

The Memoirs of  
JUDGE WESLEY E. BROWN

Senior Judge  
United States District Court  
District of Kansas

as told to  
*Jon Roe*

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This “story” is dedicated to the “Browner” Family.



## *About the Author*

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## *Opening Statement*

Out my east office windows on the fourth floor of Wichita's Federal Courthouse, I view the spires of churches, a YMCA, and a YWCA. But out of the south windows, I see the commercial buildings and bustle of a city. I sit between those two rows of windows, much as I live between the quiet neighborhoods of the early part of this century and the pressure-packed cities of today. And I look into the screen of my computer, in this attempt to bring it all together—yesterday and today, the domestic tranquillity and the feverish bustle.

I don't understand how this technological marvel at which I type works. But when I proceed correctly, it allows me to peer through yet another window—the window of memory—and to transcend time and space as no one would have believed possible on June 22, 1907.

That's the day I was born. So was Oklahoma, which became our 46th state, United Press news service, William James' Pragmatism, the art of Cubism and the electric vacuum cleaner. It was also the year a record 1.29 million immigrants entered the United States.

To how many hundreds—no, probably thousands—of immigrants have I administered the oath of citizenship over the past 37 years? Always with the assurance that this is a unique and blessed country. And how many of them required that assurance? None of them. They know, those who come here from other countries, how very special this one is. It's the rest of us who sometimes need to be reminded.

I am reminded every day. And I'm writing this memoir in large part to remind others. And to try in some small way to say thank you to my friends, my country, and my calling.

To practice law in the United States of America, and then to cap one's career as a federal judge is as awesome and important an activity as there is. But it carries its responsibilities.

Every blessing does.

And it often seems to me that the only thing wrong with America right now is that we too often accept the blessings and reject the responsibilities.

Certainly, it's a free country, and I suppose we have the right to take such a cavalier approach toward freedom and responsibility. But I find such a view impossible to understand.

I think about responsibility a good deal in these, undeniably, the final days of a life that has received so much from democracy, and given back as much as I could, but still so little.

I grew up in a tradition of working hard, doing the very best one could and seeing through whatever life gave you. But now I am at the age where questions take on more importance than answers. And I ask myself how I've done. If I've left a legacy. If the world is a little better for my having been here.

Most of all, as I look through my window of memory, I find myself asking if I lived up to the promises I made in 1962 in another courthouse.

I think probably each of us has one event in life that was a benchmark, a pivot-point, a defining moment.

That moment for me was April 12, 1962.

It was a year in which Johnny Carson debuted on the Tonight Show, Jack Nicklaus won his first major professional golf tournament, prime-time television and Polaroid film both went to color and Lear Jet and pop-top aluminum cans came into being.

And on April 12 of that year, I was sworn in as a United States District Court Judge. At age 54, I was at a point where most people begin to think about slowing down their life's work, and bringing it to an end. But even then—looking out over the more than 250 friends and family who overflowed that Hutchinson courtroom, and wondering what in the world I would say to them—I knew that I had just found my life's work and that I would never work harder and enjoy it more than in the years to come.

Three old and dear friends had just spoken.

George Powers, of the American Bar Association, talked of the honor of the office, and of how almost any lawyer, regardless of income or position, would give all that up to be a federal judge. "This is a difficult job," George said, "It is a working job. It is a pressure job. It is a lifetime job with great honor..."

Judge Delmas Hill, who had been appointed to the Circuit Court of Appeals, and whose position I was taking, spoke of the power I was assuming, that is arguably "more power than the President of the United States .... There are certain fundamental qualifications every man who dons the robe of justice should possess," he said. "Among these are integrity, humility, legal learning, patience, a willingness to work hard, and an understanding of human nature .... With these qualifications, a good judge must then proceed to declare the law as he finds it, whether he likes it or not, and usually there are many others who don't like it."

Then D. C. "Hap" Martindell, who helped me as I began the practice of law, spoke of what he believed was the greater meaning of my instal-

lation in this post. "It makes me just a little prouder of our nation when we think of it as a land of opportunity," Hap said. "I am happy that we, in our lifetime, can see an actual demonstration of that possibility because I know that Wes is a self-made man. He didn't get to this position through influence. He came up the hard way, too, supporting himself much of the time through school and having a difficult time. And of his own volition he has achieved this high honor which has been accorded him. And that makes me think well of our country..."

There were tears in his eyes, as Hap handed me my commission as judge. And my eyes weren't any dryer as my wife, Mary, put the robe over my shoulders. I realized again how lucky I was to be born in America where we all have the opportunity to achieve, to have parents who taught me the value of individual effort and caring for others, to have mentors like D.C. Martindell and Judge Hill, to have friends like George Powers, and to have a wife who was both my anchor and my sail.

It seemed to me that—as Hap had said—America was once more proving what it is about, living up to its promises by bestowing so much on me. Now I had to live up to that trust.

I asked the presiding judge, Judge Stanley, for a moment to compose myself. I sipped some water. Then I took a deep breath and spoke from my heart, from my upbringing. My first words were right out of the Boy Scout oath of my youth:

"I want you all to know that I will do my best to do my duty to God and my country; to obey the laws; to uphold the Constitution and the laws of the United States; and with the help of God do it justly and with great humility.

"In addition, to those of you who have had confidence in me, I shall not betray that confidence. And to those who may have some doubt, I accept the challenge. But here with you, my friends, I say here and now in the only way I can pay tribute to

you and the faith you have had in me, that I will strive to seek to find the way of justice. This is my pledge for your faith. Thank you.”

Now I’ve been asked to chronicle my life, to—in a sense—judge just how I did by way of living up to that pledge. But I write these words

in the full knowledge that I cannot answer that question.

The answer is outside these office windows, in the men and women and the society a judge serves. They will make the final judgment. And I’m content with that.



*Chapter 1*

1907-1915

## It Seemed a Perfect Life

I was born on June 21, 1907, in Halstead, Kansas, the second child born to Julia Elizabeth Wesley Brown and Morrison (Morey) Houston Heady Brown.

That was also the year that Picasso was born; composer Edvard Grieg died; and Rudyard Kipling



*Wesley E. Brown as a baby*

won the Nobel Prize in Literature. In sports that year the Chicago Cubs swept the Detroit Tigers, winning their first world title. In government, Theodore Roosevelt was president. In technology, the first helicopter flight took place, and Marconi established a wireless telegraph connection between Ireland

and Canada. In commerce, Cadillac proudly sold its 1907 Runabout for \$800.

My older sister, Eula Elizabeth, had been born five years before. A third child, born in 1911, died in infancy of pneumonia.

### **A New Age Was Dawning**

Both my parents spent their childhoods in Kentucky. But in 1880 they came as teenagers

to Kansas with their parents, joining the thousands of American families who responded to the Homestead Act of 1862 followed by the extension of the Santa Fe Railroad to Newton, to the Colorado border, and then to California in 1871.

So many families packed their belongings and traveled by rail and wagon across the mid-western plains toward new beginnings and seemingly unlimited possibilities that a real estate boom swept southern Kansas in 1880.

A new age was dawning in the wake of America's most divisive era of Civil War. General William Tecumseh Sherman uttered the words: "War is Hell" and as if to echo the thought Republicans refused to nominate Civil War hero Ulysses S. Grant for a third term as president in the election of 1876. Their nominee James A. Garfield defeated Democrat William S. Hancock, another Civil War general.

The Kansas City Star was founded in 1881 and Edison patented the electric light bulb. Of course nothing changes overnight, and progress came in fits and starts. In 1881 President Garfield was assassinated. That same year new Jim Crow laws segregating blacks on trains in Tennessee were adopted throughout the South in defiance of an earlier ruling by a federal circuit court judge that Jim Crow segregation laws were unconstitutional. And the Kansas real estate boom burst.

Still our country was undergoing major changes. Pat Garrett killed Billy the Kid in the New Mexico Territory in 1881; and Bob Ford killed Jesse James in Missouri the following year.

The opening of Buffalo Bill's Wild West Show in Omaha, Nebraska, in 1883 symbolized the fact that from now on the wild west would live only in our imaginations. And in 1885 the Kansas Legislature ended the great cattle drives from Texas to Dodge City out of concern for a cattle disease caused by a Texas tick.

### **My Father's Story**

My father's parents, Dr. Felix Grundy and Elizabeth Wakefield Brown; my father, Morrison (Morey) Houston Heady Brown; and his brother William came by covered wagon to Hutchinson, a thriving town with a population of 1,528. Traveling with them was a family of freed slaves who had worked on the Wakefield farm. When they arrived in Hutchinson, my grandfather helped them establish a homestead near Hutchinson, and that kindness was to be repaid many years later.

My father was a smart young man, but the move to Kansas ended his education before he could finish high school, so he went to work as a dry goods salesman. It quickly became apparent that he was a master at sales. He opened a clothing store in Guthrie, Oklahoma, then moved to Hutchinson where he worked in Pat Martin's Dry Goods Store while he saved to open a store in Halstead.

My grandfather Brown died before I was born, but I grew up hearing stories about him. I knew, for example, that he was born in Indiana but had moved to Kentucky, where he met and married the tiny and delicate Elizabeth Wakefield. I knew that he was one of the first medical doctors in Kansas and that he brought Kentucky elm trees with him to Kansas and planted them all along Avenue A in Hutchinson.

I also grew up hearing stories about his quick temper and sense of humor. One story told about his finding a cow grazing in his garden. A big, powerful man, Grandfather Brown hit it angrily with his fist and crushed its skull.

Another story showed that Grandfather's sense of humor was as great as his temper. He delighted in telling others about his dispute with a Hutchinson judge named Whiteside, who sold him a horse for my grandmother. The horse had "the blind staggers," which I gather made it dangerous and worthless to my grandfather.

"You sold me this bad horse," Grandfather told Judge Whiteside. "You don't want to do that to your friends, do you?"

And Judge Whiteside is supposed to have replied: "Felix, the only way you make money is off your friends."

Lucky for the judge he wasn't grazing in my grandfather's garden at the time.

### **My Mother's Story**

My mother's family, the Rev. Pleasant Wesley and Susan Godby Wesley settled with their three sons and three daughters in Great Bend, 63 miles northwest of Hutchinson with a population of 1,071.

Grandfather Wesley was also a medical doctor, but he gave up ministering to the body to minister to the soul as a Methodist minister, one of the first in Great Bend. He died in his 30s, and my Grandmother Suzanne reared their six children by herself.

Julia, the second of three daughters, was a lovely and intelligent young woman who worked harder than most. She moved to Hutchinson after high school graduation to work in Pat Martin's Dry Goods Store. There she met Morey Brown, and two people were never better suited.

Of course, they fell in love, and were married in nearby Halstead where Morey opened his own store.



*My mother, Julia Wesley Brown*

### **Early Childhood Memories**

My sister Eula and I were blessed with parents who taught us by example not to fear what life might bring, but instead to prepare for and accept whatever it might be. When a third child, a baby boy, died of pneumonia, four years after I was born, my family mourned, but my parents took the terrible loss in stride, and so, of course, did we.

I remember those early years of my life as a busy and happy time. And except for getting violently ill after eating the contents of a tobacco pouch I found, getting run over by a horse and buggy, and going through all the usual diseases, my childhood was normal.

My father was one of my heroes. A successful salesman, he had friends all over America.

Eventually, he closed the Halstead store and devoted all his energies to selling merchandise to other stores for Ely Walker Dry Goods.

I remember vividly when I was six, he took the whole family with him on a sales trip to Spokane, Washington.

That trip was a great adventure for us all: the train trip through the Northwest and the beautiful city with its pretty homes and terraced gardens. Everything was an adventure. The trip, like the life my parents had begun to build, seemed perfect.

On our return to Hutchinson in 1913, my parents built a large brick home at 551 East A Street on the corner of A Street and Ford. We



*Preparing for military service as a youngster*



*Morey Brown and his son, Wesley.*

were very proud of the house and, for the next two years, very happy in it.

The family also owned two smaller houses on Ford Street, next door to 551 East A. Renters lived in the two-story frame house at 103 S. Ford next door to us and paid rent to my widowed Grandmother Brown (Mam) who lived in the third house. Ours was a comfortable neighborhood of lawyers, doctors, bankers and other professionals. But we fit in because Father was so successful and he and Mother were so personable.

I'm tempted to say that the two years that began with our trip to Spokane and ended in our dream home in Hutchinson were the best times our family knew. But I can't say that because, even though a time of hardship and great testing lay before us, we would take it in stride, have faith that we would prevail, remain a close-knit family, and learn to appreciate the generosity of the others.

And that made all the difference.

*Chapter 2*

## 1915-1925

# A Time of Trial

One day, life was a game. The next, it became a struggle.

One day, life was a game. The next, it became a struggle.

Suddenly, in 1915 just before my eighth birthday, my father was struck down by a debilitating illness that took his eyesight and confined him to what the doctors said was his deathbed. He didn't die, but over the next four years, he shrunk from a 200-pound six-footer to five-foot-eight and 90 pounds,

Our life changed drastically, but our family continued to work together and keep going as best we could. Our first priority, of course, was to save my father's life. My father's company also did their best to help him. For three years after my father became ill, his company kept him on the payroll and paid to send him to specialists around the country. But none could restore his sight. Although we were Presbyterians, we also attended the Christian Science Church for a while in another attempt to restore my father's sight.

### **Financial Struggles**

The next priority was to adjust to the loss of my father's income. My mother went to work as a clerk at the Rorabaugh-Wiley Dry Goods Company, and, in order to keep an eye on me, got me jobs at the store when school was out for the holidays. I remember working with her in the Boys' Department and in the Toy Department.

Even though I was there so Mother could keep an eye on me, Mr. Wiley always gave me an official pay check of one or two dollars a day.

Even with my mother's efforts, it became an economic necessity for us to move out of our dream house so that we could earn rental income from it. For the first year, we moved in with my Grandmother Brown. Then we moved into the house next door at 103 South Ford.

My parents' strength made the struggle bearable for Eula and me, and the kindness of friends and neighbors made a big impression on me. One act of unexpected kindness came from the family Grandfather Brown had helped set up in a homestead nearly 30 years before. Learning of our plight, the family of the freed slaves who traveled with my grandparents and father from Kentucky began coming into town in their wagon every week and bringing food to our door.

Because we stayed in the neighborhood, we kept our neighbors, all of whom were also supportive and solicitous. One of our neighbors and a great friend of my grandfather and father, Judge Charles Williams, encouraged Dad by saying, "Morey, you'll outlive everyone on our street."

Well, Dad outlived most of them. He kept believing and living and getting stronger. His weight slowly climbed back to 150 pounds. And finally, four years after he'd been struck down, he got up and got on with life.

### Lessons Learned from My Father

I learned a great deal from my father, but my greatest lesson came in sharing his acceptance of his handicap and his determination to live a fruitful and fulfilling life.

He developed a remarkable sense of hearing and could identify people not just by their voices, but also by their footsteps. He was too proud to feel dependent and never played the role of one who sought help or handouts. It must have pained him terribly that Mother went to work to support the family, but instead of complaining



*The young entrepreneur*

he did all the housework and cared for Eula and me. And he shared the disciplining of us kids, although he disciplined more by example and humor than anything else.

Once Mother told him to spank me, and I'm sure I had it coming. Father took me into the next room, and whispered: "Now, you've got to holler, Son." And he beat the seat of a chair with a stick while I wailed up a storm. I doubt that it fooled my mother.

Another legacy from my father was his politics: he was a strong, southern Democrat; so I became one, too. In 1916, when I supported Wilson's re-election on the slogan "He Kept Us Out of War," I was chased home from school by some other kids whose families were Republican.

I'd have done anything for him, I think; I admired him so. He always said: "Buster, if you wear a clean collar and keep your shoes shined, you can be acceptable in most places." And, despite his blindness, he was accepted everywhere. He was much admired at the local Elks Club, where he was the best informed member, since Mother read newspapers and magazines to him every evening. When he died in 1953, his was a big funeral. The members of the Elks Club turned out in force.

### Lessons Learned from My Mother

My mother was every bit as amazing in her own way. Beautiful and proud, she devoted herself to the family as its principal breadwinner, handling a hard life with dignity and aplomb. Her sense of right and wrong was unwavering, and she knew the importance of passing those values on to Eula and me.

For instance, one day one of my chums and I decided to start a pop stand in front of his house. We didn't make any money, but my friend went into his house, brought out some change and gave me fifty cents.

Fifty cents! It was a fortune...and a gift. And I wanted to keep it. When I got home and showed the money to my mother at supper, I told her I'd made it on the pop stand. She knew I hadn't. She was so upset that I'd take money I hadn't earned and then lie about it, that she was nearly in tears.

I took the money back to my friend without finishing my supper.

Mother kept me honest and, along with my father, instilled a personal pride and desire to excel. And, even though we were now poor, they succeeded in never letting me feel poor. In fact, I remember my childhood as a busy and happy time.

### **Childhood Jobs and Illnesses**

From the age of 10 on, I always had at least one job. I mowed lawns, threw a paper route and did odd jobs. And starting in 1916 I sold *The Saturday Evening Post* for a nickel. Norman Rockwell and I came to the *Post* about the same time: he had his first cover in 1916 when he was 22. I built up a route of 50 *Post* subscribers, and I lugged those covers all over the neighborhood. The magazines were so heavy, I had to put them in a bag and wheel them through the neighborhood on my bicycle rather than riding it.

World War I started in 1917, when I was in the fifth grade, and later that year the international flu epidemic swept across America. Proclaimed the worst epidemic since the Black Plague of the 14th century, it killed more than one percent of the world's population, and half-a-million Americans. To try to shield me from catching the flu, Mother sent me in July to visit her niece, Ethel Stevens Ragland (Mrs. Walter Ragland), on the Ragland's farm west of Hutchinson. Boy, was that an adventure for a 10-year-old! For two weeks I rode horses, herded cattle and, because the windmill broke, pumped water into a 500-gallon tank for the cattle to

drink. That's when I learned how much water one cow can suck up in just one swallow.

I dodged the flu, but a few years later in seventh grade at Sherman Street Junior High School, I became quite ill. The doctor said I was suffering from Saint Vitus Dance brought on by my weakened condition due to working and playing too hard. I missed the last few weeks of school and spent the summer in bed under medication but recovered well and was able to start the next school year with my class.

### **School Experiences**

Even though I always worked, my memories are of having fun with my friends. A group of us entered first grade together, formed a clique in junior high, and stayed together through high school. We went everywhere and did everything together. We didn't have any problems or troubles, certainly nothing like the kids face today. One or two members of the group were still living in 1999, and we would talk by phone now and then. The boys were Harold Herr (whose father ran the reformatory), Kenneth Sentney, Billy McLoud, Bob Fernie, Don Waddell, Max Bascomb, Burnham Humphries, and Dan Welchons. The girls were Paula Cost, Anna Foutron, Helen High, Mercedes Ellis (she and Ken Sentney married), Nan Wright, and Alice Homes.

In 1922, I entered Hutchinson High School and continued to juggle school, activities, and at least one job. I worked at various men's stores every weekend, had a Hutchinson News route for a while, did yard work, worked at Ragland Kingsley Motor Company at the gas pump and changing tires, and worked at a drug store as a "soda jerk." After graduation in 1925, I took summer courses in typing and shorthand.

But jobs didn't keep me from being active in school. I was a cheerleader with friends Ann Alford, Charles Larkin, and Sam Finklestein. I tried out for football but was too small to make



*50th High School reunion in Hutchinson, Kansas, class of 1925. Sitting down front on the floor are Ken Weasner, Bob Fernie and Wesley Brown (left to right).*

the team. I played the lead in several plays such as “Seventeen” and “Only Thirty-Eight”. I debated and participated in the Latin Club and all the science clubs. And I went to a few dances, swam with the gang at the old Stevens Pool and, when I could afford it, attended plays and motion pictures.

I liked school, history and English were my favorite subjects, but my parents were disappointed with my B average. They wanted me to do as well as my sister Eula who graduated second in her class five years before, excelled in voice and piano and wrote the school song for Hutchinson High (not the one they use today, however). She was so talented that my father’s great uncle Wake Giles from Indiana paid her way to Smith College.

It was reported, but never discussed, that while at Smith she was offered a part in the Ziegfeld Follies, but my mother wouldn’t hear of

it. So Eula came back to the University of Kansas and married Tripler Lewelyn “Trip” Child, whose family had automobile agencies (Davis and Child) in Hutchinson, Emporia, Great Bend, and Missouri.

### **Childhood Heroes**

When I think back on my childhood, I’m very grateful for the many people, in addition to my parents, who provided a positive influence on my life. Of all those people, the one who had the greatest effect during my childhood was my Scoutmaster, Father M. L. Kain, an Episcopal Priest. Our gang, he called us “the dirty dozen”, attended Scouts each week. Then, although most of us weren’t Episcopalians, we attended Sunday School in Father Kain’s home, where we studied the daily newspaper, then a lesson that was always of great interest and value as both Bible study and philosophy. We also attended his

church. He was an idealist and a great preacher of sermons about “climbing the mountain” and doing great things. (While I was in the Boy Scouts I became an Episcopalian, but I returned to the Presbyterian Church after the war to attend that church with my mother. I’m still more or less a Presbyterian today, although I believe God transcends man’s attempts to divide faith into different religions.)

When the dirty dozen graduated, Father Kain was transferred to a much larger church in California. But he left behind young people imbued with the spirit to strive to do their duty to God and Country. (After Father Kain left, I took over as scoutmaster for a while. And two of the boys in the troop, Robert Gilliland and John Hayes, would later be my law partners.)

### **The Inspiration to Study Law**

While Father Kain inspired me to strive for excellence, other mentors inspired me to study the law.

One was my father, whose blindness had forced him off the road and out of his sales work. “If you learn the law,” he told me, “you’ve got something they can’t take away from you.”

As if to prove his point, our neighbor and friend, F. Durmont Smith, who was also blind, was president emeritus of the American Bar Association. Not only did he try interesting

cases, but he was also a vocal and tireless opponent of Prohibition, which he said was unconstitutional. He made speeches against it at every opportunity. When he spoke to my high school class, our principal Mr. Gilliland (Robert Gilliland’s father) was quick to make it clear that Mr. Smith’s view was not that of Hutchinson High.

Judge Williams, who had predicted my father’s long life, was also an important influence on my life. Throughout my childhood, he told me stories about his courtroom experiences and about the hard economic times during the Depressions of the 1870’s and 1880’s. (Those stories made it easier for me to cope with the Depression of the 1930’s). Now that I was graduating from High School, he also recommended that I go to law school. For my high school graduation, he gave me a pen and pencil set with a handwritten note that read: “The pen is mightier than the sword.” He and his partners, Don Martindell and Bill Carey, later helped me in many ways.

In the autumn of 1925, I set out for Lawrence, Kansas, to go to college as a first step to becoming a lawyer. But before I could do that, I had to find something I’d had every year since I was seven.

Before anything else, I had to find a job.



Chapter 3

1925-1933  
The Study of Law

Fortunately there were plenty of jobs in Lawrence in 1925. That was the year President Calvin Coolidge pronounced: “The business of America is business,” and businesses in Kansas and all over America were booming.

Among America’s new businesses were 1925’s crop of new magazines such as *The New Yorker* and *Cosmopolitan*. That was also the year *Colliers* did an exhaustive report on Prohibition, which it pronounced a failure.

F. Scott Fitzgerald chronicler of The Roaring ‘20s published his classic *The Great Gatsby* that year and Anita Loos published *Gentlemen Prefer Blondes*. The big movies were *Phantom of the Opera* and *Ben Hur* and the songs people sang included “Yessir That’s My Baby” and “Sweet Georgia Brown.” And a brand new card game swept the country—contract bridge.

Not everything was positive, of course. Also in 1925, 40,000 Ku Klux Klan members paraded in Washington D.C. And far away in Germany Adolf Hitler published *Mein Kampf*. But the storm clouds of hatred and division were pretty much ignored by most Americans. We were booming after all.

**Freshman Year: 1925-1926**

My freshman year at the University of Kansas started well: I got a job working every afternoon during the week and all day Saturday



*Wesley during his freshman year at the University of Kansas*

at the A. D. Weaver Dry Goods Company. I enrolled in classes on the hill. And I moved into the Sigma Chi House, where I pledged.

Unfortunately, during the next few months, I discovered something I’d never expected: I learned that, while I certainly knew how to work, I’d never learned how to study. By the end

of first semester, I'd failed two of my courses. I was reinstated second semester, but I didn't have the grades to keep my fraternity membership, which meant I had nowhere to live. And I wasn't earning enough money to pay my tuition, let alone rent an apartment.

I was stubborn, but I wasn't willing to starve. So I went home sadder but wiser, moved back in with my parents and spent the following academic year working at Citizens State Bank in Hutchinson (it's now Nations Bank), saving money to return to college.

### **Sophomore Year: 1927-1928**

My second year at KU, beginning in the fall of 1927, was more successful. I got a job as a bookkeeper at Lawrence National Bank, and I lived in a boarding house on Tennessee Street operated by a Mrs. Wellman. This time, I buckled down in school, majoring in history and taking some of my freshman courses over again. My grades were much better the second time around. History and economics were my best subjects.

My only setback that year was another illness. When Lawrence National Bank merged with Watkins National Bank, I had to work on both sets of books during a 48-hour shift. Shortly after that, I had my tonsils removed. Due to my rundown condition, I developed a throat infection that laid me up at KU Hospital for two weeks.

But, as with earlier illnesses, I bounced back and made up my school work.

### **Junior Year: 1928-1929**

By 1929, my third year at KU, I was making my grades. But I was also running out of patience. The longer I waited to go to law school, the longer it would be before I was making my way in the world. I wanted to practice law more than anything, and in order to do that I would need to attend law school at night so that I could work full time during the day.

Just down the road was the Kansas City School of Law (now the University of Missouri School of Law at Kansas City), a four-year night school. It had quite a good reputation. (Fellows like Federal Judge Art Stanley and Governor Ed Arn also worked their way through Kansas City School of Law.) So instead of returning to KU for my fourth year and graduation, I left KU and began studying law at night in the fall of '29.

### **Law School: 1929-1930**

Today, we remember 1929 as the year the stock market crashed and the Great Depression began. But Kansas didn't feel the shock of the Depression until 1930 or 1931. In the meantime, jobs were plentiful. I got a good job on the assembly line at the Ford Motor Company in Kansas City, moved into the nearby Blue Valley YMCA, and became a law student.

I joined the Delta Theta Phi law fraternity and tried to manage its house. I also served as business manager of the yearbook *The Pandex* and took part in other school activities.

The faculty members at Kansas City School of Law were practicing lawyers, and I was inspired by several first-rate attorneys in the classroom. They were men like:

Elmer N. Powell, an immaculate dresser, who always looked as if he'd just stepped out of a bandbox. When I asked him how he managed that, he said: "Mrs. Powell takes care of that."

Edward Ellison, the dean and a very considerate man.

Vivian Phillips, a tall, angular fellow we used to call Abe Lincoln. He was a good teacher, who inspired you to read the cases he mentioned.

Arthur Mellott had been an assistant state's attorney or county attorney, and later I knew him well as a federal judge.

Homer Cope taught criminal law, and delighted in shocking the young ladies in class

by discussing what constituted rape. He was very outgoing and dynamic.

Judge Merrell Otis was a great inspiration to me. He told lots of good stories about getting on in the world. He told the class the story of the first fee he ever earned as a lawyer. He was defending a woman who was accused of stealing a twenty dollar gold piece. He got her acquitted. And he said she paid him with a twenty dollar gold piece.

The friends I made at Kansas City School of Law were every bit as important and influential in my life as the faculty. Among them were Wash Brown, who was still practicing in 1999. Jay Dillingham became president of the Kansas City Stockyards Company. Hilary Bush, Con Withers, Bob Sevier were all working their way through law school, and all became fine lawyers.

### **Law School: 1930-1931**

I continued working at the Ford Motor Company during my second year of law school. Things had gone well there during my first year: after several months working on the assembly line on the dock unloading 300-pound motors, management found out I had a college education and could type, and I was moved into the office.

My first job in the office was to handle floor plans for area Ford dealers, who were required to take a certain number of cars from the factory each month. By 1930, the effects of the Depression were beginning to hit the Plains states, and my job was to write sales contracts (from floor plans) for dealers to add more new cars on their sales floor with the ones they hadn't been able to sell. If the dealers couldn't take any more cars, the factories would shut down, and we'd all be out of work.

By the early months of 1931, we were fighting a losing battle. People couldn't afford to buy new cars; our dealers couldn't afford to stock them; and we couldn't afford to manufacture them. Slowly, the company began to close down, and in

the spring of 1931. I was transferred to the plant service office where it was my grim job to write up pink slips discharging plant employees.

Over a short time, I wrote up 3,000 pink slips. And the last one I wrote had my name on it. I fired myself.

That evening, I walked back to the Y and sat down on the front steps, wondering what I would do next. As I sat there in a funk, someone said: "Move over."

