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1995]

MASTER OF THE CRAFT:
A TRIBUTE TO COLLINS J. SEITZ

BETH NOLAN*

If you are fortunate enough to know Judge Collins Seitz, you know these things about him: he has a penetrating intelligence, the courage of his convictions, and an ideal judicial temperament. He is calmness personified, but it is the calmness of profound and controlled concentration,¹ so when you first come to know him, you appreciate in a new way the mysterious truth of the old saying that “still waters run deep.” He is sure and confident, but as entitled as he would be to them, he does not possess a shred of either self-importance or self-satisfaction. Because he has no false modesty, he takes real pride in his accomplishments, although he is, by nature, measured in expression of that pride.

If you know Judge Seitz more than a little, you have probably also discovered this: he possesses a sense of humor so keen and subtle that it can be a little, gentle time bomb he leaves with you. This gentleness is revealing beyond all else, because he has the razor-sharp mind and wit to demolish others, if he wished to, but he chooses instead to be courteous and civil. In fact, his powers of observation and his understanding of human nature are so shrewd that a less generous heart would have been made cynical by them. Since his was not, he continues to live in the law in a spirit of enthusiasm and high adventure. As Judge Seitz himself has said: “[F]rom the day I was admitted to the Bar in 1940 I had a love affair with the law which has never diminished. It is the one calling that suited me perfectly and where I feel at home”²

* Associate Professor of Law, George Washington University Law School. From 1980-1981, perhaps because of some great good deed I performed in another life, I had the fortune to clerk for Judge Seitz.

1. See LOUIS NIZER, *MY LIFE IN COURT* 502 (1961) (“I have never seen greater concentration in repose.”).

2. *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, 35 F.3d LXXIII, XC (1994). Judge Seitz’s decision in *Ringling v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc.*, 49 A.2d 603 (Del. Ch. 1946), *modified*, 53 A.2d 441 (Del. 1947), is important for its analysis of the validity of pooling agreements in corporate voting. Listen to Judge Seitz describe it:

That [case] also sticks in my mind not just for the legal issues but because of the personalities involved. The aspect of the case in most of the case books in law school is the legal issue — the validity of a pooling agreement. Nice problems about whether you could imply proxies and things of that sort. But the people were interesting. They were really

In his fifty years as a judge, Collins Seitz has made immeasurable contributions to the quality of justice in our country. Some of those contributions came very early. In his first few years of judging, he decided the classic civil rights case that was the only state decision affirmed in *Brown v. Board of Education*.³ His early decisions in the corporate field are also landmarks.⁴ As brilliantly as he shone right from the start, he was no bright star that burned out early. Judge Seitz's contributions, both in the substance of his judging and in his improvements to the administration of justice, have continued to be exceptional throughout the decades.

These contributions have been publicly celebrated at certain moments in his career and on other occasions important to the American legal world. When he stepped down from the chief judgeship of the Third Circuit in 1984,⁵ when the Delaware Court of Chancery marked its bicentennial,⁶ when his portrait was presented and a Third Circuit courtroom was dedicated to him in 1994,⁷ and now on the occasion of his golden anniversary on the bench, as well as his thirtieth year on the Third Circuit, we have honored him as best we could, within the limits of the human mind to express itself.

I am resisting the temptation to recite these accomplishments yet again, but not because I think they should not be repeated. They should be rehearsed until we know them by heart, and by so knowing them, let them guide us towards our better selves. I resist, because I am afraid that recitation of Judge Seitz's accomplishments, even if only the highlights, would be to engage in just the

characters of the first order. There was a vice president who didn't much care about how the case came out as long as the decision didn't interfere with his right to retain his private car on the circus train. What I can remember most about the case was the hearing in which the witnesses were the people who were in charge of signing the circus acts

Bruce M. Stargatt, *Judge Seitz Remembers*, DEL. LAW. 38, 41 (Spr. 1984) (interviewing Judge Seitz).

Here indeed is the voice of a man who has had a life-long love affair with the law. "That's why I love corporation law," he said of the power struggle in *Campbell v. Loew's Inc.*, 134 A.2d 852 (Del. Ch. 1957). "It had a lot of sex appeal for me. A big fight." *Judge Seitz Remembers*, *supra*, at 41.

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

4. *See, e.g., Ringling*, 49 A.2d 603; *Campbell*, 134 A.2d 852.

5. *See* 132 U. PA. L. REV. 1275 (1984); 70 VA. L. REV. 1543 (1984) (tributes to Collins J. Seitz).

6. *See Bicentennial of the Delaware Court of Chancery: Remarks Given on the Occasion of the Bicentennial Celebration of the Delaware Court of Chancery, September 17-18, 1992*, 48 BUS. LAW. 351 (1992).

