

# TRIBUTE

## GERALD BARD TJOFLAT†

WILLIAM H. REHNQUIST

*The Chief Justice of the United States*

### INTRODUCTION

I would like to take this opportunity to recognize Chief Judge Gerald Tjoflat of the United States Court of Appeals for the Eleventh Circuit for his exceptional service to the federal judiciary over the past twenty-five years. Both on the bench of the United States District Court for the Middle District of Florida and on the Court of Appeals (first on the “old” Fifth Circuit and then on the “new” Eleventh Circuit) Judge Tjoflat has demonstrated superior legal and administrative abilities.

Judge Tjoflat has also contributed to the improvement of the federal judicial system. Based on first-hand experience, I can say that he has performed admirably during his membership on the Judicial Conference of the United States. Before that, from 1973 to 1987, he served on the Conference’s Committee on Administration of the Probation System, including serving as its chairman for nine years. He was also a member of the Conference’s Ad Hoc Committee on Sentencing Guidelines from 1986 to 1987.

His judicial accomplishments, along with his public service, are testaments to his outstanding career. Chief Judge Tjoflat’s dedication to the judiciary and to his country are highly laudable. It is fitting that his alma mater, Duke University School of Law, has chosen to honor him.

---

† Duke University School of Law, LL.B. 1957; Editorial Board and Associate Editor, *Duke Bar Journal* (now *Duke Law Journal*). Judge, Fourth Judicial Circuit of Florida, 1968–1970; United States District Court for the Middle District of Florida, 1970–1975; United States Court of Appeals for the Fifth Circuit, 1975–1981; United States Court of Appeals for the Eleventh Circuit, 1981–present (serving as Chief Judge since 1989). Chief Judge Tjoflat is married to the former Sarah Marie Pfohl (Duke University, B.A., summa cum laude, 1956).

BYRON R. WHITE

*Justice (Retired), United States Supreme Court*

For three years, Jerry Tjoflat and I were two of the three members of the Devitt Award Committee. Its task is annually to choose the federal judge who has been of unusual service to the judicial system, enough so to merit being given a rather tidy sum in recognition of his or her work. In the course of those two-or-three-day meetings, I was more and more taken with Judge Tjoflat. A gregarious and very likeable person with a great sense of humor, he is great fun to be with. Beyond those traits, which would be of benefit to anyone, he was and is a very intelligent man with boundless energy and impressive experience on the bench.

Jerry works very hard at his job and is an excellent judge. This I know from close encounters with his work from the vantage point of the Supreme Court bench. The Courts of Appeals are really under siege these days, and the judges on those courts are to be much admired, particularly the chief judges charged with the task of seeing that the caseloads of their courts are handled in a way that serves the ends of justice.

It should also be mentioned that Judge Tjoflat has been of great service to Jacksonville by devoting a significant amount of time and energy to activities that benefit the community in many ways. His work with the Boy Scouts and his church are prime examples. Even so, it may be difficult to find Jerry at his desk during the annual ACC basketball tournament or when Duke is playing in the Final Four of the NCAA tournament. It is also plain enough that had Jerry not chosen to work so hard at his job and taken his golf game seriously, he could resign from the system and join the professional tour. I also admire his taste in onions (*vidalia*) and his enthusiasm for fishing.

Judge Tjoflat has served the federal judiciary and the country very well, and we are all grateful to him, as well as to his wife, Sarah, who has been such a wonderful partner in his life and work.

LEWIS F. POWELL, JR.

*Justice (Retired), United States Supreme Court*

When I was an active member of the Supreme Court I was Circuit Justice of the Eleventh Circuit. Jerry Tjoflat was Chief Judge of that Circuit during the last part of this period. After I retired from the Supreme Court I sat on the Eleventh Circuit in Jacksonville and Atlanta. I had the good fortune of being on several panels with Jerry Tjoflat. Mrs. Powell and I know Sarah as well as Jerry.

I am glad that the *Duke Law Journal* will honor Judge Tjoflat with articles and commentary. I would appreciate it if you included Mrs. Powell and me among the friends and admirers of the Tjoflats.

