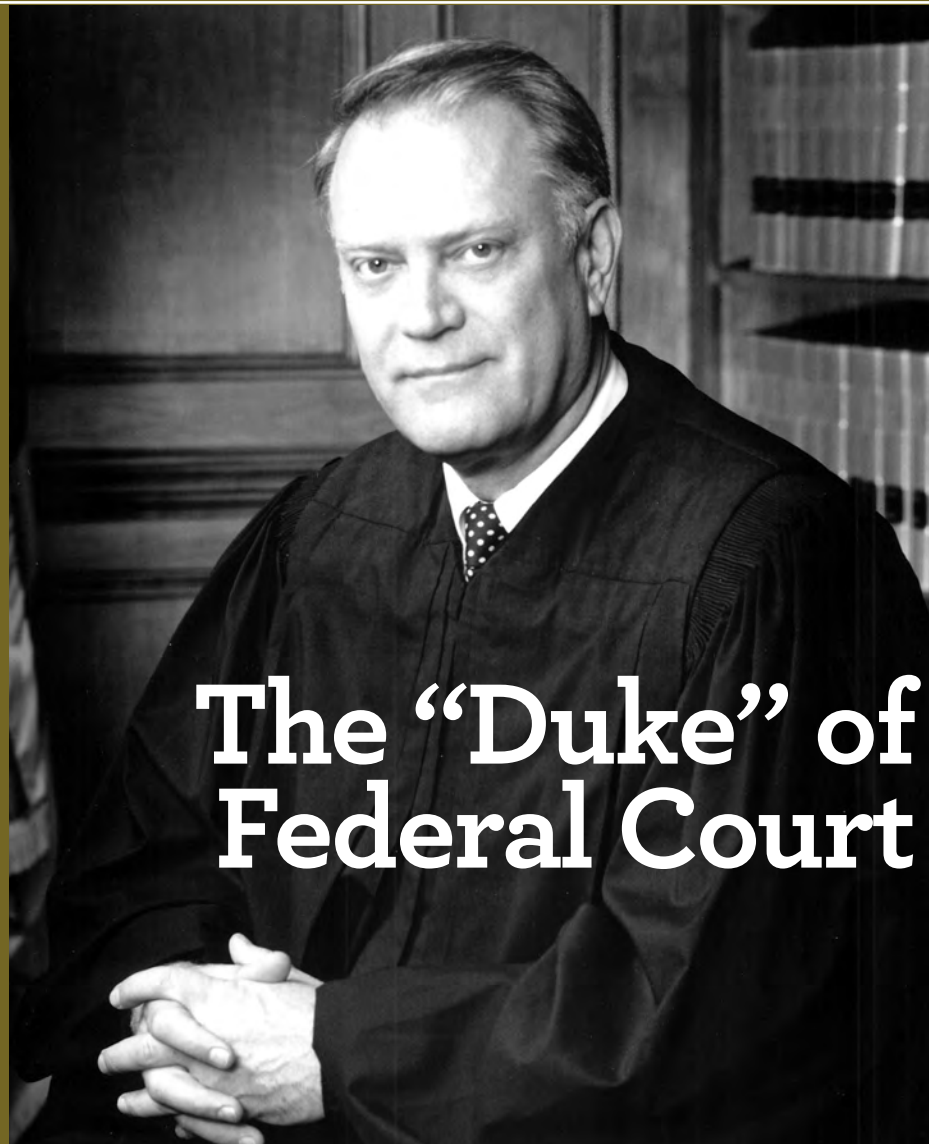


**GERALD BARD TJOFLAT**

SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

50 years


**The “Duke” of Federal Court**
*Celebrating  
 Gerald B. Tjoflat’s  
 50 years as a  
 federal judge*

BY TIMOTHY J. CORRIGAN

**A**s a card-carrying member of “the Union,” those of us fortunate to have served as law clerks to the Hon. Gerald Bard Tjoflat, I receive an annual letter from His Honor recounting the past year and opining on all manner of things in his forceful and inimitable way. In one of those letters, Judge Tjoflat, answering questions about when he might take senior status, told us that he intended to take senior status in a “pine box.”

