

Hon. Jane Richards Roth

Senior Judge, U.S. Court of Appeals for the Third Circuit

by Anne Shea Gaza



Anne Shea Gaza is a partner with the law firm of Young, Conaway, Stargatt & Taylor LLP in Wilmington, Del., practicing in the area of intellectual property litigation and complex commercial litigation. The author wishes to thank Jennifer McColough, a trial attorney in the U.S. Department of Justice, for her assistance in making this article possible. The views expressed in this article are those of the author and do not represent the official position of her colleagues, firm, or any government agency.

Whether sitting in her home near the Potomac with her energetic bulldog, Teenie,¹ or in session in Philadelphia, the Hon. Jane Richards Roth has as much energy about life and the law in her 32nd year on the bench as when she was a junior attorney, litigating before the judges who later became her peers. Judge Roth spent two decades as a litigator and raising a family with her husband, the late Sen. William Roth Jr., before she received her first judicial commission in 1985 and assumed senior status in 2006. As a senior judge, she continues to carry almost as full of a caseload as when she was an active judge. Now 82 and with a legal career spanning 52 years, Judge Roth is, according to the Hon. Kent A. Jordan, “A remarkably excellent judge” and “someone who has not lost a step—she is just as focused and on top of cases, as clear and incisive with her questioning at oral argument, and as thorough with her rationale in panel deliberations as ever.”²

A Student

A career in the law may have seemed predestined for Judge Roth. Her great-grandfather, grandfather, and father were all lawyers, as were her brother, uncle, and cousin. In fact, her grandfather, Robert H. Richards, was one of the founders of Richards, Layton & Finger PA, a pre-eminent law firm in Wilmington, Del. With this lineage, and in the words of her sister Lydia Boyer, no one “could be surprised if anyone [in the family] went into law because it was very much a factor in our lives, so we all had that as a possibility.” And in her junior year at Smith College, Judge Roth attended a trial in London’s law courts that indeed sparked her interest in becoming a lawyer.³

But she did not immediately embark on a career in the law. In her final year at Smith College, Judge Roth decided she “did not want to sit through more



Judge Roth (center) at the Senate Spouses Luncheon in Honor of the First Lady with Michele Obama (left) and Jill Biden.

school” and instead joined the Foreign Service as a clerk-typist. Embracing life in the U.S. Department of State, she picked assignments based on location, always choosing places she “would not go as a tourist.” Her adventures led her first to Tehran, Iran, and later to Salisbury, Rhodesia (now Zimbabwe). While in Rhodesia, Judge Roth studied chiShona, the language of the Shona tribe. Though it has been 55 years since her time with the State Department ended, she can still tell you “I like beer” in chiShona.⁴ Her third and last assignment in the Foreign Service was in Brazzaville, Republic of Congo. It was during her tour in Brazzaville that Judge Roth determined she was “tired of typing and decided to apply to law school.”

Ultimately faced with the choice of Harvard or Stanford law schools, Judge Roth chose Harvard, which she attended along with Elizabeth Dole and Bruce Babbitt. For perhaps the first time in her legal career, though certainly not the last, Judge Roth was a true trailblazer as the first applicant ever in the history of Harvard Law School from the Republic of Congo. At the time of her matriculation to Harvard Law School in 1962, she was one of 25 women in a class of 700-plus men. Erwin Griswald was the dean of

the law school at that time and he “invited all 25 women to his home for dinner, only to tell them that they were taking the place of 25 men who otherwise would have a future in the law.”⁵ By the end of her 3L year, Judge Roth was one of 23 women to graduate with 545 men.

A Litigator

After graduation, and intent on practicing law as a litigator, Judge Roth returned to Wilmington. As one of the first 10 women members of the Delaware bar,⁶ Judge Roth faced many challenges in her early years as an attorney. Despite a pronouncement by her father when she was 13 years old that “no woman lawyer is going to be hired by Richards, Layton & Finger!”⁷ Judge Roth did just that, becoming the first female attorney in the history of the firm. Encouraged to sit in her office and practice family law, she learned that while a woman may be hired by the firm, it was widely believed that “a woman would never be made partner”⁸ at the firm. Not one to shy away from a challenge, Judge Roth became a formidable litigator and the first female partner of not only Richards, Layton & Finger, but also the first female partner of any major Delaware law firm.⁹