EDWARD R. BECKER

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

The *Reader's Digest* used to publish a monthly series entitled "The Most Unforgettable Characters I Ever Met." If I were ever asked to contribute to such a series, I would, without hesitation, write about Gerald Bard Tjoflat. Does Roget's have enough terms to describe this man? The ones that come most readily to my mind are "overpowering" (both intellectually and physically), "brilliant," "energetic," "dynamic," "direct," "forthright," "courageous," and "larger than life." Oh yes, and "take charge." Does Jerry Tjoflat take charge of everything he touches? Is the Pope Catholic?

I have known this remarkable man for almost a quarter century—since we met at "new judge school" sponsored by the Federal Judicial Center in Washington, D.C. One of the joys of my life since then has been that we became fast friends and have remained so. But I never got to see Judge Tjoflat's work firsthand until 1979, when I became a member of the Judicial Conference Committee on the Administration of the Probation System, which he chaired. I served on that Committee with Jerry for eight years, and never ceased to be awed by his total command of the realm that he oversaw. I can testify from personal knowledge that

his efforts on behalf of the judiciary were at once prodigious and successful, in matters of both administration and legislative liaison. Judge Tjoflat "took charge," and he got the job done.

My most vivid recollection of Jerry Tjoflat taking charge, however, lies in a much more mundane setting. My wife Flora and I shared a cottage with Jerry and his marvelous wife Sarah for a few days one summer at Lutsen, Minnesota, on the shores of Lake Superior, during a meeting of the Probation Committee. When Flora and I entered the kitchen the first morning to make breakfast we found the entrance blocked. Jerry was in charge. He and he alone cooked the eggs, sautéed the Lake Superior whitefish, made the grits, and told us *exactly* how much butter went into (and on) them . . . and so on. Chef, maître d' extraordinaire!

Except for his judicial opinions and administrative ability, there is nothing at which Jerry excels more than conversation. When Jerry tells a story or makes a point, the listener will never forget it. I have revelled when Jerry gets into the subject of his Norwegian relatives in Wisconsin, or his days as a state circuit judge at Green Cove Springs (Florida), or the luncheon he once arranged between Ted Williams and Bill Terry (the last two men to hit .400), among others. The narration is never brief, but it is always memorable. What fun!

My most recent professional encounter with Judge Tjoflat occurred quite recently—in December 1994, when he appeared to present his views on the proposed Long Range Plan for the Federal Judiciary. It was vintage Jerry Tjoflat—a luminous and forceful presentation, banishing shibboleths (to which others adhere for fear of evoking displeasure from the "establishment") and giving us a clear vision of what the federal judiciary should do if its future is to be as glorious as its past, notwithstanding the terrible and increasing burdens upon it.

The citizens of the Eleventh Circuit as well as the entire republic are fortunate to have had for a quarter century the services of this extraordinary man. I only hope that we have them for a quarter century more.

MYRON H. BRIGHT

*Senior Circuit Judge, United States Court of Appeals  
for the Eighth Circuit*

GERALD BARD TJOFLAT: "THE COMPLEAT ANGLER"

(With credit to Isaac Walton)



Any judge who has served with Chief Judge Gerald Bard Tjoflat can, as do I, speak to his diligence, intelligence, and judicial acumen.

I come now to praise Jerry (as he is affectionately known by his friends and colleagues) for his other, perhaps less known, talents. He is a freshwater fisherman of great ability, particularly in pursuit of the wily walleye pike, a prize-eating, game fish of the Minnesota lakes.

Several years ago, Gerald and Sarah Tjoflat came to visit me and my wife, Fritzie, at our cottage on Lake Melissa, near Detroit Lakes, Minnesota. Jerry and I tried fishing in the lake in the morning. We caught nothing. In late afternoon, we went out again in my fourteen-foot plain, old Crestliner boat equipped with only wood seats, cushions, oars, and a six-horsepower trolling motor. Using night crawlers (worms), the walleye pike started to hit.

Bang, one walleye. Bang, bang, two more walleye, two to three pounds each.

But that was not all. Northern pike, one of the great fighting fish of the North country, also grabbed the bait. We dragged in four northern pike, four to six pounds each, in addition to the walleyes.

