
DEDICATION
to
The Honorable John J. Gibbons

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For twenty-nine years now, my work as a lawyer has been associated with the name Gibbons. I was the first John J. Gibbons Fellow in Public Interest and Constitutional Law, beginning on September 17, 1990; since 1992, I have been the Director of the Gibbons Fellowship Program, privileged to be working with the Judge and the amazing Gibbons Fellows, and always benefiting not only from John Gibbons being my friend and mentor, but also from doing my work in his name.

Beginning in 1997, all of us became Gibbons lawyers when the firm changed its name; starting in 2007, we have all been proud to work in a building that has his name on it. It really is, now, our name: Gibbons is simply who we are, in ways both profound and mundane. Of course, for the Judge it was a source of some amusement—he often told me that the big sign was how he knew where to go to work in the morning (and I am afraid that, toward the end of his work days, well into his nineties, that was true), though in moments of reflection, he really was very thrilled about it.

For me—for all of us at the great Gibbons law firm and those who have been Gibbons Fellows, so many of whom are here today—our association with the Judge is both a source of great pride and a personal and professional challenge. The pride, of course, comes from our being identified with a true legal giant. And a giant he was—to be sure, Judge Gibbons was slight in physical stature (when my children were young, they were convinced, from his appearance in his unique Christmas garb at our holiday parties, that Judge Gibbons was actually an elf); he was, as we all remember well, halting in speech (except when he was in court); and he was, most of all, so humble and lacking in ego.

And yet, he was truly one of the great judges in American and certainly in New Jersey history. He was the author of more than eight hundred opinions—and, as those who clerked for him know, he really *was* the author,

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often handwriting them himself on yellow legal pads. Many of those opinions were incredibly important: he struck down a New Jersey law that disenfranchised convicted felons (begetting even more significant election reform being contemplated today); he prohibited New Jersey schools from permitting a moment of silence before the school day on Establishment Clause grounds; he required that persons civilly committed on ground of what was then called “mental retardation” be provided with adequate due process in the form of periodic reviews rather than being indefinitely confined; in case-after-case-after-case, he issued rulings that assured access to the federal courts in discrimination, civil rights, and environmental cases—a renowned Eleventh Amendment scholar, he nonetheless advocated an approach that rejected limiting federal court jurisdiction. And his dissents were powerful: he dissented from rulings that allowed overcrowding in the Union County jail on the ground that inmates there were being treated in a manner that would have violated federal standards for the treatment of animals; he dissented from a decision allowing single-sex public schools in Philadelphia, arguing that it was a return to *Plessy v. Ferguson*. For such a gentle, modest person, his language was sometimes harsh. For example, in *Miller v. Fenton*, a case regarding the admissibility of an involuntary confession, Judge Gibbons wrote:

The judges in the majority, determined at any cost to reach the end that no relief will be given to a person they feel to be the perpetrator of a heinous offense, have distorted the record and misstated the law with respect to permissible police methods of interrogation.

And in *Davidson v. O’Lone*, a case addressing the duty of the State to assure the safety of those in its custody because involuntarily committed, Judge Gibbons wrote:

There was a time in our history when the government of the United States was so indifferent to the plight of persons involuntarily committed to custody by the states that it condoned hundreds of lynchings per year. Among civilized persons in this twelfth decade of the fourteenth amendment, however, I would have hoped that a negative answer to the question presented would no longer be a matter of serious debate. Whatever a state may do in relieving its agents of the obligation to take reasonable care in performing other duties, no body politic calling itself humane should assert that the custodians of the involuntarily committed may be relieved of the duty to take reasonable care to prevent harm from befalling their charges. Yet six judges of this court unfortunately are of the view that custodians may be relieved of that duty. Because I share a common humanity with the involuntarily committed, I dissent.

That sense of “common humanity” was what made Judge Gibbons a great person, as well as a great judge. As a judge, he treated every litigant with genuine respect; and he treated us, who had the honor to work with him, as colleagues, though we knew that we could never pretend to be his equals.

That is not to say that, once he was no longer a judge, he did not use his unique standing to the benefit of his clients. I remember, for example, that in the late winter of 1991, when I was the only Fellow, I went away on vacation, and while I was gone, the City of Clifton decided to try and shut down a transitional housing facility for the homeless that we were representing. We had no choice but to seek emergent relief and, since I was away, called in the reinforcements—Judge Gibbons—who appeared before the late great Judge Nicholas Politan to argue against Clifton’s actions. I listened in by phone and will always remember Judge Gibbons responding to a question from Judge Politan about whether there was the requisite likelihood of success on the merits. Judge Gibbons responded that he had never seen a case more likely to succeed on the merits and Judge Politan said, “Well, you have seen a lot more cases than I have, so that is good enough for me.” The transitional housing got built.