Early in her legal career, Judge Roth realized that family law was not her niche and considered moving her practice to Washington, D.C., to pursue a litigation-focused career. A conversation with Rodney Layton, however, persuaded her to give Delaware another chance. After speaking with Layton, Judge Roth began working on medical malpractice cases under his tutelage. She started out “carrying bags” and having to “prove herself,” but eventually worked her way up to lead trial attorney. Reflecting on her successful navigation of the legal field, Judge Roth believes that her being a “terrible tomboy for quite a while” helped her hold her own because “boys were not so strange . . . at least until puberty.” Unfortunately, her knowledge of the law and skills in advocacy did not stop at least one male adversary from becoming abusive and condescending during a trial. After her repeated objections were sustained, her adversary shouted at her, “Stop yelling at me like a fishwife.”¹⁰ Needless to say, Judge Roth continued with her meticulous trial presentation and left the courthouse with a victory for her client.¹¹

Toward the end of her 20 years in private practice, Judge Roth diversified her practice. When asked about her most fascinating cases, she quickly recounted the case of *Jesse Colpo v. Francis J. Sheeran*.¹² She represented Colpo who asserted claims of libel and slander against Sheeran for distributing anti-campaign literature four days before the local election. What made the case particularly memorable, however, is that one of the jurors had to be released after advising the court that he could not decide against Sheeran, head of the Teamsters local, or he would be dead. This concern was perhaps not unfounded given the widely circulated rumor at the time that Sheeran had shot and killed the national labor leader for the Teamsters, Jimmy Hoffa.¹³ In the end, Judge Roth’s client prevailed

both in the Delaware Superior Court and in the Delaware Supreme Court, where Judge Roth also argued the appeal.

A Trial Judge

It was shortly after the *Colpo* case that a seat opened up on the U.S. District Court for the District of Delaware, with the elevation of her childhood friend, Hon. Walter K. Stapleton, to the U.S. Court of Appeals for the Third Circuit. Nominated by President Ronald Reagan on Oct. 16, 1985, she faced some criticism over her lack of criminal law experience before being confirmed by the Senate on Nov. 1, 1985. When Judge Roth received her commission on Nov. 4, 1985, she was the first female judge to serve on the court and served as a trial judge for almost six years.

As she assumed the bench, there were two senior judges serving the court, noted jurists Hon. James Latchum and Hon. Caleb Wright. With the mentorship of these seasoned jurists, coupled with her shrewd assessment of the law and ability to control a courtroom, she “learned how to do her job.” Looking back on her first criminal trial, Judge Roth recalled discussing a particularly difficult situation with Judge Latchum. In that case, it was reported to the judge that the lead witness from the day before told a juror that he was “going upstairs to be crucified.” The juror then made mention of this statement as he walked into the jury deliberation room. Her discussion with her senior colleague helped her to figure out what to do and, after letting go of the juror and one other juror who heard his comment in the jury room, the case continued. While there were many issues on appeal, the juror issue was not one of them.

As a trial judge, Judge Roth was known for being a “completely fair, no nonsense judge.”¹⁴ Noting that it was a “real treat to appear before her,” Judge Jordan recalled that, as an assistant U.S. attorney, he loved trying cases before her because “she not only had excellent control of the courtroom—including a mastery of both the rules of evidence and procedure—but she was not the least bit afraid to do what was needed to move cases along.” In fact, one of the tools he recalled she would employ as a jurist was a “gentle, but effective use of humor that she deployed appropriately. She knew how to lay out a one-liner to break the tension in the courtroom or to move things along when proceedings became bogged down.”

The Hon. Richard G. Andrews similarly recounted that she was “hard to anger and always had a great sense of humor.”¹⁵ Notwithstanding her lack of criminal experience when she went on the bench, Judge Andrews recalled that while he was an assistant U.S. attorney, “she was always on top of things, she picked up on criminal cases as a judge without missing a beat . . . she



Teenie

would dive right in.” One quality in particular he noted was Judge Roth’s ability to manage a courtroom while “not adding to the stress of trial. She did not interject herself into proceedings—she let the lawyers try their cases.” A quality that Judge Andrews aspires to himself as a trial judge, conscious as always that “what lawyers do is very stressful and in court it is important not to add to the stress of the situation.” With her impeccable judgment, unquestionable impartiality, and desire to get it right without any personal agenda, Judge Roth was “an obvious choice for nomination to the Third Circuit Court of Appeals.”¹⁶