Lake Melissa is a small lake, seven miles around, and heavily populated with cottagers who keep a constant eye on the fishermen through binoculars to see where the fishing action is. Soon we became surrounded by other boats and fishermen, but the fish only hit on night crawlers, and we had them. The others did not. We pulled in a few more fish. The others remained luckless.

Then dusk came on. The worms gave out. We gave out! Cottage-bound, we putt-putted with our six-horsepower motor. Tired, but happy—nine beautiful walleyes and four northern pike.

The next morning Chief Judge Tjoflat reported our catch, with only slight exaggeration, to the United States Probation Office in Washington, D.C. Gerald said, "Why we caught twenty-two fish—walleyes, northern, and muskies" (the latter short for muskellange, a very large game fish, of which Lake Melissa had none).

Others may extol Gerald's judicial prowess. For me, he is my good fishing friend and we continue to fish together when we can. As any sportsperson knows, a fishing friend is one's best friend and always is a great human being; that is the real Gerald Bard Tjoflat.

So I say, "Hail to Gerald."

CHARLES CLARK

*Chief Judge (Retired), United States Court of  
Appeals for the Fifth Circuit*

For as long as physics has been an organized science and the U.S. Patent Office has functioned, both have maintained that there can be no such thing as a perpetual motion machine. The reason this theory still exists is because Chief Judge Tjoflat turned to the law rather than physics or invention.

Everything he does, and he does everything, is done nonstop at full speed and with maximum energy. He constantly amazes his friends and admirers with the number and variety of tasks he

undertakes, accomplishes, and executes exceedingly well. Not only has he defied the laws of physics, but he also manages to defy genetics. I can assure you that there is more than one of him. How else can he always be in two places at the same time?

He did his undergraduate education at two colleges. He attended two law schools and in the meantime, managed to serve a two-year hitch in the Army as Corporal Tjoflat and play professional baseball. He practiced with two law firms and served as a judge in one state and three federal courts. He served on three very active committees of the Judicial Conference of the United States (chairing one and serving as vice-chairman of another) even before he became a member of the conference. He also served on three ABA committees and has been on Duke Law School's Board of Visitors continuously since 1973. He is a fully participating member of the ABA, the ALI, the American Judicature Society, and the Florida Bar. The National Conference of State Trial Judges counted him a member during his tenure as a state trial judge.

If, as I suggest, he really is at least twins, the energy of each would surpass that of most individuals you know. What makes Jerry run makes Jerry uniquely interesting. It also defines his charm and warmth. He obviously does as much as he does because he likes to be with people and help them. He cares for his friends as much as he cares for justice. He is a cordial friend, a pleasant fellow, and a great colleague and jurist.

Let me close this tribute by sharing my favorite courtroom story about Judge Tjoflat. We were on an Atlanta panel assigned to hear oral argument in an appeal from a Federal Power Commission order setting the national rate for new gas. It was a decision which involved values in the billions of dollars—back in the times when a billion dollars was a lot of money. Obviously, the lawyers wanted to be sure to pronounce the Swede's name correctly. They must have practiced saying "Joe flat" a hundred times. When the Judge hit the first lawyers with one of his customary hard questions, the response came, "Well, Judge Flat Joe . . . ." When the words passed counsel's lips, the color left his face. Jerry quickly reassured the embarrassed lawyer he had come pretty close, and that Flat Joe was a lot kinder than other things he had been called.

From a friend and admirer: Skoal!

FRANK M. JOHNSON, JR.

*Senior Circuit Judge, United States Court of Appeals  
for the Eleventh Circuit*

Gerald Bard Tjoflat is a remarkable man and a distinguished judge. Since becoming Chief Judge of the Eleventh Circuit Court of Appeals, he has proved to be an effective leader as well. His contribution to the judiciary is immeasurable.

When I moved to the Circuit Court from the District Court, Judge Tjoflat and I soon came to know one another, not only on the bench, but also on the fishing boat and in my workshop. He is a better judge than fisherman, but his catch is augmented by his lively fishing stories. He is a better judge than cabinetmaker, but he persevered for long hours with enthusiasm and crafted a grandfather clock anyone would be proud to own. Over the years, we became firm friends.

