

LEARNING FROM THE JUDGE: A STUDENT'S APPRECIATION

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For the past several years, I have encouraged law students to seek judicial clerkships following graduation.¹ In the process, I try to explain why I believe that this is a worthwhile option to pursue even though it may result in a short term sacrifice of a considerable amount of income, given the current salaries that top law school graduates now command.

I tell the students that if they clerk for a judge, they will have the invaluable opportunity to obtain an inside look at how the judicial process operates, an opportunity they will never again have unless they eventually become judges themselves. I tell them that they will probably be exposed to a broader range of legal issues during a judicial clerkship than most practitioners will encounter during their professional careers. I also tell them that they will have the chance to develop and polish their research, writing, and rhetorical skills on a daily basis with rigorous and demanding supervision. I also say to them that they are likely to be given more responsibility over matters of considerable importance than they would receive at such an early point in their careers in almost any area of private practice. I tell them that they will spend a year or more working with other bright young lawyers like themselves in a challenging, but enjoyable setting, and that they will have an extra year to consider particular areas of practice, particular firms, or a specific geographic area if they are not yet certain what they plan to do. I tell them that a judicial clerkship is a prestigious, highly sought after position that cannot help but enhance even the most stunning resume. And most importantly, I tell them that they will have the opportunity to work on a relatively close and personal basis with a state or federal judge—almost invariably a lawyer of great experience, skill, and wisdom who delights in sharing what he or she has learned with the law clerks.

I say this all quite confidently and enthusiastically based on my own

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1. I am particularly pleased that one of my former students, Louis Teitz, clerked for Judge Brown from 1981-1982.

experience and the experience of so many other clerks with whom I have spoken. And yet, when I have finished, I cannot help feeling that I have not come close to capturing the benefits that I derived from my clerkship with Judge Brown. The invitation to contribute to this special issue has prompted me to think back to the year I spent with the Judge and to explain in at least a little detail some of the lessons that I learned from a truly unique and outstanding teacher.

Judge Brown is, and indeed sees himself as, a teacher to his law clerks. He tried to teach us about good lawyering, about professionalism, about judging and the operation of courts, and about life. I have been exposed to some of the Judge's lessons, both before and after my clerkship, from a variety of other sources including family, friends, church, college, law school, and practice. Other lessons were more unique to the Judge. I should also note that, more often than not, the Judge taught by example, rather than by lecture.

It was apparent that Judge Brown hoped to send us off far better prepared to practice law than we were when he hired us. Judge Brown relishes high quality lawyering. When impressed by a brief or oral argument, he was quick to compliment the responsible attorney. He would invariably call it to our attention and explain exactly what the lawyer had done that was worthy of our emulation. Likewise, when the attorney failed to satisfy his expectations, he was likely to call us aside and say, "Now I hope you never . . ." Unlike many of the other judges, Judge Brown wanted at least one of his law clerks present at oral argument. The clerk was present primarily to aid him in the event he needed a case or reference during the argument. The Judge made it clear, however, that we were there for our own benefit as well. When a particularly capable advocate was scheduled to appear, we were instructed to pay especially close attention.

Judge Brown knew that regardless of what other skills and talents his incoming law clerks might possess, they were probably not nearly as efficient as they would need to be in order to practice law successfully. Judge Brown's belief in the importance of organization and administration to the success of any enterprise can scarcely be lost on anyone who has observed his enduring commitment to efficient case management within the Fifth Circuit as well as within his own chambers. My first several days in the Judge's chambers were, to a very large extent, an introduction to administrative procedures that he, his fellow judges, the court clerks, prior law clerks, and the secretaries had created to increase efficiency. I was introduced to screening memos, administrative panels, rule 21, round robin screening procedures, routing slips, the monster file,

the holding drawer, the rehearing file, the boilerplate format, the yellow sheet, flyspecking, clearing the credenza, the hotseat, the home-baked digest, the ice shelf, summary calendar class II's, the docket book, bluiies, pinkies, and a plethora of other carefully crafted devices designed to ensure that the Fifth Circuit and Judge Brown were able to handle the staggering caseload.² I quickly learned the system, learned to speak the jargon, and learned that the key to accomplishing what initially might seem an overwhelming task often lies in the method of approaching and organizing it.