It was my boss. He'd just signed his own pink slip. We sat there beside each other and pondered a bleak future.

I scrambled to find a job so I could stay in school, and I ended up with two jobs: selling life insurance and building and loan stock for the Blue Valley Building and Loan Association and keeping the books for several Kansas City drug stores with my friend Clint Boadly. Even so, I couldn't make ends meet.

I took the Missouri bar exam to find out how much I still needed to learn, and found it was quite a bit. So in 1931, after two years of law school, I had no choice but to interrupt my education once more to return to Hutchinson to work and save some money.

### **1931-1932: A Turning Point in My Education**

Dropping out of school for the 1931-1932 academic year appeared a setback, and yet that year turned out to be the turning point in my education. And, as so many times before, it happened because my grandfather's and father's friend, Judge Williams, took an interest in me and permitted me to study law in the office of his firm—Williams, Martindell, & Carey. Sitting all day at a desk in the firm's library studying all the subjects I hadn't yet taken in school seemed to me to be the next best thing to attending law school. But I soon learned it was even better than attending school because I learned a valuable lesson.

One day just after I'd started my reading, Judge Williams came in the library with the firm's youngest partner, W. D. P.(Bill) Carey, a Rhodes Scholar and a member of the Carey Salt family. Judge Williams looked at me and said to Bill, "Look at him, he thinks he's thinking."

We all laughed, but Bill began to notice something else. He watched my friends dropping in to visit during the day and watched me take Coke breaks or long lunches.

One day, he asked: "Do you really want to pass the bar examination?"

"Yes, I do," I replied.

"Well," he said, "how much time do you think you should spend studying?"

"Eight hours a day."

"All right," Bill said, "I'll do to you what I did to myself when I studied in England. You take that yellow pad, and every time you get up to go to the bathroom, take a drink of water, visit a friend, or whatever, you mark down how much time you've taken off from studying."

I did. And the first day, I had to read until four in the morning to get in my full eight hours. That first week, I was at the office 14 hours a day. But I learned to study.

### **New Beginnings: Fall 1932**

After my year of working and reading law in Hutchinson, I re-enrolled in law school in the fall of 1932. Although the economy hadn't yet recovered from the Depression, autumn of 1932 was a time of new beginnings, a breath of fresh air and the promise of a better life—for the country and for me.

Kansas native Amelia Earhart became the first woman to fly solo across the Atlantic ocean. And Shirley Temple and Johnny Weismuller's "Tarzan" made their film debuts, launching careers built on two necessary qualities for a country battling Depression—charm and courage. In England, Aldous Huxley pub-

lished *Brave New World*, and in the United States, voters chose a man of charm and courage, Franklin Delano Roosevelt, to lead us into our own brave new world.

(In the ensuing years, I watched with interest and admiration as this great and controversial leader showed what government could do to help people. A great admirer of FDR, I considered myself a New Deal Democrat. But I never thought of myself, or Roosevelt, as liberal. Rather, I believe, he was an activist and problem-solver who did what worked to get people back to work and the country back on its feet. In critical times such as those, leadership can't very well be a question of liberal or conservative. Rather, it comes down to whether one has the vision and ideas to solve problems and save people's lives.)

I was grateful to be back in school, inspired by the example of the president and the study habits I learned from Bill Carey. Again I took the Missouri bar exam, and this time I passed all the subjects I'd studied in the law office and failed all those I'd studied in school.

Having learned the value of concentration, I felt as if I couldn't fail now; and I doubled my class load, planning to have my degree by the end of that academic year, 1933.

I soon got a job to my liking in the law firm of another great inspiration to me—Wendell H. Cloud. I was a rotten speller and took lousy shorthand, but Mr. Cloud and his partners—Paul White and a Mr. Jackson, a former Assistant U. S. Attorney—took pity on me and put me to work at \$15 a week as a secretary. That was fine with me. I just wanted to work in that firm and soak up everything I could.

Mr. Cloud was a distinguished and thoughtful gentleman who always took the time to help me, even though he was deeply involved in a high-profile patent lawsuit (the Haydite lawsuit) at the time. He represented Mr. Hyde who sought to patent a type of cement mixture that

produced a lightweight block. He discussed the suit with me and told me stories about Hyde, who had a fascinating life.

### **Graduation and a New Goal: Spring 1933**

In my third and final year of law school, I took a job as an insurance adjuster for the Morrison, Nugent, Berger, Byers and Johns law firm, where I made more money and had some great assignments. One was my investigation of a grain elevator fire (the Hall-Baker fire) in which arson was suspected. My investigation helped establish that arson was the cause and led to the arrest and conviction of the arsonist.

The job also brought me into contact with the first judge before whom I appeared. The judge was an extremely political justice of the peace in Kansas City, Missouri, very pleasant and entertaining. I guess it's fair to say he taught me some lessons about how not to be a judge. His approach to his cases can be summed up in a trip Mr. Nugent and I made to his chambers. We went there to get a ruling on a lawsuit against an insurance company. The suit was being brought by a man whose car was stolen. The man claimed his medicine was in the stolen car and that the loss of his medicine ruined his health. He wanted a lot of money from the insurance company.

Mr. Nugent and I walked into the judge's chambers, and the two of them picked up golf clubs that leaned against the wall and began putting balls into an overturned water glass as they chatted. After a while, the justice of the peace asked: "What's our position on this case, Wes?"

"Well, Judge," I said, "We think this is a put-up job."

"I do too," said the judge.

We left, and the case was disposed of.

### **The Beginnings of a Social Life**

While it's true I was now making a lofty \$25 a month, you can gauge my relative importance

to the firm by the fact that my secretary was paid more than \$100 a month. Of course, she was probably better at her job. She was intelligent, efficient, and hard working. And, I noticed, quite attractive.

I was chatting with her one day when Mr. Morrison walked by. He could tell I was talking with her on a social, rather than a business basis, and he paused for only a second to say, "Wes, we fire them first."

I never looked at another girl in the office. At least, not with the idea of squiring her around. Fortunately, something was about to happen that would take my mind and attention off every girl but one. I was about to meet Mary Miller.

Because I was crowding two years' courses into one year, working all day and taking classes from 4:00 to 9:00 each night, I had no time for a social life. But a friend who worked at the Kansas City Public Library kept pestering me to meet Mary. And when I did, I started finding ways to make time to be with her.

She was busy too. A 20-year-old University of Wisconsin graduate, working in the Kansas City library system, she was attending law school because her father wanted her to become a lawyer. But she was more interested in becoming a librarian. A brilliant student, she made better grades than I. But, since she was a year behind me, we didn't study together.

Instead, each night when our classes ended, I'd escort her home on the street car, walking the several blocks from the station to her home. Her mother always baked cookies and custards, which pretty much kept me alive, since I was spending my meal money on streetcars. So I'd eat those pastries, then catch the street car back to the Blue Valley Y, 15 miles away.

And on the nights I was unable to tear myself away from Mary and the cookies and missed the last streetcar to the Blue Valley Y, I walked the last five miles. Of course, the walk



**Mary Miller Brown**

was made easier by the fact that, as a young man in love, I was walking on clouds.

It was largely through Mary's love and emotional support that I was able to earn my law degree that year. We were very much in love, and I was dying to ask her to marry me. But I felt and she agreed that I couldn't until I was able to support her. To do that, I needed a good job. And to get that, I had to pass the Kansas and Missouri bar examinations.

### **Passing the Bar**

After I graduated in the spring of 1933, I got a job as a baggage handler for the Continental Bus Company in Kansas City. The job allowed me to work at night and study for the exams during the day. Once, when Mary went to Chicago, I got a free bus ticket to visit her so we could go to the World's Fair together.

In June, I took the Kansas bar and was admitted to practice in Kansas. A week later I took the Missouri bar exam, and found myself sitting next to a young woman from my school. Her uncle was one of the supervising judges who circulated around the room. During the exam, he walked over to his niece, bent down toward her paper and murmured something to her. As he straightened up, I leaned her way and whispered: "Was it the right answer?"

She smiled. He laughed. I never knew.

But I passed. I'm pretty sure she did, too.

After passing my bar exams, I had hoped for a position with Morrison and Nugent. I wasn't interested in setting the world on fire or making a fortune. I just wanted enough money to support Mary as my wife.

Morrison and Nugent didn't have an opening for me so I asked Judge Williams for a job at Williams, Martindell & Carey back home in Hutchinson, and they took me in.

In the fall of 1933, I considered myself fortunate to be with such a distinguished firm. My potential was unlimited, but I can't say the same about my salary. I still made only \$25 a month and, when Mary graduated in the spring of '34, I wanted to be in a financial position to marry her. But on \$25 a month?

*Chapter 4*

## 1933-1938

# County Attorney

All my fretting about supporting Mary sounds strange today, I know, when couples share the financial responsibilities and when many wives support their husbands in the initial years of marriage. But in 1933, a man was expected to support his family. I had seen how the inability to do so had distressed my father. And I guess that, having helped to earn my way nearly all my life, I wasn't going to fail to provide for the woman I would ask to spend her life with me.

But what could I do to make more money? I looked around, and there it was: the chance to practice law, make a living wage (about \$3,000 a year) and satisfy the itch for political office President Franklin Roosevelt had brought out in me.

I decided to run for Reno County Attorney on the Democratic ticket.

Judge Williams agreed that it would be beneficial to me and my family, and during the campaign, he bought an endorsement ad in the newspaper.

Once again, I found myself surrounded by all kinds of people willing to help in many ways. It was really quite exciting and gratifying. My younger friends went door to door, because they wanted Mary and me to be able to marry. I had no opposition in the Democratic primary, and my general election run was about as non-partisan as you can get. Bill Carey, who wouldn't vote for

me because he was a staunch Republican, nonetheless loaned me a car to campaign in; and my brother-in-law also pitched in a car. The Republican state senator from Reno County, Walter Jones, even arranged for some of his GOP precinct committeemen to help me.

My Republican opponent was Frank Russell. His platform called for continuation of Prohibition. My platform was nothing more than three words: "Enforce the Law." I didn't spend \$100 on the whole campaign.

The month of November opened with a convincing victory for us at the polls, and it ended with a wedding at Mary's home, 920 West 34th Street in Kansas City. We were married by the minister who had married her parents.

Two days later, Mary and I came to live at the



*Newlyweds Wes and Mary Brown at home*

Rosemont Apartments on East A Street in Hutchinson, and Mr. and Mrs. Brown started out on a grand adventure together.

On January 1, 1935, at age 27, I was sworn in as County Attorney. Although she would have been a fine lawyer, Mary and I agreed that I'd earn the living while

she cared for the family we hoped we'd soon have. We also agreed never to discuss any of the cases I was prosecuting. It was our belief that, if she didn't know anything, people would stop asking and trying to get gossip about them. But, of course, they never did.

### **Enforcing the Law**

Being County Attorney was an interesting job. The legislature made the laws. The sheriff filed complaints. And I was the attorney representing the county in all the civil and criminal matters. My job was just to enforce the law.

I had superb help from my deputy attorneys, J. Richards Hunter and Gerald F. Stover. They were about my age, honest, sincere and diligent. We worked beautifully together, and stayed together through both my two-year terms.

My only other staff member was a secretary. Margaret High, the first one, set up the office and helped with my re-election campaign in '36. Then she got married and left. A series of competent, dedicated secretaries followed. The last, Evelyn Thompson, went with me when I returned to the law firm in 1939.

### **A County Attorney's Caseload**

My caseload was big and busy. We had seven murder trials in four years (a lot for Reno County), and four of them came at just about the same time, which taxed us to the limit. But we won them all.

One involved the murder of a prominent doctor. In another, a fellow with syphilis killed his wife and three kids. And I also tried what I believe was the first case in Kansas that carried the sentencing possibility of capital punishment. The defendant had killed the doctor when the doctor called to treat him. The defendant was convicted but didn't get the death penalty. He died in the penitentiary.

We prosecuted a number of rape cases, all successfully, as well as cases of bank robbery and other types of thefts. I put a stop to a long-standing practice in which the County Attorney was paid a fee for collecting on bad checks for local merchants. And we ousted the City Clerk for misuse of funds.

Since Prohibition was still the law, we prosecuted bootleggers and closed down nightclubs for liquor and gambling violations. My friend and colleague on the bench, Judge George Templar, once described me during my days as a County Attorney as a "fireball prosecutor" who campaigned against illegal liquor and gambling. George was half-right. I wasn't a reformer who went around making speeches against sin and degradation. But, once a complaint was issued, I felt it was my duty to prosecute the case.

During one case against a bootlegger, his defense attorney Don Shaffer complained in court: "Here you are prosecuting my client for selling a pint of whiskey, and they're running wide open out at the Hutchinson Country Club."

"Are you telling me that officially as an officer of the court?" I asked.

"Yes, I am," he replied; and one hour later, on my orders, the sheriff confiscated slot machines and liquor at the club.

That brought a good deal of consternation from many acquaintances and riled a lot of people who said I'd never be re-elected.

Another gambling case was initiated by State Attorney General Clarence Beck. Clarence, who was a Republican, mistakenly thought I was hooked up in some way with a fellow named Ewing King, who ran a gambling place in the county called the Barn. Clarence went to a justice of the peace elsewhere in the county to get a warrant, then called me in the middle of the night to assist in the arrests. He thought I'd balk. Instead, I got one of our big trucks, drove out to the Barn, loaded lawbreak-

ers into it and brought them into town for book-  
ing. We also seized 100 marble machines.

Clarence decided I was on the level after that, and despite our rocky start, we became good friends and worked together many times.

Probably the strangest, and funniest liquor-related case I had was one that hinged on whether 3.2 beer was intoxicating.

One of my good friends, Burnham Humphries, an officer of the Barton Salt Company, didn't believe in drinking and had never touched a drop. So I enlisted Burnham in an experiment. Three doctors and I witnessed as he drank three bottles of 3.2 beer. Then we climbed into his Ford, and he drove us all home.

The doctors were unanimous in agreeing that he was sober, and I dismissed the suit.

### **Other Duties for the County**

The County Attorney's job wasn't all prosecution. As County Attorney, I also defended the county in the Cunningham vs. Reno County case before the Kansas Supreme Court. The Legislature had cut government expenditures by cutting the salaries of public officials. The plaintiff in the case, the Reno County Sheriff, claimed the action was unconstitutional. We won, and the law was upheld.

Another facet of my job was to write and pre-

pare the county bonds we called "Pick and Shovel" Bonds. These bonds were used to finance construction jobs administered by the Works Progress Administration (WPA). America was still deep in



*Wesley E. Brown circa 30 years old*

the Depression, and even though government had to tighten its belt, there was a need to find jobs for all those who were out of work. The WPA did that with construction jobs.

In retrospect these New Deal experiments have had a great effect on the way our people face up to the social problems even to this day. The Shelter Belts planted to slow down erosion of the land were forerunners of the environmental work and legislation adopted and now being carried out today.

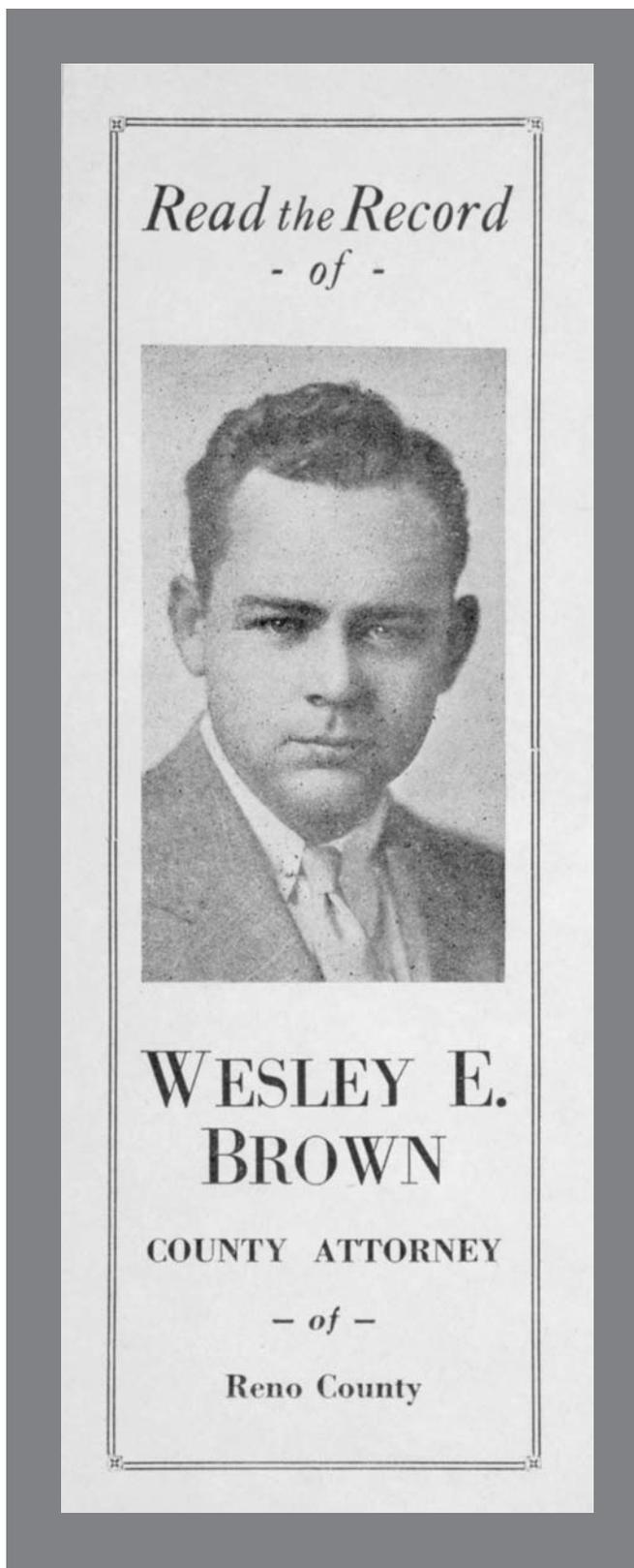
The Civilian Conservation Corps (CCC) used to get young people off the streets as a way to control crime and give the young men a work ethic.

While I was County Attorney, I also served as president of the Kansas Fifth District Young Democrats. I enjoyed making speeches and advocating the election of deserving people. Politics gave me a great deal of pleasure and helped me make a great many friends, Republican and Democrat.

### **A Re-Election Campaign**

Despite the prediction that my efforts to enforce Prohibition would ensure I wouldn't be re-elected, I ran better in the re-election of 1936 than I had in '34. Matter of fact, I led the ticket, with more votes than President Roosevelt or Governor Walter Huxman. (My opponent, a man named Clark, died a year after the election from a fall down a stairwell in Washington, D.C.)

Of course, some of my success may have been due to the fact that not all voters were well informed. I remember during the campaign of 1936, my secretary, Margaret High, was campaigning door-to-door for me, and one weekend she gave a brochure to the woman who came to the door. The woman looked at my picture and said: "Well, he's a nice lookin' fellow, ain't he? I'll vote for him, because we've got to get rid of that so-and-so who's in there now!"



*Re-election flyer*

My slogan for re-election was “Be Safe: Re-Elect Wesley E. Brown, County Attorney.” I personally campaigned over the county and was given the opportunity to talk about “safety.” I couldn’t have spent more than \$200 because I couldn’t afford any more, and I refused to accept money from anyone, since I didn’t want to be beholden.

In recent years, the money and power associated with seeking and serving in public office have too often overshadowed the responsibility and service public office demands. Could a young lawyer in a county of 60,000 people today spend \$200 of his or her own money, run for prosecutor on a platform of “enforce the law,” and win? If the answer is no, I believe we need to ask ourselves why not and see whether we like the answer.

### **A Growing Family**

Mary and I had moved out of our room in the Rosemont Apartments and into an apartment on Cleveland Street. We were living there when our son, Wesley Miller, was born November 19, 1936 at Grace Hospital. The following year, we bought the house at 551 East A from my parents.

I felt as though I was being recompensed for the struggles of my youth. Life couldn’t have been brighter. And we couldn’t have enjoyed it more. But, as my second term drew to a close in 1938, the birth of a second child was imminent. I wrestled with the same problem that had led to my running in the first place. I had become County Attorney so that I could earn enough money to support my wife. Now I needed to make enough money to support a family.

It seemed to me, and Mary agreed, that I needed to get out of public office and practice law.

In four years, I’d built a solid reputation as an effective county attorney. Partly because of that, and partly because the lawyers in the firm had known me for a long time, I was invited



*Wes at home with his kids, Loy and Miller Brown*

back to Williams, Martindell and Carey as a partner. And, on January 1, 1939, the firm became Williams, Martindell, Carey and Brown.

That made me proud, but not as proud as the birth of our daughter, Mary Maloy, one month later.

Although I never ran for public office again, I stayed active in politics during the years I practiced law and enjoyed it. I agree with Robert Kennedy, who said that politics is a noble undertaking. If there are times when it seems less than noble, that's not because the system has failed us, but because we have failed the system.



*Chapter 5*

1938-1944

**The Private Practice of Law**

**W**hen my name was added to those of Williams, Martindell, & Carey, I joined a distinguished group of gentlemen to whom I owe much of what I have become. Except for my two years in the Navy from 1944 to 1946, I would be with the firm for 30 years.

The law firm had begun as Prigg and Williams in the late 1800s, shortly after my father and his parents settled in Hutchinson. One of the founding partners was our family friend Judge Charles Williams whose life and support was very influential in my life. The other founding partner was a man named Prigg who left the firm to become a state district judge.

After Judge Prigg left, Don Martindell joined the firm, which was then called Williams & Martindell. The third partner, when I joined the firm in 1939, was WDP (Bill) Carey, who had joined the firm in 1926, fresh from his Rhodes Scholar schooling in England and Cornell University Law School.

By 1939, the firm had moved from the top floor in the American National Bank Building to the Woolcott Building. The building has since been razed.

**An Optimistic Year**

By 1939, more Americans were employed than in any previous Depression year, but they weren't making any more money. For instance,

in 1939, I made about \$2,500. Still it was an optimistic year, full of new beginnings.

Television was unveiled, as was FM radio, Batman and Detective Phillip Marlowe in Raymond Chandler's novel, *The Big Sleep*. The blockbuster book was John Steinbeck's *Grapes of Wrath*. "Life With Father" was setting a record for longest-running Broadway play, while perhaps the greatest year in the history of movies offered "Gone With The Wind," "Mr. Smith Goes to Washington," and "The Wizard of Oz."

Grandma Moses burst upon the art world at age 79. Brash young Ted Williams came to major league baseball, and humble, ailing Lou Gehrig left the game. And Baseball's Hall of Fame was established in Cooperstown, N.Y.

Trans-Atlantic commercial air service was launched that year in Pan American's Boeing "Yankee Clipper." The first flight was from Port Washington, New York, to Marseilles, France. And, although we may have hailed the progress it symbolized, when most Americans looked toward Europe in 1939, it was with feelings ranging from discomfort to dread. The Fascist government of Francisco Franco, aided by German and Italian forces, crushed the rebels in the Spanish Civil War that March. And deeper inside Europe, another fascist government was talking world domination and rattling sabres.

In those heady early days of 1939, we could have read—had we known their significance

then—signs of what would become the most terrible war the world has known. Of course, we all knew about Germany’s invasion of Poland, setting off a war in Europe. But we didn’t know about a letter from Albert Einstein to President Roosevelt reporting “that it may be possible to set up a nuclear chain reaction in a large mass of uranium by which vast amounts of power and large quantities of radium-like elements would be generated. This new phenomenon would lead also to the construction of a bomb.”

We thought we had grown up in a world of rapid and amazing change. Little did we know the changes that lay before us.

### **New Mentors in Practicing the Law**

Bill Carey and Don Martindell were wealthy men, and they practiced law the way they felt it should be practiced: we didn’t go out looking for business, but when it came, people paid well for our services.

We would represent anybody, in civil or criminal proceedings. But fundamentally the firm represented several insurance companies and the Carey interests, which were widespread.

Judge Williams represented Emerson Carey of the Carey Salt Company, Central Fiber Products Company, and many others.

Bill Carey eventually took over the management of the Central Fiber interests of the family (and later left the law firm to become president of Packaging Corporation of America.)

And Don Martindell specialized in title and real estate law. For most of his professional life, he was on the Kansas Bar committee for title examinations, rules and regulations.

The three of them taught me and shaped my attitudes toward the law. And they were great teachers.

### **Lessons from a Trial Lawyer**

Judge Williams taught me about being a

trial lawyer. And he was a great one. His title “Judge” came from his brief experience as a state district judge. He had served in that position for only six months before he resigned. He explained that he couldn’t bear to sit up there and watch lawyers do such a rotten job.

One day I ran across some of his old papers and saw that he had meticulously written out every question he was going to ask a witness. I asked him if he did that with every witness, and he said he did. In fact, he meticulously prepared every aspect of his cases. A case in point was one of his many murder trials.

Judge Williams was representing the defendant who was accused of killing a man by hitting him over the head with a pool cue. Before the pre-trial interviews, Judge Williams bought a pool cue and cut it into three pieces of equal length—the heavy part, the middle part and the tip.

In his first pretrial interview of the key witness, Judge Williams held up the heavy part and asked if the murder weapon was like the pool cue he was holding. The witness said yes. The next day, Judge Williams held up the middle section of the cue, and the witness said again that the murder weapon was like the one Judge Williams held.

The third time the Judge interviewed the witness—two or three weeks later—he carried the tip of the cue.

“By the way,” he asked, “did the defendant hit the victim with a pool cue?”

“Yes,” said the witness.

“Was it this type of pool cue?” he asked, holding the tip in his hands.

“Yes,” came the reply.

“Thank you,” said the Judge.

Weeks later, when the case went to trial, the murder weapon – a big bludgeon of a pool cue – was brought into court. Judge Williams held up the tip of his cue and asked the witness: “Didn’t you tell me that my client hit the victim with this type of pool stick?”

“Yes I did,” the fellow said. “That’s what it was.”

Well it was obvious that a blow from the tip of that pool stick couldn’t kill anyone, and the defendant was acquitted.

Judge Williams could be a real fighter when he got into court. As a matter of fact, he was fined at the age of 70 for nearly coming to blows with another lawyer in court. An opposition lawyer, driven to exasperation, said, “If you weren’t an old man, I’d whip you.”

And the Judge answered him, “If you think I’m too old, why don’t you start?”

### **An Expert in the Law**

As great a trial lawyer as Judge Williams was, Don Martindell was that great a research lawyer. He didn’t like to try cases, but he loved to look up the law. If you wanted to write instructions about the law, he was the man to have on your side. I used to say that having him second me when I was trying a case was like having God on my side.

Bill Carey was fundamentally an advisor. He didn’t try many cases and didn’t often go to court. But he was a mentor and preceptor to me.

### **Wide Experience**

I took all kinds of cases in my first couple of years as a member of the firm. In one of the first cases I represented a couple in a suit against an insurance company for their son’s death. I was pretty pleased with myself when I settled the case for \$1,500. Afterwards, the insurance agent said: “Well, that’s fine. We had a \$3,000 reserve on it.”

I also handled two criminal cases during my first couple of years with the firm. In one of them we represented a fellow who was married to one of the Carey maids and had been accused of rape. We got him off. In another case, I was hired as a special prosecutor for the County Attorney’s office to prosecute a man charged with rape.

One case I didn’t get to handle was a big lawsuit an Indian tribe wanted us to take. I was pretty excited about it, but my partners turned it down because we’d have to take it on a contingent basis and spend a large sum to prosecute the suit on behalf of the tribe. The tribe later, I was told, recovered five or six million dollars.

I also handled some family law. The strangest divorce I ever handled was when I represented a fellow named A. M. Horrell. He was a pipeline contractor with offices directly below us. He commuted in his private airplane from Tulsa—where he had a ranch and a wife, to Hutchinson—where he had a secretary of whom he was greatly enamored. He had no children, and he hired me to work out a divorce settlement with his wife.

I went to Tulsa to meet with Mrs. Horrell and her attorney, and I negotiated what I thought was a really great settlement. But when I laid it out for A. M., he looked at me and said: “That’s not fair, Wes.”

“What do you mean?” I asked.

“She can’t live on that,” he told me. “This guy is selling her out. You go back and tell them this is what I’ll do.” And then he went through the settlement, increasing everything. He not only gave her more money, he also gave her the ranch because she liked to raise horses. And he set up a trust fund that would give her enough income to run the ranch.

Well, I went back to Tulsa and told her lawyer what A. M. wanted to do, and the lawyer was elated, as you might imagine. I’m sure he planned to tell his client how he had negotiated this much better settlement for her.

“Mr. Horrell has just one last little point,” I said. “He specifies that your fee is to be \$500, and nothing more.”

Six months later, A. M. married his secretary in our living room.

Through me, the firm also began representing the City of Hutchinson on a flood control project

that had begun with the flood of 1929. The project—and my work on it—lasted until 1955. I'll talk more about that project in a later chapter.