An Appellate Judge

On May 16, 1991, Judge Roth was nominated to the seat on the Third Circuit Court of Appeals vacated by Hon. Collins J. Seitz.¹⁷ Describing the court as “very collegial,” Judge Roth quickly acclimated to her new position. This congeniality continues to the present time. She mentioned numerous conversations with Hon. Cheryl Krause, who she described as having a “deep understanding of the law,” and reminiscing with Hon. Thomas Ambro about their law firm days together. Over the years, she often discussed issues that uniquely confront appellate judges with her good friends the late Hon. Edward Becker and the Hon. Judge Stapleton. She notes that with such a collegial bench there is not a single judge she does not look forward to sitting with on a panel.

Judge Roth credits her experience as a trial judge in making her a better appellate judge. One advantage she believes her experience as a trial judge brings to her appellate cases is “knowing the tricks lawyers are up to and understanding the pressures on a district court judge to know the rules and make split-second decisions or have the confidence to call a recess to do the research needed to render a ruling.” With that knowledge base, she approaches appeals with the mindset that not every thought and rationale underlying a decision by the trial judge must be outlined in excruciating detail when it is clear from reading the decision that all of the factors were considered.

One of her favorite appellate cases is one that causes her brother Robbie to curse her every time he has occasion to ride in an airplane. The case was *Abdullah v. American Airlines*,¹⁸ and it involved claims for personal injuries resulting from extreme turbulence during a flight. The plaintiff argued for an ordinary negligence standard while the defendant argued that compliance with federal law simply required a seatbelt warning sign. Left in a quandary favoring neither position on the law, Judge Roth went to the Wilmington Public Library and read the Federal Aviation Administration regulations. This diligence revealed language proffered by neither side regarding the standard by which a pilot must operate an aircraft. Specifically, 14 C.F.R. § 91.13(a), the “Careless or reckless operation” regulation, requires of the pilots and aircrew that: “No person may operate an aircraft in a careless or

reckless manner so as to endanger the life or property of another.”¹⁹ Writing for the panel, Judge Roth sent the case back to the district court with instructions “to evaluate whether the evidence on standards of care and the instructions given to the jury conformed to the federal aviation safety standards.”²⁰ Overall, her diligence and ultimate ruling led to more safe, albeit more constrained, flight travel. After recounting the case to her brother, however, he said, “*You* are the reason why I have to wear that seatbelt all of the time now!”

A Senior Judge

With the 2008 presidential election on the horizon in 2006, Judge Roth considered taking senior status in order to open a seat on the circuit court that could be filled during the current administration. After following the career of then-District Judge Jordan, who had made a strong impression on her when he was an assistant U.S. attorney, she timed her transition to senior status so that there would be enough time for him to pursue her seat before the 2008 election. Her timing was, as always, impeccable. Judge Roth assumed senior status on May 31, 2006, and Judge Jordan was nominated by President George W. Bush on June 28, 2006. By the 2008 presidential election, the Third Circuit had gained a new senior judge and a new active judge.²¹

As a senior judge, she credits her mentorship by Judges Latchum and Wright back when she was on the district court with demonstrating how valuable senior judges can be to a busy court. Judge Roth noted that of the six judges on the district court, it was her, the new judge, plus the two senior judges who were carrying more than 50 percent of the work of the court. It was their example that she emulated when assuming senior status herself. Noting that some active judges are concerned that senior status means they are not “real judges,” Judge Roth has no such concerns. Since assuming senior status in 2006, she has sat on over 60 panels, has authored over 400 opinions, and continues to serve as the chair of the Third Circuit Committee on Facilities and Security.

As a senior judge, Judge Roth maintains her chambers in the federal courthouse in Philadelphia, aided by four full-time law clerks, an assistant, and, from time to time, various judicial interns. When asked what the biggest difference for her is since taking senior status, she noted that she cannot sit on every *en banc* panel and she cannot serve on the Circuit Council, neither of which she misses after involvement for almost 15 years. As to no longer sitting *en banc* (though she still sits *en banc* on cases that she was on the original panel for), she particularly does not miss the “*en banc* opinions, which can be so difficult.”