Fortunately, it did not come to that. In the fall of 2019, approaching age 90, Judge Tjoflat finally decided to accept his senior status. But, as was to be expected, he has continued his judicial work apace. Now, in the fall of 2020, we celebrate *50 years* of distinguished federal judicial service from this remarkable man.

\* \* \* \*

**June 23, 1971, was a big day for me.** I was 15 years old and had just won the junior tennis tournament at a local

park in Jacksonville, Fla. What’s more, the local news station had filmed part of the tournament and was going to run a story on it that night. I excitedly called all my family and friends and told them to watch (there was no DVR or online availability back then). Much to my dismay and embarrassment, my tennis tournament triumph did not air that night. Why? Because some federal judge I had never heard of with a funny sounding name had just made a landmark school desegregation ruling and the entire newscast was devoted to it.

That judge, of course, was Gerald B. Tjoflat.

The case decided that day was *Mims v. Duval County School Board*.<sup>1</sup> Following the 1954 Supreme Court ruling in *Brown v. Board of Education* that segregated schools were unconstitutional, progress toward achieving desegregation was slow.<sup>2</sup> Finally, in the 1971 case of *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court reaffirmed that school desegregation remedies should be implemented “forthwith.”<sup>3</sup> In a 2014 profile of Judge Tjoflat, Daniel S. Bowling III picks up the *Mims* story:

The reaction in the South [to *Swann*] was again widespread resentment and bitterness. Even Georgia Gov. Jimmy Carter spoke out angrily against *Swann*. In Jacksonville, *Swann* “caused the smoldering Jacksonville schools case to burst into the full flame of crisis,” in the words of one scholar.

Jumping into this flame was newly appointed District Judge Gerald B. Tjoflat, who had taken over the desegregation case shortly after being appointed to the bench. He wasn’t hesitant. Within two months, he took the earlier, half-hearted desegregation plan submitted by the Jacksonville school board and issued a sweeping new directive to the board. Following the Supreme Court’s lead in *Swann*, he directed that schools were to be integrated immediately, by busing where necessary. The board had one last chance to propose a plan or else he would do it for them.

The negative public reaction was predictable and directed in large part against Judge Tjoflat. A billboard — “Impeach Judge Tojo”

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— Judge Tjoflat

— was erected in a prominent location; and because of death threats, he and his family had to be protected by U.S. Marshals. Judge Tjoflat was personally unperturbed but concerned about the impact on his family, which included an assault on his 12-year-old son Bard by schoolmates. “Enduring the public reaction to what I was assigned to do was much harder on the members of my family than it was on me. . . .” says Judge Tjoflat.

The task at hand was to do his duty — not just as a judge, but also as a citizen. Fairness to the community, real and perceived, was critical. “At some point in my career in the judiciary, I learned that the more controversial a case may be — especially a case in which the public at large has a stake in the outcome — the more the process used to adjudicate the case is important,” says Judge Tjoflat. By “process,” Tjoflat meant ensuring that every affected party be “fairly heard.” The steps Tjoflat took to ensure fair hearings were extraordinary.

While the school board was drafting a new desegregation plan pursuant to his order, Judge

Tjoflat drove to every school in the sprawling city to meet with faculty, students and administrators, black and white. Upon receiving a draft desegregation plan from the school board in May 1971, Judge Tjoflat held days of hearings in open court for comments on the plan.

\* \* \* \*

On the afternoon of Wednesday, June 23, *Mims v. Duval County School Board* was issued. In his order, Judge Tjoflat directed the school board to implement the mandatory reassignment of students to so-called “grade clusters” spread across the city to achieve a racial mix of approximately 25 percent black. Students were to be bused only to the extent necessary to achieve the mandated racial balance. The judgment was affirmed on appeal.

