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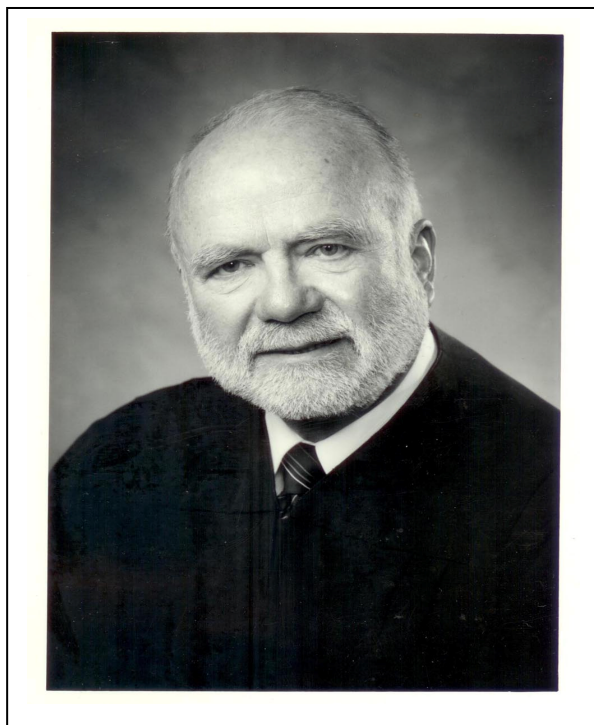
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Honorable Gerald Brown: A Life Well Lived

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June 4, 1915-December 9, 2005

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I. INTRODUCTION

The Presiding Justice of the California Court of Appeal for the Fourth Appellate District Gerald Brown (“Judge Brown” to his friends and colleagues) passed away in December of 2005. He was 90½ years old.¹

Always a fan of the understated English double negative, Judge Brown would have described his life as “not at all unpleasant!” Indeed, he lived a full, productive, and happy life.

Judge Brown was blessed with many talents, which he exploited to the fullest with hard work and efficiency. A gifted singer, he performed with a local choral group until shortly before his death—discreetly giving up his place amongst the tenors only when he reached his nineties. He was also an accomplished athlete, a voracious reader, an ardent scholar, and student of the English language.

As a jurist, Judge Brown was renowned for his concise and plainly-written opinions. He was also an able and effective administrator who masterfully steered the California Court of Appeal for the Fourth Appellate District (San Diego, Orange, Riverside, San Bernardino, and Imperial Counties) through the turbulent years of the 1960s, 70s and early 80s.

II. BIOGRAPHY

Gerald Brown was born on June 4, 1915, in Chamberlain, South Dakota. *Gerald* was his mother’s maiden name. Out of respect for her, he never referred to himself as “Jerry”—always *Gerald*. Judge Brown never used his middle name; he told people he did not have one. He did, but out of respect for *him*, I will not mention it here.

Judge Brown came from a family of distinguished lawyers in South Dakota. His grandfather, James Brown, was born and raised in a small coal mining town in Scotland. One of his teachers told him, “You’re too

1. Shortly before his death, Judge Brown observed fractions of a year are only important to the very young and the very old. He was proud of the fact he was “90½”—it made him the longest surviving Brown of his generation.

smart a lad to grow up a miner. Ye should go to America!” He did; emigrating to the Dakota Territory where he took up law and eventually served on the South Dakota Supreme Court from 1927 to 1931.

Judge Brown’s father, Matthew A. Brown, was also a successful lawyer. In addition to his private practice, Matthew Brown served as the United States Attorney in Grand Rapids. In 1931, he was elected as the first president of the South Dakota State Bar Association.

Gerald Brown was one of five children—two boys and three girls. As boys, Gerald and his older brother, James, roped mustangs on the open range for their “Uncle Scotty” who wrangled the wild horses for the army. However, one of Judge Brown’s fondest memories was of the summer of 1929, when he and James drove the family car to visit cousins in Annapolis, Maryland. It was during this magical trip that James decided to seek an appointment to the Naval Academy. He was successful and returned to Annapolis two years later to begin a distinguished naval career.²

As for Judge Brown, he was named valedictorian of his high school class in 1933. He received a scholarship to attend the University of Southern California where he graduated Phi Beta Kappa in 1937. Judge Brown was also named a Rhodes Scholar in his graduating year.³ However, his attendance at Oxford University in England was cut short by the commencement of World War II in Europe.

Judge Brown returned to the United States to study law at Yale University Law School where he attended with former Supreme Court Justice Byron White, former President Gerald Ford, and former United States Attorney General Nicholas Katzenbach.⁴ He graduated from Yale in 1941.