Despite the variety of cases I handled, much of my work was in the labor relations field. And most of the labor relations work was for Carey Industries around the country, producing considerable revenue for the firm. That practice continued to grow rapidly throughout my career with the firm due to the increased regulatory functions of the federal government—the National Labor Relations Board, Food and Drug Administration and many other agencies.

### **Wartime Industry**

One of the most challenging projects in my early law career began on the Prairie Dunes golf course one beautiful Sunday, December 7, 1941. That's where I learned that the Japanese had bombed Pearl Harbor, and we were at war.

Soon afterward, A. M. Horrell was back in my office with a proposition. Aircraft companies were suddenly swamped with orders for military aircraft, and they needed massive amounts of specialized parts. The CEO of Cessna Aircraft, Dwane Wallace, had known A.M. in World War I, and he asked A.M. to launch a plant in Hutchinson that would build wooden aircraft parts for the trainers Cessna was building for

the Canadian government. A. M. agreed, then asked me to help put the deal together.

What an education! A.M. got loans from the First National Bank of Hutchinson and took over a woodwork manufacturing company owned by the Steed and Nichols families. I became secretary and general counsel, but turned my retainer and salary over to the firm. I supervised recruitment of supervisors, engineers, contractors, architects, and other professionals whose businesses had suffered with the coming of the war. A. M. didn't want to serve on the Chamber of Commerce, and Hutchinson business people didn't know him well so I



*Wes and Mary out to dinner circa 1944*



*Lieutenant Wesley E. Brown*



*Wes and Mary waiting for a train to Tucson, Arizona where he attended a Naval training camp.*

became a director of the Chamber. It was an interesting and useful experience.

In 30 days, Aircraft Woodwork Manufacturing Company grew from 25 employees to nearly 600, and our building grew from one about the size of my legal chambers to more than 30,000 square feet. Eventually we had about 700 employees, including half the waitresses in the area because they had good finger dexterity.

The Steed and Nichols families remained and, along with many others, carried out the necessary work of a company with one customer—the US Air Force. The people A. M. assembled for that company, in my opinion, performed a most important work for America’s war effort. I was glad to be a

part of it. In addition to being the legal advisor for that business, I represented other clients who needed advice about how new laws enacted to carry out the war effort would affect their businesses. It was a busy time.

### **The Call to Arms**

By 1944, I was 37 years old, with two youngsters and a law practice that was just taking off. In fact, I was billing a considerable amount of the revenue the law firm made. Like thousands of other young couples in America Mary and I had been able to build a life full of satisfaction and limitless opportunity for ourselves and our children. Now we had to sacrifice to defend what we had and what we—and they—might yet achieve.

I told A. M. I was leaving to enlist in the Navy. And the corporation’s comptroller, a wonderfully competent fellow and close friend named Burton Lyman, decided it was time for him to leave too. With that, A. M. said that if we were leaving, so was he. And he closed down the company.

Bill Carey also left at about the same time to join the military. That left Judge Williams, Don Martindell, and the newest partner, Edward Brabets. Ed had been Judge Williams’ secretary and a real student of the law. He read law under Bill Carey and passed the bar—one of the last to read law in a law office. The law firm also hired some other young men to keep things going until we got back.

Over the next two years, I learned another lesson that has served me over the years: The lesson is that some of the most valuable discoveries come at times and places where you least expect them.



*Chapter 6*

## 1944-1946 Setting a Course

I entered the Navy in 1944 as a lieutenant junior grade and came out two years later a lieutenant. I was told that line officers would eventually receive different titles, but I don't know if we ever did.

Even though at 37 I was the oldest man in my unit, I had enlisted because I thought it was

the right thing to do. Besides, I was about to be drafted, and I never doubted that I would serve. Because I served, I was spared the embarrassment often suffered by men my age who had to explain why they weren't in the war.

I went in with a positive attitude and, had it not been for the grim seriousness of the under-



*Lt. Brown at the Naval Training School in Tucson, Arizona, May, 1944 (WEB: 3rd row from bottom, far right).*



*Mary, Miller and Loy Brown*

taking and my separation from my family, the whole experience would have been quite enjoyable. One thing that allowed me to enjoy the experience was the fact that I shared in the law firm's profits while I was in the Navy, so with the family allowance from the Navy I felt Mary and the kids were provided for while I was away.

### **The Role of a Line Officer**

A U. S. Navy line officer is supposed to know everything about the Navy and be able to do anything to which he's assigned. He must gather facts, weigh evidence and options, make decisions and be subject to reversal by higher authorities. It's a great deal of responsibility. And I thrived on it. Much of my Navy experience

was in the training programs required to be able to handle my Navy assignments.

I enjoyed the regimentation and training because it was designed to keep us physically and mentally awake and morally straight. I also enjoyed the company of men from all walks of life who were good and decent, meeting in every way the criteria for gentlemen.

At the end of the war, I was sent overseas to the Philippines as executive officer of the house-keeping branch (called the Anchor Section). I was stationed at the Com Phil Sea Frontier, a giant operation with a couple of admirals and a lot of ships coming in and out. To tell the truth, I never did know exactly what we were about. But I kept busy providing the clothing, housing and feeding of thousands of sailors.

### **Two Kansas Democrats Far from Home**

Often in the evening, I'd play host to a friend from Kansas, Delmas Hill, known as "Buzz" to his friends. Buzz was a respected Wabaunsee County and Topeka attorney I knew from our work in the Kansas Democratic Party. He was a knowledgeable and fascinating fellow and the epitome of a "gentleman," even though he served in the Army, rather than the Navy. He was in the Philippines as a prosecutor of high-ranking Japanese officers.

I'd invite him to the base for some superior Navy food and whiskey, and, more than 12,000 miles from home, we'd talk about the law and life in general far into the night. It was during one such discussion that I recall thinking seriously for the first time about becoming a federal judge.

Not that I hadn't thought about it before. Several lawyers had mentioned me as a possible judge. But I had no idea how to go about getting such an appointment. Well, Buzz had the same ambition. We talked about it and, when an appointment came open, wired President Truman from the Philippines asking that the vacancy be held open until we got out of the service.

The President couldn't wait, and Arthur Mellott, Mary's and my former teacher at law school, got the appointment.

I was discharged in 1946 and said goodbye to a host of new friends. We swore on an oath over a grog that we'd meet every Christmas. But, as was the case with so many well-meaning veterans when they got back to their lives, it never happened. I joined the American Legion and VFW (but didn't go to the meetings).

My boyhood friend and inspiration, Judge Williams had died while I was overseas. And almost immediately after his return from the military, Buzz Hill found himself appointed federal judge. I believe the news of both events made me hope all the more hope that I would someday become a judge. I just didn't know when or how.

In the meantime, I happily immersed myself in my family and the law firm, where I was now a senior partner.



*Chapter 7*

1946-1955

**The Fight for Flood Control**

**N**ot only did my work as a senior partner at the law firm keep me busy, the firm itself was busy enough to need to expand. Lee Hornbaker, who had been hired when Bill and I left for the Service, left the firm when Bill and I came back and started a successful practice in Junction City, Kansas. During the next several years, several more outstanding lawyers joined us at the firm: Robert Gilliland and John F. Hays from my Boy Scout troop, and William Miller and Bob Martindell. (All but Bob Martindell left the firm shortly after I did, and each would become very successful.)

Although I still represented a variety of clients, most of my work with the firm between 1946 and my leaving in 1959 was focused on two types of cases: labor law and legal work on the Hutchinson flood control project.

**New Insights in Labor Issues**

When we got back from military service, one of the first things I did was to tell Bill Carey about the experiences I'd had with our stevedores and other laboring people in the Navy and how my respect increased for those who carry on the everyday business of survival. Wars may be won by generals, but no strategy would ever succeed if it weren't for the people on the front lines.

I returned from the Navy convinced that those who carry the load under the direction of others should be treated fairly and compensated

adequately for their work.

And, while I represented corporations, I believe the contracts we negotiated were good for employees as well as management. I was sometimes asked by clients if I didn't think organized labor was bad for the economy.

I said then, and still believe, that unions are a necessity to speak on behalf of the workers until American management builds trust and communication with the working men and women in their corporations.

I know you can't generalize on this, but on the whole, companies with the best relations between labor and management earn the most money for their stockholders. The labor vs. management model under which many companies operate is short-sighted and self-destructive. Strikes hurt both sides. And, while I believe in arbitration to settle labor disputes, the best solution is for labor and management to reach an agreement by themselves.

It isn't the demands of labor that have made so many American products noncompetitive in the world market. That's due to a lack of teamwork, understanding and cooperation. I've seen that it doesn't need to be that way. When I represented the Carey interests, for example, if we needed a new piece of equipment that could reduce labor costs, it was not hard to convince the labor unions to approve it unless there was pre-existing enmity.

I always enjoyed negotiating labor contracts. What I didn't enjoy was negotiating with the government for tax breaks for the corporations I represented. Such negotiations were fraught with ethical problems. But I was fortunate that Bill Carey wouldn't consider anything that might be unethical. We were also backed up by a good tax man, James Dye of Bever, Dye, Mustard and Belin. The three of us worked well together, respected each other, and stayed away from anything that would even suggest misconduct or unethical tricks.

### **The Beginnings of the Long Fight for Flood Control**

Hutchinson's fight for a flood control system began long before my involvement in the project. In fact, the project dated back to July 12, 1929, the year I transferred from KU to Kansas City School of Law.

Two days of heavy rains had spread the Arkansas River tributary of Cow Creek more than six miles out of its banks and into the city. East Sherman Street was under four feet of water, and Main Street traffic was limited to row boats. When the waters receded, damage was estimated at more than \$3 million. Business and government leaders asked the federal government to help protect against anything like that happening again.

Hutchinson had a great city engineer named Andy Campbell who kept talk of a flood control project alive long after the flood of '29 and eventually talked the city commissioners into taking on the project. They got the Corps of Army Engineers to do a study and launched their own economic survey to show that the project would be of economic benefit to the area.

And thus began a project that continued for 25 years. Handling all the legal work on the Hutchinson Flood Control Project was one of my main jobs both before and after my Navy service. And there was plenty of it.

Bob Gilliland and John Hayes worked closely with me on the project when I came back from the Navy, and (when I left the firm) saw it to its successful conclusion.

### **Slow Progress**

On July 22, 1936, Congress had passed a Flood Control Act that contained authorization for a Hutchinson project for \$1,050,000, as long as Hutchinson put up its share of the cost. However, the project got sidelined again in 1943 after a report from the Corps of Engineers that the project would cost nearly \$3.5 million—too much, in their estimation.

The city forged ahead alone, developing an alternative plan that would cost the city only half that amount. Commissioners Hi Heaps, Loren Baird, Forrest McCandless, W.C. Hutchinson, and W. G. Wolesslagel unanimously passed a resolution adopting the city's plan.

### **Legal Setbacks**

Following the resolution, the city began adding up its costs of moving railroads, condemning land and the like. And that was when we discovered that Kansas lacked a state law that permitted a flood control project anywhere.

So, in 1943, Wichita attorney Howard Fleeson and I met with Governor Frank Carlson and got his support. Howard Fleeson and I drafted the legislation that would permit cities to take the necessary measures to develop flood control. And, with Governor Carlson's help, the Kansas Legislature passed the necessary statutes.

On the home front we had other problems to contend with.

As Robert Kennedy used to say: "Everyone wants progress. But progress demands change. And change has its enemies." Indeed it does. Those who contested the flood control project were vocal and tenacious. Reno County and South Hutchinson both opposed the project primarily

because it would wipe out several county bridges. Home and business owners whose property would be condemned or disrupted by the proposed levee established the Cow Creek Valley Flood Prevention Association and sued the city over the project. The city won the law suit at the district court level, but the Association appealed.

I argued the case in the Kansas Supreme Court in 1948 (the case of Cow Creek Flood Prevention Association vs. The City of Hutchinson, 200 P. 2d 299, 166 KS 78). The Kansas Supreme Court affirmed the District Court, and upheld the authority of the City to carry out its Flood Control Project.

### **City Action**

The City had been assured in 1945 that the federal government would pay its share of the project, and Secretary of War, Henry L. Stimson, had assured the City on July 4, 1945, that the project was approved. A month later, the Corps of Engineers also informed the City that they would begin work as soon as the project was funded.

When the legal battles ensued, funding for the project was frozen, but with the Kansas Supreme Court ruling in 1948, the way was once again clear.

On July 15, 1949, the City evicted 46 landowners and issued three notes over the next year to pay for the City's share of the initial work. We gained the cooperation of the State Highway Department, which gave up land for the project, and pledged to build necessary infrastructure.

### **More Funding Delays**

But funding problems continued to plague us. On April 18, 1950, the Corps of Engineers reported that our construction funds had been cut from the federal budget, and once again the project came to a screeching halt.

We sought help from members of our congressional delegation, who lobbied hard on our behalf. But the project was officially deferred for lack of funds.

What to do next? By this time we had a new City Commission, but City Engineer Andy Campbell and the Commission decided that we should appeal our case for funds to Washington.

On May 3, 1951, I was a member of a Hutchinson delegation that appeared before the House Appropriations Committee urging funding for the project. And July 13, Senator Andrew Schoepell introduced us to the Senate Committee that was dealing with flood control projects. It just happened that Kansas City was having a big flood at the time, and our project was approved with others before that Committee.

After 19 years of hard work and hope by the people of Hutchinson, I could speak with all honesty when I answered the question of Chairman McKellar:

“Let me ask you this. There is no difference of opinion in your community?”

“There is no difference of opinion. We know what we want. We know it is good; we know it is worthwhile, and we would appreciate it very much if you would go ahead with the project.”

Three days later, the Arkansas River and Cow Creek flooded, putting Hutchinson under water, just as it had in 1929.

Finally, on October 17, 1951, Congress appropriated \$1.9 million for the project.

### **Excavation Begins**

Excavation of the levees began in 1952, and in less than two years, The Hutchinson News-Herald was trumpeting: “Let it rain, let it pour. If Hutchinson isn't ready now for a Cow Creek or Arkansas River flood, it never will be.”

For all practical purposes, the job was done. But not until August 10, 1955, did Mayor John

Olison accept the completed project from Army Engineer Colonel Stanley G. Reiff. I was in Hutchinson for that event, and I was proud to have been a part of the long, frustrating struggle.

The total cost was \$7 million. The city's share was \$1.5 million. There's no doubt that the Flood Control Project improved the lives of the people of Hutchinson and the surrounding area immeasurably. In 1973, flood waters were even higher than in '29. Without the levees, the down-

town would have been underwater at least three times during that year alone.

It's important to give credit for the project where credit is due. Despite my hard work on that project, lawyers rarely make anything; we just keep projects going and see that they are carried through. The people who put their reputations on the line were the city commissioners and the city engineer who never faltered in their dedication for a quarter of a century. They were visionaries and true public servants.

*Chapter 8*

1952-1959

## Political and Professional Activities and a Time of Transition

**M**ost of my work as an attorney took place outside the courtroom, negotiating contracts and the like. And, along the way, I served as a director of the Hutchinson Chamber of Commerce, and a member of the Rotarians, Elks and Masons. I also remained active in state and local bar associations and in politics during my years as a practicing attorney.

### **Bar Offices Held**

I first became active in the state and local bar associations as a young county attorney, and I continue to believe bar associations make the difference between a profession that is connected to, and vital to its community, and one that is not. For example, the local bar in Wichita carries out many important projects, including a May day visit into the schools where lawyers talk with students about the importance of a government under law.

And the Kansas Bar Association (KBA) does a tremendous job of establishing and maintaining the guidelines for professional practice. The KBA also has an active congressional committee that monitors how bills will affect lawyers and the issues of the day.

During my career as an attorney, I served in a variety of roles in both the local and state bar.

In 1947, I served as president of the Reno County Bar, and I think I pretty much fit the definition Will Rogers gave to President Calvin Coolidge: “He didn’t do nothin’, but nobody wanted nothin’ done.” I also served as president of the Southwest Bar Association.

In 1949, I was elected to the Executive Council of the KBA, and I stayed active as a member of the Council and then as President until my duties on the Court required all my time. Serving on the Council was an important professional service, which allowed me to meet and know members of the Kansas Bar from all over the state. These lawyers that I met and associated with added to my respect for the legal profession and the service they were performing for the state and nation.

### **Political Activities**

I guess if being chased home from school for being a Wilson Democrat in 1916 couldn’t cool my ardor for politics, nothing could.

Before the war, I had performed well as president of the Kansas Democratic Club, and after the war, there was some talk about my running for office.

The talk began in earnest in 1948, when Buzz Hill, my friend from the Philippines and the state party chairman, talked me into being

the keynote speaker at the Kansas State Democratic Convention in Wichita.

I didn't realize it, but his plan was to use the keynote address to launch my candidacy for governor. And it was a rip-roarin' speech, in which I called Arthur Capper and Clyde Reed the "senior and junior senile senators from Kansas."

One reason the speech struck such a responsive chord around the state was because Bill Carey, a Republican, helped me write it, pointing out, as only a Republican could, what was wrong with his party.

Clifford Hope, our Republican congressman, had also been telling me for some time that he'd retire if I'd just run to replace him. (He was a great citizen and may have told others the same thing.)

All this talk was flattering, but, there were three reasons why I felt I couldn't run for office.

- First, I couldn't afford the campaign. I was making money for the firm, but wasn't bringing much home.
- Second, I couldn't afford the time away from my family. I was already traveling a lot negotiating labor contracts, and what time I had with Mary, Miller, and Loy was precious.
- And third, I didn't see how I could remain independent, both from those who financially supported my candidacy, and from those who asked political favors. I didn't see how I could be in a position where I could in good conscience say "No."

Still, I continued to be active in the party, but nothing like Buzz Hill and later Frank Theis. They were the real Democratic leaders. My involvement was an avocation; theirs was a vocation.

My name continued to be mentioned for Congress or Governor or Senator well into the 1950s. But I never pursued any of that.

In 1949, I was considered for an appointment as United States District Judge, but that's the

appointment that went to Buzz Hill. Little did I know that his appointment would have a profound effect on my life just nine years later.

In 1956, I was a delegate to the Democratic National Convention in Chicago. I supported Adlai Stevenson for the presidential nomination. But the person who really impressed me was John F. Kennedy. The young Massachusetts senator sought my support for his candidacy for the vice-presidential nomination. I gladly supported him, but he lost the nomination to Tennessee Senator Estes Kefauver.

### **A Need to Move On**

By the mid-1950s, Mary and I were looking at the prospect of trying to send the kids to college on an income that just wasn't sufficient. Nor did I have any prospect of sufficiently increasing my income if I stayed with the law firm. Being a partner in that wonderful firm was as frustrating as it was rewarding. I was bringing in a considerable portion of the firm's income, but we were splitting it up among everyone.

In addition to the prospect of political office, I'd received and turned down other job offers during my career. One such offer, to be head of the Internal Revenue Service in Wichita, came to me just before World War II, and I turned it down because I didn't think it would be fair to take the job right before I planned to enlist in the service.

It turned out I was wrong. I would have received a higher Navy commission had I taken that position, and I probably would have come back after the war to an excellent position. So I thought about the consequences of passing up opportunities, and the potential of doing something new and different.

I had learned a great deal at the firm, and my partners were always solicitous of my financial well-being, even though they didn't understand. But by 1958, like several young lawyers before me, I was considering leaving the firm

and setting out on my own. It was the only way I could see to send my kids through college.

And right at that point, things came together just the way we needed them to. The '50s had

transported us about as far as we could go on the crest of a post-war wave of security. Now, for the Browns and the nation, a new and challenging chapter was about to begin.



*Chapter 9*

## 1958-1962 Bankruptcy Referee

In the spring of 1958, necessity and opportunity came together (as they had so often) at just the right time to change my life. Just when I had decided that the best option for a larger and steadier income was to leave the firm and practice on my own, I got an interesting offer. My friend, Judge Delmas Hill asked me to accept an appointment as the state's second Referee in Bankruptcy. (Bankruptcy was under his jurisdiction.) I suspected that Bob Martin from Wichita had been his first choice, but the judge's request to accept the appointment carried a lot of weight with me.

Since 1949, Kansas had had only one referee, Retired State Supreme Court Justice Eldon R. Sloan. Judge Sloan was a man of impeccable reputation and remarkable ability, but no one could have handled the burgeoning number of cases in bankruptcy court. The caseload had grown from 48 bankruptcies in 1945 to more than 4,000 in '58. (By 1999, the number was more than 10,000 cases per year.)

My partners said I had to do what I felt was best, and I told myself I could always go into private practice on my own if the position as Bankruptcy Referee didn't work out.

That left only one other consideration. I didn't want to give up my active participation in the state bar association. Its activities and mission were important to me. I was in line to become

president, and I wanted to carry out my plans for the organization.

So I told Judge Hill that I would accept the position if I could remain active in the Bar. He agreed. And on April 1, 1958, at the age of 50, I began a new career.

### **Getting Started**

I commuted between Hutchinson and my offices in Wichita for a time, but Mary and I eventually moved into the Shirkmere Apartments in Wichita; and, with the kids gone, she was able to use her degree in library science working at the Wichita Public Library.

I found the transition from attorney to bankruptcy referee a fairly easy one. I brought my secretary from private practice, Thelma Borresen, to be clerk of the new bankruptcy court in Wichita, and she assembled a topnotch staff. And I enjoyed the work. It's vastly different being on the other side of the bench, calling the shots rather than advocating them.

### **The Job of Refereeing Bankruptcy**

We've had bankruptcy laws in this country since the Colonial era. Article 1, Section 8, of the Constitution provides for Congress to make uniform laws on the subject of bankruptcies.

Ninety percent of the cases are purely administrative. The other ten percent are the controversial ones, such as the big Chapter 11 cases involv-

ing large businesses. I had some of those. Most cases, however were those in which I had a feel for the fact that people needed some relief from getting their checks garnished, losing their jobs, and having their lives upset. It was my experience that bankruptcy gave many people their only chance to get back on their feet and do a good job of it.

In my four years in the job, I learned a great deal about bankruptcy and was called on from time to time to defend it against attacks from those who believe people take advantage of it. Certainly, there's no question that bankruptcy is a major source of loss to loan companies and banks. The record clearly shows that billions of dollars are lost every year due to people taking bankruptcy. But every study of the subject shows that the overwhelming majority of those who take it have no alternative. They must do so.

Refereeing the conflicts that arise when people take bankruptcy is a big and important job, and perhaps one of the few in the justice system that has sprung out of a Biblical injunction, "Forgive us our debts, as we forgive our debtors." The referee's job involves overseeing the collection of assets from the debtor's estate, collecting all you can for the creditors, while providing the opportunity for the debtor to get a fresh start. It calls for delicacy, diplomacy and dogged determination.

### **A Summary of the Referee's Job**

Hutchinson News editor John McCormally pretty well summed up the job and my approach to it in one of his "Memo from Mac" columns in early 1962. When he asked if it wasn't dull, after a varied private practice, to become "a kind of glorified accountant," I told him truthfully that it wasn't. As he quoted me:

"Not at all. In the first place it is quite an experience to be on the other side of the bench, to be calling the shots instead of just advocating the shots to be called. And there's nothing dull about all that accounting. In criminal cases the decision

will determine whether a man goes to the penitentiary. You're dealing with a man faced with personal ruin. In these cases, you're dealing with a man faced with financial ruin. Your decision can determine whether he will get a new start or go through life hounded by creditors."

Next McCormally asked me what leads people to a referee's chambers. I told him one of three things:

"Poor management, undercapitalization, and lack of something to sell. Companies often get in financial trouble simply because their bookkeeping departments aren't efficient enough to guide management in the right directions. Or management bites off more than it can chew, takes on an expansion without sufficient capital to see it through. Or, even with the best management, the company may fail because its product or service is poor quality, or is made obsolete by changing habits or new products.

All these troubles can beset the individual as well as the business.

Poor management probably gets more people in trouble than anything else. They simply don't use their incomes wisely. And they get undercapitalized the same as businesses. They buy too many things on installment, or borrow more from the loan company than their income can handle. Or they become unemployed, they lose the market for their labor, the same as companies lose markets for their products."

McCormally asked me for my best advice for keeping out of this court, and I told him, "Always know exactly where you stand. Keep the kind of records that will tell you every morning your exact financial position; then financial trouble is not apt to slip up on you."

### **Increasing Caseloads**

The business of the court increased tremendously over the next few years. Judge Sloan developed wage-earner plans, under which debtors would pay off their debts through a trustee. As the debtors paid money to him, he would pay it out to the creditors. It reached the point where the trustee would even collect money to pay off child support and alimony for the debtor.

For some of my four years as referee, Judge Sloan was ill, and I was required to handle the entire state docket by myself. Like Judge Sloan, I worked quickly and still do. I conducted proceedings rapidly, getting the people in, hearing what they had to say and making a decision about the circumstances in the case. If the decision were wrong, the people could always appeal it.

In 1959, I was elected a director of the National Association of Referees in Bankruptcy, and served until I left bankruptcy court in 1962. I certainly enjoyed my fellow bankruptcy judges, who were tremendous people. I remember one in particular who turned down an appointment to the federal bench so he could continue to serve.

Because of the growing demand for wage-earner plans, I authored "A Primer on Wage Earner Plans Under Chapter XIII With Specimen Forms," which was published in 1962 in the *Business Lawyer* of the American Bar Association.

So I kept busy and I think I did some good in that job. Both Loy and Miller married in the late

1950s and early 1960s. Miller worked his way through Amhurst, where he was graduated cum laude with numerous honors, and received a one-year Rotary scholarship to the Sorbonne in Paris. Upon his return, he taught French at Boston University while earning his Ph.D. in Philosophy at Harvard. There, he met and married Susan Rand.

Three years behind Miller, Loy met and married Wichitan John Kimmel Wiley in 1959 while the two were attending the University of Kansas. Loy received her B.A. from the University of Kansas and later her MBA from the University of Dayton.

The kids were doing so well that Mary and I began planning a bit more for what the rest of our life would be like. I had stayed active in the Kansas Bar Association, and, in 1963, became president-elect of the Bar. And frankly, I had the itch to get back into the courtroom. I missed the action of being a lawyer. And I still had the dream of being a judge.

And so it was that in 1961, everything came together once again. On September 14th, my friend and mentor Judge Hill was appointed to the 10th Circuit of the United States Court of Appeals. That not only created a vacancy on the District Court, but Congress had just provided for a third federal judge for Kansas.

Suddenly, there were two federal judgeships to be filled. And I was being considered by President John F. Kennedy to fill one of them.



*Chapter 10*

1962

**A Streetcar Came By and I Got On**

**P**resident Kennedy had pledged to appoint as many Republican federal judges as President Eisenhower had Democrats, and heavily-Republican Kansas was a logical place for him to appoint a Republican. There was no shortage of well-qualified potential appointees in both parties.

**Potential Candidates**

The Republicans most often mentioned in the churning rumor mill were:

- George Templar, U.S. Attorney from Arkansas City who had run for governor in 1954
- Governor John Anderson of Kansas City
- Former state senator and Kansas GOP chairman James Pearson of Fairway
- Sam Mellinger of Emporia
- Floyd Ruppenthal of McPherson,
- Paul Wilson, former assistant Kansas attorney general then teaching at KU
- Wilbur Leonard, former United States attorney from Topeka.

Democrats included:

- Frank Theis
- Joe McDowell of Kansas City
- Democratic leader of the state senate, Paul Aylward of Ellsworth
- District Judge John L. Young of Salina
- Shawnee County District Judges David Prager and Marion Beatty
- Unites States Attorney Newell George
- my fellow bankruptcy referee, Judge Dawes of Leavenworth and Topeka.

The man who had all the political credentials and the best academic training was my good friend from Arkansas City, Frank Theis. As a matter of fact, he may have had a couple too many credentials. Because, while he was Democratic National Committeeman and Kansas Party Chairman, he also had worked for Lyndon Johnson's nomination at the Los Angeles National Convention in 1960 (four years after I'd supported John Kennedy's bid for the vice-presidential nomination in Chicago).



*At the Democratic Convention 1956*

### **Support in the Senate and Locally**

Frank had also run a very aggressive campaign against Republican United States Senator Andrew Schoepel in 1960. Because of some of the things Frank had said in that campaign, Senator Schoepel told his colleagues that Frank would get that appointment over his dead body.

And then he died.

But Andy's successor, Jim Pearson, supported my candidacy since Andy had made it clear I was his choice for the Democratic appointment.

Frank understood that, and wholeheartedly backed me, as did George Templar, who shared his hometown of Ark City. The Southwest Kansas Bar Association unanimously endorsed me, and I believe most of the attorneys supported my candidacy, since they knew me from my work for the state bar association. But I stayed out of the politics of it all. Because I was one of the judicial officers of the Bankruptcy Court, it seemed inappropriate for me to get involved in the selection process; I merely let it be known that I was available.