For the most part, and in marked contrast to cities like Boston, Mass., Jacksonville reacted peacefully. The fairness and comprehensiveness of the order, however painful it was to parents, was key. *The Florida Times-Union*, the paper of record for North Florida, headlined an editorial two days later: “A Workable and Worthy School Plan.” The editors said the order, which contained “impressive logic,” presented the “most reasonable and realistic one” to comply with the Supreme Court’s mandate. Years later, three former mayors of Jacksonville wrote a letter praising Judge Tjoflat for his judicial conduct during this period, noting “desegregation was instituted immediately and peaceably.”<sup>4</sup>

Judge Tjoflat’s grace under pressure in handling the *Mims* case led former ►

Tjoflat law clerk and now my colleague, Judge William F. Jung, to brand Judge Tjoflat “the last unlikely hero.”<sup>5</sup>

\* \* \* \*

**Born on Dec. 6, 1929, to a Chilean mother and a second-generation Norwegian immigrant father,** Judge

Tjoflat grew up in Pittsburgh where his father was an electrical engineer. For a number of summers, young Gerry worked on dairy farms owned by his Norwegian relatives. Baseball was his passion. He was a pitcher and eventually received an offer from the Cincinnati Reds organization. He did work out with the Reds one summer but decided to pursue his schooling instead, accepting a partial baseball scholarship to the University of Virginia, where he played for two seasons. However, the family finances demanded that he quit baseball. He moved with his family to Cincinnati and attended the University of Cincinnati for the remainder of undergraduate school and the beginning of law school. In 1951, while finishing his first semester of law school, Tjoflat was drafted into the U.S. Army during the Korean conflict, where he served in counter-intelligence, honing the examination skills that would later strike fear into many of the lawyers who appeared before him. (His tough questioning of lawyers at oral argument earned him the moniker “Tjoflatosaurus Rex.”)

Following his army service, Tjoflat resumed his law school career at Cincinnati. After his first year, he transferred to Duke Law School, beginning a love affair with all things Duke that has lasted for more than 65 years. Judge Tjoflat has remained an ardent



**His love affair with all things Duke has lasted for more than 65 years. There is a Duke Law scholarship named after him. His dog is even named Duke!**

supporter of Duke athletics and is an honorary life member of the Duke Law School Board of Visitors. There is a Duke Law scholarship named after him. His dog is even named Duke!

Judge Tjoflat's affinity for Duke Law School also led him to hire many of his law clerks (including me) from the school's alumni ranks. Of course, my case was aided by the fact that one of my fellow Duke Law students, also seeking a clerkship, neglected to do any research on the Judge before he went in for his interview. Deciding that the judge's name was “Joe Flat,” he walked into the interview, stuck out his hand, and said “Judge Flat, nice to meet you.” He didn't get the job. (Another story I believe to be true is that an attorney arguing in front of Judge Tjoflat was determined to get his name right, but in the heat of the moment referred to him as “Judge Flat Joe.”)

After graduating from Duke in 1957, Gerry Tjoflat, with his late first wife Sarah, moved to Jacksonville, where he spent the next ten years in private practice. In 1968, Tjoflat, one of the few Republicans at that time in

Jacksonville, was tapped by Republican Gov. Claude Kirk to complete an unexpired term as a state circuit judge. Tjoflat then was elected to serve a full term without opposition. But his time on the state bench was short. In 1970, Congress created a new federal judgeship in Jacksonville; nominated by President Richard Nixon, Judge Tjoflat began his service as a federal district judge on Oct. 16 of that year.

In 1975, President Gerald Ford nominated

Judge Tjoflat to the Fifth Circuit Court of Appeals, which, at that time, encompassed Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida and was based in New Orleans. Unlike today's judicial confirmation atmosphere, Judge Tjoflat's confirmation hearing was informal. It was followed by a voice vote to elevate him to the Fifth Circuit on Nov. 3, 1975. Thus began his long record of appellate service, including well over 1,000 written opinions (not including concurrences and dissents), which continues to this day.

In August 1981, I began my clerkship with Judge Tjoflat. After first traveling with His Honor to New Orleans for his final oral arguments as a member of the Fifth Circuit, I then witnessed the birth of the Eleventh Circuit, covering Florida, Georgia, and Alabama, on Oct. 1, 1981. It was exciting to be a part of starting an entirely new circuit, and, as might be expected, Judge Tjoflat was in the thick of it. He had worked tirelessly to help make it happen, including lobbying Congress, and then was part of the decision-making when the new circuit decided things like what prec-

edent it would follow. (Under the oft-cited *Bonner v. City of Prichard*,<sup>6</sup> the new Eleventh Circuit followed the precedent of the old Fifth Circuit.) If you have two or three hours sometime, ask Judge Tjoflat to tell you all about the birth of the Eleventh Circuit!