Unlike senior district court judges, senior appellate judges do not have control over what types of cases they are assigned, but senior appellate judges can limit the number of sittings they take a year. An active judge

has five sittings a year while a senior judge may have as few as one or as many as five sittings a year. Last year, Judge Roth took four-and-a-half sittings and generally participates in four to five sittings every year for the Third Circuit. One opportunity available to a senior appellate judge is sitting on other circuit courts. To that end, Judge Jordan recently noted that, “as a senior judge, Judge Roth not only continues to be very engaged in the work of the Third Circuit, but also in courts around the country, which is a real blessing to the other circuits that she assists while continuing to be fully engaged at our court.” To date, Judge Roth has sat on the Second, Fourth, Sixth, Ninth, and Eleventh Circuits, and looks forward to sitting again on those or other circuits if invited.²²

Even after relocating to Washington, D.C., in 2009 to be closer to her children and grandchildren, she maintains practically the same schedule and continues to enjoy the collegiality of her colleagues on the bench. After her move, Hon. David Sentelle, then chief judge of the Court of Appeals for the District of Columbia Circuit, welcomed her and introduced her to the judges’ lunches. A mixture of bankruptcy, magistrate, district court, and appellate judges, the judges lunches have become a favorite for Judge Roth. It is there that she engages in discussions with her D.C. colleagues—“sometimes serious, sometimes humorous, but always maintained within the lunchroom walls.”

A Mentor

Judge Roth also keeps up with her more than 100 current and former law clerks. Serving as their mentor while they are clerking for her, Judge Roth prides herself on being available to her former clerks any time they want to discuss their futures and aspirations. Among her notable former law clerks, Chris Coons became a senator in 2010 after working in the private sector and for the “I Have a Dream” Foundation following his clerkship. “Judge Roth has been a mentor to me since I had the privilege of clerking in her chambers,” said Sen. Coons. “Her tenacity, command of the law, and commitment to justice set the bar high, and I continue to strive to emulate her example.” Echoing this sentiment, Jeff Steger, who clerked for the judge in 1993-1994 and has served as a trial attorney with the Department of Justice since 1994, added that “Judge Roth treated us as professionals, valued our work, and helped to launch many legal careers in both the public and private sector.” Indeed, among others, Judge Roth launched the careers of a vice chancellor on the Delaware Court of Chancery; a judge of the Superior Court of San Francisco; an administrative law judge in defense spending appeals; and the former homeland security adviser to the president of the United States.

A Wife, Mother, and Grandmother

Judge Roth was married to Sen. Roth for 38 years. Together they raised two children who, in turn, gave them

five grandchildren. But what few may know is that their relationship almost ended with their first date.

In 1959, Judge Roth’s father was the leader of the Delaware delegation to the Republican National Convention in San Francisco. Sen. Roth was then the leader of the young Republicans in Delaware and a good friend of Judge Roth’s brother Robbie. Judge Roth had just graduated from Smith College and was introduced by her brother to Sen. Roth at the top of Knob Hill. After the convention, Sen. Roth invited her to a movie. The movie was unmemorable, but afterward they went for a bite to eat. In part due to his meal choice of a peanut butter, lettuce, and tomato sandwich with a glass of buttermilk, she almost never saw him again. “But,” she said, “there must have been a good movie in town.” because she did end up going out with him again. Nine years later, they married following her tour in the Foreign Service and her graduation from law school.

While Judge Roth and her husband supported each other in their careers, they had very little professional crossover. She recalls only having to recuse herself from one case—involving the closure of the Naval base in Philadelphia—since Sen. Roth had been heavily involved in creating the commission charged with the task of identifying which military bases to close. The one political event she most regrets having to miss, because of the ethical guidelines for judicial officers, was a fundraiser Sen. Roth had with Henry Kissinger. But Judge Roth was quick to point to those same ethical guidelines when she gladly declined any events of a political nature where she was asked to fill in for her husband.

Well regarded for her wonderful sense of humor, Judge Roth’s sister reminisced that “Bill also had a great sense of humor, making them just a wonderful combination.” Together they raised their children while working full time and traveling, as needed, between Wilmington and D.C. While her son obtained a law degree, her daughter pursued a career in medicine and some of her grandchildren²³ are set to do the same. Interestingly, patent cases are what Judge Roth most enjoyed when a district court judge, so perhaps the interest in the sciences by the later generations is not too surprising.