Floyd Breeding, Congressman from what is now the First District, was the only Democrat in the Kansas delegation. He quite rightly had held out for Frank, but then shifted his support to me, saying he would try to convince the President and his brother, the Attorney General, to rethink their plan to name one Democrat and one Republican. Floyd also got me a coveted hour-long meeting with the powerful Speaker of the House, Sam Rayburn.

Senator Frank Carlson, who had been of such help on the flood control project when he was governor, was a most gracious and enthusiastic sponsor, who led the efforts on my behalf.

So I've always said that I was supported for judge by all three Kansas Republican Senators.

### **Local Press support**

The Hutchinson News editorialized:

"If qualifications are to be the gauge, there is a hometown boy who is not to be overlooked. As County Attorney he was unafraid to stand for the right rather than the popular. In private

practice he showed a sound knowledge of the law. As federal referee in bankruptcy he has demonstrated that he possesses judicial temperament to a high degree. Through his career he has commanded public liking and respect. "Mr. President, Mr. Attorney General, Senators, we give you Wesley Brown."

All that support was most humbling. And I was particularly moved when Attorney General Robert Kennedy called Frank Theis to Washington and asked which of the candidates the people of Kansas would prefer. Later, at my installation, Frank recounted:

"I told them that with Judge Wesley E. Brown, the cornerstone of the courthouse would remain in place as it had with the integrity and judicial prowess of Judge Hill, and Wes's ability as a lawyer and judge would make the administration honored and proud they had selected him as a judge."

On March 5, 1962, Congressman Breeding called me from Liberal, where he was attending the Shrove Tuesday Pancake Race. He told me that President Kennedy had nominated me to be a United States District Judge. The President had also nominated George Templar, but his confirmation was held up a few days, rumor had it, so that I'd be the senior on the court. It meant little to me at the time, but it was the reason I became the Chief Judge instead of Judge Templar. Senator Carlson had also called to inform me of the Senate hearings.

### **A Hearing Scheduled for Farm Boys**

My confirmation hearing before the Senate Judiciary Committee was scheduled for 10:30 Friday morning, March 23, but instead was held before a subcommittee at 8 a.m., because committees are not allowed to meet while the full Senate is in session. And the Senate was indeed in session, debating the abolition of the poll tax, and Southern senators were holding a filibuster in a vain attempt to perpetuate this tax upon voters which had for years operated to deny the Constitutional right of suffrage to the poor, particularly poor blacks in the South.

Of the subcommittee members, James Eastland (D-Miss.), Olin Johnston (D-S.C.), and

Wife Studied Law

## Kennedy Sends Brown Appointment As Federal Judge to U.S. Senate



**NOMINEE WITH WIFE**—Nominated for federal district court judge for Kansas Thursday by President Kennedy is Wesley E. Brown, 54, who served as referee in bankruptcy here since 1958. Judge Brown is shown here with Mrs. Brown who is employed at Wichita Public Library.—(Eagle Staff Photo.)

Wesley E. Brown, referee in bankruptcy in Federal Court here, was nominated Thursday by President Kennedy to become a federal district judge for Kansas.

Brown, 54, a Democrat, will succeed Judge Delmas C. Hill who was elevated to the 10th U.S. Circuit Court of Appeals last September.

Judge and Mrs. Brown maintain residence both at Hutchinson and at the Shirkmere Hotel, Wichita.

### Born at Hutchinson

The judge was born June 22, 1907, at Hutchinson and attended Kansas University and Kansas City University School of Law. He was admitted to the bar in 1933 and was a member of the law firm of Williams, Martindell, Carey and Brown at Hutchinson.

Formerly he was a Kansas delegate to the Democratic national convention and has been keynote speaker at state Democratic conventions.

Mrs. Brown attended law school at the same time as her husband and received a law degree but never practiced the profession, choosing instead to raise a family. She was a librarian at Kansas City, Mo., before marriage and presently is employed in the cataloging department of Wichita Public Library.

The Browns have a son, Miller Brown, doing graduate work at Harvard University for a doctorate in philosophy, and a daughter, Mrs. John K. Wiley, residing at Athens, Greece, where her husband, 1st Lt. John Wiley, is stationed with the Air Force.

In addition to his study at Harvard, Miller Brown is teaching at Boston University.

### Named Referee in 1958

Judge Brown was county attorney at Hutchinson from 1934 to 1938 and was appointed referee in bankruptcy in federal court April 1, 1958.

His successor as referee will be selected by federal district judges of Kansas unless they fail to agree on a choice, in which case the appointment will be made by Chief Judge Arthur J. Stanley Jr. of Kansas City. Word that George Templar, Arkansas City, a Republican, was to get a third judgeship for Kansas has not been confirmed in Washington but the announcement is expected shortly.

A delay in his appointment would put Judge Brown next in line for the chief judgeship in Kansas.

Roman Hruska (R-Neb.), only Chairman Hruska was there at 8 a.m. Senator Carlson complimented such early attendance, calling it "a little beyond the call of duty."

But Hruska replied: "For Kansas and Nebraska farm boys, it's just about regulation."

Senator Carlson then presented me, saying: "I not only give him my full endorsement, but I was pleased when the President nominated him."

He also submitted written statements from Pearson and Breeding, and then Republican Congressman Garner Shriver testified on my behalf. Mrs. Breeding was there, and former Gov. George Docking, then a member of the Export-Import Bank, attended. Attorney friends of mine Thurman Hill and Paul Aiken, and Lloyd Miller, formerly of Oberlin, then vice president of AT&T, were there as well. I answered the questions of the senators, shook hands all around and came home. The full committee approved my appointment later that day, and on April 2nd, I received a telegram from Senator Carlson: "Congratulations. Senate confirmed your nomination today."

I was 54 years old. The new job paid \$22,500. Finally, I was a federal judge.

If you were to ask me exactly how it all came about, I'd have to give the reply Justice Tom Clark gave when I asked him how he came to be appoint-



*The Honorable Wesley E. Brown*

ed to the United States Supreme Court: “I was standing there, and a streetcar came by, and I got on,” he said.

When all the politics is said and done, you are either lucky enough to be there when the streetcar comes by, or you aren’t. I was a very lucky man indeed.

*Chapter 11***“I Accept the Challenge”**

The ‘60s had already established themselves as a time of change by April 12, 1962. But the events of that particular year presaged both good and ill for those of us who would live through the tumultuous decade.

**Signs of the Times in the 1960s**

In space, astronaut John Glenn orbited Earth three times in Friendship 7. In Wichita inventor Bill Lear launched a brand new company called Lear Jet. And in Dallas IBM salesman Ross Perot started a company called Electronic Data Systems.

The first sugar free soft-drink (Diet-Rite with cyclamates) hit the general market. So did pop-top cans. Polaroid introduced color film. K-Mart opened its first store and Richard Nixon launched a comeback attempt by running for governor of California.

The New York Mets launched their first season in baseball. In television Johnny Carson began his long tenure as host of “The Tonight Show.” In literature two young writers launched careers, Harper Lee with *To Kill a Mockingbird* and Ken Kesey with *One Flew Over the Cuckoo’s Nest*. And biologist Rachel Carson published a frightening forecast of a world in which pesticides made birds extinct in *Silent Spring*.

Tony Bennett made the first recording of “I Left My Heart in San Francisco” and an updated version of a black protest song was copy-

righted in Nashville. The song—“We Shall Overcome”—would soon become the anthem of the Civil Rights movement.

That was also the year that South Vietnam, supported with money, arms and “observers” from the United States, launched a full-scale military effort to wipe out the Viet Cong rebels who were receiving supplies from North Vietnam.



*Mary Brown helping Judge Brown with his robe*

### **Installation and a Primer on the Judgeship**

The events of the 1960s were very close and yet quite far away that warm April afternoon when Mary and I walked into the Reno County District Courtroom and looked out upon an overflow crowd of more than 250 friends and colleagues. This was to be my installation as what I'd dreamed of being for so long—a United States District Court judge. It was more than that. It was also a primer on the career I was undertaking, from those who knew.

Chief Judge Arthur Stanley presided, and the first speaker he presented was my old and esteemed colleague George Powers, who represented the American and Kansas Bar Associations. George and I had worked against each other in the courtroom and with each other on the executive council of the state Bar, and he was most gracious as he explained the process by which the American Bar recommended federal judge candidates to the president. He said:

“You have an investigation, and many of you in this room have been called. You can say the man is not qualified—which rarely happens—that he is qualified, that he is well qualified or that he is exceedingly well qualified. And I know you will be happy in joining me when I say that Wes' record in his investigation by the American Bar was one of those who came out exceedingly well qualified.

“Isn't it amazing that this job, and it is a job, that this honor, and it is an honor, carries with it the esprit de corps, the honor, that will make almost any lawyer, regardless of his income, his position in life, give it up in order to be a Federal Judge? And I will tell you it is a working job. It isn't done because this is a simple job where you no longer have to work. I suspect, Wes, you will work harder than you have ever worked before. I hope you will, and I know all of the lawyers

think you will. This is a difficult job. It is a working job. It is a pressure job. It is a lifetime job with great honor, and it couldn't happen to a nicer person.”

### **Comments of Judge Hill**

George introduced my friend and mentor, Judge Delmas Hill, whose position I was taking. Buzz congratulated me and said some nice things about me and the position I was assuming:

“(T)he power and authority of the Judiciary must be exercised wisely and with discretion. It must be exercised for the purpose of administering justice and for no other. That authority must at all times be reconciled with justice, to the end not only that justice may be enforced with authority but also that authority may be vindicated by justice.

“There are certain fundamental qualifications every man who dons the robe of justice should possess. Among these are integrity, humility, legal learning, patience, a willingness to work hard, and an understanding of human nature. There are, of course, many other desirable attributes of a Judge, but these will certainly qualify a man to be acclaimed a ‘good judge.’ With these qualifications, a good judge must then proceed to declare the law as he finds it, whether he likes it or not, and usually there are many others who don't like it.

“I can say to Judge Brown that in the years to come the greatest reward that he will receive from judicial service will come at the end of every day when he hangs up his robe and can conscientiously say to himself that he has done his very best in the administering of justice. Nothing short of that would satisfy any good judge.

“He is the twelfth man in the history of Kansas to be appointed to the United States District Bench. Those of us who know him are confident that he will make a good judge.”

### **The Presentation of the Commission**

I had asked that another old friend, mentor and former partner, Don Martindell, present me with the presidential commission. Don's speech was very emotional, and touched me deeply. He concluded:

"I think perhaps as we get a little bit older we are a little more inclined to be more egotistical. I don't say this in the spirit of egotism, but I think perhaps I had just a little to do with the training of Wes to get him where he is today. I am sure he won't cuss me much for some of the things that went on between us in our many years of practice together. 'Just country lawyers,' you say. I appreciate the honor extended me and I think that is perhaps the reason.

"And with those few remarks Wes, I want to present to you this Commission as Judge of the United States District Court. And God bless you."

### **The Oath of Office**

The audience stood along with me as Judge Stanley gave me the oath of office:

I, Wesley E. Brown, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as Judge of the District Court of the United States, according to the best of my abilities and understanding, agreeable to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithful-

ly discharge the duties of the office on which I am about to enter, so help me God.

Judge Stanley asked Mary to help me into my judicial robe, and—as I looked out upon all those friends as a District judge, and as the words of my colleagues and the oath of office echoed around me—I was overcome by the moment. Even the generally dry court transcript captures the emotion:

### **The Court Transcript**

(Mrs. Brown helping Judge Brown into robe)  
HONORABLE WESLEY E. BROWN: I hope to be able to get into this easier some day. Will you fasten it for me please?

(Mrs. Brown fastening robe)

HONORABLE WESLEY E. BROWN: Thank you.

THE COURT: Judge Brown.

HONORABLE WESLEY E. BROWN: It will take a minute for me to compose myself. So, may it please the court...

HONORABLE LUTHER BOHANNON: Here is a little water, Judge Brown. (Handing)

HONORABLE WESLEY E. BROWN: Thank you. That will help.

I took a sip of water, and reminded myself that yes, indeed, I was in this place, wearing this robe. At the age of 54, I understood why I had turned down opportunities to run for governor and senator, why I had stayed true to my profession and steered the course I had. I knew with every fiber of my being that I had finally arrived at my life's work.

Apparently, I wasn't the only one that day overcome by the emotion of the occasion. Hutchinson News columnist John McCormally described the scene as follows:

Martindell, senior member of the Reno County bar, wept. The tears were partly those of pride of an elder lawyer, who had seen and helped a young lawyer climb up the high plateau of legal success. But, his emotion also stemmed, Hap Martindell said, from the fresh comfort and faith which this event had given him in America.

America was still all right, he knew, when men like Wes Brown could come the hard way, from lowly beginnings, to places which Appellate Judge Delmas Hill conceded sometimes hold more power than the President himself.

Now Judge Brown wept, too, and his tears took the place of words he just couldn't quite get out, to express what he felt about what had happened to him. Around the crowded courtroom, I could see tears in many other eyes. Spectators sat so quietly, in the long pauses between Wes's sentences, that you could hear only the loud ticking of the clock. I don't think I have ever seen such a contagious sweep of emotion.

He wasn't just getting a good job, or just becoming an important official, or merely receiving a well-deserved prize. There was something else. When the last ringing word of the oath, which is "God," had been said, and the black robe had gone round his shoulders, he had become something different from what he had been before, not just in title, but in fact, and something different from what the rest of us are. It was as if a miracle of sorts had taken place, like death, or the birth of a baby, or the ordination of a priest.

In the latter case, the faithful believe that the Holy Spirit actually does come down to transform a mere mortal into a special kind of servant. The judiciary, although, it does

call upon God for help, makes no such claim to divine transformation.

But if it has no special claim on divinity, the judiciary has something that, in a mortal way, works the same kind of spell. It is the long tradition, going back beyond Runnymede and the Roman Senate, back beyond the stones of Greece and the tablets of Hammurabi, to the earliest of lawgivers. The long history, the solemn commitment, to seek and to administer justice.

And the presence of this tradition, bright with promise and fearsome if betrayed, was there in the Reno County courtroom the other day, much as Biblical writers felt the wingbeats of the Holy Ghost.

In our miraculously balanced system of government, the judiciary is the solid anchor and has the hardest job. The executive can succeed by doing the expedient, the congress by doing the popular. But the judiciary must seek justice.

And if this has been difficult up to now, and brought storms of criticism down on the courts, how much more so it will be in the years ahead. For as we grow more crowded on this continent, and more entwined with the fortunes of people all over the world, many of the liberties that we have taken for granted will be severely challenged. When the property of 180 million Americans must suffice for 300 or 400 million, how it is owned and used will be subjected to unimagined restrictions. When actions and words and negligence and discrimination can so explosively affect so many others, the freedoms which now permit them will be sorely tested.

Yet if the planet's survival is worthwhile at all, the basic liberties that give human life dignity must somehow be preserved.

Sociologists and economists will seek answers, Presidents will have plans, Congress will pass laws. But, the last refuge of freedom and justice will be in the courts.

The glimpse we had the other day was of a system which fastens those few to the roots of a tradition from which great strength and wisdom can come.

Many of those feelings so eloquently put by John were mine that beautiful April afternoon when I set down the water glass, faced my friends and colleagues and struggled to find my own words with which to tell them what I felt.

As I read them today, I find them not eloquent or grand. But they come pretty close to what I wanted to say. And I'd take them as an epitaph.

Ladies and Gentlemen, This Honorable Court, My Friends:

I want you all to know that I will do my best to do my duty to God and my Country, to obey

the laws, to uphold the Constitution and the laws of the United States, and with the help of God do it justly and with great humility.

In addition, to those of you who have had confidence in me, I shall not betray that confidence. And to those who may have some doubt, I accept the challenge. But here with you, my friends, I say here and now in the only way I can pay tribute to you and the faith you have had in me, that I will strive to seek to find the way of justice. This is my pledge for your faith.

Thank you.



*Chapter 12*

## 1962 and Counting

# The Rule of Law: Its Application

I started hearing cases the very next day, on April 13, 1962. Which was fine with me, because from the first minutes of that first day, I loved it. Being a federal judge was quite simply fun. Because of my bankruptcy court experience, I didn't go in blind. They say that if you've been around the federal courts a little while and know where the bathrooms are, it is a great help to you.

The challenge was great, and it was something I could sink my teeth into. Besides, I truly felt an obligation to all those people who had helped me. I felt obligated not just to do a good job, but to do the best job. I knew I couldn't do that, but I enjoyed trying.

In Bankruptcy Court, retiring Judge Sloan and I were succeeded by Robert Morton in Wichita and Joseph Dawes of Leavenworth, who worked out of Topeka.

On the District Court bench I joined Chief Judge Arthur Stanley, who was stationed in Kansas City, Kansas. And, two weeks after my commissioning, George Templar was sworn in as a third federal judge in Kansas. George was stationed in Topeka. I operated out of Wichita.

### **The Case Load**

During the fiscal year before my commissioning, our district had the highest caseload per judge of any district in the United States. And, even with three judges, our district had the fifth highest case-

load in the nation, with most of the filings in Wichita. (By June 30, there were 68,000 civil cases pending in federal courts of the United States.)

It was understood that we'd each handle the dockets of the cases filed at our respective stations, but we helped each other out when we could. George Templar and I quickly sought to dig out from under the huge backlog. On May 14th, the two of us waded through a three-hour docket call to assign hearings of 303 cases: 25 criminal, 106 civil jury, 168 civil court trials, and 4 land condemnation suits. I told the attorneys that day that George and I intended full use of pretrial conferences, deposition and other procedures to narrow and define the issues and shorten trials. I added that we meant to keep things moving toward speedy conclusions and decisions.

I was used to working fast and making quick decisions. Sometimes I may not have considered decisions long enough and could have used more time in contemplation. But most of the time at the trial level, shooting from the hip isn't harmful or dangerous.

### **Politics Now a Private Issue**

As busy as I was, I couldn't commute any longer, so Mary and I left our beloved home in Hutchinson and our temporary quarters at the Shirkmere in Wichita, and we bought a home at 316 St. James. We were living a bit easier now, not fighting the financial problems we'd faced



*Mary Brown, Judge Brown, Sharon Reid and Magistrate Judge Reid out to dinner on Valentine's Day, February 14, 1987.*

when the kids were growing up. We settled in and, I think, enjoyed life a good deal more now that we were settled in for life.

Being a federal judge also required other adjustments. For instance, people would ask about my political views. I would have to tell them, "I'm not interested in that. I mean, I might have personal curiosity about politics, but I can't become publicly interested. I can't take a public stand."

When I became a judge, the first thing I was told at judge's school was, "You are not in politics. You're the third branch, the judiciary." But that doesn't mean judges don't have fun talking politics. It's like the old saying in the Navy that there are three things you don't talk about: religion, politics and women. Well, when I was in the Navy, I never heard one conversation that didn't deal with at least one of those subjects. Otherwise, you talked about family, sports, war or food. Besides, politics is the selection process by which we get people to operate our govern-

ment. It deserves our support as well as constructive criticism—I just can't support or criticize it openly anymore.

So, while we judges have to have been political to get where we are, we have to be non-political when we get here. It's interesting and it's hard. But it's a great challenge too, and I enjoy a challenge.

### **Relationships Change**

Another adjustment comes up because people are forever asking me legal questions. I just have to tell them that it's unethical and illegal for a judge to practice law. I've also missed working with lawyers. You simply have less contact with your fellow attorneys after you're appointed to the federal bench. And they tend to become more formal in their dealings with you.

I still enjoy being with members of the Bar, playing golf for example. We just don't talk business. Sometimes I miss the casualness and the easy joking around. But it comes with the territory, and you can't change it. So you accept it. In

a sense, it's part of that whole idea that you have become a different man by becoming a federal judge. It has to do with the power you command and by law are required to exercise. You feel it too. And, rather than an ego booster, it's a very humbling feeling.

As I write these lines, I am reminded of my relationship with one very special lawyer that changed because of my position. It was unavoidable and sad.

One of the cases I had to decide shortly after I became a judge involved Don Martindell, my old friend, mentor, and former law partner, who had presented me with the presidential commission at my installation. To me the case was just another foreclosure action by the government, and I ruled against him. I was surprised and chagrined when he wrote me an angry letter taking personal affront that I would rule against him.

I transferred the case to Judge Stanley, who reversed me. The government appealed the case to the circuit court, and I felt much better when my position was sustained.

A few years later, when Don Martindell died, I delivered a eulogy. But we had never again been close after my ruling. I regret that, but the law requires a judge to rule as he sees the law and not because of personalities and I couldn't have ruled any other way.

### **Setting Admiration Aside**

Another problem I had to anticipate and guard against was not to let my admiration for a skilled lawyer overcome my responsibility to arrive at a judicial decision in accordance with the facts and the law. A good lawyer is a joy to behold in a trial, and oftentimes a Godsend. He or she moves things along in an orderly and efficient manner, presents a case clearly, and pins down objections. Usually, the good lawyer is right. But I learned I had to be constantly alert to the fact that my job differed from his or hers.

My responsibility was to make my decision based on the facts and the legal issues, not on the presentation. Yet I couldn't lean over backwards for the other side either. Finding and maintaining that judicial middle ground was often difficult. I was reminded of Justice Byron White's comment to me after my confirmation by the Senate (he was the Deputy Attorney General of the United States at the time and I went to thank him for his approval, "We'll look at you in five years," he said). Five days later he was appointed to the Supreme Court.

### **Other Professional Activities**

In 1964, my alma mater, the University of Missouri at Kansas City, honored me by making me an honorary initiate of the Order of Bench and Robe.

That same year, I became president of the Kansas Bar Association, succeeding the Kansas Attorney General Bill Ferguson. Becoming president of the Bar was the culmination of serving on the executive committee of the bar since the 1950s. In those times you became a member of the executive committee and then eventually moved automatically to the presidency.

During my presidency, the bar backed my proposal to adopt the Missouri plan to fill the vacancies in the court system of Kansas by appointing judges and then letting them stand for election to see if they should be retained. In this method, the state judges were not required to run against other candidates but would run against their record. Kansas adopted the plan but with the proviso that counties could get out of the plan by local option and require their state judges to run for election. Many counties have done this, but I have always felt that it is better to have judges removed from the political fray after they have accepted the responsibility of a judicial position.

During my presidency, the bar also adopted a different manner in selecting its governing com-

mittee and its officers at my request. With the new method, candidates' names were submitted for a vote by the bar members of state districts and state bar.

I made many speeches around the state as president of the bar because, frankly, those of us in the legal system needed to do more to explain its workings and its importance in these ever more complicated and confusing times.

I also spoke to attorneys' groups when pre-trial conferences became a part of the Kansas Civil Code in 1964, urging lawyers to make full use of them.

I resigned as president in 1965, after less than a year in office. As I told the members of the bar, I was honored by the position, but the work on the bench required my full time.

### **Chief Judge: 1971**

In 1967, Judge Stanley, Judge Templar, and I welcomed to the court our good friend, Frank Theis, who filled a newly-created position, giving us four district court judges. Judge Theis continued to serve with distinction until his death in January of 1998.

In 1971, Chief Judge Stanley was required to step down and as the senior judge under 70, I became Chief Judge of United States District Court. Judge Stanley continued to serve the courts with honor and distinction until his health prevented further work. He has always been known by his associates of the Kansas Federal Court as the "Super Chief," a designation Judge Theis gave him and to which we all concurred.

Also in 1971, I was pleased to swear in Kansas Supreme Court Justice Earl O'Connor as a district court judge. He was truly a judges' judge. We were delighted to get him because the cases were coming in bunches. From 1969 to 1971, the total number of cases in United States District Court in Kansas rose 34 per cent.

Being the chief judge in the District of Kansas didn't cause any big problems. After all, there were only five of us:

- Judge O'Connor and Judge Stanley on senior status continued to handle cases in Kansas City
- Judge Templar took care of the Topeka Docket, and
- Judge Theis and I handled the Wichita Docket.

As judges of one court, we moved with ease to the various cities in which we were having court sessions to help each other when we were needed. Our dockets always listed all of us on our court calendars as judges who would be available to try the case at issue.

This procedure was not always pleasing to the lawyers because the cases were listed one after the other and would be set for trial in the order listed. Thus if a case set on the docket was settled or was otherwise disposed of, the lawyers in the following case were expected to be ready for trial at once. At that time it was accepted by the bar, and both criminal and civil cases moved through the courts as fast as we could get them ready for trial.

A reporter for the Wichita Eagle interviewed me when I became chief judge and asked what was the toughest part of the job. I answered that it wasn't the added responsibilities of assigning caseloads to the judges and administering personnel. It was the responsibility that all of us on the bench faced, sentencing. As I explained to him:

"The primary reason for this is this is an area of our judicial duties in which Congress has given trial judges a great deal of leeway.

"It wouldn't be difficult to have a uniform sentence—one way to do this would be to have Congress pass flat rules. This, of course, is the problem. People are not uniform and therefore it would be very difficult to give uniform sentences unless we have uniform people. And nobody wants that."

Now, thirty years later Congress has adopted sentencing guidelines. The guidelines have established uniform punishment, but they have eliminated much of the latitude district judges used to possess and has certainly contributed to the filling of our prisons. Indeed, more prisons are needed. We will have to wait to see if standardized justice is successful.

I also told the reporter: “The only way, in this job, to show gratitude is to do a better job for the people you serve. By that standard, I have a lot to do.”

### **Senior Status: 1979**

As the cases came in greater numbers I was just as eager to hear them. So, in 1977, when I became eligible to take senior status and perhaps slow down a bit I decided to remain active. One reason was so that I could finish out service on the Judicial Conference of the United States, a body composed of 24 judges plus the Chief Justice. At that time, I was chairman of the Kansas Rhodes Scholar Selection Committee (probably the most enjoyable task I ever took on).

I said then: “As long as I can make my best contribution as an active judge, I propose to stay active.”

But two years later, I was ready to shed my administrative duties, and Mary was delighted with that decision. I took senior status in 1979, and the next year, October 30, 1980, nearly 200 guests gathered for the unveiling of a portrait of me that was hung in my old courtroom.

Listening to my friends and colleagues in my old courtroom, I was reminded of my installation 18 years earlier in another courtroom in Hutchinson. Then, it was all just a beginning. On that day I didn’t want it to end.

Judge Pat Kelly, my successor as district court judge, accepted my portrait on behalf of the court. I was deeply moved by his words:

“I am a student of Judge Brown. I have watched him closely over these years. And, while



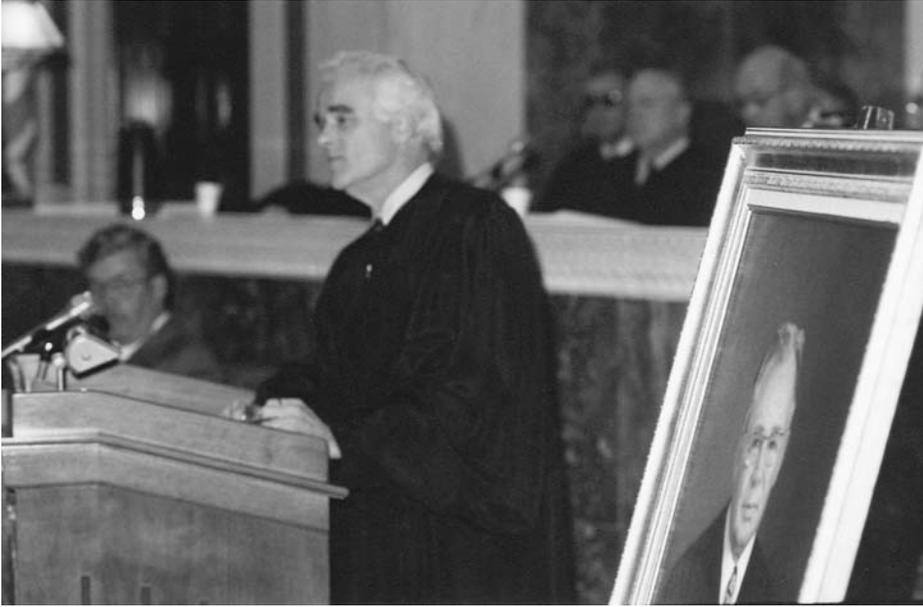
*Judge Brown’s portrait as it resides on the second floor of the United States District Court, District of Kansas at Wichita.*

it may be our styles will vary somewhat in the procedures and the demeanors, and the decorum of court, I trust and pray I can learn to accomplish the one trait that marks this man: That has been, as far as I can ever identify it, an innate ability to grasp what is right, and the fortitude to do it....I studied this portrait, and what it says to me is: ‘Judge Kelly, if you think you are right, do it.’”

Even though I was taking senior status, I didn’t want to leave the bench. I felt a responsibility to work the best I could for as long as I could. I said as much toward the end of my comments. I told the audience: “I’m proud to be a working judge. I hope that I can keep it up. And my work on senior status, I hope, will be judged like a tire, on the tread, and not the mileage.”

