

Hon. William D. Browning

By
Richard E. Gordon

Preface

Even the most cursory review of *The Federal Lawyer's* monthly "Judges Profile" reveals a seemingly unending parade of qualified subjects who — for very unique reasons — have aspired toward, and achieved, the status of federal judge. These profiles provide the reader with a glimpse into the lives of the men and women who run our federal judiciary and make the decisions that guide the professional lives of many of us, as well as the most intimate affairs of those who choose (or must) appear before them. In light of the obvious accomplishments of these individuals, it should come as no surprise that the profiles are flattering and, indeed, this profile does not depart from the tradition.

This common thread, however, should not be read as a qualification for writing such a piece but, rather, an unavoidable consequence of the subject matter. Despite obvious admiration and enormous respect for the subject of this profile, Hon. William D. Browning, a senior district judge in Tucson, Ariz., this profile steers clear of superlatives and gross displays of adoration. This is so not only because the piece sounds less like a eulogy without them, but also because there can be no doubt that its subject would want it that way.

Judge Browning's Background

Although born and raised in Arizona, Judge Browning's origins are anything but ordinary. At the age of 10, the eldest of two boys, William ("Bill") Browning found himself living in the Philippine Islands. At that time Judge Browning's father, Horace Browning, was a mining engineer working in the small Philippine town of Baguio. Following the bombing of Pearl Harbor, as well as much closer sites, the Brownings were evacuated to Manila. Horace Browning, however, left his family after being convinced by Gen. Douglas MacArthur to consult on a week-long project on Corregidor.

The Brownings, who stayed behind, were captured and interned by the Japanese. For three years, they were civilian prisoners of war kept at the University of Santo Thomas in the heart of Manila. Judge Browning never saw his father again. Because Gen. MacArthur did not let the senior Browning leave as promised, Horace Browning was later captured and killed, ironically, by an American submarine while en route to a prisoner labor camp. This fascinating story is told in the historical fictional novel

America's Best, written by Sinclair Browning (Judge Browning's wife), available through AMC Publishing.¹

Following their liberation and return to the United States, the Browning family moved to Los Angeles, where the young Bill Browning completed high school. Thereafter, Judge Browning returned to Tucson where he attended the University of Arizona. He received a business degree in 1954 while enrolled in the ROTC program.

By 1960, Judge Browning had received his law degree from the University of Arizona. He acquired an interest in the law while in the Air Force. As Judge Browning tells the story, the Air Force allowed an accused, if he or she so chose, to be represented by a lay-military person, rather than a lawyer. "Stacking the deck" is one way to describe it, Judge Browning recalls. Apparently, without any legal training, Air Force Captain Browning got a winning reputation and, therefore, a lot of good experience from a steady stream of referrals. This, together with the urging from a family friend, enticed the judge to explore a legal career, eventually landing him in law school.

Lawyer Browning

Upon his graduation, Judge Browning stayed in Tucson and entered private practice. Tucson's legal community in those days was small and "very close" — so if a lawyer engaged in unacceptable antics, according to the judge, he or she would be "thrown out of town." Despite the small-town feeling of the practice, the lawyers from that time are not so obscure. A list of lawyer Browning's former partners and associates, in fact, sounds like it comes from "who's who" in Arizona and beyond. From the Udall brothers (Morris and Stewart), both of whom served as members of Congress for the state of Arizona, and Stewart who served as secretary of interior under President Kennedy, to Justice Thomas Zlaket, the current chief justice of the Arizona Supreme Court, there was (and is) no shortage of talent among lawyer Browning and his contemporaries.

Lawyer Browning's 20-plus-year practice focused primarily on civil defense, although his reputation brought him everything from criminal cases to divorces and wills. He loved practicing law, even as the Tucson community grew to a major metropolitan area. Before taking the bench, lawyer Browning tried some 150 cases in both state and federal court, and argued before the Ninth Circuit, as well as the Arizona Supreme Court. There was, of course, far more in store for this once small-town lawyer.