The Judge knew that a successful lawyer needs to be able to juggle several assignments at once. He also knew that fresh young law clerks left to their own devices would rather work on one project at a time. He made it a point to see that we learned how to work effectively while continually changing gears. He was right, of course. I am sad to report that even the ivory towers of academia seldom allow one to pursue any single project for more than a few hours at a stretch. At the same time, however, we learned by necessity that some of our tasks were of significantly greater urgency than others. Much of the administrative structure for which the Judge was largely responsible, both within chambers and throughout the Fifth Circuit, was designed to ensure that top priority items did not get lost in the shuffle.

The Judge impressed upon us that time was one of an attorney's most valuable assets and that we needed to use ours as effectively as possible. What better place to plow through briefs or keep abreast of slip opinions than on the bus home or on the airplane to a panel sitting in New Orleans? Do not waste time writing memos out in long hand; lawyers must be able to dictate.³ If a law clerk failed to keep a tape recorder or at least a pencil and pad on the nightstand to make note of any ideas that might occur in the middle of the night, it was not because the Judge had not suggested it.

The Judge well understood that, often, the toughest part of an assignment was simply getting started. On one occasion, he stuck his head into my office in passing to see how things were going. Eventually he

2. It would consume far more space than it is worth to explain the significance of all of these various devices and procedures. I mention them simply to illustrate the complex infrastructure that the Judge developed over time to solve some of the administrative problems that arose.

3. At the time, I believe the Judge was correct. Today in the era of the personal computer, however, I would seriously question whether dictation is the most efficient means for the creation of written work product by attorneys.

I should note that Judge Brown is one of the true pioneers in the area of computers and the law. See Brown, *Electronic Brains and the Legal Mind: Computing the Data Computer's Collision With Law*, 71 YALE L.J. 239 (1961).

inquired about a large and imposing Title VII case on which I was supposedly working. My only response was to show him the large box full of briefs and exhibits on the floor in the corner. He told me, "When I was a young lawyer, I was assigned a difficult case that I couldn't seem to get started on. When the partner I was working for came by to ask what I had done, all I was able to say was, 'I've picked it up off the floor and put it on my desk.'" I got the hint. I picked the case up off the floor and put it on my desk that very afternoon, and from then on it was easy.

Judge Brown is a living lesson in the socratic method. Anyone who has ever seen Judge Brown during oral argument knows that in confronting a legal problem, he wastes no time in getting to the heart of the matter. Many lawyers have approached the podium armed with a lengthy and intricately structured argument only to have the Judge begin the proceeding by asking, "Now counsel, doesn't your whole case boil down to the simple proposition that . . . ?" More often than not, they were forced to agree with his assessment. So it was with the law clerks, as the Judge would wonder how we could write a five-page memo and still manage to miss the only real issue in the case. In looking at a legal problem, the Judge was never afraid to ask the most obvious questions. All too often as it turns out, those are the ones that tend to get overlooked and can cause the most damage if they remain unanswered. Nor did Judge Brown mind being challenged by his clerks. Instead, he expected it. As he has always been fond of telling us, "I don't need some smart . . . law clerk to tell me when I'm right. I know when I'm right. I need him to tell me when I'm wrong."

As a young clerk fresh out of law school, I was naturally eager to discuss the precedential and theoretical significance of the first batch of cases that I had researched for the Judge. Imagine my surprise when all that he wanted to hear was the record, the significance of which I had wholly failed to perceive. I was reminded that courts exist to decide actual disputes between real litigants, not to write law review articles. I tried not to underestimate the importance of facts again. Although the Judge often dwelled on the facts, he certainly did not neglect the law. More than a thousand opinions spanning over 500 volumes of the Federal Reporter testify to Judge Brown's prodigious scholarship and keen legal analysis.

The Judge has always stressed that it is important for an attorney to have a good memory and frequently illustrated that point by pulling controlling precedent out of the air during oral argument or a discussion with the law clerks. If our memories did not always serve us as well as his served him, we learned that we could supplement our recall with or-

ganizational aids such as the Judge's Home-Baked Digest of his own opinions.