Even as an appellate judge, Judge Tjoflat did not shy away from sitting as a district judge and trying cases. I was fortunate to be clerking for him when we traveled to Brunswick, Ga., to try a criminal case in Judge Anthony Alaimo's courtroom. The case was a multi-defendant drug conspiracy trial involving the corruption of public officials, including law enforcement, in the small town of Baxley, Ga. The case was tried by experienced DOJ lawyers and some of the best criminal defense lawyers from around the South. Judge Tjoflat was put through his paces, making numerous evidentiary and other rulings. In the end, the defendants were all convicted, and Judge Tjoflat sentenced the principal figures to long prison sentences (sentencings were indeterminant at that time, so Judge Tjoflat had virtually unbridled discretion). Judge Tjoflat's many rulings were affirmed on appeal, though the Eleventh Circuit did not leave him entirely unscathed, reversing on a jury instruction issue involving one of the more minor counts in the case.<sup>7</sup> As an appellate clerk, I was thrilled to get the trial experience and impressed by Judge Tjoflat's willingness to expose himself to the judgment of his appellate colleagues and his fearlessness in trying what was a very difficult and complex case. Of course, no one ever accused Judge Tjoflat of lacking confidence!

Eventually Judge Tjoflat became chief judge of the Eleventh Circuit, and his mettle would immediately be tested by the tragic assassination of his colleague Judge Robert Vance in December 1989.

Eventually Judge Tjoflat became chief judge of the Eleventh Circuit, and his mettle would immediately be tested by the tragic assassination of his colleague Judge Robert Vance in December 1989. . . . Former FBI Deputy Director Louis Freeh called Tjoflat's handling of the case a "great demonstration of true leadership and grace under pressure."

Gregory B. Mauldin recounts the story:

On Dec. 15, 1989, soon after Tjoflat was installed as chief judge of the Eleventh Circuit, a shoebox wrapped in brown paper and containing the return address of a colleague was delivered by mail to Judge Vance's home. When Judge Vance opened the package, a pipe bomb loaded with nails detonated and killed Vance instantly and severely injured Vance's wife. Judge Tjoflat was at home preparing to leave for a Christmas party when he received word of the bomb that had killed Vance. Fearful that other bombs had been mailed, Tjoflat, the U.S. Marshal's Office, and the FBI worked feverishly through the night to contact the remaining members of the Eleventh Circuit.

The following Monday, three additional bombs were received in offices in the Southeast: one at

the Eleventh Circuit's clerk's office in Atlanta, another at the NAACP office in Jacksonville, and a third at a lawyer's office in Savannah (that exploded and killed the lawyer). Members of the Eleventh Circuit also began to receive threatening letters bragging about the murder of Judge Vance. The bombs and letters resulted in numerous federal agencies and state prosecutors descending on the Southeast to investigate the crimes.

Judge Tjoflat threw himself into the fray. He quickly implemented security measures to protect the courthouse and its occupants and realized that the various investigators needed a coordinator and leader. He asked then U.S. Attorney General Richard Thornburgh to appoint the best federal prosecutor in the United States to the case, and [future FBI Director] Louis Freeh was assigned. Freeh and Tjoflat worked closely together to resolve the case. The perpetrator, Leroy Moody, was eventually caught and convicted. As Freeh observed with respect to the important role Judge Tjoflat played in handling the affair, "Judge Tjoflat was as fine an investigator as he was a jurist. His insights, logical analysis and pure 'gut' instinct manifested itself and proved him to be one of the most competent investigators I have ever observed. . . . [I]t was [T]joflat who took charge of the crisis management and led the Eleventh Circuit, as well as the entire legal community, with the utmost courage, dignity and resolve. It was great demonstration of true leadership and grace under pressure."<sup>8</sup>

\* \* \* \*

**Judge Tjoflat's contributions have never been limited to his judicial decisions.** From 1973 to 1987, Judge Tjoflat was a member and later chair of the Judicial Conference of the United States Committee on the Administration of the Probation System, testifying to Congress on several occasions concerning issues of crime and punishment. He also was a member from 1975 to 1987 of the Advisory Correction Council of the United States, charged with overseeing the federal prison system. He has been heavily involved in the construction of new courthouses in the Eleventh Circuit, including the Jacksonville courthouse where he and I sit. His involvement in civic affairs also has been fulsome, including leadership roles in his church and as president of the North Florida Council of the Boy Scouts of America. During his ten years as president, the North Florida Boy Scouts more than doubled in size, with much of that growth occurring in urban areas where scouting had previously achieved little foothold.