Justice Brown was admitted to the California Bar on December 8, 1942. He began his career practicing law in Los Angeles with the O’Melveny & Myers law firm from 1942 to 1943. He served briefly in the United States Army during World War II in . . . where else? . . . the calvary.

2. James attained the rank of captain. He served valiantly in World War II, surviving the attack on Pearl Harbor and the ferocious battle of the Coral Sea. Having no less than five navy ships “shot out from under him,” James was a highly decorated naval officer.

3. The honor of a Rhodes Scholarship was also bestowed upon Judge Brown’s father. Matthew and Gerald Brown were the first American father-son combination to attend Oxford on a Rhodes Scholarship.

4. Years later, Justice White would comment, “Gerald was the smart one.”

Upon his release from service, Judge Brown was spirited away from O'Melveny & Myers by the Vice President and General Counsel for the Santa Fe Railway Company, Jonathan C. Gibson—a man whom Judge Brown had met and impressed while studying for the California bar exam two years earlier. Judge Brown was a successful trial attorney with Santa Fe from 1944 to 1947.

However, in 1947, Judge Brown was offered a unique opportunity. The Rhodes Scholarship Committee offered him a chance to return to Oxford University to complete his post-graduate studies. From 1947 to 1949, Judge Brown attended Brasenose College at Oxford with, according to Judge Brown, “some of the finest minds I’ve ever known.” His mentor and tutor while at Oxford was the distinguished professor of law Ronald H. Maudsley.

While Judge Brown attacked his studies at Oxford with vigor, he was equally “vigorous” outside the classroom. During his tenure as a Rhodes Scholar, Judge Brown was one of very few to earn his “colors” in three different sports. In his final year, he led his teammates to victory over Cambridge and a championship year in “Rugby Fives”⁵—a feat never before accomplished by an American.

For his accomplishments in and out of the classroom, Judge Brown was selected by his peers for the prestigious Vincent’s Club—“the picked hundred of the University, selected for all round qualities; social, physical and intellectual.” And, oh yes, he obtained his M.A. from Oxford University in 1949.

Upon his return to the United States from Oxford in 1949, Judge Brown was again offered a position with O'Melveny & Myers in Los Angeles. Before taking the position, however, Judge Brown and his wife, Olive, decided to visit a friend working with the law firm of Best, Best & Krieger in Riverside, California. During that meeting, Judge Brown was offered a position with the firm. He took it, and became a litigator with Best, Best & Krieger until 1963.

Judge Brown was a lifelong Democrat. He often stated proudly, “In those days, I was one of the only Democrats in Riverside County.” During the gubernatorial campaign of 1962, Edmund “Pat” G. Brown, Sr. tapped Gerald Brown to serve as his chief fundraiser for Riverside, San Bernardino, and Inyo Counties. Judge Brown worked so tirelessly

5. Rugby Fives is a rugged handball game. A Fives ball is slightly larger than a golf ball, leather-covered, and hard. The court is slightly smaller than a squash court and has a stone—rather than wooden—floor. The game is played in a court enclosed by four walls. The “front” wall has a board of wood running across it at an even height from the floor. The players, using leather gloves worn on both hands, aim to hit the ball above the bar running across the front wall, so the opposition cannot return it before the second bounce.

for the incumbent governor in the inland Republican stronghold that he succeeded in raising more money for the governor's campaign than in any other sector of Southern California. His efforts were considered instrumental in the Governor's victory in November of 1962.

On January 30, 1963, the newly reelected Governor Brown appointed Gerald Brown to the Fourth District Court of Appeal to serve with Presiding Justice Lloyd Griffin and Associate Justice Martin Coughlin. Two years later, Governor Brown elevated him to Presiding Justice upon the retirement of Justice Griffin.

In 1965, the State legislature split the Fourth District into two separate divisions. Justice Brown, along with Associate Justices Martin Coughlin and Vincent Whelan, were the last justices to hear cases for the entire Fourth District. In 1970, Judge Brown was named the Administrative Presiding Justice of the entire Fourth District by then-Chief Justice Rose Bird. He twice served as a member of the State's Judicial Council—from 1971 to 1975, and again from 1981 to 1985.

In 1985, Judge Brown retired from the bench. During his tenure as presiding justice, he supervised the emergence of the Fourth District Court of Appeal as one of the largest judicial districts in the state—encompassing six counties and three separate judicial subdivisions. During a time of burgeoning litigation, Judge Brown persevered in making the Fourth District both efficient and accessible for the public. At the same time, his concise and plainly-written opinions succeeded in taking much of the mystery out of the judicial system for the individual litigants who appeared before him.