Judge Brown is a strong technical lawyer. His law clerks are constantly shown by example the importance of such basic lawyering skills as statutory construction, common-law case analysis, and logical reasoning. Any student of Judge Brown knows, however, that he will not hesitate to venture beyond technical legal sources of authority in the appropriate case. He has been especially partial to empirical learning, having noted that "statistics often tell much, and Courts listen."⁴ I personally learned a great deal about the use of empirical information for argumentation and decisionmaking by helping the Judge prepare his extensive statistical presentation before the congressional panel considering the caseload of the Fifth Circuit. The Judge's commitment to precision and detail in that particular project, as well as in the everyday course of opinion writing, still stands as a vivid example in my mind of the level of commitment and excellence that an attorney should strive to achieve.

The Judge expected attorneys to satisfy a high standard of professionalism. He was particularly pleased with those attorneys who ventured beyond the traditional confines of their own practices to pursue civil or criminal matters on a pro bono basis, and he let them know that he admired and appreciated their efforts. He was severely disappointed when an attorney failed to behave as he believed that a member of the bar should. On one occasion following an oral argument, he told me to check the citations in one of the lawyer's briefs very carefully. He said, "We've learned from past experience that he isn't honest with the court. He consistently misstates the precedent and the record. He no longer has any credibility with us and when a lawyer has lost that, he's totally ineffective." I will never forget that message, nor will I forget the Judge's disappointment at having to reach such a conclusion about any fellow attorney.

Judge Brown is a naturally gifted writer. His style is engaging and unique. He is able to express his personality through his writing, including his legal writing, better than anyone else I have encountered. As much as I admire his fluid writing style, I know better than to attempt to imitate it. Indeed, if I have learned anything from studying Judge Brown's opinions, it is that each writer must attempt to speak through his or her own voice. I also learned that style, substance, idea and expression are tightly intertwined; that writing is a form of thinking. Often

4. *Alabama v. United States*, 304 F.2d 583, 586 (5th Cir.), *aff'd per curiam*, 371 U.S. 37 (1962).

when it is difficult to express an idea persuasively, it is because it has not been thought through adequately.

Judge Brown's opinions are particularly noteworthy for their organization. The Judge well understands the overriding importance of the logical development of an argument, legal or otherwise. He also understands that it is crucial that the reader perceive that development; hence, he has never been shy about the use of headings, subheadings, introductions, and summaries. Cites and tangential points are often set in footnotes, where they may be pursued without necessarily interrupting the flow of the primary judgment.⁵

As a law clerk to Chief Judge Brown, I learned invaluable lessons in how judges decide cases, how courts operate, and how large, complex, and powerful institutions such as the Court of Appeals for the Fifth Circuit can be efficiently and effectively operated. In witnessing the Judge and his colleagues on the Fifth Circuit deciding cases and writing opinions, I had the opportunity to observe firsthand the complex relationship between simply applying the law and doing justice. Ordinarily, there is little tension between the two, although occasionally a case would come along that might cause the Judge to call in a law clerk and say, "My colleagues think we have to affirm but I think the trial court went too far on this one. Read some more cases. See if you can't find me something to help change their minds." The Judge was not about to reach a decision which he believed flew in the face of the law, but from his experience as a lawyer and judge, he knew that the law could often point in more than one direction. He seemed to believe that as a judge, he was under an obligation to reach the intuitively correct decision, at least if the law would allow.

First and foremost, Judge Brown was concerned with resolving the legal dispute between the parties on appeal. If it should seem obvious that this is the primary role of an appellate court, I must remind you that it is not necessarily obvious to the newly hired law clerk who has just spent three years pondering the landmark precedents from *Marbury* to *Miranda*. But a law clerk, at least a law clerk for Judge Brown, quickly learned that appellate cases are not merely a convenient excuse for making some new law. Indeed, if anything, we learned that the opposite is true; appellate cases sometimes force the court to develop or extend the law when there is no other reasonable way to resolve the dispute.