### **Temporary Emergency Court of Appeals: TECA**

With my change in status, my tenure on the Judicial Conference and Ad Hoc Committee on Bankruptcy was concluded, but my fears that



*The Honorable Patrick Kelly accepts Judge Brown's portrait on behalf of the court.*

moving to senior status would be tantamount to retirement were unfounded. The workload didn't slacken, and neither did I. If the truth be known, I was about to become as busy as I've ever been in my life.

In September 1980, Chief Justice Warren E. Berger appointed me to the Temporary Emergency Court of Appeals—the TECA Court. This Appellate Court was created by Congress in 1971 to hear appeals from federal district court decisions arising under the Economic Stabilization Act of 1970 and, later, the Emergency Petroleum Allocation Act of 1973.

These Acts authorized the President to impose emergency wage, price, and rent controls and to allocate petroleum products in emergencies. The Department of Energy (DOE), created by Congress to carry out the congressional mandates in the Acts, brought enforcement actions in the federal district courts, and the TECA court heard the appeals from those actions.

In 1981, there were approximately 300 cases from 36 districts. The appellate panels of TECA set the appeals for argument in the districts

where they arose. As a result, for the next 10 years I traveled to hear the appeals over the United States. This work was interesting and challenging.

Mary understood that this was the way I wanted it. She traveled with me all over the country where I heard cases and served on circuit court panels.

*Chapter 13*

## A Cross-Section of Memorable Cases

I've written very little in this memoir about individual cases because I want to deal with the ongoing judicial process rather than individual points along the way.

When people ask what were my most important cases, I reply that they're all important to the litigants. And that's not just a smart remark. It's true. That's why the smallest case requires all the attention and hard work you'd give to the biggest.

Still I've heard a number of cases that have a humorous side, cases that reflected the social problems of their time, and high-profile cases. And I suppose I should mention a few that demonstrate the court's responsibility to implement and carry out the laws enacted by Congress that affected our social order.

It's also good to include a few cases with the realization that much of the work on the trial bench is never memorialized by being published by law book companies. The cases requiring the judge to make written findings of facts and conclusions of law are found in Federal Supplements. The appellate decisions I participated in are set forth in the Federal Reporter.

The cases that I refer to here reflect a large part of my life in carrying out judicial responsibilities and are also an indication of the times we were going through as a nation. Some of them also demonstrate in how many ways history repeats itself.

### **"Feel Good" Cases**

#### *A New Asthma Treatment*

In my years on the bench, I've heard some pretty lame arguments, arguments you don't expect to encounter in federal court. But then, I guess an alibi is an alibi, wherever you find it. Even when it's the story of the fellow who was arrested for possession of one and a half gallons of moonshine. His attorney explained to the court that his client's physician, a "Dr. McGee" in Oklahoma, had recommended the use of alcoholic spirits to treat an asthmatic condition.

I sentenced the defendant to three years' probation with the recommendation that he get a second medical opinion.

#### *Justice on a Shoestring*

Judges make many important and far-reaching decisions, but some feel better than others. One such occasion was in 1962, when I instructed the United States Marshal's office to release confiscated shoestring potatoes. They had been seized because the actual weight of the contents didn't match the weight on the labels. But the shoestring potatoes were perfectly fine. So all 225 cases were released to the children at the Institute of Logopedics.

#### *Mirroring Social Change*

Criminal work was greatly increased by the social problems in our country that bubbled up

in the 1960s and took center stage in the 1970s.

Young people became disenchanted with United States' involvement in the rest of the world and by restrictions and perceived restrictions on their activities by law enforcement. As demonstrations against segregation and involvement in Vietnam increased, United States Attorneys impaneled more grand juries which, in turn, returned more indictments.

As the 60s turned into the 70s, I heard more and more cases of young men who sought to avoid the draft. And I heard more and more cases of civil disobedience. Indeed, the times were changing.

At the district level, we were also aware of the attack on Chief Justice Earl Warren by the Birch Society in the 1970s because of the decisions of the Supreme Court. These attacks on Chief Justice Warren (whom I had met and who had appointed me to the Bankruptcy Committee of the Judicial Conference) were political and not a judicial problem to most of the "inferior courts."

In fact, the decisions of the Supreme Court during the times of the social upheaval helped people feel that they could resort to the courts to resolve their disputes instead of trying to take "justice" into their own hands.

The attacks on the Supreme Court by the Birch Society also called to the attention of the Executive and Legislative Branches of government the underlying social problems which were facing the nation.

Throughout my time on the bench, I've been aware with every case I've heard and every decision I've rendered that the United States Court dockets mirror society.

#### *Issues that Return Again and Again*

I recall a stern-faced man named A. J. Porth who was convinced that the Internal Revenue Service had no right to his money, even though

he had every right to the benefits of living in the United States. A Wichita contractor, Porth initially refused to pay his federal income taxes in 1954 and 1957, but ended up paying.

Now he was brought to court for refusing to pay his 1961 and 1962 income taxes. He based his refusal on Fifth Amendment grounds, claiming that income tax laws conflicted with his rights of protection against illegal search and seizure and against giving testimony which could be used against him. This time, he said he wanted his case to go to the Supreme Court.

Well, the question of the constitutionality of the income tax had been settled long ago, and I ordered him to release his financial documents to the IRS or face contempt of court charges, which could have led to a year in jail and a thousand dollar fine. That very afternoon, he complied.

The Wichita Eagle quoted my decision on the case:

"People who fail to give the service and assistance that government needs, especially when its tasks are not pleasant to any of us, are doing themselves and this country a great disservice. Without means to operate our government and perpetuate our institutions they would destroy the things all of us have sacrificed to give. It seems also to this court that nothing would please our enemies more than to destroy us from within because of our failure to bear an appropriate share of the costs."

Still, people continue to claim "constitutional immunity" from paying taxes. And, to my way of thinking, these people are like another such defendant who appeared before me in 1964: Thomas K. Wailer. As I said in that decision, "Such a person seeks by his efforts to utilize the processes and protection which this government affords to destroy the very government whose protection he seeks."

### *Civil Disobedience*

One of the first cases I heard after becoming chief judge symbolized the difficulties in sentencing.

Milton Warren Blevins was a 21-year-old conscientious objector from Norton whose Jehovah's Witness faith forbade him to go to war. But he also refused the government's order to work at the University of Kansas Medical Center, claiming that would compromise his beliefs.

He would, however, accept such an order if it came from the court rather than the government. It was a distinction that, frankly, was lost on me. And I struggled with my sentencing decision.

"I don't know what to do," I said from the bench. "He is a perfectly nice young fellow, and that's just a statement of fact, and doesn't need a commitment behind iron bars. Yet the public interest requires something be done. The gift of faith is one of the great things that comes to man."

I ordered him into a jail or treatment facility for six months, then suspended a five-year sentence on the condition that he obey all laws and work for two years in a non-profit hospital.

### *Civil Rights Cases*

During the 1970s and 1980s, cases claiming civil rights violations filled our dockets. The following brief descriptions are representative:

- In 1971, I ruled that the Osteopathic Hospital had discriminated when it fired a woman who was pregnant and unmarried. I ordered her reinstated in her job with all back pay, raises, and maternity leave.
- In 1972, I ordered North High School to allow a young woman, 16-year-old Erin Wright, to compete on the golf team.
- And in 1972 I ruled that the Wichita School District's busing plan for racial balance was legal. It was not in violation of either United States or Kansas Constitutions.

- In the 1980s, two Santa Fe Railroad and United Transportation Union class-action cases grew (I'm told) to be the largest case filed in this district. One case was filed against the railroad and the union by 71 African Americans who worked as porters. The other was filed by 200 African American chair car attendants. Both groups charged that they had been banned from promotion to brakeman and other positions because of their race, even though they performed those duties. I awarded the porters about \$8.5 million in damages, costs and taxes, and approved a settlement of \$16.5 million for the chair car attendants.

During a period when I had taken a civil rights case under advisement, The Wichita Eagle reported that I expressed these concerns from the bench.

"I often tell new citizens who come in—and there are all the races and creeds, backgrounds—that it's time we tried to develop a national view, not just Blacks, Hispanics, Whites, Asians—We are all Americans, all members of this country. There's no other country in the world like it....We are a great nation. [But] right now—I think there's a fear in the hearts of people. It's been a long time since I have heard anybody say anything good about anybody.

"In government, whether it's city, state or national, it's just 'they didn't do this for me', or 'they didn't do that for me', or 'they did that to me, and they're going to do this to me', or they didn't do it. And we are caught up in a great many problems that a lot of people can't do anything about. I don't know whether the court can or not, but we are here for people to complain, I guess. And if we can resolve their disputes, that's fine. If they can

resolve them themselves, that's better. But there's some of them that can't, so we have to make the decision. I will try my best."

### **High-Profile Cases**

#### *Oklahoma Fraud Case*

One high-profile case in 1973 required me to travel to the Western District of Oklahoma. The case charged that Oklahoma State Treasurer Leo Winters was guilty of mail fraud. One of Winters' duties involved depositing state money in different banks, and the case charged that banks that made loans to Winters' friends got more state money than those who didn't. Winters was acquitted after a protracted trial.

An unexpected outcome of the case was that I gave up wearing bow ties after newspaper sketch artists depicted me with my bow tie peeking out above my robe, and reporters started referring to me as "the bow tie judge."

#### *Hometown Heroes*

The 1986 trial and sentencing of Mike and Mark Bell, football stars and hometown heroes convicted of purchasing cocaine, was highly publicized. Actually the case was open and shut, like most criminal cases, but the boys had a lot of people working for them, trying to get them off. And that's the way it should be. Attorneys dream up these defenses, and they have to. It's incumbent on the defense attorney to present every possible defense to the crime or in mitigation of punishment.

I sentenced the Bell brothers to one-year imprisonment.

#### *Politics and Crime*

In 1971 William Addington, head of large grain holdings, was tried and sentenced to five years in prison for converting government-owned grain to his own use. He appealed the

case and promptly filed as a Republican candidate for lieutenant governor. He didn't win the appeal or the election.

### *Human Tragedies*

Many tragedies played out their last acts in my courtroom. Few were more tragic than the case of Roy Trail, a 38-year-old Wichita attorney and Washburn University honor student, convicted of five counts of bank burglary in Bentley, Ramona, Tampa, Freeport and Burns. He threw himself upon the mercy of the court when it was time for sentencing. I called it a tragedy, but I also reminded him that "trust in the courts and the bar must be maintained if we are to have a society which is to survive." I sentenced him to 10 years in prison.

#### *Constitutional Issues: Redistricting*

In 1965, Judge Hill, Judge Templar, and I found apportionment in the Kansas Senate unconstitutional. Population in senate districts ranged from 45,000 in Saline County to 68,000 in Topeka. The ruling followed the Supreme Court's mandate and required the Senate to be reapportioned to meet federal guidelines.

Seven years later, in 1972, we found the Kansas House's redistricting plan unconstitutional, quite obviously drawn to protect Republican incumbents. We had to impose our own reapportionment plan on the senate, bringing about for the first time equitable representation of minorities.

On another such panel in 1972 with Judges Hill and Theis we made a routine ruling that became highly controversial. We ruled that two sections of the Kansas abortion law were unconstitutional. One provision required that abortions be performed only in hospitals approved by the Joint Committee on Accreditation of Hospitals. The other allowed an abortion only after a three-member panel of physicians had approved it. Our

ruling had the effect of liberalizing the state's abortion law, but it was based on the fact that the provisions were clearly unconstitutional.

### *The Helium Cases*

I remember the day in 1963 when I ruled that the United States District Court had jurisdiction in the multi-million dollar helium dispute. That ruling meant I'd hear one of the longest and biggest cases ever—10 cases combined into one to determine who owns the helium in natural gas, the landowners or the oil companies. This was a matter in which the government had an important interest, which Congress addressed, but which became moot as the case progressed through the courts.

The case began in 1963 and lasted 25 years. It was not only the longest case I heard, it was also the most expensive case in Kansas history. Actually, it consisted of three cases and three major trials:

- Landowners in the Hugoton gas fields brought an action to recover for the helium that was being taken from the wells and discharged into the air or in other ways not made use of.
- Cities Service Gas Company brought an interpleader case in which they proposed to deposit the money for the helium and decide how it would be disbursed.
- The lessee-producers, or the people who leased the land and then sold the gas, filed a third suit for their share.

The landowners executed natural gas leases to the producers, who were responsible for drilling wells and extracting the natural gas. The Helex Group and its subsidiaries purchased the gas stream from the producers and sold the helium contained therein to the United States. The landowners, the lessee/producers, and the Helex Group, all claimed title to the helium.

In 1968, I ruled that title to the helium was held by the Helex Group absent an express reservation by the landowners and producers. In 1973, the 10th Circuit Court of Appeals overturned my decision, finding that while title to helium had passed to the Helex Group under the leases and production contracts, the 30,000 landowners in Kansas, Oklahoma and Texas had never been paid for it.

Ultimately, I awarded some 25,000 royalty owners a total of \$205 million and approved a \$90 million settlement between the helium companies and the natural gas producers and landowners.

The law works in many diverse ways. At the conclusion of the cases, we found that nearly \$500,000 remained in the court's custody because the gas producers and landowners entitled to these funds could not be located. One of the attorneys involved in the case suggested that the money could be used to benefit the residents of the region which provided the helium-bearing natural gas involved in the litigation. This area, known as Hugoton Field, covered parts of southwest Kansas and the Oklahoma and Texas Panhandle regions.

Several attorneys involved in the litigation, including Gerald Sawatsky (lead counsel for the oil and gas producers), prepared papers to incorporate "The Helium Litigation Scholarship Fund, Inc." which would award scholarships to students residing in the southwest Kansas counties of Hamilton, Kearny, Finney, Stanton, Grant, Haskell, Stevens, Seward and Morton; the Oklahoma Panhandle counties of Texas, Beaver, and Cimarron; or the Texas Panhandle counties of Moore, Sherman, Hansford, Ochiltree, and Hutchinson. In order to be eligible for an award, the students must be pursuing degrees in agriculture, environmental or energy-related fields at an accredited institution.

With the concurrence of Judge David Kennedy in the state district court, helium funds in the state court action were transferred to the Fund, and the A.H.L.S.F. began its work of providing scholarships to worthy students.

The first six \$1,000 scholarships were awarded in April, 1993, with a plan to add additional scholarships until 24 renewable scholarships were funded annually. I am happy to report that as of March, 1999, 43 individual students have received scholarships, many have been renewed on a yearly basis; and, for

the past two years, the scholarship has been increased to \$1,200 with eight new students (instead of six) being selected annually. It is apparent that the Helium Litigation Scholarship Fund is in good hands and that it has, is, and will be benefitting those most entitled to recognition—the young people residing in the Hugoton Field.

Because there have been so many questions asked about and such interest in the Helium case and the scholarship fund, there is a history of both in the appendices of this memoir.



*The “Blankenbaker v. United Transportation Union, et al” class photo. Back Row (left to right): Roth A. Gatewood, Gregory J. Stucky, Thomas D. Kitch, George F. Smith, Virgil L. Crumpton, Kenneth E. Brown, William A. Smith, Harold Hawkins, Martyn Tuggle, Terry G. Paup, Alexa L. Parnell, Lou Jackson, and Oneil Davis. Front Row (left to right): Herschel C. Ramsey, Freddie Ramsey, Eligah Shoemaker, Judge Wesley E. Brown, Magistrate J. Thomas Reid, Vic Powell, Beatrice Thomas, and Rebecca Swan.*

*Chapter 14*

## Reflections and Changes

**A**fter more than 40 years on the federal bench, I've formed some conclusions and seen many changes in the District Court. Here's a smattering of both.

### **Reflections**

#### **The Courts of First Resort**

You can't ignore or downplay the importance of the nearly 1,000 active and senior federal district judges in our society. But what you can do is let knowledge of that importance breed humility rather than hubris.

Federal district judges are important, it seems to me, primarily as a safety valve for the conflicts that erupt over our moral, social, and political problems. The district courts, as the courts of first resort, can do much to allay the spreading of conflicts and to carry out the law. And they've done so. Look at what federal judges did for desegregation, for freedom of religion, for equal representation and a host of other reforms that were often unpopular, but were the law.

#### **It's a Good System**

In addition to my time on the district court, I spent nearly 20 years at the next level—the appellate court—serving on the Temporary Emergency Court of Appeals and in the various circuits. In circuit courts, you have two other judges with whom to discuss a case, so that should mean there's less chance for error. That level is the final court for most cases. But in cases involving the Constitution, or where there

are divisions in the various circuits, a case may go to the Supreme Court. In my service on the courts of appeals I have found the judges with whom I have served to be fine human beings following the law and dedicated to arriving at a just and definitive decision on the appeals they heard. And when I am reversed (or affirmed) on district court decisions, it is nice to have confidence in our system, to know that the case has been reviewed by individuals with integrity and a dedication to the rule of law.

The system is designed to provide backup. It's a good system. It makes for a longer period of litigation, but I think most of the time it results in a just resolution of disputes presented to the courts by people, states, and all who come before it. It has taken conflict out of the streets, away from those such as street gangs and "Freemen" who have organized to carry out their own form of justice.

The courts work successfully because people believe in them. When the people cease to believe in them, then we'll have anarchy. Or we'll have to develop another system.

#### **The Jury System**

We use juries in our courts less frequently than we did in the past. Settlements are encouraged. Arbitration as I said is often desirable, and mediation is often required. It still seems to me that a jury of our peers is often required and the best manner to resolve the disputes in both civil and criminal cases.

The jury selection is always an issue. From what source do you select the panel? Are the jurors a cross-section of the community? Are they thoughtful and honest? Will they and can they decide the case fairly?

We seek to provide fair and impartial juries by our voir dire system and by our instructions. While parties do not select the judge in the case, they participate in the selection of jurors who decide the facts.

Everything the judge says is so important that, unlike most judges these days, I question the jurors on voir dire. The lawyers can tell me the questions they want to ask the jury. I do that because attorneys who have to ask certain types of questions can show prejudice or generate it in jurors. For example, it's always better to have the judge, rather than the attorney, ask a prospective juror, "Would you be affected by the fact that the defendant is Black or Jewish or Hispanic or Chinese or whatever?" But generally I tell the lawyers, if they have additional questions to clear up an issue, they are permitted to inquire.

A fine lawyer once told me: "Judge, if you'll let me voir dire the jury, I won't make a closing argument."

I replied: "Counsel, you wouldn't have to. By the time you got through with voir dire, you'd have made a dozen closing arguments."

### **Instructions to the Jury**

As the law changes, it is necessary to review our instructions to juries. We are always working to make our instructions clear and cover the issues presented by the parties.

It is essential that we instruct on the law in a manner that permits the jury to understand and apply the law to the facts as they find them.

The rules of evidence have been further codified to provide a more definitive standard by which we may judge acceptable evidence--the

facts, documents, and exhibits which are used to sustain a party's position. It has also helped the judges in the district courts to rule on the dispositive motions which determine whether a litigant has valid claims to warrant a trial.

### **A Tough Judge?**

I'm a little perplexed when people tell me I have the reputation of being a tough judge with a hot temper, although, truth be told, it's a pretty handy reputation to have. I do take charge and run the courtroom. I hope that my style is that of running a pretty tight ship.

I always tell lawyers that I want them to stand when they make objections unless they're ill or infirm. I do that because if lawyers have to stand to make objections, they won't make so many.

I also expect the lawyers to know their cases and to present them with dispatch, dignity, and decorum. And I hold myself to the same standard. However, I am irritated by pettifoggery. A lawyer who constantly quibbles over unimportant details isn't doing anyone a bit of good.

I also expect lawyers to be on time. And I hate to keep juries waiting. Not only is it rude to keep a jury waiting, but I think it tends to diminish a jury's respect for the law and the seriousness of the job they have to do. I once threatened a lawyer with a \$50 fine when he was late to court while we were holding a jury. I informed him of my views on tardiness in no uncertain terms. In the end I didn't fine him -- but I don't think he was ever late for court again.

### **Lawyers as Advocates**

I tell lawyers to be advocates for their clients in every sense of the word. I never in my life thought I represented a guilty client, and neither should they. I tell them to make their pitch and do their best, and when they're through they will know they've done their best and have nothing further to do.

I've never had a lawyer come to court totally unprepared, but I've had lawyers botch up cases. That's a tough situation, because I have to be careful not to rescue those lawyers and yet it's my duty to do what I can to bring a fair outcome to the case. So it's a balancing act.

### **Television in the Courtroom**

I hope the atmosphere in my courtroom is one of respect, efficiency, and dedication. After all, more people than ever are seeing the inside of a courtroom today. They should see that kind of courtroom, it seems to me.

That becomes all the more important as more and more television cameras are allowed in. That's a very troublesome trend to my mind, for a couple of reasons.

First, too many people tend to act like movie stars when the TV camera is on them. A lawyer shouldn't go through a trial auditioning for work with some viewer out there. Instead, he or she should be concentrating fully on the case and client at hand.

Second, I have no problem with people viewing a videotape of an entire trial. But I do have a problem with a live broadcast, because no one is going to watch the entire trial. Trials are often very boring, but that boring routine is essential; and television's projection of a tiny, exploitable portion of a trial can be very misleading to the public.

Justice should be meted out inside the courtroom, where everyone involved understands the process. It's a collaborative process on the part of everyone in that room.

### **Changes**

By the time I took senior status, I had been on the federal bench 18 years, years which, while the primary function of federal judges remained the same, the way those judges functioned was changed in many ways.

Every change in the justice system is important because that system is so vital and so delicately balanced. But I would list the following as among the most important during my tenure:

Pretrial proceedings allow us to lay all the groundwork before the case comes to trial, and often people settle cases during this period.

Investigative proceedings provide us with much more information, pertinent information that is a great help, particularly in sentencing.

Sentencing guidelines might appear to make the job easier, but they trouble a judge greatly when he or she believes they are inappropriate. Those guidelines have been the source for more appeals than have resulted from any other legislation coming out of Congress. A recent case illustrates the dilemma of the guidelines: four young men were charged with a crime. Three of them were adults and were tried in federal district court. Under the sentencing guidelines, I had no choice but to sentence each of them to a term of 20 years. The fourth young man, who had committed the same crimes, was a minor. He was tried in state court, where sentencing is left to the discretion of the judge and was sentenced to 3 years.

The manner and extent depositions of witnesses may be taken and used have permitted the parties to litigation to be informed about the factual basis on which a party supports his claim.

The use of magistrate judges to get cases ready for trial and, in some instances, to try them, has been a tremendous time-saver. In addition magistrate judges hold settlement conferences and, when requested, can act as mediators at settlement conferences. They also advise the parties concerning the use of lawyers as mediators to help resolve disputes.

When I was commissioned in 1962, we had no full-time magistrate judges to pre-try cases, and so we federal judges handled every bit of the preliminary matters for both criminal and civil dockets.

The use of arbiters to resolve disputes—called Alternative Dispute Resolution—has likewise saved some time and expense. More and more contracts between parties require arbitration of any disputes instead of court action. As a matter of fact, to avoid litigation, parties in anticipation of a dispute have contracted for the use of arbitration, and it works quite well in a lot of instances. But, it's not successful if one side or the other is determined to control the outcome.

The jury selection process now sometimes includes the factor of a juror's race, when just a few short years ago race couldn't be a consideration.

The tremendous increase in cases, their complexity and far-reaching ramifications made it imperative to find ways and develop rules to insure timely and speedy trials and dispose of cases. The Speedy Trial Act of 1974 has created time tables for the disposition of criminal cases. While this has helped to speed up getting the case to trial, by its very nature it has required much paper work to see that forcing a faster trial time does not prevent the defendant from being able to prepare a proper defense. In general, I believe in a speedy trial that protects the right of the litigants, and I don't believe lawyers should get in the way of that. I make that very clear, and—as a result—I've never had to penalize a lawyer, never held one in contempt.

One of the greatest sources of change in my tenure has been the introduction of new technology to the judiciary and to the practice of law in general. When I started, technology consisted of a typewriter. Now, computers and the Internet have changed the way courts operate. With electronic filing in our district, we no longer have paper files containing the official record of the case.

[They tell me the official record is in "Cyberspace"—wherever that is.]. Attorneys and judges have instant access to a world of information – which can be both good and bad.

While the courts have had to change rapidly to keep up with our fast-changing society, I've never considered myself an innovator. I simply dealt with problems as they arose.

No report on my work as a part of the Federal Judicial System would be complete without recognition of the great help my law clerks have given me. It helped expedite the decision process in disposing of cases when Congress, bless their political hearts, authorized judges to employ a law clerk and later authorized the employment of two law clerks by district judges and three by circuit judges.

### **I'm Proud of Our Law Clerks**

I'm proud of our law clerks, who in many ways are the backbone of our courts, and I've been lucky enough to have the best. My criteria are simply that they be in the top third of their classes and have done some Law Review writing. And I prefer they come from Kansas, or at least from Kansas schools, so that they're acquainted with Kansas law. And finally, I require that they be a whole lot smarter than I am at looking up the law.

When I started, I hired them for two years. Consequently, I have fewer clerks than most judges, who hire them for only one year. But I've found that, no matter how good they are, it usually takes six months to learn how to do the job, then it takes another six months to find a job. So, by hiring them for two years, I get a good year's work from them.

There's no doubt that young lawyers are better educated and better prepared to practice than we were sixty years ago. They've had a far better curriculum than we did. They have good research skills and they've been trained in advocacy and in writing. Those were things never even mentioned when I was in school.

Three of my former clerks have since become judges. My very first law clerk, Paul Buchanan, was a Sedgwick County District Court Judge for

many years. Another of my early clerks, Jerry Elliott, is on the Kansas Court of Appeals. Monti Belot, who clerked for me from 1971 to 1973, is my colleague here on the district court bench. Monti and his family have been a source of joy to me. His wife Karen, and their four sons – Mark, Andy, Tom and Alex – have been great friends to both Sis and me.

I've had two "permanent" law clerks over the years. Jane Murray was my law clerk for more than 30 years. She is a remarkable person, who worked full tilt after at least five heart operations before retiring in 2003. She's an inspiration to me. My other permanent clerk, Mike Lahey, has now been with me for 18 years. I had him come to work for me at a time when I wasn't sure how long I would stay on the bench so I asked him to stay with me until I hung up my robe.

My other able law clerks over the years included: Bob O'Connor; John Martin; Ward Summerville; David Phillips; Alex Mitchell; David Fisher; Kathy Pruessner Peters; Terry Sims; Christopher Phelan, Jim Wong, John Andra, Skyler O'Hara and Jennifer Wilbert.

### **In Gratitude to My Administrative Assistants**

I am also very grateful for the loyalty and service of my administrative assistants. My second administrative assistant, Maggie Johnson, was absolutely unbelievable. She worked in the clerk's office for 18 years, and Maggie knew all the ins and outs of where everything was, how to get it and what to do with it.

She succeeded the person who was with me longer than anyone, devoting a good deal of her life to making mine go smoothly. Thelma Meacham Borresen was with me when I practiced in the Hutchinson firm and came with me when I became bankruptcy referee. She established the bankruptcy clerk's office for me. And

when I became a district judge, I told her she ought to stay where she was because she had it so beautifully arranged.

But she wanted to come with me. Thelma retired March 1, 1989. She'd been with me for nearly 32 years. She received national recognition for making judicial secretaries administrative secretaries. And she also deserves much of the credit for founding the National Association of Judicial Secretaries.

### **The Court Family**

I would also like to thank all of the members of the court family whose efforts make the work of the court possible. The clerks of the District and Bankruptcy Courts, for example – Ralph DeLoach and Fred Jamison – and their predecessors like Art Johnson, Clarise Farmer, and Russ Brenner – as well as their staffs, without whom the courts simply could not operate. I am also grateful to the U.S. Marshals, who by their dedicated service and vigilance give us in the court a sense of security; they have earned my abiding respect and affection. Last – but not least – the U.S. Probation Department, whose duties have multiplied over the years, I offer them my congratulations and thanks for their hard work, and for making the impossible possible.

### **A Few Favorite Sayings**

Looking back at over 40 years as a United States District Court judge, I can't help but think about the wonderful surprise party Thelma Borresen engineered to celebrate my 25th anniversary as United States District Judge, April 11, 1987. She and Mary got 100 people from all over the country to Prairie Dunes Country Club in Hutchinson to surprise me, and she got 109 more of my judicial colleagues to send letters.

Loy and Miller were also there, which really underscored the special nature of it all.

I was presented a golf-shirt at that party, on which were listed what my colleagues claimed were some of my favorite sayings. It reads:

- Have you tried to settle this case?
- Can't you stipulate to that?
- We go to trial in the morning.
- We'll work through the lunch hour.
- We don't enjoy the luxury of indecision
- Justice delayed is justice denied
- I'll give you five minutes
- He's finished but he doesn't know it.