7. *See Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, *supra* note 2.

kind of string citation that Judge Seitz does not welcome from his clerks. So, I will add just this: In his fifty years as a judge, Collins Seitz has enriched forever the world we inhabit, both as citizens and as lawyers.

What might seem extraordinary is that Judge Seitz's impact could be so profound when his style of opinion writing has been so restrained and careful. It is on his opinion style that I want to focus — not on the great substance of his decisions, not on the processes by which he has distinguished himself as a judicial administrator — but on his unmistakable style. For, when complexity, inaccessibility and convolution have often been thought to be the mark of intellectual weightiness, Judge Seitz's opinions have been characterized by directness, simplicity and illumination. When judicial exploration has been celebrated, Judge Seitz has been careful to strike his own path with constant reference to the path of the law already written. Here, matters of style truly reflect — and become — matters of substance. Here we find one of the keys to Judge Seitz's enduring legacy.

In a 1986 speech at the Law School of the Australian National University, Judge Seitz described the four important constraints on judicial decisionmaking that keep judges from deciding cases on the basis of their personal values. One of these was “the discipline of the judicial craft.”⁸ He described as the most important element of this craft “the writing of an opinion, laying out the court's reasoning and decision in accordance with the structures and traditions of legal reasoning.”⁹ It is this commitment to the craft that shows in Judge Seitz's opinions. It is his own emphasis on its importance that makes its recognition a fitting tribute to Judge Seitz.

As a clerk to Judge Seitz, one of my jobs was to write first drafts of opinions in conformity with his unmistakable directions about their style. I remember how Judge Seitz would wander into my office after he had reviewed a draft. No buzzing the clerks to come to his office, no summoning them through his secretary. He would simply arrive, unannounced and quietly, and stand before my desk. Then he would say, in his soft, low voice “I just got over your draft.” It took a few times before I concluded, with great relief, that he meant “I just reviewed your draft,” rather than “I just recovered from your draft.” Given his remarkable talent for subtlety and his keen use of understated humor, I confess that I still wonder, from

8. Collins J. Seitz, *Judicial Review and the American Constitution*, 17 *FED. L. REV.* 1, 11 (1987).

9. *Id.* at 11-12.

time to time, if the benign interpretation I settled on is the correct one. But, as Judge Seitz himself likes to say, I took the comment “in the spirit in which it was intended.” With just that little phrase, Judge Seitz taught me that there was every advantage in recognizing the worst that someone meant, and then choosing to believe the best.

I remember that Judge Seitz tolerated footnotes, but barely. As in all things, he is not absolute or doctrinaire about this, just suspicious, particularly of the footnote that is in the nature of a little, meandering footpath, requiring the reader to follow the writer on an interesting excursion to no particular destination. We clerks, however, full of recently acquired footnote-writing skills that we had no intention of wasting, had a scheme. I don’t know who first thought of it. By the time I clerked in 1980, though, it was firmly entrenched as Standard Clerk Practice: Throw in a first footnote you don’t care about. The Judge will cut that footnote out on general principle, and all the other (truly important) footnotes will be saved.

Judge Seitz, who knows a useless footnote when he sees one, deleted most of our first footnotes just as we predicted. We were proud, even prideful, of our cleverness in writing plausible but useless first footnotes, and prouder still of our record of accuracy in predicting their demise. We were even a little mystified about what to do next when the occasional draft came back with the first footnote intact. Of course, since Judge Seitz has an eye for unnecessary footnotes, whatever their placement, he excised many others as well. Still, despite the absence of any proof that the Judge’s footnote-cutting steam was exhausted after just one, we kept at it. Judge Seitz allowed us our delusions.¹⁰

What he did not allow so readily were delusions of grandeur, or even pretensions to it, when they might creep into drafts of opinions. In matters of opinion writing, Collins Seitz favors simple, direct, clear writing. “He is the master of the clear thought and unpretentious phrase,” Chief Judge Sloviter tells us.¹¹ “His opinions are disarmingly direct and easy in describing even the most

10. I refer you to Judge Seitz’s own assessment. He says of us, his law clerks, in his typically generous but straightforward manner, that they “are a wonderful, wonderful group, who made it a joy to come to the office in the morning, a special joy, because we dealt as equals except occasionally I had to remind them that I took the oath of office.” *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, *supra* note 2, at XC.