It became obvious that the Judge perceived the function of oral argument somewhat differently than did many of the attorneys who ap-

5. The Judge pointed out with some pride that the clerk of the court had proclaimed him "the footnote King."

peared before him. The Judge had read the briefs and ordinarily was familiar with the relevant legal principles. As a general rule, he neither needed nor wanted the extensive lecture on the state of the law, complete with quotations from his own opinions that, all too frequently, the attorneys had come prepared to deliver. What he did want was an opportunity to learn about those aspects of the case that were not necessarily apparent from the briefs, but which might well be crucial to its correct resolution, such as the state of the record on a particular point, the presence of another issue that might render a decision premature, or the precise contours of the dispute between the parties. Many appellate advocates never got beyond the first paragraph of their prepared arguments due to the Judge's interest in a particular aspect of the case. The poorer advocates were disconcerted and irritated. The better ones realized that the Judge was actually giving them a far greater opportunity to have some influence on the decision of the case than if he had simply sat back and allowed them to proceed without interruption.

I learned much about the role of concurring and dissenting opinions from the Judge. I learned that, as a general rule, the Judge believed that they were not worth the trouble even when he had legitimate differences of opinion with his colleagues. Writing them would consume time that could be put to more productive use (such as writing majority opinions) and would create unnecessary division on the court. Occasionally, however, when the Judge was convinced that his colleagues on a panel had indeed made an error of some general significance in either the result or rationale of a case, he would use a concurrence or dissent masterfully, and often successfully, to highlight an issue for further consideration, persuade the panel to reconsider its initial decision, persuade the court to rehear the case en banc, or persuade the Supreme Court to grant a writ of certiorari. I learned from the Judge that a dissenter has a fairly limited opportunity to have an impact, and, as such, it may be wise to save one's ammunition for those cases that truly matter.⁶ That, of course, did not stop Judge Brown from being one of the few judges to dissent from his own opinions occasionally.⁷

6. Judge Brown has written many brilliant and influential dissenting opinions. Among them are *Perkins v. Mississippi*, 455 F.2d 7, 11 (5th Cir.) (Brown, J., dissenting), *aff'd on rehearing*, 470 F.2d 1371, 1371 (5th Cir. 1972) (en banc) (Brown, J., dissenting); *United States v. Mississippi*, 229 F. Supp. 925, 974 (S.D. Miss. 1964) (Brown, J., dissenting), *rev'd*, 380 U.S. 128 (1965); *Gomillion v. Lightfoot*, 270 F.2d 594, 599 (5th Cir. 1959) (Brown, J., dissenting), *rev'd*, 364 U.S. 339 (1960); *Lincoln Mills v. Textile Workers Union*, 230 F.2d 81, 89 (5th Cir. 1956) (Brown, J., dissenting), *rev'd*, 353 U.S. 448 (1957).

7. *Triangle Publications, Inc. v. Knight-Ridder Newspapers, Inc.*, 626 F.2d 1171 (5th Cir. 1980); *Campbell v. Carter Found. Prod. Co.*, 322 F.2d 827 (5th Cir. 1963); *Rutherford v. Illinois Cent. R.R.*, 278 F.2d 310 (5th Cir. 1960) (per curiam); *Stanga v. McCormick Shipping*

In our society, judges are confronted with some of the most controversial and divisive issues of the day. As a matter of necessity, they disagree with one another, often vigorously and in print. Many laymen assume that there must be a certain amount of ill will between judges who regularly dissent from each other's opinions. As Chief Judge, I believe that Judge Brown considered it one of his most important responsibilities to see that this did not happen on the Fifth Circuit. He had previously seen the court bitterly divided by personal antagonism⁸ and desired to avoid returning to that atmosphere if at all possible. As far as I could see, he and the other judges were quite successful in maintaining a spirit of collegiality and friendship despite the inevitability of legal and philosophical disagreements. The Judge made it a point to know his brethren well and always to be prepared to smooth over any situation or incident that was likely to create friction. I learned that it was possible for a group of strong willed and independent people with often sharply divergent opinions and philosophies to disagree adamantly and still work together cordially. That does not, however, necessarily occur naturally; rather, it requires patience, hard work, and sensitivity.

Despite the obvious power and authority that the Judge was capable of wielding as Chief Judge of what, as he pointed out, was then "the largest constitutional court in the country,"⁹ the Judge was always alert to the limitations of a federal court as an institution and even more importantly of judges as human beings. He never tired of reminding himself and his colleagues on the federal bench that "we are appointed, not anointed."