*Judge and Mary Brown at the 10th circuit Judicial Conference in Denver, Colorado, 1986.*



*Judge Brown and Thadene N. Moore (Sis) at a Wichita State University Shockers party about one year before they married.*

I sometimes wonder if that last line might possibly apply to me—if I'm finished but don't know it.

I certainly had that feeling March 1, 1991, when the light went out of my life with the death of my wife Mary. But you go on. You have promises to keep and a job to do.

In 1994, Thadene Noel Moore (Sis) became a very special addition to my life by becoming my wife on July 22. Sis, her husband George and Mary and I had known each other for many years in Hutchinson. In fact, George and I used to carpool together between Hutchinson and Wichita in the 1960s. George died in 1990. In 1992, Sis and I began going to dinner together and gradually spent more time together. A few years later with the support of our children and grandchildren, we decided on marriage.

We enjoyed our time together. Our children and grandchildren were supportive and happy for us. Indeed my daughter Loy was insistent

that we enjoy our lives together. Sis's son Jim always said Sis did not become "Mrs. Moore-Brown" but "Mrs. Browner."

The ability to continue working and to make some sort of a contribution keeps me going now. I've asked for, and received bigger case loads each of the last few years. So I don't think that

line—He's finished but he doesn't know it—applies to me yet. And, if I have anything to say about it, it never will. At times, I'm very much aware of my age. At times, I think of retiring. But I hope that I will be able to maintain my contract to remain a judge for life or good behavior, whichever I lose first.



*Judge and Sis Brown enjoying an afternoon with the “Browner” clan.*

*Chapter 15*

## My Colleagues

**M**y admiration for my fellow judges in the District of Kansas and the Tenth Circuit can only be expressed in the way that I hold them -- with admiration, respect, and indeed affection.

Since following in the footsteps of Judge Arthur Mellot who was one of my professors at the University of Missouri at Kansas City

School of Law, Judge Delmas Hill who was my friend and political ally, and Judge Arthur Stanley who remained and had the integrity and discipline of a soldier and military man all his life, all the rest of the district judges have followed me on the bench.

The Kansas District Court has generally been collegial and carried on its duties in a suc-



*Several Judges got together to celebrate Judge Stanley's 90th birthday (left to right): Judge Crow, Judge Saffles, Judge Martin, Judge Stanley, Judge Brown, Judge Belot, and Judge Theis.*

cessful and expeditious manner. The Tenth Circuit Court of Appeals Judges with whom I have sat during the course of my tenure in the office, and judges of other circuits with whom I have sat, likewise have my highest regards for their competence and integrity.

### **I'm Proud of our Kansas Federal Judges**

When people ask me about this court and how it operates, I think of the people who have made it what it is. I think of my colleagues who have made such great contributions to the judiciary, and whose integrity helped ensure that people would trust in the courts to resolve their

disputes. Judge Stanley was on the bench when I was appointed, and he was my mentor. He was quite simply everything a person should be. He was a gentleman and a hero. In fact he served in the United States Cavalry – the United States Horse Cavalry. With input from many people, Judge Stanley rewrote the rules of this district court, and so was instrumental in putting new procedures to work. (Another great innovator was Judge Pat Kelly, now retired, who became a very progressive and capable judge who was in the forefront of court reform for speedier and more efficient trials.) I think of former colleagues like Judge Frank Theis, who was



*A group photo of the District and Magistrate Judges in the United States District Court for the District of Kansas, taken on January 23, 2004 at a Judges' Meeting in Topeka, Kansas. Back Row (left to right): Hon. Gerald L. Rushfelt, Hon. James P. O'Hara, Hon. Donald W. Bostwick, Hon. Karen M. Humphreys, Hon. David J. Waxse, Hon. K. Gary Sebelius, Hon. John Thomas Reid. Second Row (left to right): Hon. Julie A. Robinson, Hon. J. Thomas Marten, Hon. Monti L. Belot, Hon. John W. Lungstrum, Hon. Kathryn H. Vratil, Hon. Carlos Murguia. Third Row (left to right): Hon. Richard D. Rogers, Hon. G. Thomas VanBebber, Hon. Sam A. Crow, Hon. Wesley E. Brown.*

not only a great personal friend, but a great judge. He was brilliant, straightforward, and very able. And before he took the bench he was an upright and honest politician, in the best sense of that often abused word. Judge George Templar, another Arkansas City product, was a friend who ably handled the Topeka docket while I took care of Wichita and Judge Stanley handled Kansas City. Judge Earl E. O'Connor was a "judge's judge" of great perception. And Dale Saffels was a superb judge who served as an example of integrity and humility.

My current colleagues continue the great tradition of this court. Each of them is a remarkable person in their own right. In my opinion, they exemplify the ideals of integrity, wisdom, and collegiality. I no doubt should (and indeed do) praise each of my colleagues, because they're all of impeccable character and great good will. I have a deep and abiding affection for them all, for the work they've done, the problems they have solved, their modesty, and how they've accomplished their judicial duties. They are: Chief Judge John Lungstrum; Senior Judge Dick Rogers; Senior Judge Sam Crow; Senior Judge Tom Van Bebber (now deceased); Judge Monti Belot; Judge Kathy

Vratil; Judge Tom Marten; Judge Carlos Murguia; and Judge Julie Robinson.

The Magistrate Judges in this district are a dedicated and competent adjunct to the district court. They are now an indispensable part of the business of the courts. For their contribution to the administration of justice, my congratulations go to former Magistrate Judge John Wooley, and to our current group of Magistrates: Chief Magistrate Judge Karen Humphreys, Judge Tom Reid; Judge Don Bostwick, Judge Jim O'Hara, Judge Dave Waxse, Judge Gerry Rushfelt and Judge Gary Sebelius.

To the Bankruptcy Judges -- with whom I have a special historical connection -- my congratulations for the work by former Judge Eldon Sloan; Judge Dawes; Judge Robert Morton; Judge Ben Franklin; Judge Jim Pusateri; Judge John Flannagan; and the current judges, Chief Judge Robert Nugent; Judge Janice Karlin; Judge Dale Somers; and Judge Robert Berger.

The whole group of Kansas federal judges has been up to the challenge. They're remarkable in the fact that they've all had a high regard for the Rule of Law and have in my opinion done a great job in upholding it. I'm proud of them.



*Chapter 16*

## The Summation

**T**hese memories were originally written up in 1999. It is now 2006 and I am still “on the bench” enjoying being able to carry on the work of a Senior U.S. District Judge. My colleagues have asked me to bring this work up to date and to get it published.



*Judge and Sis Brown relaxing at home.*

In the six years or so since I put together these memories, much has happened that has added to my reflections on my life and duties.

I appreciate the wisdom of Congress in providing judges with the means to make our decisions more expeditious and effective by hiring law clerks and administrative assistants. It has enabled me to serve the United States as a Senior Judge the last 28 of my now 48 years on the bench.

In the last several years, two of my long-time staff members, Jane Murray and Maggie Johnson, have retired. I hired two new law clerks, John Andra and Skyler O’Hara, to take their places. When John left, Christopher Phelan came aboard and Jennifer Wilbert later took Skyler’s place as my most recent law clerk. Mike Lahey, my “chief of staff,” has continued to give me his great service.



*Former law clerks that reunited with Judge Brown in 2002. From left to right: Jim Wong, Jane Murray, Alex Mitchell, Hon. Monti L. Belot, Judge Brown, Hon. Paul Buchanan, Bob O’Connor, David Phillips, Mike Lahey, Kathy Pruessner Peters, and David Fisher.*

In 2002, Thelma Borresen, my former administrative assistant for thirty-plus years, put together a luncheon of my former law clerks. Nearly all of them were able to attend, and I enjoyed spending time with them again.

Life has been most gracious to me and my family, and I can still look forward to the continuation of my work in the U.S. Courts.



*Out golfing with friends (left to right): Judge Bob Miller, Judge Wesley E. Brown, Judge Earl O'Connor, and Judge Richard Rogers.*

We've come to the point where I must summarize the story of a life that is still unfolding, still delighting, perplexing and humbling me each day. Looking back over these pages, I can't believe they cover so many years, or that the years went by so quickly.

Those who know me well probably can't believe that I've covered all these pages without mentioning my hole in one on the 142-yard, Par 3, second hole at Hutchinson's Prairie Dunes Country Club. It was May 28, 1969. Not that it stands out in my memory or anything.

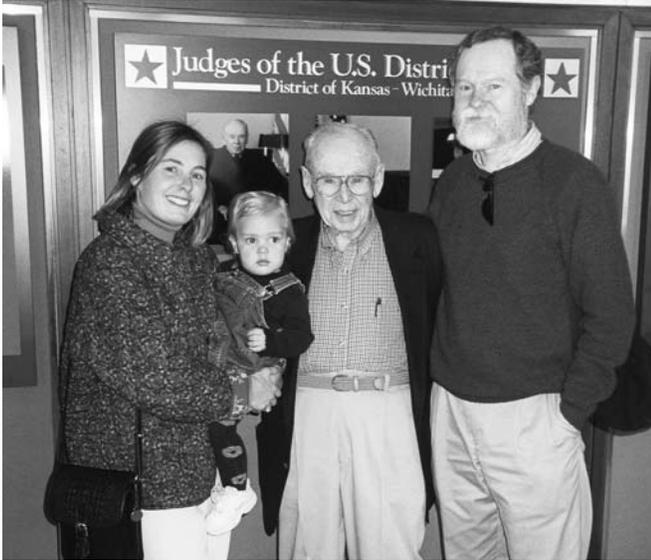
Golf has always been my avocation. I've played at Prairie Dunes for close to 70 years, although my game isn't what it once was. I carry a very high handicap now which, I have to remind myself, isn't bad for my age. Add in books (preferably escapist literature), theater, movies, T.V., and Jayhawks basketball, and you pretty much have my spare time.

As always, I carry with me gratitude for the life of my wife Mary (Mary Miller Brown), whose love, care and advice carried me through a large part of my life.

Our two children have always been a joy to me. My son Wesley Miller Brown, who goes by Miller, raised two remarkable daughters: Mara A. Brown Marden, a lawyer in Salt Lake City who lives in Ogden with husband Brad and my great granddaughters Ruby and Pearl (also known as my "precious gems") ; and Shana Brown, who obtained a doctorate in Chinese History at Berkeley, California, and after spend-



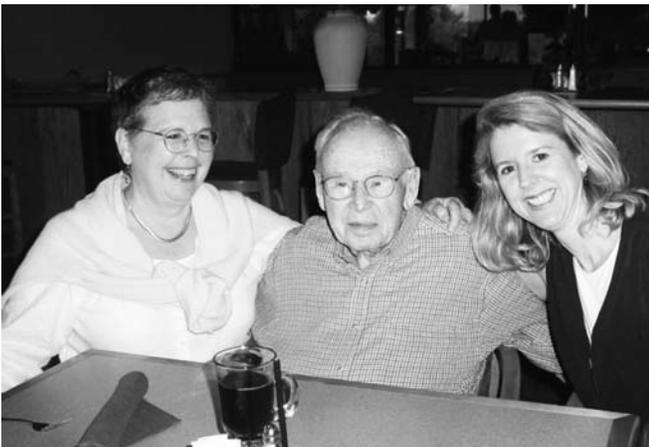
*Judge and Sis Brown at a White House reception for Federal Judges.*



***Judge Brown with his son Miller, granddaughter Mara Marden, and great-granddaughter Ruby Marden.***

ing time teaching in China and studying in Germany is now a Professor at the University of Hawaii in Honolulu. Miller is remarried to Hilary Baldwin Brown, a clinical psychologist. Miller has taught philosophy at Trinity College for over 30 years, and recently completed a term as Dean of the Faculty at Trinity.

My daughter Loy B. Wiley is every bit as remarkable as Miller. Loy has her master's degree in business administration. She is a Certified Urban Planner and a retired partner from Woolpert LLP, an engineering firm with



***Judge Brown with his daughter Loy (left) and granddaughter Dr. Jennifer Gould.***

some 600 employees. She has two lovely and intelligent daughters: Dr. Jennifer W. Gould who specializes in dermatology and lives near Cleveland with husband Jack and my great grandchildren Alexander and Kristen; and Elizabeth W. Taylor, an opera singer, who lives with her husband Chris in Oxford, Ohio.

I was blessed to have Sis (Thadene Moore Brown) as a part of my life for so long, but she finally lost her fight against diabetes, passing away in July of 2005. For as long as we could, we continued to share our lives together, to be grateful for our many blessings, and to laugh together as much as possible.

I am now doubly blessed to be a part of Sis's family, too. To Jim, Danna and Kelly Moore; to Ann and Jim Ellis and their family – Peter, Elizabeth, and Chris, Alison, Paige and Carter Ellis—they have my shared affection and admiration.

Indeed, I am blessed. And I've done little to earn such blessings, other than to work hard to live up to the trust friends, family, and society put in me.

I've also tried to live according to the tenets of my faith. Except for a few years as an Episcopalian (inspired by my scoutmaster Father Kain), I've been a member of the First Presbyterian Church in Hutchinson for most of my life. I was baptized there as an infant. I'm also now a member of the University Congregational Church in Wichita, where I find inspiration and insight in the sermons of two exceptional ministers, Dr. Gary Cox and Dr. Robert Meyers. I've never been what I would call highly religious, but I think religion is an essential part of our lives. Most law, after all, is based on the Ten Commandments. And in that respect, it has been central to my life.

I have no complaints and no worries, except for the nagging concerns we have when we realize that while we're busy doing our little things, bigger national and world problems are worsening. Here are some of my concerns:

- Intolerance in the world. I believe tolerance should be a main tenet of religion, but the religious wars in the Middle East and Eastern Europe are terrible things.
- Intolerance seems to be on the rise again in the United States. For years, I've told new citizens that we must try to develop a national view, not just Blacks, Hispanics, Whites or Asians. We're all members of this country, and I believe that we have to get away from categorizing people by race if the United States is to survive.
- That we are losing our sense of history and relevance in a throw-away society. Communication is so rapid that what happens today is forgotten before the day is out, and no bit of information seems more important than any other.
- That many people today use their liberty to shirk their responsibilities. Our country was founded on the presumption that some values are more important than others—that democracy is our constant vision and that liberty and responsibility are the twin engines that drive us toward that goal. Working toward the goal of democracy should be the responsibility of all.

All in all, these are pretty “high class” worries. Why worry about such cosmic problems? Maybe because our history teaches that such problems are solved only when individuals like you and me set out to solve them in our daily lives. Part of my concern comes from my age and what I have seen of history, and my hope that the courts and the law can continue to help solve these problems.

The generations that are coming to power are far better educated and far more capable

than we were, but I'm still concerned for the future. Will they work together in understanding and tolerance?

End of sermon.

I am grateful for my life, my family, my friends, and my life's work. Anyone who is successful—and that's not something you decide, but something others decide—has the support of many people trying to guide him or her down the right path. I've had the help of others in abundance, and I hope I've proved worthy of their confidence.

I've had my share of self-doubts, questions about whether I was making a difference for the better. But I've come to learn that—in one way or another—we're all of us on trial in this life, judged continually by ourselves and others. And I've come to accept that my value in this life isn't for me to judge. As long as I'm here on Earth, that judgment will come from a jury of my peers. And I am content with that, provided I am allowed to instruct the jury.

I know of no one who should be more grateful than me “For the Love we all may share/ For the Beauty everywhere/ For the hope of God to be/ and For the search for Truth that can make us free.”

A footnote (Judges love to explain themselves in footnotes): this biography has been written in part by Jon Roe. He has given the historical references, the flair, and dressed up the content when he felt it necessary. I have edited and filled in some of the blanks which in reporting to him I had left out. For his work and thoughtfulness, my thanks. Also my thanks for the editing by my daughter, Loy B. Wiley, and to transcribing numerous times by my administrative assistant, Maggie Johnson, and Skyler O'Hara, Mike Lahey, and Jennifer Wilbert, my law clerks.

We are adjourned subject to call.





## *Appendices*



# Appendix A

HISTORY OF “THE HELIUM LITIGATION”  
IN THE DISTRICT OF KANSAS  
and  
THE ESTABLISHMENT OF  
THE HELIUM LITIGATION SCHOLARSHIP FUND, INC.

*by Jane Murray*

The capitalization of the “Helium Litigation Scholarship Fund” had its origin in one of the most protracted cases tried in the District of Kansas. Participants simply referred to it as “the helium litigation.”

Over a period of more than 25 years, the basic issues surrounding the ownership of helium, an element contained in natural gas, were litigated and determined by the district court sitting in Wichita, Kansas, and in the 10th Circuit Court of Appeals, which is situated in Denver, Colorado.

## BACKGROUND OF THE LITIGATION

The factual background leading up to this litigation may be summarized in this manner:<sup>1</sup>

The presence of helium in natural gas was first discovered in 1905 by two University of Kansas professors, Cady and McFarland. Helium is an unusual element, noncombustible, and the second lightest known element. It is so inert that it will not chemically react or combine with other elements. During World War I, the first real use for helium outside the laboratory was for the inflation of dirigibles.

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<sup>1</sup> The progress of the helium litigation may be followed in more detail in the following published opinions: Grounds v. Northern Natural Gas, 327 F. 2d 1003, (10th Cir. 1964), affirming interlocutory orders finding jurisdiction in the district court.

Northern Natural Gas Company v. Grounds, 292 F. Supp. 619 (1968), affirmed in part, reversed in part and remanded, Northern Natural Gas Company v. Grounds, 441 F. 2d 704 (10th Cir. 1971) [Grounds II], cert. denied, 404 U.S. 951, 1065.

Northern Natural Gas Company v. Grounds, 393 F. Supp. 949 (10th Cir. 1974), reversed, Northern Natural Gas Co. v. Grounds, 666 F. 2d 1279 (10th Cir. 1981), reversing first finding of value.

Northern Natural Gas Co. v. Hegler, 818 F. 2d 730 (10th Cir. 1987) affirming district court’s second finding of value.

See also Ashland Oil, Inc. v. Phillips Petroleum Company, 554 F. 2d 381 (10th Cir. 1977), cert. denied, 434 U.S. 968 (1977) [Ashland I]; and Ashland Oil, Inc. v. Phillips Petroleum Co., 607 F. 2d 335 (10th Cir. 1979), cert. denied 446 U.S. 936 (1980) [Ashland II].

During World War II, helium became vital in the development of atomic energy, deep sea diving and submarine operations. At this time, the only plants extracting helium were owned and operated by the United States government. In the 1950's and to date, helium has become an even more valuable asset in the fields of medicine, nuclear and cryogenic research and industrial applications.

It was estimated that the natural deposits in the "Hugoton Field" area in Western Kansas and the Oklahoma and Texas Panhandles contained 99% of the nation's recoverable supply of helium. The area covers approximately 210 miles from north to south, 160 miles from east to west, and covers approximately 33,000 square miles and over 21 million acres.

Helium carried in natural gas to fuel markets does not burn - it simply passes into the atmosphere, and there is no economical method to retrieve it, once it is lost. In a 1954 report it was estimated that two thirds of the country's total helium supply would be dissipated in this manner within the next 20 years.

In 1960 Congress recognized the need to conserve helium by enacting the Helium Act Amendments of 1960, 50 U.S.C. §167 et seq, which provided for a helium conservation program with private participation under the control of the Bureau of Mines.

To effect this program the United States contracted with certain affiliates and subsidiaries of pipeline companies which had access to large

quantities of gas containing helium which had been extracted from wells in the Hugoton Field. These companies agreed to build facilities capable of extracting helium from the gas supply, then selling it under contract to the federal government which stored and sold the helium on its own account.<sup>2</sup>

The companies which contracted with the government and their three extracting plants were the National Helium Corporation, owned in part by the Panhandle Eastern Pipe Line Company; the Northern Helex Corporation, owned in part by the Northern Natural Gas Company, an interstate pipeline company, and Cities Service Helex, owned by the Cities Service Gas Company and its affiliates.<sup>3</sup>

#### THE CASES AND PARTIES TO THE LITIGATION

The first lawsuits in the litigation were filed in 1963, shortly after the extraction process began. Ultimately, there were eight consolidated civil actions, all filed in, or transferred to, the United States District Court for the District of Kansas, and assigned to Wesley E. Brown, District Judge. Each of these eight cases, in one aspect or another, developed into a class action.

For convenience, the parties to these cases are divided into four groups: 1) the Landowners who retained royalty interests in mineral leases which they had granted to production companies, 2) the production companies, referred to as "Lessee-Producers", which drilled the gas wells and pro-

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<sup>2</sup> The extraction process depends upon the fact that helium does not liquefy until it approaches a temperature nearing absolute zero, or -453 degrees F. The temperature of the gas stream is lowered in stages from about -30 degrees F, when some of the propane, butane and heavier hydrocarbons are liquefied and removed, down to about -275 degrees F when all of the liquid hydrocarbons are swept out, leaving the gas stream a mixture of nitrogen and a helium content of around 70%. This "crude helium" is the product which was sold to the government under the federal conservation contracts.

<sup>3</sup> The Cities Helex plant at Ulysses, Kansas began helium extraction in June, 1963, the Northern Helex plant at Bushton, Kansas began in December, 1962, and the National Helex plant at Liberal, Kansas began the process in July, 1963. See 393 F. Supp. at 957.

duced and sold the helium bearing natural gas to pipeline companies; 3) the “Helex Group”, the extracting companies and their pipeline subsidiaries which purchased the gas stream from the Lessee Producers and sold helium to the United States; and 4) the United States.

Six of the eight cases consolidated for trial were in the nature of interpleader filed by the members of the Helex Group and their affiliates. The “fund” interpleaded in each of these cases was the money paid and to be paid by the United States to these companies for extracted helium. The defendants in those interpleader cases were specifically named landowners and lessee-producers and members of their classes.<sup>4</sup>

The remaining two actions were brought by named landowners, as representatives of their class, against the United States. The theory of these claims was that the government had wrongfully appropriated the helium contained in the gas stream which was produced from their property.

On January 16, 1967, the District Court defined the classes of landowners and lessee producers in each interpleader case. The cases were “eminently suited to class proceedings” since it was estimated that approximately 30,000 persons received income from the production of helium bearing natural gas by reason of the ownership of land, or a mineral interest and/or royalty right in gas obtained from the Hugoton Field.<sup>5</sup> In a like manner, there was a multitude of lessee producers, operating under more than 10,000 leases, who sold gas to the pipeline companies which transported gas from the well-head to the extracting plants. It was estimated that each pipeline company had hundreds of gas purchase contracts in the Hugoton area.

As the cases developed, it was first necessary to determine what persons or entities had title and ownership of helium, a component of natural gas, which was produced from wells drilled in the area referred to as the “Hugoton Field,” a huge natural gas reservoir located in Southwest Kansas and portions of the Oklahoma and Texas Panhandles.

It was the theory of the landowners that the leases which they granted to the lessee/producers did not cover the helium contained in the gas stream, and if they did, the landowners had not been paid for the helium content.

The position of the lessee producers was that helium was granted to them under the leases, but that title to the helium remained with the producers because it had not been sold to the pipeline companies under the gas purchase contracts.

The position of the pipeline companies and their subsidiaries, the Helex Group, was that the leases and gas purchase contracts had completely conveyed title to the helium and that none of the other parties were entitled to any portion of the funds received from the United States in payment for the helium.

The pretrial proceedings, which involved over 50 attorneys, were lengthy and complicated. All of the cases were consolidated for trial to the court, and the first trial to determine which persons or companies had title to the helium began on October 23, 1967 and was concluded on January 5, 1968. Hundreds of witnesses testified and thousands of exhibits were introduced in evidence. Among these exhibits were over 10,000 leases executed by landowners, a multitude of gas purchase contracts between lessee producers and pipeline companies<sup>6</sup> and sales contracts between the

<sup>4</sup> The district court’s denial of motions to dismiss these interpleader cases on jurisdictional grounds was affirmed by the Court of Appeals. *Grounds v. Northern Natural Gas Company*, (10th Cir. 1964) 327 F. 2d 1003.

<sup>5</sup> There were in fact over 1,000 individually named persons who personally advanced claims as landowners in the actions.

pipelines and members of the Helex group. Other contracts and agreements concerned with the extraction of helium by the United States in government plants operated by the Bureau of Mines in Texas in 1918 - 1930's, in Kansas in 1943-1952, in New Mexico in 1944 and in Oklahoma in 1959 were also a part of the evidence.<sup>7</sup>

In October, 1968 the District Court issued its findings determining that under the leases the grant of "gas" extended to the entire gas stream which emerged at the well-head, absent an express reservation, and that the gas purchase contracts, executed by the lessee producers, also passed title to the helium contained in that gas stream to the pipeline Helex groups. Under these circumstances, the district court held that the landowners and producers were not entitled to share in the proceeds from sales of helium to the government. Northern Natural Gas Company v. Grounds, 292 F. Supp. 619 (D. Kansas 1968).

In March, 1971, in the appeal from this finding, the 10th Circuit reversed and remanded the case to the District Court.<sup>8</sup> Northern Natural Gas Company v. Grounds, 441 F. 2d 704 (10th Cir.

1971), cert. denied, 404 U.S. 951, 30 L. Ed.2d 267, 404 U.S. 1063, 30 L. Ed.2d 751, 404 U.S. 1065, 30 L. Ed 2d 754. While the appellate court agreed that title to helium had passed under the leases and gas purchase contracts, it further found that the landowners and lessee producers had not been paid for the helium contained in the gas stream.<sup>9</sup> In remanding the cases, the Circuit concluded that the lessee producers were entitled to the reasonable value of the contained helium, which would mean that the landowners would receive royalty payments on the value of the helium produced from wells on their land.<sup>10</sup> The appellate court did not believe that tracing the helium content back to individual wells would be "difficult or impossible".

After remand the parties prepared for their second trial - this time collecting evidence relating to the value of helium.

The United States intervened as a party solely for the purpose of attempting to prove that the value of helium was nominal, since it had signed indemnity agreements with the Helex extracting plants.<sup>11</sup>

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<sup>6</sup> The rights of lessee-producers were further complicated by the fact that some had entered into "farmout agreements" with other third parties. For instance it appeared that the Pan American Petroleum Corporation had executed 168 farmout agreements in which it agreed to assign various leases to third parties who would drill wells at their own expense and would thereafter own a working interest in the well.

<sup>7</sup> In 1958 the United States agreed for the first time to pay for helium bearing gas on a basis other than solely for the volume of shrinkage in the plant during the extracting process.

<sup>8</sup> It appears that 88 separate appeals were presented and determined by the Circuit on a consolidated record.

<sup>9</sup> The evidence before the district court established that the thousands of leases were executed on more than 150 printed forms, that 25% of the leases were executed before 1940, and that the leases had at least 50 different granting clauses. Six of these clauses covered over 90% of the acreage involved in the consolidated cases.

<sup>10</sup> The Circuit noted that helium had no value until it was extracted from the gas stream:

Our conclusion that payment is required relates only to the helium content of the processed gas. The record shows that only about 44% of the produced gas goes through the separation plants. We do not intend that payment to the lessee-producers or royalties to the landowners should include anything for the helium content of the nonprocessed gas. The record does not show any market for the helium commingled with the non-processed gas. (444 F. 2d at 723)

<sup>11</sup> In their contracts with the government, the Helex companies agreed to warrant title and indemnify the United States for all ownership claims of third parties; however the ultimate cost each seller might have to bear was limited to \$3.00 per m.c.f. of helium. In the event a Helex company was required to pay more than that, the United States agreed to reimburse the company for all sums in excess of \$3.00. Northern Natural Gas Co. v. Grounds, 666 F. 2d 1279 at 1285 (10th Cir. 1981)

In November, 1974, following another lengthy trial, the district court determined that the value of helium in the gas stream ranged between 60 to 70 cents per m.c.f. during the years 1961-1972. Northern Natural Gas Company v. Grounds, 393 F. Supp. 949 (D.Kan. 1974).

In November, 1981, the Court of Appeals set aside this valuation, finding that the District Court had erred in failing to employ the “work back” method for computing the value of the helium content of processed natural gas. The case was remanded for re-evaluation based upon a “work-back” method, subject to a \$2.00 per m.c.f. “floor” or minimum payment to which the lessee- producers and landowners would be entitled<sup>12</sup>. Northern Natural Gas Co. v. Grounds 666 F. 2d 1279 (10th Cir. 1981). At this time, almost 20 years had elapsed since the beginning of litigation.

Following this remand the parties conducted further discovery, and in November and December, 1982, the third trial of these cases was conducted upon the issue of “value” as determined through a “work-back” method. On May 3 and May 4, 1983, the 20th anniversary of the litigation, the district court heard closing arguments following the presentation of evidence. After considering this new evidence

in addition to evidence of value submitted at the second trial, the District Court issued new findings of fact and law in a 70 page Memorandum filed on October 18, 1983, in which it was concluded that the values for helium extracted by the Helex group ranged from \$3.71 to \$3.82 per m.c.f.<sup>13</sup>

No one was satisfied with the district court findings on value, and the landowners, lessee producers, and the helex companies filed another appeal.<sup>14</sup> On May 13, 1987, the appellate court affirmed the decision of the district court in all respects. Northern Natural Gas Co. v. Hegler, 818 F. 2d 730 (10th Cir. 1987).

