



CHIEF JUDGE JOHN J. GIBBONS

A TRIBUTE TO CHIEF JUDGE JOHN J. GIBBONS

*Honorable Leonard I. Garth**

On January 1, 1987, the Honorable John J. Gibbons became Chief Judge of the United States Court of Appeals for the Third Circuit. In assuming that position, Judge Gibbons followed in the footsteps and traditions of the great Chief Judges with whom this Circuit has been blessed throughout the years.

It is a peculiar phenomenon that although seniority dictates the judge who will head the Circuit as Chief Judge, many of the judges of this court who have succeeded to that position—including John Biggs, Jr., William H. Hastie, Collins J. Seitz, and more recently, Ruggero J. Aldisert—have been acknowledged by their peers not only for their impressive talents and judicial abilities but also because they were indeed “giants” of their day and “giants” of the court. It is therefore fitting that Judge Gibbons, who brings to our court the same distinction and qualities of leadership and scholarship for which his predecessors were known, should now inherit the mantle of Chief Judge.

Throughout his years on the Third Circuit, Judge Gibbons has exhibited extraordinary legal knowledge and an understanding of the most complex legal issues. He has consistently demonstrated a scholarly and judicial approach to every question that has come before him. Academicians, judicial colleagues, and members of the bar all have recognized him for what he is—a superb judge. I share in this assessment, not only as one of his colleagues, but also as a friend whose relationship with John goes back many years before either of us ascended the bench. I therefore feel qualified to express my admiration for him and for the various capacities in which he has, through his dedication, character, and intellect, guided and served others. He has done so in the roles of student, author, lawyer, scholar, citizen, leader, friend, and judge.

It bears mention that, as a lawyer and litigator, John displayed many of the same talents, courage, and energies that his tenure on the bench has reflected. After graduating from Holy Cross College, where he presently serves as a trustee, John at-

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tended Harvard Law School. In succeeding years, his talents were devoted not only to his law practice as a partner in the law firm of Crummy, Gibbons & O'Neill in Newark, but also to the work of various commissions to which he was appointed. He served as a member of the Governor's Select Commission on Civil Disorders of the State of New Jersey, the New Jersey Department of Community Affairs, and the Governor's Council Against Crime. During this period, he also served as a member of the New Jersey Board of Bar Examiners and as trustee of the New Jersey Institute for Continuing Legal Education. In addition, he found time to preside over the New Jersey State Bar Association and to serve as a member of the American Bar Association House of Delegates. Indeed, it was at a New Jersey State Bar Association annual meeting that he received a Senatorial inquiry as to his desire and availability to serve on the federal bench.

John Gibbons became Circuit Judge Gibbons in January 1970 when he joined the Court of Appeals for the Third Circuit as its youngest associate. At that time, the active judges on the court numbered only six—one half the number of active judges serving in 1986. It was evident from the very first that Judge Gibbons, as the court's newest member, was destined for judicial greatness. He had always been recognized as a scholar, and his writings (and there were many of them), his opinions, and his judicial perceptions and values very soon made him a standout among a court of judicial standouts.

When I joined the Court of Appeals in 1973, I particularly looked forward to my court sittings with him, not because we necessarily agreed in our dispositions of cases (indeed, in many instances we did not!), but because as a colleague, I respected his views, his learning, his pragmatism, and his wisdom. I always knew where John stood. The grounds on which his opinions were predicated were always thoroughly and painstakingly explained. His preparation for each court sitting was meticulous. He was, and is, decisive as a judge, always probing an advocate's argument, always questioning the facile answer, and constantly exploring the boundaries and ramifications of the court's decision. I must confess that the sittings that I enjoyed most—and indeed those which I still continue to relish—were the sittings in which I participated with my good friend.

What of the decisions that have received the benefit of Judge Gibbons' pen? Two things must be said at the outset: first as to the number. Since the beginning of his tenure on the Court of

Appeals, year in and year out, Judge Gibbons has written more published and unpublished opinions than any of his colleagues on the court. This reflects not only a measure of his willingness to accept assignments beyond the normal schedule, but also reflects his own view that the panel's determination, even though it may not be published, should be made known by a statement of the reasons which led to the result of the appeal. Second, the scholarship evident in the opinions which he has authored is breathtaking. Whether written for the majority of the court or in dissent, his conclusions have always been supported by precedent and reason.

Limitations of space prevent me from reciting or analyzing the very many significant opinions which bear his name—each of which has contributed to the jurisprudence of this Circuit and the nation. Rather, I leave that task to judicial historians, who in any event will do a far better job than I, in discussing the dramatic imprint which his decisions have left on the law.