11. Dolores K. Sloviter, *Tribute to Collins J. Seitz: A Kind Man*, 40 VILL. L. REV. 553, 556 (1995).

complex subjects," wrote his law school classmate Mortimer Caplin in 1984.¹² They are "lucid and learned but eschewing legalese," Justice Brennan has written.¹³

Judge Seitz writes to the point; he does not " 'throw the paint can at the wall.' "¹⁴ He writes as simply as the case permits. His opinions therefore stand unadorned by distracting baubles. They reflect his view of the judge's task: he is deciding the case before him, but he is conscious that his decision will have to be followed by many others. He is bound by the precedent he faces and he is constrained by the principles of judicial reasoning. When a case is hard, he says so. When there are strong countervailing arguments, he gives them their due. He is writing to explain the decision.

This is not a radical description of the opinion-writing function of a judge, but neither is it one to which all adhere. It takes a suppression of ego that some could not master. It requires a judge to be candid about what he is deciding and to acknowledge the weaknesses of the decision, as well as the strength of contrary views.¹⁵

No mechanical application of the law is in play here. I am particularly reminded of the words of Judge Seitz's daughter, Virginia: "[T]hroughout his judicial career there was never so much law that there was no room for justice; and there was never so much personal passion that there was no room for law."¹⁶ His decision in *Belton v. Gebhart* surely stands as the model for this approach: in that case, Vice Chancellor Seitz applied the law of *Plessy v. Ferguson*, as he concluded he was bound to do, but he also made explicit his disagreement with *Plessy*.¹⁷ More importantly, he would not tolerate the fiction that the separate facilities he examined approached

12. Mortimer M. Caplin, *Judge Collins J. Seitz*, 70 VA. L. REV. 1543, 1544 (1984).

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

14. See Shannon P. Duffy, *A Conversation with Judge Collins J. Seitz*, 3rd Circuit Court of Appeals, PA. LAW WEEKLY, at 7 (June 27, 1994). Judge Seitz expresses as much compassion as criticism when he discusses the tendency of most lawyers to overbrief their cases: " 'It's an excess of caution I suppose. Lawyers are scared to death that they're going to have a case decided against them somehow on a contention they failed to make, so they throw the paint can at the wall.' "

15. See ROBERT E. KEETON, JUDGING 143-44 (1990) (suggestions for "combining substance with style" in opinion writing).

16. *Presentation of Portrait and Dedication of Courtroom: Honorable Collins J. Seitz*, *supra* note 2, at LXXXVIII.

17. *Belton v. Gebhart*, 87 A.2d 862, 865 (Del. Ch. 1952) ("I believe the 'separate but equal' doctrine in education should be rejected, but I also believe its rejection must come from that Court."), *aff'd*, 91 A.2d 137 (Del. 1952), *aff'd sub. nom Brown v. Board of Educ.*, 347 U.S. 483 (1954).

the equality that was demanded by an authentic adherence to the law.

Sitting in a court of equity no doubt provided the foundation for this approach, but Judge Seitz's method of judging has been so consistent that it must reflect the man at least as much as the chancellor. Forty years later, when Judge Seitz joined a majority, holding that the United States Department of Health and Human Services was not required to consider "extraordinary circumstances" in calculating Medicare payments, he had this footnote added to the opinion: "Judge Seitz agrees that the present state of the law dictates the result here reached. However, he believes that, if administratively permissible under the Act, a kinder, gentler and more equitable administration of the Act would justify the granting of administrative relief in the present situation."¹⁸ In *Schiavone v. Fortune*,¹⁹ addressing the relation-back rule embodied in Federal Rule of Civil Procedure 15(c), he noted that the plaintiff's interpretation, "as a policy matter, is quite persuasive," before concluding that the unequivocal language of the rule required him to rule for the defendant.²⁰

Listen to Judge Seitz in *Halderman v. Pennhurst State School & Hospital*,²¹ acknowledging the limits of his judicial role: "Pennhurst as it exists today . . . must not obscure what is an entirely severable legal issue. That issue is the legality of the institutionalization of the mentally retarded. The inquiry is not whether institutionalization is outmoded, undesirable, or unjustifiably expensive. . . . Although I believe improvement of Pennhurst to be mandatory, I do not believe a federal court may dictate to the state the type of treatment that best suits every individual."²²

These examples should make clear that Judge Seitz never abandons the human element, even when his reasoning requires him to reach a legal conclusion that does not mirror his personal preferences. It is the willingness to acknowledge the divergence in decision and preference and the willingness to acknowledge the best arguments against him, that makes Judge Seitz such a fine judge. As Judge Robert Keeton has said: "People call judges good not because they are good at logic but because they are good at making

18. *Sacred Heart Medical Ctr. v. Sullivan*, 958 F.2d 537, 550 n.27 (3d Cir. 1992) (also explaining three reasons why he believed administrative relief would be appropriate).

19. 750 F.2d 15 (3d Cir. 1984).

20. *See id.* at 18.

21. 612 F.2d 84 (3d Cir. 1979) (en banc).