I value my friendship with Judge Tjoflat and admire him as a truly dedicated jurist. Congratulations, Jerry, on your twenty-five years on the federal bench.

ANTHONY A. ALAIMO

*United States District Judge, Southern District of Georgia*

"THE BARD"

For many years, each issue of *Reader's Digest* magazine has carried a piece entitled "My Most Unforgettable Character." If I were capable of writing such a piece, Chief Judge Gerald Bard Tjoflat would be its subject. One would, however, have to be a modern-day Boswell to cover the many-faceted characteristics of the Chief Judge's personality.

Judge Tjoflat is an outstanding jurist who supports his judicial conclusions with a complete mastery of the facts, clarity, lucidity of expression, and overwhelming logic. He is a devout churchman who permits no obstacle to prevent the fulfillment of his lay responsibilities.

Judge Tjoflat is a person of consummate compassion. For the last twenty years of Circuit Judge Warren Jones's ninety-six-year-

long life, Judge Tjoflat personally ministered to Jones's physical, medical, and personal needs. He took the aging, almost blind, judge to church and brunch every Sunday. He was extraordinarily solicitous of Judge Jones's comfort and welfare until the latter's death.

As an interesting aside, Judge Jones coined descriptive sobriquets for his brethren on the Court of Appeals. For instance, Judge Griffin Bell was "Ding Dong Bell." Judge John Minor Wisdom was "John Little Wise." And Judge Tjoflat was simply "Shoofly."

Judge Tjoflat is a model, civic-minded citizen who, by his indefatigable energy, has rejuvenated and redefined Boy Scouting in North Florida, and, most importantly, he is a devoted husband, father, and friend. In sum, he is, indeed, a Sir Thomas More-like "Man For All Seasons."

Turning from the sublime to the comic, I recite the tale of this appellate judge's attempt to metamorphose into the ultimate judicial presence: the trial judge. With the excuse that his law clerks had expressed a desire to witness a live trial before their clerkships ended, Judge Tjoflat asked me to assign him a relatively short criminal trial.

As it happened, I had a garden variety bank robbery case that filled the bill. The file in the case revealed that, on government motion, the defendant had been examined for mental competency and found to be competent to stand trial, although possessing an anti-social personality.

Up to the day before the trial, the government had no eyewitness who could positively identify the robber because, at the time of the robbery, he was wearing a stocking mask. Luckily, the government found a witness who had seen the defendant leave the bank while removing his stocking mask. The witness, pointing her finger at the defendant, said, "That's the robber; that's him." With that, the defendant jumped to his feet, went into a tantrum, shouting, "She's lying. She's lying!"

Because of the uproar and the wild, almost maniacal, antics of the defendant, Judge Tjoflat, mindful of the competency report on the defendant, excused the jury until after lunch.

He then asked me if I could get a psychiatrist to examine the defendant regarding his competency. After a few telephone calls, I located one who agreed to examine the defendant and come to

court to testify as to his findings. He did so and testified that the defendant was, indeed, competent.

A guilty verdict soon followed.

The date of the sentencing was set to coincide with a portrait hanging ceremony attended by six district judges, including four chief district judges. As Judge Tjoflat was being cried into court by the Marshal, he noticed the six judges seated in the back of the courtroom, apparently to monitor the Chief's performance.

Those of you who know Judge Tjoflat know that he does not lack self-confidence. On this occasion, however, the Chief seemed to be a little nervous in his sentencing litany and dialogue with the defendant during defendant's allocution. Judge Tjoflat noticed that his comments and rulings were being met by a shaking of the head and facial expressions of disbelief by the district judges in the back of the courtroom.

Later, the latter agreed that Judge Tjoflat had committed at least six reversible errors during the sentencing hearing. They all knew that Judge Tjoflat's appellate colleagues would greet with much glee the opportunity to reverse the Chief.

More than two years have elapsed since the notice of appeal was filed in the case. No decision on the appeal has come down. Of course, I am sure the appellate panel has no desire to keep the Chief in suspense, and that the delay in deciding the simple appeal is purely coincidental.