In so doing, the circuit recognized the difficulties involved in computing value under the “work-back” method:

The trial court. . . made many determination as to the elements which made up the basic factors needed for the work-back method. With the complex accounting and the varied testimony as to proper accounting methods, especially as to cost allocations between the helium plants and the related and sometimes dependent LPG plants, the court was required to weigh conflicting testimony.

<sup>12</sup> The government contracts with the Helex companies included a \$2.00 per m.c.f. helium payment.

The “work-back” method was extremely complicated. It involved the use of a “proceeds less expense” approach to the issue of value. This method would start with the sum received by the Helex companies from the government, deducting the costs of extraction, adding on a figure which would be considered a fair rate of return on the Helex companies’ investments, then deducting a “by- product liquid credit” which was arrived at by computations concerning profits realized by the Helex companies from extraction of liquid hydrocarbon extraction operations which were carried on in conjunction with helium extracting activities. Northern Natural Gas Co. v. Grounds, supra, 666 F. 2d 1279, at 1283-1284..

<sup>13</sup> Extractions at the National Helium plant were valued at \$3.82, those processed at the Cities plant were \$3.85, while helium extracted at the Northern plant was valued at \$3.71 per m.c.f. The figure for the Northern plant was later reduced to \$3.22.

The difference in helium values at the three plants was due to calculations involving the “reasonable rate of return” due to each company.

<sup>14</sup> The United States also appealed from the value decision since it remained exposed to indemnity liability in the event the Helex companies had to pay landowners for helium extracted from their land.

\* \* \*

These appeals concern specific elements which made up the basic structure of the work-back method. . . We have considered a number of particular elements which may not appear to be significant but become so by reason of the very large volumes of helium concerned. An adjustment of a few cents when applied to such a large volume results in sums in the millions of dollars. (818 F. 2d at 734).<sup>15</sup>

After this decision on “value” had been reached, the court was next required to determine those persons entitled to a share of the helium fund. This issue proved to be almost equally difficult in terms of tracing the helium back to the appropriate well-head and locating the lessee-producer and royalty owners entitled to share in the distribution.

For this purpose, the District Court appointed Jim H. Goering as Special Master to oversee this aspect of the case. On June 14, 1988, the 25th anniversary of the litigation, the district court held extensive hearings regarding a settlement reached by the Northern Helex group, motions pertaining to the assessment of allocation expenses and the final approval of distribution procedures which would be followed in distributing the fund. These procedures involved the collection of computer runs of well-head production, the publication of a legal notice to all lessee producer and landowner-lessor classes, the sending of instructions for filing claims, and the processing of those claims. Specially selected accountants assisted the Special Master in these duties.

By May, 1989 distribution of the fund was in progress and by May, 1991 the majority of claim forms had been processed and payment made.

At this time, some producers had not made their final returns to the Special Master regarding helium funds still in their hands. The main work left in the case concerned resolution of issues remaining between lessee producers, and unlocated royalty owners. Some late payees responded to notices in newspapers, and in many cases, the actual payment went to the heirs of producers and royalty owners.

Ultimately the district court awarded some 25,000 royalty owners a total of \$205 million, and approved a \$90 million settlement between the Helex companies and the natural gas producers and landowners.

The law works in many diverse ways. At the conclusion of the cases, the court found that nearly \$500,000 remained in the court’s custody because the gas producers and the landowners entitled to these funds simply could not be located. Attorneys involved in the case suggested that this remaining money should be used in some way to benefit the residents of the “Hugoton Field”, the region which provided the helium bearing natural gas involved in the litigation. As noted, this area covered parts of southwest Kansas and the Oklahoma and Texas Panhandle regions.

In response to this suggestion, several attorneys involved in the litigation, including Gerald Sawatsky, lead counsel for the oil and gas producers, prepared papers to incorporate “The Helium Litigation Scholarship Fund, Inc.” which would award scholarships to students residing in areas where the helium bearing natural gas had been produced. Mr. Sawatsky and his firm, waived their fee and acted *pro bono* in this matter. In August, 1991, Judge Wesley E. Brown in the federal district court and Judge David W. Kennedy of the Sedgwick County District Court (which was

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<sup>15</sup> Some of the delays in processing appeals in the circuit court were due to the fact that the District of Kansas helium litigation was related to parallel litigation in the District of Oklahoma, and circuit opinions in the Oklahoma cases were made applicable to the Kansas trials.

also holding undistributed helium funds), issued a “Joint Order Regarding Equitable Distribution” of funds held by the two courts. This order appointed the initial directors, and approved articles of incorporation, bylaws and investment policies for the scholarship fund, which had been adopted by the Board of Directors.

On January 21, 1992, the Internal Revenue Service ruled that the scholarship fund was exempt from federal income tax. In this respect, the IRS granted “publicly supported organization” status to the scholarship fund, the most favorable treatment available. Under this ruling, all contributions, bequests, legacies, devises and other gifts to the scholarship fund are deductible for federal estate and gift tax purposes. Attorney Kevin Arnel, a tax specialist with Foulston & Siefkin, Wichita, prepared the papers filed with the IRS, and Eric Nordling, President of the Scholarship Fund, provided invaluable assistance in this matter.

On February 7, 1992 a hearing was held in the federal District Court to determine the final procedures and Orders necessary to transfer all helium funds held by the federal court to the Scholarship Fund, and on February 5, 1993, Judge Kennedy authorized a similar transfer of funds which remained from litigation conducted in the state court.<sup>16</sup>

#### THE HELIUM LITIGATION SCHOLARSHIP FUND, INC.

The initial Board of Directors of the Scholarship Fund, appointed upon recommenda-

tions to the federal and state courts, included Erick E. Nordling, President, Attorney at Law, Hugoton, Kansas, Brian L. Mitchell, Secretary, Mitchell Farms, Elkhart, Kansas, James F. Thompson, Treasurer, Bank IV, Liberal, Kansas, Steven R. Davis, Hugoton Kansas, Stephen K. Long, Long Ranch, Guymon, Oklahoma, and Thomas Talbott, Brookover Companies, Garden City, Kansas.

Beginning in 1993, the Helium Litigation Scholarship Fund was used to finance six \$1,000 scholarships annually, renewable for four years. Six new scholarship were added each year, until the Fund financed 24 permanent scholarships each year.

Applicants for scholarship funds must be residents of one of the counties within the Hugoton Field which provided the helium involved in this extended litigation. These counties are the Texas counties of Moore, Sherman, Hansford, Ochiltree and Hutchinson in the Texas Panhandle area, the Oklahoma counties of Texas, Beaver and Cimarron located in the Oklahoma Panhandle area, and the Southwest Kansas counties of Hamilton, Kearny, Finney, Stanton, Grant, Haskell, Stevens, Seward and Morton.

Each student must be pursuing degrees in agricultural, environmental or energy-related fields at an accredited college or junior college.

The first six scholarships, awarded in April, 1993, went to the following students:

Samir Bhakta, Liberal, Kansas, to pursue degree in civil engineering at University of Kansas or University of Southern California;

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<sup>16</sup> At this time, one dispute remained between two producers in the state cases. Judge Kennedy closed his case with the following comment:

The Court considers these cases, with their colorful history spanning. . . many years, to now be closed, save a question/dispute which has arisen regarding certain funds held by Enron/Northern attributable to helium bearing gas from Colorado Interstate Gas Co. . . something which will be resolved by separate Order. Mobil Oil Corporation v. Cities Service Helix, Inc., consolidated cases Nos. 86 C 4354, 87 C 4562, 87 C 4563, 18th Judicial District, District Court, Sedgwick County, Kansas.

Emylie Horton, Stinnett, Texas, studies in environmental science, Texas A & M;

Anissa Morton, Stinnett, Texas, agricultural engineering, Texas A & M;

Greg Norwood, Johnson, Kansas, student in bio-environmental science;

Sharlet Slough, Gruver, Texas, animal science, Texas A & M;

David Starkey, Dumas, Texas, animal science, Texas A & M

As of June, 1999, a total of 43 individual students have been awarded scholarships and most have been, or are currently being renewed on a yearly basis. For the past two years, the amount of the annual scholarship has been increased to \$1,200, and the number granted has been increased from six to eight awards.

In addition to the “home towns” listed above, one or more scholarships, or alternate awards

have gone to students residing in the communities of Sunray, Borger, Perryton, and Fritch, Texas; Turpin, Guymon, Balko, Forgan and Felt, Oklahoma; and Rolla, Elkhart, Ulysses, Hugoton, Holcomb, Lakin, Garden City, Sublette and Syracuse, Kansas. Each year the Board of Directors of the Scholarship Fund makes a special effort to ensure that one of the directors is present at each high school graduation ceremony for the purpose of making a personal presentation of the Helium Scholarship to each grantee.

It is apparent that in just a few years, the fund derived from the Kansas helium litigation has had a wide-spread effect in the “Hugoton Field.” With a conservative investment policy, the corpus of the fund remains intact to benefit the residents of that area into the next millennium.

Inquiries concerning The Helium Litigation Scholarship Fund, Inc., may be addressed to P.O. Box 248, Hugoton, Kansas 67951.

# Appendix B

## HONORS, AWARDS, MEMBERSHIPS, POSITIONS

### *Honors & Awards:*

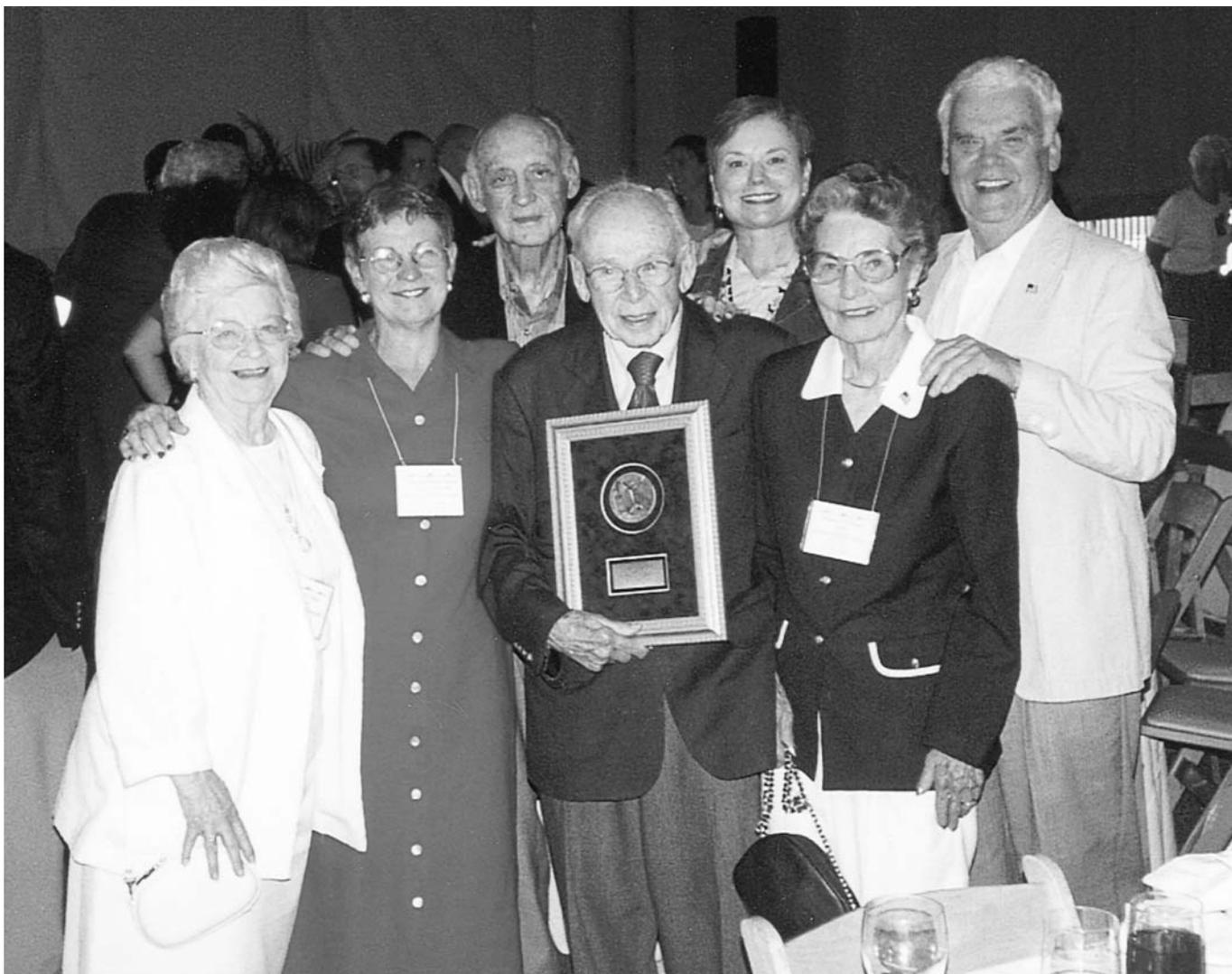
- 1968 Bench and Robe, Univ. of Missouri School of Law, Kansas City, MO
- 1998 Phil Lewis Medal of Distinction for outstanding and conspicuous service to the state and to the nation in the administration of justice. (From the Kansas Bar Association)
- 2000 Washburn University Law School Association Honorary Life Member for exceptional and meritorious service to Washburn Law School
- 2000 Lifetime Achievement Award from the Wichita Bar Association
- 2002 Judicial Council of the Tenth Circuit Lifetime Achievement Award

### *Memberships and Offices:*

- 1950-1965 Kansas Bar Association Executive Council
- 1963-1965 President of the Kansas Bar Association
- 1960-1966 American Bar Association, Committee on Consumer Bankruptcy
- 1963-1969 Judicial Conference of U.S. on Bankruptcy Administration
- 1976-1979 Judicial Conference of the United States

### *Positions:*

- 1935-1939 County Attorney, Reno County, Kansas
- 1933-1944 Private Practice in Hutchinson, Kansas
- 1942-1944 Secretary of corporation and attorney, Aircraft Woodwork Manufacturers
- 1944-1946 U.S. Navy Lieutenant
- 1946-1958 Private Practice, Hutchinson, Kansas
- 1958-1962 Referee in Bankruptcy, U.S. District Court for the District of Kansas
- 1962-1979 United States District Court Judge, Wichita, Kansas
- 1980-1993 Judge, Temporary Emergency Court of Appeals
- 1979 - present United States Senior District Court Judge, Wichita, Kansas



*Judge Brown gathers with friends and colleagues after receiving the Lifetime Achievement Award from the Judicial Council for the Tenth Circuit in 2002. From left to right: Mrs. Ruth Crow, Judge Deanell Reece Tacha, Judge Richard D. Rogers, Judge Brown, Mrs. Cynthia Rogers, Mrs. Thadene Brown, and Judge Sam A. Crow.*

# Appendix C

## LAW CLERKS AND ADMINISTRATIVE ASSISTANTS

### *Law Clerks:*

Paul Buchanan	1962-1963
Robert O'Connor	1963-1964
Jerry Elliot	1964-1966
John Martin	1966-1968
Ward Summerville	1967-1969
Jane Aguirre Murray	1968-2003
David Phillips	1969-1971
Monti Belot	1971-1973
Alexander Mitchell	1973-1975
David Fisher	1975-1977
Kathy Pruessner Peters	1977-1979
Terrance Sims	1979-1983
Jim Wong	1983-1987
Michael Lahey	1987-present
John Andra	2003-2005
Skyler B. O'Hara	2003-2006
Christopher Phelan	2005-present
Jennifer Wilbert	2006-present

### *Judicial Assistants:*

Thelma Meacham Borresen	
	(Chief Clerk, US Bankruptcy Court, 1958-1962)
	(Judicial Assistant, 1962-1989)
Maggie Johnson	1989-2003



## Appendix D

**Presentation of the Portrait**  
**of the**  
**HONORABLE WESLEY E. BROWN**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

**Presentation of Portrait**

of

**THE HONORABLE WESLEY E. BROWN**

Senior Judge, United States District  
Court for the District of Kansas

Held in the United States Courthouse

at

Wichita, Kansas

on

Thursday, October 30, 1980, 2:00 p. m.

PROGRAM

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Opening of Court .....	Court Bailiff
Invocation .....	Reverend William T. Soule First Presbyterian Church Hutchinson, Kansas
Pledge of Allegiance .....	Thelma J. Borresen Administrative Secretary To Judge Brown
Remarks .....	John F. Hayes, Esquire of Gilliland, Hayes & Gilliland Hutchinson, Kansas
Comments .....	Honorable Oliver Seth Chief Judge United States Court of Appeals for the Tenth Circuit
Unveiling of Portrait .....	A. J. (Jack) Focht President Wichita Bar Association and Raymond F. Berkley President Reno County Bar Association
Response .....	Honorable Wesley E. Brown Senior Judge United States District Court District of Kansas
Acceptance of Portrait .....	Honorable Patrick F. Kelly Judge United States District Court District of Kansas



HONORABLE WESLEY E. BROWN

**PRESIDING**

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**Honorable Frank G. Theis  
Chief Judge  
United States District Court  
District of Kansas**

**SITTING**

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**Honorable Oliver Seth  
Chief Judge  
United States Court of Appeals  
for the Tenth Circuit  
Santa Fe, New Mexico**

**Honorable Delmas C. Hill  
Senior Circuit Judge (Retired)  
United States Court of Appeals  
for the Tenth Circuit  
Wichita, Kansas**

**Honorable James K. Logan  
Circuit Judge  
United States Court of Appeals  
for the Tenth Circuit  
Olathe, Kansas**

**Honorable Arthur J. Stanley, Jr.  
Senior Judge  
United States District Court  
for the District of Kansas  
Leavenworth, Kansas**

**Honorable Wesley E. Brown  
Senior Judge  
United States District Court  
for the District of Kansas  
Wichita, Kansas**

**Honorable George Templar  
Senior Judge  
United States District Court  
for the District of Kansas  
Topeka, Kansas**

**SITTING**

**Honorable Earl E. O'Connor  
Judge  
United States District Court  
for the District of Kansas  
Kansas City, Kansas**

**Honorable Richard Dean Rogers  
Judge  
United States District Court  
for the District of Kansas  
Topeka, Kansas**

**Honorable Dale E. Saffels  
Judge  
United States District Court  
for the District of Kansas  
Kansas City, Kansas**

**Honorable Patrick F. Kelly  
Judge  
United States District Court  
for the District of Kansas  
Wichita, Kansas**

# Ceremonies

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COURT BAILIFF: Hear ye, hear ye, the United States District Court for the District of Kansas is now in session. God save the United States and this Honorable Court. Please be seated.

CHIEF JUDGE THEIS: Good afternoon, ladies and gentlemen. We will open this very pleasant ceremony on the occasion of court with the invocation by the Reverend William T. Soule, of the First Presbyterian Church, of Hutchinson, Kansas, Judge Brown's pastor.

Would you all please stand for the invocation?

REVEREND WILLIAM T. SOULE: Let us pray. Our Father God, we lift our prayers to thee for this special day when we have the opportunity to celebrate and honor the work of Wesley Brown. We thank thee, oh God, for Mary, and her family, and all these friends and fellow workers. May this day be hallowed in our minds and hearts. We truly thank thee for this free land and our inheritance in the causes of liberty and justice for all. Please guide, and protect, oh God, the President of these United States, the Governor of our State, all who legislate and administer the laws of our land, all who preside and labor in the courts of our country. Watch over us, oh God, in these days of decision and concern for the future of this wonderful world. We pray these things in the name of him who is the Prince of Peace, Jesus Christ, our Lord. Amen.

CHIEF JUDGE THEIS: Thank you, Reverend Soule. If you will just remain standing, please. We will follow that up with the Pledge of Allegiance, to be led by Mrs. Thelma J. Borresen, the Administrative Secretary to Judge Brown. Mrs. Borresen.

MRS. BORRESEN: (In unison with those present.)

I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible with liberty and justice for all.

CHIEF JUDGE THEIS: Thank you. You may be seated.

## CEREMONIES

The Court is indeed pleased to see this fine assemblage here today. All of you, I'm sure, are friends and admirers of Judge Brown, the subject matter of this very special ceremonial session of the Court.

As I indicated we have assembled here today for the very extra special purpose of honoring a fellow United States Judge of national repute, whose superb judicial achievements we honor with the "hanging" or "unveiling" of his official portrait in his courtroom, where he has served us, and his Country, so outstandingly in the cause of justice.

As I remarked at Kansas City a few weeks ago, when a ceremonial court session was held to commemorate an identical occasion for Judge Stanley, this is the second in a series of very pleasant occasions as we celebrate the distinguished judicial services of our four venerated colleagues, Judges Hill, Stanley, Brown and Templar.

The five active judges of this court believed it much more proper to have portraits of our senior judges made now, and the appropriate ceremonies for their presentation and hanging in the courtrooms in which they had served be held now, so both they, their families, we, their admiring colleagues and friends, could have a joyful occasion, rather than the inevitable sad one which has often characterized such events.

Along with many of my distinguished brethren on this bench, I have had close affinity for many long years in politics, in the bar, and on the bench with Judge Brown. He hates to admit it, but he, like most of us on this bench, is a child of politics as well as his own legal acumen. He first attracted attention in his state, both as a lawyer and as an attractive political personality, when he served two terms as the vigorous county attorney of Reno County, one of our populous counties.

He was widely in demand as a public speaker when World War II broke out, and he left to complete a combat career as an officer in the United States Navy in the Pacific campaign. He came out as a Lieutenant, and went back to Hutchinson to practice law with the prestigious firm of Williams, Martindell & Carey.

In those post-war years, as I note from my own knowledge, he was frequently mentioned as a desirable prospective candidate for Congressman, Governor, or U. S. Senator, but he chose to stay with his law practice until he accepted an appointment from

## THE HONORABLE WESLEY E. BROWN

Judge Hill to be the Referee in Bankruptcy at Wichita, where he served until he ascended this bench.

Other speakers will laud in detail his accomplishments at bar and bench, so I shall pick up shortly before he was selected by President Kennedy to be a judge of this court.

Judge Brown was a leading candidate for the Wichita seat just vacated by our colleague, Judge Hill, who had been elevated to the Tenth Circuit Court of Appeals. At that time, in 1961 and 1962, I was serving as Kansas National Committeeman for the Democratic Party. There was the usual vigorous in-fighting for Wes's position. Robert Kennedy, the Attorney General, called me into Washington and asked me which of the candidates the people of Kansas would prefer. I told him that with Wesley E. Brown the cornerstone of the courthouse would remain in place as it had with the integrity and judicial prowess of Judge Hill and Wes's ability as a lawyer and judge would make this Administration honored and proud they had selected him as a judge. Unfortunately, I am the sole survivor of that conversation, but both the late President Jack Kennedy, and his brilliant brother, Bobby, in their Valhalla, must be saying "well done" at the excellent judicial career of our esteemed colleague, Judge Brown.

All of the judges here have cherished our judicial services with Judge Brown, who was our able chief and mentor for six years, from March 21, 1971 to June 22, 1977. His many innovations and improvements in judicial procedures for a multi-judge court continued the leadership of our revered Super Chief Judge Stanley.

I have especially profited by being Judge Brown's colleague here in Wichita, and therefore I think I have a little extra license to speak. He has always gone out of his way to share his experience and wisdom with me as a colleague—and with his other colleagues here on the Federal Bench in Kansas—for outside of your colleagues, and your staff, being a federal judge is a singularly, lonely and isolated position, where neither trepidation nor vacuity of decision can be tolerated or long unnoticed.

Judge Brown can be a stern taskmaster, or a compassionate, understanding judge, and friend, as the posture of justice may demand. We, his colleagues, are grateful for his service, his juridical scholarship, his friendship, and his leadership.

He has served in this marble palace with great distinction as proved by the approbation of his fellow jurists, and by the praise

## CEREMONIES

of many competent lawyers, jurors, and litigants who appeared in cases before him, and above all the enduring monuments in the law books in the form of his well-reasoned opinions.

As an active judge, he has served as visiting trial judge all over these United States, as well as being sought after on many circuits to sit as a judge of the Court of Appeals. He has served us well as the Tenth Circuit District Judge on the Judicial Conference to the United States, which is the governing body of the entire federal court system in our nation, and which is chaired by the Chief Justice of the Supreme Court. He has likewise served on several important national judicial committees under Chief Justice Burger.

Because of his zest for work, he delayed taking senior status for several years after reaching seventy, which I might add, parenthetically, made a lot of people nervous, who would like to have a job.

One of his principal forms of recreation and relaxation—which I am sure other speakers will be noting—is the game of golf at his beloved Prairie Dunes in Hutchinson, where he clips a few strokes from par and a few “bucks” from the pockets of his four-some partners.

Apparently it was this yen for the hot weather, and the fine fairways of the Dunes during our summer months, which has prompted his abandonment of his judicial colleagues to the ice and snow while he pursues his judging and golf in sunny Phoenix, where he gets winter assignments from the Judicial Conference.

Lately he has begun to show disdain for his Kansas colleagues, and is hard to corral for trial assignments, as he yields for the heavenly fields of circuitry.

Just recently he has served stints by sitting on the Tenth and Ninth Circuit Courts of Appeals at Denver, and San Francisco, respectively, and accepting coming assignments on the Seventh Circuit at Chicago, the Temporary Court of Appeals, known as TECA, in Washington, D. C., and the usual January-through-March chore in the District of Arizona.

Really, this fellow doesn't know what the word “retirement” means. I am almost tempted to have his judicial colleagues do a chorus of that well-known pop tune: “Won't you come home Bill Bailey?”

However, wherever he goes, or whatever he chooses to do, we are intensely proud of him. This is his day. May he hang in splendor.

## THE HONORABLE WESLEY E. BROWN

Now, as I say, I feel very close to this fellow, so I feel compelled to make a few remarks about him, but mine are secondary, and we'll resort to the program.

It is my pleasure at this time to introduce John F. Hayes, a colleague of Judge Brown's in the Reno County Bar, and a long-time friend of Judge Brown's, who will make remarks for the ceremony. Mr. Hayes.

JOHN F. HAYES: May it please the Court, Judge Theis, distinguished members of the Federal Bench, Congressman Glickman, fellow attorneys and friends one and all of Wesley Ernest Brown.

When Art called sometime ago regarding this most welcome assignment, I was pleased but perplexed: Pleased because I viewed it a high honor to be asked to participate in it, but perplexed because I'd never attended a portrait presentation, and thus I was at a loss as to what remarks would be in order.

On the program I see that I am called on for "remarks", and I assure you I will keep them as brief as possible for a member of the Bar.

Something over forty-five years ago Troop 2, of the Hutchinson Boy Scouts, found itself without a Scoutmaster, and a young lawyer in town was persuaded to take the job. In that troop was a kid with curly hair, and not much sense, and thus commenced a friendship that has lasted nearly a half century.

After the war I joined Judge Brown's firm, and, for the next twelve years Wes and I worked together. We advocated, negotiated, litigated, incorporated, contracted, ejected, enjoined, probated, defended, divorced, annulled, and we had lots of fun doing all of it.

As Judge Theis pointed out, prior to World War II Wes had been the County Attorney, and the record in Reno County will show that he crusaded mightily against demon rum, and its purveyors. I've never known whether the extra pay that the prosecutors use to get for this type of case motivated him, but he did build a reputation as a fireball prosecutor.

In any event, after the war, and when I was practicing with Wes, this reputation led to his employment as Special Prosecutor in a case that was going to be tried in Reno County. And, as you can imagine, being one of the lower men on the totem pole, the investigation, the preparation of the case, fell to my lot.

## CEREMONIES

Sheriff Walt Dixon, who was then the Sheriff of Reno County, and myself, toured Central Kansas developing the evidence and interviewing witnesses. And we had a bang-up case for Wes to try. It was so good, in fact, when he made his opening statement he scared the defense attorney and the defendant so badly that they entered a plea instanter, and my case never unfolded before that jury.

As most of you know, Wes left the private practice in 1958, and our partnership then ended what we lawyers call *de jure*, but it continued *de facto* in selected areas, such as golf, gin rummy, and activities involving manipulation of that portion of the anatomy known as the "elbow."

Wes has had a full life, blessed by his lovely and charming bride, Mary. He is rightfully proud of his son Miller, and his daughter Mary Loy, and his grandchildren.

His contributions to his profession are numerous, including the presidency of the Kansas Bar Association. And, though he has stepped up to senior status, all of us wish for him many more years of distinguished service on the federal bench.