Through the years, Judge Tjoflat has been honored by legal luminaries, including Chief Justice Rehnquist and other members of the Supreme Court. I recount here an excerpt of remarks made by Justice Byron White presenting the prestigious Fordham-Stein prize to Judge Tjoflat in 1996.<sup>9</sup>

Justice White first quoted from Judge Tjoflat's colleagues on the Eleventh Circuit:

"As Judges in the Eleventh Circuit who have worked with him, we know of no one whose life and work better exemplify the highest standards of professional conduct and dedication to the rule of law. His energy and devotion to the realization of the rule of law through the administration of jus-



THE AUTHOR (AT LEFT) ON HIS SWEARING-IN DAY, WITH JUDGE TJOFLAT.

I charged right down there just as I had always done when Judge Tjoflat bellowed for me as a clerk. Halfway down to his chambers I realized I hadn't even told my wife and kids that I was being sworn in. I was able to put him off, but only for a day.

...tice and through leadership in his community are demonstrated in his work as a lawyer, judge, and judicial administrator. He has made many contributions to this country's system of justice and helped to create a positive perception of that system."

Justice White further cited Judge Tjoflat's colleagues concerning his tenure as Chief Judge:

"He proved to be one of the rare individuals who could lead a federal circuit through sheer force of untiring energy, engaging personality, and powerful intellect. He has been guided by the conviction that achieving collegiality among judges, and a shared dedication

to the common goal of producing clear and consistent decisions, are essential to the administration of justice. Even in a group as diverse as the Eleventh Circuit, he is universally revered as an outstanding example of all that a Chief Judge should be."

Justice White then opined:

The emphasis on Judge Tjoflat's qualities as a leader should not overshadow his contributions as a judge. In *Hishon v. King & Spalding*, he argued in dissent that Title VII's proscription of sex discrimination applied to a law firm's decision to admit a person to partnership. The Supreme Court ultimately agreed and reversed the decision of the panel majority. His opinion for the en banc court in *United States v. Beechum* is widely cited for its exposition of the admissibility of extrinsic misconduct evidence under Fed. R. Evid. 404(b). Over the years, he has authored other opinions that have been extremely influential on subjects as diverse as voting rights, abortion rights, admissibility of coconspirator statements, and a host of other issues.<sup>10</sup>

Judge Tjoflat's judicial scholarship continues even in his 50th year, especially in the areas of jurisdiction and procedure. Just as I was writing this article, Judge Tjoflat wrote for the en banc majority in a case involving the scope of a jurisdiction-stripping provision in the Immigration and Nationality Act.<sup>11</sup> And his condemnation of "shotgun pleadings" is legendary.<sup>12</sup>

\* \* \* \*

**One might think that my relationship with His Honor would be different now** that I am a judge myself. However, in many ways, things haven't changed. On a late Friday afternoon in September 2002, after 17 months in the confirmation process, the call came that the President had finally signed my commission to become a federal district judge. I called Judge Tjoflat to give him the news, and he said, "Get down here, and I will swear you in right now." Of course, I charged right down there just as I had always done when he believed for me as a clerk. Halfway down to his chambers I realized I hadn't even told my wife and kids that I was being sworn in. I was able to put him off, but only for a day.

In remarks that I gave in honor of Judge Tjoflat's 35 years on the federal bench (yes, I have had practice in doing these tributes), I told this (embellished) story:

When I clerked for Judge Tjoflat, sitting across the table from him while we worked on one of my draft opinions, sometimes he would just blurt out "No! No! No! No!" to let me know exactly what he thought of my analysis.