The Chief's law clerks agreed that the case presented a complete panorama of what can go wrong in the trial of a criminal case. And so did I.

In startling contrast to Judge Tjoflat's mastery of the law, he is a walking encyclopedia of sports minutiae. For instance, to the questions, "Who was the Philadelphia Phillies' third baseman in the 1956 World Series?" or "Who is the only pitcher to pitch two no-hitters in one season?" or "Who were the Final Four in 1952?"—he can instantly provide the correct answers.

Well, I could go on almost interminably to relate many interesting anecdotes about this truly remarkable human being. I am, indeed, very grateful to number him as one of my best friends.

WILLIAM TERRELL HODGES

*United States District Judge, Middle District of Florida*

GERALD BARD TJOFLAT:  
A TRIAL JUDGE AT HEART

Borrowing from the ringing conclusion of the Declaration of Independence, I suggest that Gerald Bard Tjoflat has given his life and his fortune to the administration of justice while retaining, and building upon, his sacred honor.

The gift of his life to public service began when, at the age of thirty-eight, he became a state trial judge on the Circuit Court of the Fourth Judicial Circuit of Florida. Now, more than twenty-five uninterrupted years later, he continues making that gift every day, presently as Chief Judge of the United States Court of Appeals for the Eleventh Circuit.

The gift of his fortune occurred during the 1970s when, despite spiraling inflation, Congress denied any meaningful salary increases for the federal judiciary. Yet, without complaint, he remained true to his commitment to judicial public service even though at any moment he could have returned to the practice of law at five times his salary or more.

And, as one might expect of such a person, he has by the force of his own strength of character, and the making of the selfless gifts, retained and built upon his sacred honor which is to say his reputation for absolute integrity—the one thing on earth that really matters to him apart from his church, his family, his court, and his country.

An analysis of Judge Tjoflat's heralded scholarship, derived from his published opinions, is a job for a qualified academician, and when undertaken—as it ought to be—the result will no doubt fill a large volume in itself. I will focus, instead, upon Judge Tjoflat as a trial judge laboring “in the trenches,” as he would say, because (a) that is where he began; (b) that is where I first met and served with him; and (c) that is where, in his heart of heart, he will always be whether he admits it or not.

I could begin by describing our first meeting in November, 1971, when I was nominated to join him on the bench of the Middle District of Florida, where he had then served since October of the year before. He was in the Tampa courthouse striding down a public hallway on his way to court with his unbuttoned

robe flowing behind like Superman's cape, his entourage of clerks running to keep up, and everyone else coming to attention with their backs to the wall as he passed. Or, in a more somber tone, I could describe his unflinching and courageous handling of the Duval County school desegregation litigation while still a neophyte judge. His home was picketed and his children were threatened as his reward for enforcing the law. I believe it to be even more revealing, however, to draw attention to his career on the district bench *after* his ascension to the court of appeals.

I have always thought it to be a healthy experience in the federal system for circuit judges to sit from time to time on the district bench and, for that matter, for district judges to occasionally sit on the circuit bench. Each becomes exposed to the pressures and problems of the other, and both can then be on the lookout for those pressure points and problem areas in handling future cases in their own courts. I have never heard any judge on either court disagree with this, but it is a rare feat indeed to persuade a circuit judge to take a turn on the district bench even among those circuit judges who have previously served on the district court. Why this is so is not at all clear. Some say that circuit judges are simply too busy—that they don't have the time. Others (district judges, that is) speculate that circuit judges do not want to suffer the embarrassment of a possible reversal at the hands of their colleagues. Whatever the reason, it remains a fact that circuit judges rarely sit on the district court even though the law expressly permits it (28 U.S.C. § 291(b)) and they are frequently invited to do so.