A Trailblazer

Well known for her “wonderful sense of humor...[,] brilliant mind and unshakeable integrity,”²⁴ these traits may well be what aids her in continuing to be one of the most active senior appellate judges in the country. While time has made it more difficult for her to travel as extensively as she did in her youth, she still visits the family vacation home in Montana and sits as a visiting judge on other circuit courts whenever invited to do so. She also hopes to one day have the opportunity to mediate appeals for her circuit court, particularly since she finds appellate mediation “takes away all of the interesting business cases.” For now, she plans to maintain a full docket for as long as possible and enjoy her time with her family and beloved



Bella

dog Teenie. And for those who know her, like her colleague Judge Ambro, “What you get [with Judge Roth] is a colleague respected for her competence, collegiality and independence, a leader of her profession, a friend whose word is true and trusted, a parent who always finds time for her children (and their children), and all this is wrapped in a package free of pretense.”²⁵ ◉

Endnotes

¹The family’s succession of Saint Bernards became something of a trademark for Sen. Roth since he would often bring them along during public appearances. With the passing of Bella, the last such Saint Bernard, Judge Roth decided to branch out and adopted a small, but energetic, young bulldog named Teenie who both guards her family and welcomes friendly visitors with her favorite toys.

²Interview with Hon. Kent A. Jordan, U.S. Circuit Judge, U.S. Court of Appeals for the Third Circuit (May 5, 2017) (hereinafter Jordan Interview).

³Thomas L. Ambro, Introduction for Hon. Jane R. Roth at the Monsignor Paul J. Taggart St. Thomas More Society Award and Annual Dinner (May 15, 2005) (hereinafter Ambro Introduction).

⁴As her friend and colleague Judge Ambro has had occasion to note, Judge Roth still likes beer, but nothing fancy and no glass needed. *Id.*

⁵*Id.*

⁶WILLIAM LANOUILLE, RICHARDS, LAYTON & FINGER: AN ILLUSTRATED HISTORY 51 (2009).

⁷*Id.* at 36.

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²*Jesse Colpo v. Francis J. Sheeran*, 460 A.2d 522 (Del. 1983).

¹³DailyMail.com Reporter, *How Frank Sheeran Killed Jimmy Hoffa: The Shocking Claims Made 41 Years After the Legendary Union Activist Vanished*, DAILYMAIL.COM (Updated Aug. 1, 2016, 3:38 AM), <http://www.dailymail.co.uk/news/article-3716997/How-Frank-Sheeran-killed-Jimmy-Hoffa-shockingly-claims-41-years>

legendary-union-activist-vanished.html.

¹⁴Jordan Interview, *supra* note 2.

¹⁵Reflecting on one of his numerous hearings before Judge Roth, Judge Andrews recalled a particularly humorous comment from the bench during a suppression hearing. The proceedings required him to offer a police dog as an expert in alerting for the presence of drugs in a stopped vehicle. In order to qualify the dog, then-Assistant U.S. Attorney Andrews described at length the training the dog had received and that he had graduated second in his class. Judge Roth quickly noted that the dog had graduated “Fido Beta Kappa!”

¹⁶Ambro Introduction, *supra* note 3.

¹⁷Judge Roth’s elevation to the Third Circuit opened up a seat on the district court that was filled by then-Magistrate Judge Sue L. Robinson. After a long tenure on the district court, including as the first female chief judge from 2000-2007, Judge Robinson assumed senior status in February 2017.

¹⁸*Abdullah v. Am. Airlines*, 181 F.3d 363 (3d Cir. 1999).

¹⁹*Id.* at 371.

²⁰*Id.* at 376.

²¹Judge Jordan is “always conscious [that] he holds the seat once held by Judge Roth, which is both a point of inspiration and imparts a sense of real responsibility because she did and continues to do a terrific job, and I want to live up to the standard she set.” Jordan Interview, *supra* note 2.

²²In addition to her caseload, Judge Roth also chairs the Third Circuit Committee on Facilities and Security, serves on numerous committees, and is involved in innumerable organizations within the legal community and in the community at large. Indeed, this profile would go on indefinitely were one to try to identify all of the committees, boards, and organizations Judge Roth has been involved in during her career.

²³It was from her grandson Bobby that she was gifted with the nickname “Jane the Jaywalking Judge,” but that is a story for another day and another article.

²⁴Chad M. Oldfather, *Hon. Jane Roth*, FED. LAW. (1999).

²⁵Ambro Introduction, *supra* note 3.