Federal Judge Browning

In 1984, lawyer Browning became Federal District Court Judge Browning. Appointed by President Reagan, Judge Browning recalls his secretary interrupting him as

he left his office for a deposition, calling out: "can you hold for the President of the United States?" The answer, of course, was obvious and the call's purpose turned out to be congratulatory. Most memorable about the call was Reagan's sincere appreciation for *accepting* the judicial post: he made me feel like "I'd done him a favor," rather than the other way around, Judge Browning recalls. Definitely, a politician.



In addition to resolving a host of appellate issues while sitting on the Ninth Circuit Court of Appeals by designation for over the last 10 years, Judge Browning has tackled matters as important as any ever faced by a federal district court. He handles a full criminal and civil calendar ranging from ordinary employment disputes to death penalty habeas corpus cases. No matter how small the case, however, it gets the judge's personal attention. In fact, the judge will often take on a case that, for one reason or another, dominates his attention for much longer

than expected.

In 1985, for example, Judge Browning was asked — while on vacation — to replace Hon. Richard M. Bilby (who had recused himself) in the multi district securities litigation, *In re Washington Public Power Supply System Securities (WPPSS) Litigation*, MDL 551. The case, as it turned out, potentially affected virtually every utility user within the state of Washington. WPPSS, which involved hundreds of lawyers, arose from a decision to discontinue building certain nuclear power plants and the resulting default on \$2.25 billion of bond debt. Ultimately, the case was resolved, but not before years of legally and procedurally complex litigation, requiring a full-time law clerk whose sole responsibility was to work on WPPSS litigation, and spawning numerous published opinions. By 1989, Judge Browning would realize the enormity of the WPPSS case, noting in one of his opinions that WPPSS was "one of the most complex lawsuits in the history of securities litigation." *In re Washington Public Power Supply System Securities Litigation*, 720 F.Supp. 1379, 1385 (D.Ariz. 1989), *aff'd*, 955 F.2d 1268 (9th Cir.), *cert. denied*, 506 U.S. 953 (1992).

Judge Browning's list of accomplishments and endeavors is too lengthy to explore with great detail. In the years since becoming a lawyer, Judge Browning has participated in a host of organizations, including: the American Bar Association (Special Committee on Housing and Urban Development Law and Committee on Urban Problems & Human Affairs); fellow, American Bar Foundation; fellow, American College of Trial Lawyers; American Judicature Society (board of directors); American Board of Trial Advocates; State Bar of Arizona (Security Regulation Committee, chair of Uniform Jury Instructions Committee, chair of Merit Selection of Judges Committee, Board of Governors, President, and Bar Counsel); Pima County Bar Association (Executive Committee and president); Pima County Bar Association Medical-Legal Screening Panel; delegate, Ninth Circuit Judicial Conference; board of trustees, Institute for Court Management; Judicial Nominating Commission on Appellate Court Appointments; and instructor in law and lecturer in law, the University of Arizona.

When asked, however, what he believes is the most important of his many accomplishments, Judge Browning, without hesitation, tells about his involvement with changing the system of judicial selection in Arizona. In 1973, then lawyer Browning chaired a committee which helped end judicial elections in Arizona's most urban counties, replacing them with a merit selection system. The change was profound as it de-politicized and affected

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every state court of record, including the Arizona Court of Appeals and the Arizona Supreme Court. The value of this particular legacy is immeasurable; for newer lawyers practicing in Arizona, it is difficult to imagine Arizona's judicial selection system being run any other way.

Even after reaching senior status in May of 1998, Judge Browning has not slowed his pace in the slightest. Judge Browning was one of only five individuals selected by the chief justice of the United States to sit on the "Commission on Structural Alternatives for the Federal Courts of Appeals." The purpose of the commission, which began its work in January 1998, is to make recommendations to Congress on potential changes to the courts of appeals, with particular attention to the Ninth Circuit. The size and workload of the Ninth Circuit, including its possible division, has been the subject of much discussion in recent years. Currently, the judge flies from Tucson to Washington, D.C., twice a month and meets with the commission. The commission's report is due in December 1998, and the judge, with his counterparts, are working hard to meet this deadline. Without hinting at its outcome, Judge Browning notes that the job is complicated and believes that any action, based on the commission's study or otherwise, will not come quickly.