If I may presume to be the spokesman for those here present, let me say here and now, for myself, and for the lawyers of Kansas, and for the multitude of friends here: We are thankful for your life and your contributions to the law. We are pleased to have a part in recognizing your achievements, and in making this recognition permanent through the presentation of this portrait. It will introduce to lawyers and litigants yet unborn the Scoutmaster of Troop 2, who became a beloved member of the Federal judiciary. Thank you. (Applause)

CHIEF JUDGE THEIS: Thank you, Mr. Hayes, for those most appropriate remarks concerning our colleague and honorary here today.

We are extremely fortunate today, for several reasons, to have on the program, and to be honored by the presence of the Chief Judge of the Tenth Circuit Court of Appeals, Judge Oliver Seth, who is not only a good friend of all the Judges, but is a special friend of Wesley Brown's. And, of course, here at the bench also is Judge Logan, from Kansas, who is our Circuit Court Judge. And, Judge Hill, our beloved Judge Hill, who is a retired judge.

At this time it is a real privilege, and a real asset to this program, to be able to present to you the Honorable Oliver Seth,

## THE HONORABLE WESLEY E. BROWN

the Chief Judge of the Tenth Circuit, for whatever comments he may want to make.

CHIEF JUDGE OLIVER SETH: Thank you very much, Frank. It is always a pleasure for Jean and I to come to Kansas, and it is a special pleasure today to be a part of this ceremony.

I think it is important for us to think a little bit about what we are doing. As Judge Theis said, it is a pleasant occasion, and it is nice that we can gather together and to leave something, and to honor a person who has contributed so much to the judiciary of the United States, the litigants, the lawyers, and as well the machinery that is always necessary—Judge Theis mentioned the conference—and Judge Brown has done so much in addition to what we see on the surface. So it is a very important occasion, I think, for all of us to take just a few minutes out of our busy lives to come here and to recognize these contributions.

So much is going past us on a daily basis we don't really get time to think about occasions like this. And, so much is going by nationally, and internationally, and it is important to be here and to think about the person, and to think about the judges on this court who have always done so much for the advancement of justice and of the judiciary.

Kansas, rightfully, is proud of all of their judges all through the years—the district judges, and those on the court of appeals. So, it is really, again, important for us to think about.

I see Judge Theis has me listed for “comments”—which I take it to mean something shorter than “remarks”—so I will not extend it any further than that.

Again, we wish well for Mary and for Wes. We see them occasionally in Phoenix, and he's so busy down there trying cases he doesn't have time to play golf, and that sort of worries me about the senior status, what becomes of people when they take it. I think they take work harder. And, Judge Stanley, and all the Kansas Judges, do the same thing.

In New Mexico we call him “Senor Brown.” So, here it is: Best Wishes to Mary and Senor Brown. Thank you. (Applause)

CHIEF JUDGE THEIS: Thank you very much, Chief. Those are most appropriate remarks for a great couple.

## CEREMONIES

Now, we come to the so-called core of the program here, the unveiling, and for the purpose of unveiling the portrait, which is over here on the left, covered by the Judicial Robe, the Court would like to introduce Mr. Jack Focht, president of the Wichita Bar Association, and Mr. Raymond Berkley, president of the Reno County Bar Association, who will do the job of unveiling the portrait.

(Portrait unveiled by Mr. Jack Focht and Mr. Raymond Berkley.) (Applause)

CHIEF JUDGE THEIS: Now, ladies and gentlemen, the distinguished and pretty subject of that portrait, our beloved colleague, Judge Brown.

SENIOR JUDGE BROWN: Chief Judge Seth, Chief Judge Theis, the Super Chief Judge Stanley—we always, in our group here, we call Judge Stanley a Super Chief, Judge Theis, the Big Chief, and I'm the Ex-Chief—my brothers here on the bench—all of whom I respect and admire—Reverend Soule, my unveilors—who have helped me—and, of course, my friend and ex-colleague, John Hayes—he putts left-handed—he always beats me when he turns around and forgets to putt the right way—and to you guests who have been kind enough to appear today on this occasion.

I suppose as you get older, you reminisce a little bit, and some of the people here will remember the story I'm about to tell because the portrait which was unveiled today reminds me of my experience when running for County Attorney of Reno County in the late 30's. I was running for re-election, and we had a pamphlet with a flattering picture of me on the front, and at the top it said, "Re-Elect Wesley E. Brown, County Attorney." My secretary at that time—an ex-high school friend, was passing out these pamphlets—on her own time, of course—and she came to a particular house and handed the pamphlet to the lady that came to the door. The lady looked at it and said, "Well, he's a nice looking fellow, ain't he? I'll vote for him, because we've got to get rid of that so-and-so who is in office now." Well, would you believe it—I was re-elected.

I have enjoyed my twenty-two and one-half years serving as a part of the federal court system. It has been a great experience. It has been an honor, and I, of course, appreciate the recognition given to me by my colleagues, and the Bar, and my friends.

## THE HONORABLE WESLEY E. BROWN

I also appreciate the advice, and careful guidance I've had from Judge Hill, and from my younger associates—who I find much more willing to give advice than my older ones. But I accept it all because I know they are all great people.

And, of course, as I said, I appreciate the recognition given to me by these colleagues, by the Bar, and by you as my friends.

I have been most fortunate. Mary, my wife, has given me her guidance, love and devotion—she said I would break up on this.

MRS. BROWN: Go to the next paragraph.

SENIOR JUDGE BROWN: She taught me to strive for the serenity to accept the things I cannot change, the courage to change the things I can, and most of all the wisdom to recognize the difference.

Mary and I are both proud of my secretary, and the law clerks, who have sought to make my official performance acceptable.

When I became a Judge in 1962 the Civil cases filed in the Federal Courts of the United States totaled about 62,000. Approximately 58,000 were terminated, and pending on June 30, 1962, were approximately 68,000 cases.

Eighteen years later in 1980 there were 168,800 cases in the United States. 160,000 were terminated. And there were 186,000 pending as of June 30, 1980.

You might be interested to know there is a total of 799 Federal Article III Judges in the United States covering the Circuit, District, National Courts, Territorial Courts. Of these there are 194 Retired and Resigned Judges.

The total personnel of the Federal Courts is approximately 14,000 people. This includes not only the Judges, Bankruptcy Judges, Magistrates, the Circuit Executive, Clerks of Court, Secretaries, Law Clerks, Probation Officers, and the other personnel serving the Court System.

Congress has increased the jurisdiction exercised by the United States Courts to resolve disputes at a federal level. The general responsibility for the upholding and interpreting the Constitutional provisions, and the Federal Laws enacted to cover our ever-changing and volatile society, rests primarily with your Federal Judges.

The Judicial Branch of your Government, the Third Branch, is comparatively a very effective branch of Government. Your

## CEREMONIES

Federal Courts perform their task on a budget of  $\frac{1}{100}$ ths of one percent of the federal budget.

I used the term “comparative”. It reminds me of the man who went in to pay his bill. The very pretty young lady presented him with a bill. He looked at it, touched her wrist and said, “What is this?” She replied with some amusement, “Why that’s my wrist, of course.” To which he replied, “Well, I thought it was your ankle—everything is so high around here.”

I felt that the Federal Courts, and indeed the state courts, also constitute a great safety valve in our erupting society.

Congress and legislatures pass general principles to govern the conduct of the people in our society, whether corporate or personal. The Executive Branch seeks to enforce such laws. The Courts, in my judgment, offer the best opportunity for the disgruntled, the abused, and harassed, to present their grievances on, in effect, a one-on-one basis. Thus, I think the courts, both state and federal, perform a most necessary service in a free society to give people an opportunity to memorialize their grievances and/or accomplishments. This is the safety valve of which I speak.

In the Federal System Senior Judges can assist in the resolution of these disputes and thus make their contribution to the maintenance of the stability of our social order. So, as I’m sure with Judge Templar—my contemporary, who we will honor later, as Judge Theis said—I’m proud to be a working judge. I hope that I can keep it up. And my work on Senior Status, I hope will be based like a tire, on the tread, and not the mileage.

People often think of this Senior Status as retirement, and that we can be turned out to pasture. There’s, of course, one problem with this: When you get to greener pastures, it is sometimes harder to climb the fence.

I am pleased, of course, that they are not treating Judges like baseball players and posting their errors every day.

Our Federal Judges, in my opinion, perform a great service, but I am reminded of those two distinguished Federal Judges who died and went to Heaven, and were waiting at the Pearly Gates. St. Peter was busily making entries in his book when a young glamorous looking girl walked up to the Gate, walked up to St. Peter, and he waved her through without comment. One of the Judges went up to St. Peter and said, “Look, St.

## THE HONORABLE WESLEY E. BROWN

Peter, we have devoted our lives to the resolving of disputes, to the punishment of sin. Why have you not given us the consideration we deserve?" St. Peter looked up and said, "Well, Judge, this young lady had a fast Porsche car. Before she was accidentally killed, she drove that car in front of people, at high rates of speed, at people, and she scared the Devil out of more people than both of you Judges have been able to accomplish in your lifetime." Well, as Kathleen Norris once said: "Life is easier to take than you think." And I want to remind Judge Stanley about this: "All that is necessary is to accept the impossible, do without the indispensable, and bear the intolerable."

Well, what more can I say. It was nice of you to help celebrate this occasion, which Chief Judge Theis has established for Senior Judges in the District of Kansas.

I'm grateful to Judge Seth, and his lovely wife, Jean, for coming here from so far away, Santa Fe. It was snowing there, they said, so maybe that is why they came to sunny Kansas.

I am pleased, also, that Judge Hill could be here.

So, good luck, and thanks for your confidence in the Federal Courts. (Applause)

CHIEF JUDGE THEIS: Those were excellent remarks, and I think his friends in the audience can see all of the wonderful qualities that exist in this fellow from the tenor of his remarks and the gambit of his emotions.

At this time it is a real privilege for me to introduce our latest colleague on this federal bench. We had a ceremonial for him earlier in the Summer in this courtroom. And, it is fitting that he now occupies the Judge's seat, the active Judge's seat, that Judge Brown vacated when he took senior status. We are very proud of the work of Judge Kelly, and it is most appropriate that he act on behalf of the Court here in Wichita to accept the portrait, which is being donated and given here today. Judge Kelly.

JUDGE KELLY: May it please this honorable court, and dear friends of Judge Wes Brown. I must say at the beginning that I thought, Judge Brown, that I had seen the last time I would look up from down here.

But, if you will, as I thought of the remarks that should be mine of this moment in attempting to thank this gentleman, this fantastic jurist, I think it is best to say it down here where so many of you have shared with me over-the-years this vantage

## CEREMONIES

point. It may be that you can see better up there, but I'm not so sure that you can capture the meaning of this room, and thus the enhancement we will have in the continuous memory of this man with his portrait, except down here.

I'm sure I say for so many who walked into this beautiful, majestic courtroom—they say I have inherited the marble palace, and maybe it is—it is a place where justice is done, and you know the minute you come in here you are in the United States District Court. And, over the years it's been my experience, and so many of yours, that when you hear that cry, "Hear ye, hear ye" and witness Wesley Brown come on that bench, you know you were in the United States District Court. There is something about the presence of it that carries with it the quality of his service. I am no student of this court, but I've had the pleasure of witnessing, over these years, his service.

Now, I've had just a touch of something that has been his over these years: The weight, the burdens, the decision-making that has been his. I don't suppose we could inventory at all the import and the impact that this man has given to this state, to this community, to the lawyers, and indeed the wealth of litigants in his service. That's why I'm very proud to receive this picture, and to cherish it, as a constant memory of that kind of service, and can only serve to enhance the quality of this beautiful room.

From a very personal standpoint, I am a student of Judge Brown. I have watched him closely over these years. And, while it may be our styles will vary somewhat in the procedures, and the demeanors, and the decorums of court, I trust and pray I can learn to accomplish the one trait that marks this man: That has been, as far as I can ever identify it, an innate ability to grasp what is right, and the fortitude to do it. That marks Judge Brown.

And, if this picture will hang here—and I asked him—I prefer it in my chambers, where these long nights and days I can look up and see that picture—I studied the portrait, and what it says to me is: "Judge Kelly, if you think you are right, do it." And, if you will study it, that is just what he is saying.

Thank you, Judge Brown, for your service, and your portrait.  
(Applause)

CHIEF JUDGE THEIS: Thank you, Judge Kelly, for those excellent remarks accepting the portrait on behalf of the Court. And, it will hang in a prominent place in this room—as yet un-

## THE HONORABLE WESLEY E. BROWN

selected—with a light over it for everyone to see, as distinguished from the inner halls, or the private chambers of the various Judges.

Now, that does conclude the active part of our ceremonies here, but since I am the Chief Judge in charge of this meeting, I think it would be incomplete to close it without an anecdote about Judge Brown, on a little lighter note—and this has been a delightful occasion.

The lawyers all present, of course, know what discovery is. And, it was in this very courtroom that Judge Brown made an order of discovery one day, and to put the thing in the factual framework that it belongs: This was several years ago there had been considerable discussion about the lack of security in the federal courts, and how it would be easy for somebody to get access to do an act of violence in the courts. And, Judge was conducting a case in this very courtroom one day, and the lawyers were out there, and the usual spectators, and, of course, he enters from the back door here, which is from his chambers, and that is suppose to be inviolate, and he's busy on the case, and the door opens and in shuffles a rather unkempt looking old man, individual, and Judge Brown looks over his shoulder and gives a start, because he thinks the end has come, and he stood up and looked at the fellow and the fellow says to him, "I'm just looking for the men's room. They sent me up from downstairs." It was at that very time that Judge Brown then entered the discovery order. He told that fellow in very uncertain terms where to go to find the men's room on the second floor. And, later he admitted to me privately that it was really almost a draw between he and that fellow to determine who had the greatest potential for the use of those facilities. (Applause)

In any event, those things do occur—they have occurred to all of us.

This is just a wonderful guy, and we are going to—Before we close, let me acknowledge the presence of all my fellow Judges—I didn't introduce them here because I thought you knew them all. I note other distinguished personage in the audience: Mrs. Seth here—and I would like to have her stand, if you would. (Applause)

And Mary Brown. Would you please stand, Mary. (Applause)

And, I note our other Judges, our Magistrates, and Judges in Bankruptcy are here, and other distinguished personages in the

## CEREMONIES

audience. We appreciate it. And, I want to, on behalf of the Judges of this Court, I want to express our thanks to those who participated in the program: Reverend Soule, Mrs. Borresen, and certainly our good friend John Hayes. Of course, most of all, Judge Oliver Seth here, who made the long pilgrimage from Santa Fe for a friend and colleague. And to Jack Focht, and to Mr. Berkley, President of the Reno County Bar. And, our special gratitude of course, to the Sedgwick County Bar, who is having a reception immediately following this, as you will note on the program, on the seventh floor of the Century Plaza Building. That is in the headquarters of the Wichita Bar Association. And, we are indeed grateful to the Bar Association for the handling of the mechanics of this ceremony.

Most of you, I think, know where the Century Plaza Building is, but it is out the west entrance of this building, and it is three blocks south. It is at Main and Douglas on the southwest corner. And, as I understand it, there will be an "attitude adjustment" begin there as soon as we can transport ourselves from here to that place. And, all of you are invited, and the Judges will be there, and Judge Brown will be there, and Judge Seth, and others. I'm happy to note that Congressman Glickman is here. And, you're all welcome down there, and we'll do a little elbow-rubbing, and have some pleasant conversation.

If there is nothing further, then—

CHIEF JUDGE SETH: You've got a good-looking jury here, too.

CHIEF JUDGE THEIS: Yes, I noticed that.

CHIEF JUDGE SETH: Is that typical?

CHIEF JUDGE THEIS: Yes. He notes the jury, and we don't really have all of them in there, but those do include most of the wives of the Judges, and the clerk's wife, and, of course, the bankruptcy judges, and the magistrates, and we are proud they are here. That is why they got the reserve seats. In any event, if there is nothing further to come before the Court at this time— And, we are indebted to you, Marshal Cantwell, for your services here. I noticed no one came through the back door while we were here, and we appreciate that.

We will stand in recess, and the Court will adjourn for more informal proceedings.

Good afternoon.

(Adjournment, 3:00 p. m., November 30, 1980).



## Appendix E

# The Wichita Eagle

THURSDAY JUNE 22, 2000 50 CENTS www.wichitaeagle.com

# Ageless judgment



Wesley Brown in 1968. Last week, Brown was given a lifetime achievement award by the Wichita Bar Association.

File photo

As he celebrates his 93rd birthday today, Judge Wesley Brown will still juggle a full caseload in Wichita's federal court



Jill Jarsulic/The Wichita Eagle

Federal Judge Wesley Brown turns 93 today. He was appointed by President Kennedy the same year as the Cuban Missile Crisis, John Glenn's first trip into space and Johnny Carson's debut as host of the "Tonight Show."

BY RON SYLVESTER  
The Wichita Eagle

Every morning, Judge Wesley Brown climbs the stairs from the basement to his fourth-floor chambers in the U.S. Courthouse.

As he celebrates his 93rd birthday today, when most people his age have been retired for decades, Brown still juggles a full caseload in Wichita's federal court.

He's traveled by horse and buggy and

surfing the Internet. His life spans both Babe Ruth and Mark McGwire. He wrote his own pink slip during the Great Depression. He has seen two world wars and the end of a millennium.

Since President John F. Kennedy appointed Brown a federal district judge, he has called on that library of life experiences in dispensing justice in a time of swift social change.

"As a judge, your experiences help you understand people and why they act the way they do and the problems they face," said Brown, who first came

into the federal courts as a bankruptcy judge in 1958.

Brown grew up next to neighbors who were freed slaves. As a judge in the 1980s, he ordered millions of dollars in payments to railroad workers denied promotions because they were Americans of African descent.

After Brown's father had to quit work because of a blinding illness in 1915, his mother left home and went to work to support the family. In 1971, Judge

Please see **BROWN**, Page 4A

## BROWN

From Page 1A

Brown ruled a Wichita hospital couldn't fire a woman because she was single and pregnant. A year later, he ordered North High School to allow a girl to compete on the golf team.

"I have not been an innovative judge," Brown said. "I've not tried to make law but just to interpret it."

### 'Very jolly and very strict'

Brown, who doesn't look to have aged much in 30 years, thinks before he speaks. He pauses to choose just the right words. Lawyers know Brown has strict rules in the courtroom, tempered by his wry wit.

"I always say we're appointed for life or good behavior, whichever ends first," Brown said.

So far, Brown has shown no signs of slowing down.

Not only does he climb those four flights of stairs every day, he plays golf at least once a week, which doesn't surprise lawyers who appear before him.

"He has a very high intellect and amazing energy," said the U.S. attorney for Kansas, Jackie Williams.

And he demands order in the court.

"He can be very jolly and very strict," said Warner Eisenbise, who has practiced law in Wichita for 41 years.

"Many lawyers have lived in extreme fear of him."

Eisenbise remembered one lawyer's filing a motion that contained written insults of Brown. Brown read the motion aloud for other lawyers to hear as he slowly seethed underneath.

"I remember his face slowly get redder and redder," Eisenbise said. "If you're a lawyer, you don't want to see that."

Lawyers do not show up late to



Jill Jersulic/The Wichita Eagle

Judge Wesley Brown greets a new American citizen during naturalization ceremonies June 12 at the U.S. Courthouse in Wichita. In a decision from the bench, Brown once said: "I often tell new citizens who come in — and there are all races and creeds, backgrounds — that it's time we tried to develop a national view, not just Blacks, Hispanics, Whites, Asians ... We are all Americans, all members of this country."

Brown's court. And when they get there, he keeps everyone in line.

"Over the years there may have been an occasion where a defendant, after pleading guilty or being convicted, complains a lawyer was incompetent," Brown said. "Well, if you're a judge, my view is you can't let a lawyer be incompetent."

### A judicial example

Judges across Kansas have learned from Brown's example.

Fellow U.S. District Judge Monti Belot served as law clerk under Brown, as have Kansas Court of Appeals Judge Jerry Elliott and Sedgwick County District Judge Paul Buchanan.

Trials move swiftly in Brown's court. "He has a remarkable ability to cut

through the chaff and get to the key issues," Belot said. "He doesn't put up with any fooling around. All of the judges have a great admiration for that talent."

Every weekday afternoon, federal district and magistrate judges meet in Brown's chamber for a private brown bag lunch.

"You know, he could have retired years ago at full salary," Belot said. "But I think one of the reasons he stays is because he doesn't believe in doing something for nothing. He couldn't take the taxpayers' money for not working."

### An honest day's work

Brown, a past president of the Kansas Bar Association, learned an honest day's work from his father

growing up in Hutchinson.

Forced out of a career as a traveling salesman by an illness that blinded him, the elder Brown encouraged his son to study law.

"If you learn the law, you've got something they can't take away from you," Brown's father told him.

Brown entered the University of Kansas amid a booming economy under President Calvin Coolidge in 1925. He worked odd jobs during his undergraduate studies but became impatient and quit after three years to begin attending Kansas City School of Law.

Working by day on an assembly line at the Ford Motor Co. factory in Kansas City and studying law by night, Brown made it through two years of classes. But with the strain of the Great Depression, Brown moved from the assembly line to writing pink slips for employees. One night, he had to write his own.

During the next year, a lawyer friend of the family opened his law library, so Brown could continue studying.

As soon as he found another job, as secretary in a law firm for \$15 a week, Brown finished his degree.

After passing the bar exam in 1933, Brown went to work for a Hutchinson law office making \$25 a month. That year, Brown married Mary Miller, a law school classmate. They would stay together nearly 60 years, until her death in 1991.

Believing he wasn't earning enough to support his new wife and a family, Brown decided to run for Reno County attorney. Following the political leanings of his father, Brown ran as a Democrat. His opponent ran on a pro-Prohibition platform. Brown's campaign slogan was simply "Enforce the Law." Brown won.

Brown lived up to his promises,

enforcing the prohibition of alcohol sales that would later be repealed. He busted bootleggers and even raided the Hutchinson Country Club for pouring spirits.

Age has never stood in Brown's way, even when he enlisted in the Navy during World War II in 1944. At 37, Brown was the oldest man in his unit.

Brown first thought about becoming a federal judge while stationed in the Philippines. Once Lt. Brown heard that a federal judge position had come open, he sent a wire to President Harry Truman, asking that the vacancy be held open until the war ended. Truman filled the slot anyway.

### A move to Wichita

After the war, Brown returned to private practice, where he represented the city of Hutchinson in a nine-year legal battle to win rights to implement a flood control plan for the Cow Creek and Arkansas River.

By 1958, Brown received his first federal appointment as a bankruptcy judge in Wichita. He moved with Mary and their two children from Hutchinson.

Four years later, Kennedy appointed Brown, and the Senate confirmed him, to district judge.

Last week, he was given a lifetime achievement award by the Wichita Bar Association.

Among the three district judges in Wichita, Brown heard 20 percent of the criminal cases and 30 percent of the civil cases filed last year.

It's enough work to keep him climbing the courthouse stairs.

"As long as I can perform a service and perform it adequately," Brown said, "I will probably stay with it."

Reach Ron Sylvester, who covers courts, at 268-6514 or [rsylvester@wichitaeagle.com](mailto:rsylvester@wichitaeagle.com).

## THE JUDGE BROWN FILE

■ **Name:** Wesley Ernest Brown  
■ **Position:** Senior U.S. district judge, Wichita.

■ **Born:** June 22, 1907 – the second child of Julia Elizabeth Wesley Brown and Morrison "Morey" Houston Heady Brown of Hutchinson.

■ **Married:** Mary Miller Brown, 1933-91. Thadene Noel Moore "Sis" Brown, 1994-present.

■ **Children:** Wesley Miller Brown, dean of faculty at Trinity College, Hartford, Conn.; Mary Maloy "Loy" Brown Wiley, certified urban planner and retired partner from the engineering firm of Woolpert LLP, Dayton, Ohio.

■ **Grandchildren:** Mara Brown Marden, a lawyer living in Ogden, Utah; Jennifer Wesley Wiley Gould, a dermatologist in Cleveland; Elizabeth W. Taylor, opera singer in New York; Shana Brown, currently studying for a master's degree in Chinese history at the University of California-Berkeley.

■ **Great-grandchildren:** Ruby Marden Alex Wesley Wiley and one baby girl on the way.

■ **Sampling of previous jobs:** Selling the "Saturday Evening Post" (1916); assembly line worker, Ford Motor Co. (1929-31); baggage handler, Continental Bus Co. (1933); Reno County attorney (1935-39); trial lawyer and partner, Williams, Martindell, Carey and Brown (1939).

## Appendix F

For Judge Brown's 97<sup>th</sup> birthday, Judge K. Gary Sebelius and his wife, Kansas State Governor Kathleen Sebelius, sent him the Kansas flag which was flown over the state Capitol on his birthday.

# State of Kansas

*To all to whom these presents shall come, Greetings:*

I, *KATHLEEN SEBELIUS*, Governor of the State of Kansas, do hereby certify that the official Flag of the State of Kansas, which accompanies this certificate, was flown over the State Capitol on June 22<sup>nd</sup>, A.D. 2004, in celebration of

## *the 97<sup>th</sup> Birthday of Judge Wesley E. Brown*

*in recognition of his continued outstanding public service,  
including more than 32 years as a United States District Court Judge.*

IN TESTIMONY WHEREOF:

I hereto set my hand and cause to be affixed my official seal. Done at the City of Topeka, this 22<sup>nd</sup> day of June, A.D. 2004.



  
KATHLEEN SEBELIUS  
GOVERNOR OF THE STATE OF  
KANSAS

# The Wichita Eagle

THURSDAY JUNE 22, 2006 50 CENTS www.wichitaeagle.com

*Posted on Fri, Jun. 23, 2006*

## From President Bush to local lawyers, judge, 99, is honored

District Judge Wesley Brown in Wichita was sworn in by John F. Kennedy in 1962.

BY FRED MANN  
The Wichita Eagle

U.S. District Judge Wesley Brown says he'd rather be known as a good judge than an old judge. But Thursday he turned 99 and had to deal with the fuss people made over it.

Friends, staff and media, not to mention the president of the United States and the chief justice of the U.S. Supreme Court, decided it was a big deal.

"I've had more publicity than I deserve," Brown said at his desk in his chambers inside the federal courthouse in Wichita. "I just know I'm still here, and I'm working the best I can."

On the desk was a letter from Chief Justice John Roberts praising Brown for "the 60th anniversary of his 39th birthday." Near it was a card from President and Mrs. George W. Bush.

According to the Federal Judicial Center, Brown is the second-oldest federal judge in the country. Arnold Wilson Cowen, 100, is a federal circuit court judge in Washington, D.C.

But Brown is the oldest judge serving in U.S. district court.

"You do it by concentrating and by having a great staff of people that help you," Brown said. "You try to be patient, compassionate and follow the law."

"Or," he said, amending his comment, "you follow the law and try to be patient."

President Kennedy swore Brown into office in 1962.

"For life, or for good behavior, whichever I lose first," Brown said.

"I try to honor the confidence he and the Senate had in me. I've never lost the desire to do that."

Brown still puts in a full day at the courthouse. He arrives between 8:30 a.m. and 9 a.m., eats lunch in chambers with other judges, and leaves between 4:30 and 5 p.m.

"He works as hard as anybody in that courthouse," said Steve Gradert, an assistant federal public defender.

Brown became a senior judge with a reduced workload in 1979, meaning he's been on senior status nearly twice as long as he was on active status.

But he stays in shape and remains mentally sharp. For exercise, Brown said, he does sit-ups every morning and plays golf when he has the time. “He’s slowed down, but he’s still very good about focusing on the big issues,” said Mike Lahey, Brown’s clerk since 1987. “He’s never gotten bogged down in detail, always focused on the big picture, and that hasn’t changed at all.”

Brown said lawyers think he’s changed on the bench over the years, and he admits he may have mellowed.

“He used to be very demanding on the lawyers, and I think he’s relaxed a little bit,” Lahey said. “But he still keeps them alert.”

Gradert, who has appeared regularly in Brown’s courtroom, said the judge has always been kind and patient with him, but he’s heard stories of less fortunate attorneys. “Most of the consensus of the bar is that he’s mellowed a little bit,” Gradert said. “As far as his intellect and

his rulings, he’s never changed. He’s as sharp as a tack and in control of his courtroom.”

Brown, who has presided in courtrooms all over the country, praises lawyers for bringing new ideas to him. The law, for him, is ever changing.

“It’s been a challenge. Still is. That’s what makes it enjoyable,” Brown said.

He singles out as his most memorable a helium case that lasted 25 years. Helium companies, natural gas producers and landowners fought over how profits should be shared from the helium extracted from the Hugoton field. It didn’t end until 1988, when Brown approved a nearly \$90 million settlement.

But, Brown said, “Every case is important.”

He plans to hear more of them, even if it means enduring another fuss when he turns 100.

“I’m working toward it,” Brown said. “I have no illusions. But as long as I can do the job, I’ll carry on.”