I make one exception, however—and I do so because in just one paragraph of one dissent, Judge Gibbons revealed his thinking with respect to an integral part of the judicial process. In *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d 1069 (3d Cir. 1980), Judge Gibbons argued in dissent that “there is no case in which properly separated claims for relief cognizable at common law would be so complex that trial by jury would amount to a violation of due process.” *Id.* at 1093 (Gibbons, J., dissenting). Arguing for this position, Judge Gibbons expressed his conviction concerning the role of juries in an eloquent passage:

Part of my difficulty with the majority's position probably results from a perception of the nature of the judicial process and the role of juries in that process. It is often said that the judicial process involves the search for objective truth. We have no real assurance, however, of objective truth whether the trial is to the court or to a jury. The judicial process can do no more than legitimize the imposition of sanctions by requiring that some minimum standards of fair play, which we call due process, are adhered to. In this legitimizing process, the seventh amendment is not a useless appendage to the Bill of Rights, but an important resource in maintaining the authority of the rule of law. In the process of gaining public acceptance for the imposition of sanctions, the role of the jury is highly significant. The jury is a sort of ad hoc parliament convened from the citizenry at large to lend respectability and authority

to the process. Judges are often prone to believe that they, alone, can bear the full weight of this legitimizing function. I doubt that they can. Any erosion of citizen participation in the sanctioning system is in the long run likely, in my view, to result in a reduction in the moral authority that supports the process.

Id.

I want to note another aspect of Judge Gibbons' service on our court of which many may be unaware. During the years he has served on the court, it has invariably been Judge Gibbons who has been assigned some of the most difficult and arduous administrative problems which the court has confronted. The resourcefulness, ingenuity, and proficiency that he has brought to each such task undoubtedly encouraged each Chief Judge under whom he served to assign him ever greater administrative responsibilities. Judge Gibbons possesses a rare talent among those who join the court—an administrative talent that enables him to discharge management and executive functions and to do so with dispatch. Others either do not have that capacity, or shun those duties. These abilities will serve him well in his new role as Chief Judge. Indeed, I still marvel at the fact that each of the Chief Judges of this Court whom I have known were judges who combined all the judicial qualities essential to that position with an incomparable administrative artistry. Judge Gibbons is such a judge.

I hope that in this short statement I have given the picture of a brilliant and talented jurist who unites outstanding legal abilities with a flair for administration. That picture, however, would not be complete or accurate without mention of John Gibbons, the individual—his warmth, humor, and collegiality; his family, ethics, and religious values—all are part and parcel of his being.

I have observed earlier that Judge John Gibbons is a man of many capacities. First and foremost, he is a family man: not only with respect to his wife Jeanne, his seven children, and his adored grandchildren, Matthew and Claire, but also with respect to his judicial family of colleagues. True, there have been instances in his writings when he has held our feet to the fire and may have abraded our reasoning. But whatever wounds his opinions have inflicted have been the result only of scholarly and judicial disagreement. Thus, the affection with which all his colleagues regard him has never been diminished or diluted. He has been and is a close, warm, and staunch friend to each of us.

What of his other traits and accomplishments? There are many. John is devoted to his church, has taught and still teaches at law

schools (Seton Hall, Rutgers, and Suffolk Law Schools) and he continues to serve as a trustee of the Practicing Law Institute. As to the honors and awards he has received, I will not even attempt to catalogue them. One, however, requires mention. Just recently, he was accorded a most touching tribute by the students of Seton Hall Law School. It is one thing for students to demonstrate respect for a teacher and advisor. It is quite another for a teacher to merit the genuine outpouring of affection that Seton Hall Law School recently accorded him on his ascension to Chief Judge.

Finally, I must say a few words about John Gibbons' abiding love for the sea. He is an indomitable sailor, and indeed, I had intended to devote a good part of this essay to some of his nautical exploits, particularly those which have taken place before or after scheduled court sittings in the Virgin Islands. I should mention that his sailing exploits, and in particular one such voyage from the north shore of Tortola, have convinced some of those who accompanied him to either become or to remain landlubbers!

As is apparent, I did not follow my original inclination to emphasize Judge Gibbons' penchant for sailing because there was too much else of judicial substance and content that I felt should be said. Suffice it to say, in the words of an anonymous sea chanty: "John is ev'ry inch a sailor . . ." and anyone who reads his opinions dealing with admiralty law must believe that here is a judge who knows the sea. See, e.g., *Cox v. Dravo Corp.*, 517 F.2d 620 (3d Cir. 1975).

These then are just some of the qualities and talents that Judge Gibbons brings to his new labors as Chief Judge of this court. I am confident in saying for all of us on the court that, if it is the function of a Chief Judge to rule and administer in a fair, courageous, democratic, and impartial manner, to improve the court that he heads and on which he sits, to provide ethical, moral, and legal leadership to his profession, to foster collegiality among his colleagues, and to encourage justice under the law, then we are indeed fortunate that Chief Judge John J. Gibbons has succeeded to that office.

In such a setting, it is appropriate to recall the words of Judge Learned Hand, who wrote: "Without such servants no society can prosper; without such servants no society can in the end even endure. Let us pause then to acclaim one, who—himself all unaware of his deserts—has so richly earned our gratitude, and whose presence helps us to take heart against our forebodings."