Judge Browning, not surprisingly, was also intimately involved in starting Tucson's chapter of the Federal Bar Association. In 1995, he began assembling local lawyers in an effort to gauge interest in starting such a chapter. Those lawyers, with the motivation and energy of Judge Browning behind them, began one of the best chapters in the country. Indeed, in just three years, the Tucson Chapter boasts some 150 members and is earmarked to host the Federal Bar Association's annual convention in the year 2001. The judge, consistent with his humility, discounts his role in the chapter's beginnings and attributes its success to the lawyers involved. According to one prominent member, however, Judge Browning is considered the father of the Tucson organization. In fact, partly out of appreciation for Judge Browning's efforts, the Tucson Chapter established an award for a University of Arizona law student in the judge's honor.

Judge Browning also played a pivotal role in assuring that Tucson would get a new federal courthouse which — by the way — is now fully under construction. His involvement began over a decade ago when a new courthouse, although much needed, was just a vision. Despite the fact that he long ago gave up his chief judge status along with its accompanying responsibilities, Judge Browning continues to work toward completion of the \$60 million-plus project. Quite literally, Judge Browning concedes, he has been involved with the courthouse from the "ground up." Judge Browning and Tucson will not have much longer to wait; the over 400,000 square foot courthouse is slated for completion in September of 1999.

What makes a great lawyer, according to one of the finest: "dedication, intelligence, and integrity." As for a

judge, the list includes: "patience, integrity, and civility," with civility ranking the highest. The reasons for the differences between lawyer and judge are very clear to anyone who has faced an ill-tempered judge. While a judge (and lawyer) have the tools to deal with lawyer incivility, lawyers can do very little when a judge acts out of line. Thus, Judge Browning believes it is imperative above all that a judge stay in control. There is no question that Judge Browning lives by his words.

Final Thoughts

Concluding this brief look at Hon. William D. Browning without overly flattering language is difficult. The job is complicated by almost four decades of public service the judge has given to Arizonans and the federal bar as a whole. The judge's humility, however, demands nothing less. This past May, when lawyers, judges, staff, and friends filled the courthouse to celebrate the judge's transition to senior status, Judge Browning was asked to say a few words. Apparently the judge was warned in advance about the request, and he told the planners there would be no speeches. In fact, there were none. Instead, true to his style, the judge sincerely thanked everyone for coming, stepped down, and comfortably mingled with the crowd. The judge, although definitely not politically motivated, turned the tables like President Reagan had done to him some 15 years earlier, *making the attendees feel as if they were doing him a favor*. This time, however, Judge Browning does not get the last word. Our community, the federal bar, and the nation are proud and honored to have someone as qualified and dedicated as the Honorable William D. Browning to serve on the judiciary. So, thank you Judge Browning, really. ■

Richard Gordon, a 1992 graduate of the University of Arizona College of Law, served as Judge Browning's law clerk during 1995 and 1996. He currently is an assistant U.S. attorney in Tucson, Ariz., practicing in the office's appellate section.

¹AMC Publishing, P.O. Box 64185, Tucson, Arizona, 85728. In her book, Browning notes:

I can still remember that day. Seated on the floor of a public library, I was looking at a March 5, 1945, edition of Life magazine studying the photos of the liberation of Santo Thomas taken by the photographer, Caryl Mydans.

As I looked at a blonde, curly headed boy in the second story window of one of the buildings held by the Japanese, chills assaulted me and tears flooded by eyes. The boy, who looked so much like my own son, was my husband.

America's Best, Afterward, 489 (1995).