22. *Id.* at 117 (Seitz, J., dissenting).

hard choices.”²³

The human element shows up in other ways. The opinions of Collins Seitz reflect and reinforce his unswerving commitment to collegiality.²⁴ This commitment, in turn, reflects his understanding that better communication makes for better collegial decisionmaking, but it also simply improves the quality of judicial life. Judge Seitz is not a great dissenter, nor is he a great concurrer. Of the 828 federal opinions written by him since 1966, at least as they are revealed through a Lexis search, the overwhelming majority, 676, have been written for the majority. That leaves only 152 separate opinions. Considering how many panels he must have sat on, into the thousands, his restraint in writing separately is remarkable.

That restraint is, of course, intentional and meaningful. “[A] concurrence written in an attempt to disassociate the author from an unpopular but required majority decision is a reflection on the author,”²⁵ he tells us, leaving no doubt that the reflection so cast is not a pretty one. “A dissent by its very nature has the potential for crossing the line between what is principled and what is personal.”²⁶

When he does choose to concur or dissent, you know what the disagreement is about, right from the start. You know, as well, the areas of common ground. Here is a typical start to a separate opinion:

I agree with the majority that the judgment of the district court must be vacated and the case remanded for a new trial because of the exclusion of relevant expert testimony and the use of improper legal standards in the charge to the jury. I also agree with the majority that this case is governed by the due process clause of the fourteenth amendment and not by the eighth amendment. I write separately because of a pervasive disagreement with the majority with regard to the standards that should be employed in charging the jury on remand.²⁷

If we understand judging to be the task of resolving disputes, and

23. KEETON, *supra* note 15, at 2.

24. See Collins J. Seitz, *Collegiality and the Courts of Appeals*, 75 JUDICATURE 26 (1991).

25. *Id.* at 27.

26. *Id.*

27. *Romeo v. Youngberg*, 644 F.2d 147, 173 (3d Cir. 1980) (en banc) (Seitz, J., concurring), *rev'd*, 457 U.S. 307 (1982) (citing with approval Judge Seitz's concurrence).

the opinion-writing function to be to explain the resolution, then Judge Seitz's style is a model for us all. How much better even our personal disagreements are when they are narrowed to their essence, and then so clearly stated. This is especially true in cases such as the one cited above, which involved troubling and perhaps ultimately intractable problems.

His opinions also demonstrate the strong emphasis Judge Seitz places on ensuring that judicial decisions can be understandable to, and able to be implemented by, those who are affected by them. In his opinion in *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*,²⁸ Judge Seitz set the standard for awarding attorneys fees in class action suits. His landmark adoption of the concept of a "lodestar" and explication of additional factors to consider was motivated by his desire to provide real guidance to attorneys and claimants, which he found missing in the district court's approach.²⁹

In his concurrence in *Romeo v. Youngberg*,³⁰ we see his concern with the complexity and potential for confusion in the standards set forth by the majority.³¹ His opinion outlines the consequences that will flow from this problem, and follows with this: "This complexity and confusion is unnecessary. In some situations the development of multilevel standards may be unavoidable. I do not believe, however, that such standards are required in this case to accurately differentiate the factual and legal issues presented. . . . I believe that a single standard can be established to protect the constitutional rights of committed persons while recognizing the legitimate interests of the state."³² This recognition that complexity may be required, but should be avoided when it can, is a hallmark of the opinions of Judge Seitz.

In his written opinions, we see Judge Seitz make good on the many values to which he is committed: treating with regard the people who are the parties, the lawyers and his fellow judges; ensuring the proper role of the federal judiciary; adhering to legal reasoning and explaining his decisions; providing legal standards that can be understood and followed. We see his abiding devotion to the marriage of justice and law. We see his unflinching willingness to acknowledge both the limits of his own views and the

28. 487 F.2d 161 (3d Cir. 1973).

29. *See id.* at 167.

30. 644 F.2d 147 (3d Cir. 1980) (en banc), *rev'd*, 457 U.S. 307 (1982).

31. *Id.* at 174 (Seitz, C.J., concurring).

32. *Id.* at 175 (Seitz, C.J., concurring).

strengths of the views with which he disagrees. We see his frank acknowledgement of the choices he is making. We see him make hard choices. We see the restraint and civility of a man who takes no pleasure in disagreeing with others, but does not shy from doing so if he must. We see plain, unvarnished judicial accountability, since he delivers his opinions without the distractions of fancified language, excessive citations, and obscure references.

In the opinions of Judge Seitz, we see the handiwork of a master craftsman. We see also the true measure of the man, whose lifetime of judging sets a standard to which others will aspire, if never quite achieve. How fortunate we are to have had him at work for all of us, for fifty years.