III. JUDGE BROWN'S LEGACY

Serving the needs of the public was Judge Brown's legacy to the courts of Southern California: He strove to make the courts accessible, cooperative, and friendly. He believed strongly in the adage "justice delayed was justice denied," so he worked hard to make the process at the Court efficient and timely. He eliminated the gamesmanship of the trial level from the Court of Appeal, and made the courtroom a forum for discussion rather than a field of battle. Most importantly, Judge Brown invested the process with his own gentle personality. By his example, he encouraged civility between counsel and amongst the members of the court.

The Gerald Brown Inn of Appellate Court was established in 2003 by the San Diego County Bar Association, the Attorney General's Office,

and Appellate Defenders Inc. Fittingly, the Inn's purpose is to bring lawyers and appellate justices together to enhance the legal profession and promote civility within the appellate bar.

IV. A FEW OF JUDGE BROWN'S DECISIONS

COALITION FOR FAIR RENT V. ABDELNOUR, 107 Cal. App. 3d 97 (1980). The Coalition filed suit to have an initiative amending the city charter placed on the ballot after the registrar of voters rejected the Coalition's original and supplemental filing of signatures. According to the registrar, the law did not authorize supplementary filings.

In an opinion authored by Judge Brown, the court balanced the increased burden on the registrar of verifying the signatures twice against the effect of the registrar's rejection of the supplemental filing on the initiative process. The court issued a writ of mandate ordering the registrar to verify the signatures on a supplemental petition and, if the number of signatures was sufficient, to place the initiative on the ballot.

LLOYD V. SUPERIOR COURT, 133 Cal. App. 3d 896 (1982). The petitioner attorney published an open letter criticizing a ruling of the trial court. The trial court incarcerated the attorney for contempt. In an opinion authored by Judge Brown, the Court of Appeal annulled the trial court's contempt order, finding the letter was a constitutionally protected expression of petitioner's opinion.

WALTZ V. ZUMWALT, 167 Cal. App. 3d 835 (1985). The trial court imposed a conservatorship on the appellant and confined him in a county mental health facility. The conservatee could not afford to prepare a record of the proceeding for his appeal and the county refused to bear the cost.

In an opinion authored by Judge Brown, the Court of Appeal issued a peremptory writ of mandate ordering the county to prepare the record on appeal at the county's expense. The court held denying the appellant conservatee a record violated his rights to due process and equal protection.

PEOPLE V. RODRIGUEZ, 115 Cal. App. 3d 1018 (1981). Appellant was convicted of robbery under California Penal Code section 211. Appellant contended he was denied effective assistance of counsel at his trial because one of his attorneys was required to testify as to the content of his conversations with appellant.

In an opinion authored by Judge Brown, the court reversed appellant's conviction. The court found the order requiring defense counsel to testify against his client on a material issue diminished the attorney's effectiveness and infringed on appellant's right to counsel. According to Judge Brown, it

was fundamentally unfair to allow the prosecution to use the testimony of appellant's own attorney to convict him.

V. OFFICIAL TRIBUTE FROM USD SCHOOL OF LAW

Following the passing of Justice Brown, the USD School of Law Board of Visitors⁶ met on January 24, 2006 and resolved to commemorate Justice Brown in three ways. The first proposal presented by Justice Judith McConnell with the support of the California Court of Appeal for the Fourth Appellate District was that an article be submitted to the *San Diego Law Review* to highlight Justice Brown and his many accomplishments. The Board of Visitors also approved the draft of a tribute to be framed and presented to Olive Brown on behalf of the Dean and Board of Visitors. As a final means to commemorate the illustrious life of Justice Brown, the School of Law has set up an endowment fund⁷ in Justice Brown's name so his contributions can be remembered in perpetuity. By reaching the endowment minimum of \$50,000, the interest from the endowment will fund the graduation award that Justice Brown personally funded for many years. Any funds in excess of that needed for the graduation award will be used for a scholarship in Justice Brown's name.

6. The Board of Visitors is an advisory and support group dedicated to the School of Law's advancement as a leading center of legal education and scholarship. Members of the Board of Visitors provide counsel and feedback to the Dean on a range of issues relating to the priorities and needs of the School of Law. Justice Brown was a founding member of the Board.

7. Individuals or organizations interested in making a contribution to the Justice Gerald Brown Endowment fund should contact the Law Development and Alumni Relations Office at (619) 260-4692.