Fast forward to my tenure as a district judge where Judge Tjoflat is still "grading my papers," just in a little different context. Anyone who might be tempted to think that Judge Tjoflat would display any partiality toward my judicial decisions because of our prior association does not know the man. Recently, I had occasion to have one of my decisions reversed by the Eleventh Circuit in an opinion written by Judge Tjoflat. I

would like to read that opinion in full to you now:

"This is an appeal from a final decision of the Honorable Timothy J. Corrigan."

"No, No, No, No!!"

"Reversed."

\* \* \* \*

**No discussion of Judge Tjoflat would be complete without mentioning his relationship with his clerks.** Including those hired for next year, the ranks of "the Union" number 200 (yes, you read that right). Judge Tjoflat has pictures of each law clerk lining his chambers, and to this day he not only remembers every one but can tell you about their families and professional lives. Judge Tjoflat and his gracious wife, Marcia, maintain law clerk traditions: the annual holiday party, the silver spoon for each law clerk baby, the aforementioned annual letter, and periodic law clerk reunions. He has traveled far and wide for his law clerks, performing weddings and swearing in new judges. He views every person who has clerked for him as part of the family and will drop everything when one of us needs his advice or assistance.

\* \* \* \*

**I have tried to take the lessons that the Judge taught me** while clerking and which he teaches through his opinions — respect for the law, rigorous attention to detail, fierce independence, professionalism, and collegiality in the practice of law — and apply them in my professional life as a lawyer and a judge. Judge Tjoflat has been imparting these lessons for 50 years, and

there is no end in sight. In fact, I am already taking notes in anticipation of being asked to make remarks on the occasion of his 60th anniversary as a federal judge! From his unusual name, to his extraordinary intellect, to his unparalleled love for the law, to the unique way he can deconstruct a problem — "strip it bare," as he calls it — to his many quirks, there's no one quite like the Hon. Gerald Bard Tjoflat. We should all be grateful for his 50 years of distinguished service to the federal judiciary and the people of the United States.



**TIMOTHY J. CORRIGAN** is chief judge of the United States District Court for the Middle District of Florida. He is one of more than 100 Duke

Law graduates who have served as a law clerk to Judge Tjoflat (Corrigan clerked in 1981-82).

- <sup>1</sup> 329 F. Supp. 123 (M.D. Fla.), *aff'd*, 447 F.2d 1330 (5th Cir. 1971).
- <sup>2</sup> 347 U.S. 483 (1954), *supplemented sub nom. Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).
- <sup>3</sup> 402 U.S. 1, 14 (1971).
- <sup>4</sup> Daniel S. Bowling III, *Gerald Bard Tjoflat: A Profile*, 11 11TH CIR. HIST. NEWS 17, 19-20 (2014).
- <sup>5</sup> William F. Jung, *The Last Unlikely Hero: Gerald Bard Tjoflat and the Jacksonville Desegregation Crisis 35 Years Later*, 80 FLA. BAR J. 10 (2006).
- <sup>6</sup> 661 F.2d 1206 (11th Cir. 1981).
- <sup>7</sup> *United States v. Carter*, 721 F.2d 1514 (11th Cir. 1984).
- <sup>8</sup> Gregory B. Mauldin, *Hon. Gerald Bard Tjoflat, U.S. Circuit Judge, U.S. Court of Appeals for the Eleventh Circuit*, 53 Fed. Law. 24, 2-3 (2010).
- <sup>9</sup> Byron R. White, *Presentation of the Fordham-Stein Prize to Judge Gerald Bard Tjoflat: October 31, 1996*, 65 FORDHAM L. REV. 2405, 2406-07 (1997).
- <sup>10</sup> Citations omitted.
- <sup>11</sup> *Patel v. United States Attorney Gen.*, No. 17-10636, 2020 WL 4873196 (11th Cir. Aug. 19, 2020).
- <sup>12</sup> See, e.g., *Estate of Bass v. Regions Bank, Inc.*, 947 F.3d 1352, 1358 (11th Cir. 2020); *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 980 n.54, 981-83 (11th Cir. 2008); *Byrnes v. Nezhat*, 261 F.3d 1075, 1129-31 (11th Cir. 2001).

*Who is your judicial hero?*

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