Gerald Bard Tjoflat, as he is in many areas, is an exception with respect to this usual practice. At least until he became Chief Judge of the circuit in 1989, and then assumed a heavy administrative burden in addition to his usual judicial responsibilities, Judge Tjoflat regularly accepted invitations to return to the district courts of the circuit to try difficult cases. The published record of these judicial forays is incomplete because his Honor did not always write opinions and his judgments were not always appealed. There are, however, at least four opinions of the Court of Appeals written by Judge Tjoflat's colleagues after reviewing his work while he was sitting as a circuit judge on the district bench. *United States v. Nettles*, 570 F.2d 547 (5th Cir. 1978); *Alabama Farm Bureau v. American Fidelity Life Ins. Co.*, 606 F.2d 602 (5th Cir. 1979), *cert. denied*, 449 U.S. 820 (1980); *United States v. Carter*,

721 F.2d 1514 (11th Cir.), *cert. denied*, 469 U.S. 819 (1984); *United States v. Taxacher*, 902 F.2d 867 (11th Cir. 1990), *cert. denied*, 499 U.S. 919 (1991).

The most noteworthy aspect of these four cases is that, in the first three, Judge Tjoflat the trial judge did not escape unscathed. Some error was found by the Court of Appeals in all three, at least according to the panels which considered those appeals. What makes this noteworthy, of course, is the fact that he kept coming back, undeterred! His ego was not so large or so brittle as to be injured by a mere reversal. Rather, he manifested (without conscious thought, I'm sure) that noble quality of a great trial judge—the ability to decide a case judiciously, without agonizing procrastination, by applying the law according to the best of one's ability and understanding, and then to proceed to the next case while *welcoming* review of the previous decision by one's colleagues in the more tranquil setting of the Court of Appeals. Or, more succinctly, as Judge Alfred P. Murrah used to put it while he was director of the Federal Judicial Center, to decide cases without keeping score concerning one's rate of reversal in the Court of Appeals.

My point is simply this: Gerald Bard Tjoflat is a judge who loves his work and reveres the institutions in which he performs it. When those attributes are combined with boundless energy and great intellect, the result is inescapable—a stellar judge. Though he presently serves as a Chief Circuit Judge, he continues to be a kindred spirit to all of the district, bankruptcy, and magistrate judges of the Eleventh Circuit and, indeed, in other circuits as well. He has earned the admiration, affection, and respect of trial judges everywhere, not only through his scholarly and sensitive performance as a circuit judge exercising appellate review, but also because he is, first and foremost, as they say to each other, a trench digger like you and me!

DONALD L. CHAMLEE

*Chief (Retired) of the Probation and Pretrial Services  
Division of the Administrative Office  
of the United States Courts*

I am a most fortunate person. I served in the Probation and Pretrial Services Division of the Administrative Office for twenty-five years. It was my privilege during that time to know the majority of the sitting federal judges, including all of the leaders of the Judicial Conference of the United States. I worked directly for Judge Tjoflat during the ten years he was chief of the Committee on the Administration of the Probation System. I should have paid them for that experience. Judge Tjoflat was referred to by his fellow judges as "Mr. Chairman," or "Fearless Leader" among the staff; however, he was affectionately referred to as "the Jacksonville alligator"—and that for his ferocious grip on the issues, his intolerance for shoddy work, and perhaps incongruously for his good humor.

I never learned more than when I worked for the Judge. He, the Committee members, and a handful of staff worked—he more tirelessly than any—to achieve a version of the Sentencing Reform Act that would fit within the existing administrative and policy structure of the judiciary. That effort nearly succeeded. When, however, it was determined that our version was not to be, he turned his mind and effort to making work the law as enacted. He did this with such leadership and style that one could not have known he favored a different version of the law.

I mean no disrespect to the Commissioners and staff of the United States Sentencing Commission in saying that Judge Tjoflat did more to lead the federal judiciary to acceptance of the Sentencing Reform Act than any other person. With his characteristic foresight he recognized that the Sentencing Reform Act was a litmus test by which the judiciary would be judged for generations. He had to put his credibility on the line, and he was willing to do that. In countless forums Judge Tjoflat led discussions, argued, cajoled, and occasionally thundered about the need for and value of what was at that time largely regarded as a most unpopular piece of legislation.

I am indeed a fortunate person. Federal judges, especially the formal and informal leaders, constitute some of the finest people that have ever served the Republic. Not many in government get to work with so many of these as I have, and no finer than Gerald B. Tjoflat. Thank you for the opportunity to contribute to such a worthy effort.