Perhaps nothing I received from Judge Brown means as much to me as the appreciation and respect for the Fifth Circuit and its history that he instilled in me. The Fifth Circuit has played a very special part in our constitutional history. Professor Fiss has characterized the role of the Fifth Circuit in the civil rights cases during the fifties and sixties as "the finest moment in American Law."¹⁰ Judge Brown was one of the leaders on the court during that period.¹¹ Although most of the major school cases had been disposed of by the time I clerked for the Judge, I learned a

Corp., 268 F.2d 544 (5th Cir. 1959); *United States v. De Witt*, 265 F.2d 393 (5th Cir.), *cert. denied*, 361 U.S. 866 (1959); *Canal Ins. Co. v. Dougherty*, 247 F.2d 508 (5th Cir. 1957); *Bazemore v. Whittington*, 245 F.2d 943 (5th Cir. 1957); *Hunt Oil Co. v. Federal Power Comm'n*, 236 F.2d 828 (5th Cir. 1956), *cert. denied*, 352 U.S. 970 (1957).

8. See J. BASS, *UNLIKELY HEROES* 84-96, 179-88, 231-47 (1981).

9. At the time, there were 15 active judges on the court. It ultimately grew to 25 active judges prior to the division of the Fifth Circuit into the Fifth and Eleventh Circuits.

10. J. BASS, *supra* note 8, at 331 (quoting interview with Professor Owen Fiss).

11. For a detailed history of the school desegregation cases in the Fifth Circuit, as well as Judge Brown's role in those cases, see J. BASS, *supra* note 8; H. COUCH, *A HISTORY OF THE*

great deal about the court's role in those cases through conversations with him. His pride in the court's accomplishments was apparent. He spoke with great admiration about many of his colleagues on the bench during this period, as well as many of the lawyers who appeared before them. The Judge was also very proud of the efforts the court was making to cope with its expanding docket in an efficient manner without sacrificing justice. I will always continue to regard the Fifth Circuit (old and new) as a very special institution. I try as best I can both to learn more about its history and keep abreast of its present activities. I believe I will always think of it as a living inspiration reminding me of what an institution, the law, and, most importantly, courageous and committed people can achieve amidst great stress and turmoil.

The Judge also taught me some important lessons about the place of the law in life—specifically my life. When I was in law school and spending far too much time dwelling on legal matters, I attended a talk given by another judge, Justice William O. Douglas. Among other things, he told us, “Don't allow yourselves to become totally wrapped up in the law to the exclusion of everything else in life. If you do, you'll shrivel up and be blown away like dead leaves in the wind.” I have tried to remember that advice whenever I have permitted myself to become too consumed by the demands of the law. On these occasions, I have also thought of Judge Brown who well exemplified that it is possible to produce more than one's share of significant, high quality work without sacrificing one's life solely to one's career. It was possible, at least if one learned the lessons of organization, efficiency, and self-assurance that the Judge also taught.

From the first day that a new clerk arrived in the Judge's chambers, the Judge showed a profound interest in his or her family, an interest that is sustained long after the clerk has moved on. Judge Brown made it a point to see that a clerk was not neglecting his or her family because of the pressure of business, however important or challenging it might seem at the moment.

When I think of Judge Brown, I think of a man with style and with a fabulous sense of humor. When I think of the Judge's style, I think less of florid sportcoats than of his basic zest for life and enjoyment of his fellow human beings, though to be sure, the Judge's wardrobe is certainly an aspect of his style. When I think of his sense of humor, I think not so much of its more celebrated manifestations such as the seemingly immor-

tal opinion in *Chemical Specialties Manufacturers Association v. Clark*,¹² but rather of the daily quips during meetings, oral argument, or just in passing in the halls that make the Judge so much fun to be around. From the Judge, I have learned that it is possible to do serious and important work at a highly professional level while still enjoying oneself and without sacrificing one's individuality. I have no doubt that John R. Brown would have been a far less effective judge had he attempted to suppress his buoyant spirit to conform to the somewhat drabber norms of the legal world.

I could not possibly catalogue all of the lessons I learned from Judge Brown. I am certain that I am not even consciously aware of all the positive effects that he has had on my career and my life. As I look back on my clerkship, I know that I was fortunate indeed to have the opportunity to study with this great teacher.

12. 482 F.2d 325 (5th Cir. 1973).