And, of course, there is the famous exchange (which, as my friend Professor Hartnett has told me after trying to locate it in the Supreme Court record, may be apocryphal—but it’s my story and I am sticking to it) between Judge Gibbons and several Justices of the Supreme Court when he was arguing *Rasul*, contending that enemy combatants detained at Guantanamo should be able to seek writs of habeas corpus. Arguing that Guantanamo was, in essence, part of the United States, Judge Gibbons was recounting for the Court his experience there when he was in the Navy, recalling that there were McDonald’s and pizza places there, when Justice Ginsburg interrupted chiding him for, in essence, testifying in the Supreme Court, at which point Justice Stevens responded, “I would really like to hear about Judge Gibbons’ experiences.” Of course, it was inappropriate to refer to him as a judge before the Court, but Judge Gibbons did not protest—and his victory in that case is, as you all know, legendary.

These cases—Judge Gibbons’ achievements as a judge and as an advocate—bespeak the power of this extraordinary man, who was named one of the hundred most influential lawyers in America (I think Ted Wells was another of them), but they also serve to remind us of the obligation that we assume by being Gibbons lawyers, and maybe especially Gibbons Fellows. We are entrusted with his legacy, and we cannot ever forget that. This means a number of things. It means that we should never shirk our obligation to remember the “common humanity” that we share with even the most reviled persons among us—in fact, to Judge Gibbons, the more reviled, the more important it was that we step up and espouse their causes—

passionately, but also intelligently, and professionally.

Judge Gibbons did just that, himself representing death penalty inmates all the way up to the Supreme Court and working to abolish the death penalty, successfully in New Jersey; advancing constitutional challenges on behalf of sex offenders subject to Megan's Law (Judge Gibbons was among the very first to take on those cases); standing up for the rights of alleged terrorists or enemy combatants, as we continue to do to this day; investigating, on behalf of what was then known as the Lawyers Committee for Human Rights, the treatment of attorneys who represented alleged members of the Irish Republican Army; representing asylum applicants from countries that our current President, in words I won't use here, believes undesirable; advocating for poor, inner city children, as he and his wife Jeanne did their whole lives. And now, he leaves us with the challenge I mentioned before of following in his footsteps, of preserving his extraordinary legacy.

It is a solemn and serious responsibility. For as Gibbons lawyers, as former Gibbons Fellows, as his friends, Judge Gibbons—though we miss him, deeply, every single day—lives on in each of us. As we go about our work, we should do so with the goal, the aspiration, the steely resolve not only to do what Judge Gibbons would do, practicing law at the very highest standards of this profession, while always treating adversaries, clients, and tribunals with civility, dignity, and respect. We should never lose sight of the unique role that we as lawyers play in our social and political system, for we have the honor of being able to argue for and sometimes achieve change, without raising funds and running for office or garnering hundreds, thousands, or millions of votes: we can file a suit or make a motion and our government, in the person of a judge, has to listen to us and decide our case. This, Judge Gibbons understood in his decisions as a Judge and in his work as a lawyer, was what made our responsibility so great, and what made the work so challenging—including that it requires us to constantly reexamine our own belief systems in the interest of others. Remember that Judge Gibbons, a devout Catholic, ultimately embraced causes that were right but perhaps contrary to dogma, from same-sex marriage to reproductive freedom.

And though the decisions are hard and the work daunting, at the end of the day, Judge Gibbons always thought, it is really fun, and—he would reflect over his Manhattan and with a smile—makes it a great life in which we work with our friends, think about history and political philosophy, and just make a difference.

We at the Gibbons Fellowship Program, a program of which Judge Gibbons was so very, very proud, have tried very hard to do that, to make a difference, over the last twenty-nine years. Today, we celebrate that program

and its many victories, as well as the losses that have inspired our society to confront its flaws. From affirmative action to immigration; gun control to government transparency; police accountability to juvenile justice; fighting for the rights of pregnant women or those battered by spouses, as well as for those of criminal defendants, on death row or otherwise; from education reform to same-sex marriage to voting rights, we have tried, for almost three decades now, to live out the legacy of John Gibbons, to be worthy of his name.

Today, we celebrate that legacy together—indeed, we have an extraordinary showing of Gibbons Fellows, many coming from close by but others from as far as Detroit, Charlottesville, Boston, Bermuda, and Buffalo, all of whom are extraordinary people who have contributed and continue to contribute so much to the world around us with their advocacy, their scholarship, their teaching, their leadership, and their community engagement. I would like to tell you about each of them and about how proud I am—and Judge Gibbons was—of each, how excited I am to see them, and how much I wish he could be there to catch up with them as well. Time does not allow that, but I hope you will get to talk to them at the reception after this.

But celebrate Judge Gibbons though we do today, the demands of this extraordinary era in our history do not allow us self-satisfaction or time to rest on our laurels. As I told the Gibbons Fellows at the time of his death, when I would visit Judge Gibbons at Winchester Gardens the last few years, he would invariably ask me, over and over (and over), “Are we still giving them hell?” I told him we were, and in one of our last visits, I showed him a brief, filed in the Southern District of Texas, in which we were arguing that the current administration should not be permitted to end the DACA program because of the resulting health consequences for Dreamers. He was pleased, but then said it again, “Are we still giving them hell?” He understood that our obligation to do good is never over. And so today, I rededicate myself and the Gibbons Fellowship Program to giving them hell, in the brilliant but modest, professional, and passionate way that was Judge Gibbons. We are Gibbons lawyers, and that is our responsibility, working and living in his name.