. Folk, *supra* note 19, at 1555.

