JOHN R. BROWN (1910-1993): THE JUDGE WHO CHARTED THE COURSE

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Few people have the ability and opportunity to influence significantly both their profession and culture. John Robert Brown was such a person. He was an outstanding maritime lawyer, an innovative judicial administrator, and a federal judge who changed the way people thought and lived.

Born in Funk, Nebraska and a graduate of the University of Nebraska, Judge Brown attended law school at the University of Michigan. In 1932, he graduated number one in his class, and his grade point average remains the highest recorded at the law school. Realizing that there were few jobs in the depression-ridden Midwest, he and some recent law school graduates drove to Texas. Judge Brown started his career in Houston when he was hired by Newton Rayzor as a lawyer for Royston & Rayzor. With the exception of a three-year interruption for World War II military service, he remained with the firm until 1955.

Judge Brown entered the Army Air Corps in July 1942 as a second lieutenant. He was transferred to the Transportation Corps of the Army and became responsible for building and maintaining ports, a task in keeping with his maritime background. Serving in the South Pacific for three years, his final post was port commander in the Philippines. He earned a Bronze Star at the conclusion of the war and was promoted to the rank of major.

Returning to Houston, Judge Brown became recognized nationally and internationally for his legal abilities following the explosion of two ships at the Texas City port in April 1947.[1] In 1955, he was appointed by President Dwight D. Eisenhower to be a circuit judge for the United States Court of Appeals for the Fifth Circuit, which at that time included the southern tier of

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1. This maritime catastrophe reached the Supreme Court *sub nom*. Dalehite v. United States, 346 U.S. 15 (1953).

states stretching from Savannah, Georgia to El Paso, Texas.[2]

During his thirty-eight years on the bench, Judge Brown became an influential and distinguished federal judge. His talent for organization and administration in the pre-computer era led to innovative solutions for the rapidly increasing caseload of the court. These solutions were subsequently adopted by the entire federal court system. He created the summary calendar, allowing a case to be decided only on the basis of briefs submitted on behalf of the parties. He urged the adoption of the Fifth Circuit's Local Rule 21, which permits a case to be affirmed without a written opinion.

In addition to his reputation as a judicial administrator, Judge Brown is best known for his steps to further civil rights in the spirit of *Brown v. Board of Education*.[3] He believed that his most important opinion was his dissent in *Gomillion v. Lightfoot*.[4] The Supreme Court would later adopt the views expressed in Judge Brown's powerful dissent, which is widely regarded as the foundation for modern voting rights and redistricting laws.[5] Another important Judge Brown dissent occurred in *Lincoln Mills v. Textile Workers Union*.[6] His position was essentially adopted by the Supreme Court in an opinion that has become the basis for much current labor law.[7]

Judge Brown, joined by Judges John Minor Wisdom, Elbert P. Tuttle, and Richard T. Rives, enforced civil rights for all citizens in a series of decisions in the late 1950s and 1960s. They formed a group that prevailed in the face of turbulence in the American South and threats to their own safety. Their legal decisions struck down barriers of discrimination in voting rights, jury selection, education, and employment. Judge Brown wrote

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2. For background material see generally KAY GORGES SCHILL, SHIP AND SHORE, THE STORY OF ROYSTON, RAYZOR, VICKERY & WILLIAMS (2000).

3. *See* Brown v. Bd. of Educ., 347 U.S. 483 (1954) (Brown I), *amended by* Brown v. Bd. of Educ., 349 U.S. 294 (1955) (Brown II).

4. Gomillion v. Lightfoot, 270 F.2d 594, 599 (5th Cir. 1959) (Brown, J., dissenting), *rev'd*, 364 U.S. 339 (1960).

5. *See* Gomillion v. Lightfoot, 364 U.S. 339 (1960).

6. Lincoln Mills v. Textile Workers Union, 230 F.2d 81, 89–97 (5th Cir. 1956) (Brown, J., dissenting), *rev'd*, 353 U.S. 448 (1957).

7. *See* Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957).

the 1962 Order that James Meredith be enrolled in the all-white University of Mississippi in opposition to Governor Ross Barnett's position.[8] At his death in 1993, the *New York Times* wrote that Judge Brown "played a major role in desegregation cases that transformed the South. . . ."

From 1967 to 1979, Judge Brown was Chief Judge of the Fifth Circuit, the largest court in the English-speaking world at the time. He retired as Chief Judge at the age of 70, as required, but continued as an active and then senior judge until his death. He wrote more than 1,500 opinions during his judicial career, many becoming well-known for their colorful and humorous style as well as their judicial content.

With his background in maritime law and interest in maritime history, it is not surprising that this judge became a leader in formulating admiralty law. He often cited historical precedent in Roman law and the Laws of Oleron.[9] From 1955 to 1993, he established a wide range of maritime legal principles, most of which are accepted today as precedent. He gave admiralty lawyers unqualified rules for resolving disputes in the fields of personal injury, cargo, collision, salvage, and general average. His few dissents stressed a common-sense approach in assessing responsibility for various actions in a maritime casualty.

Judge Brown's creativity in making his point through humor is shown in *Croft & Scully Co. v. M/V Skulptor Vuchetich*.[10] The issue in the case was whether the $500 package limitation set forth by the Carriage of Goods by Sea Act (COGSA)[11] applied to a 20-foot steel container that held 1,755 cases of a soft drink called Delaware Punch. In the context of a container that capsized during loading operations at Houston, Judge Brown

8. The effective work of these four judges in the area of civil rights litigation is set forth in JACK BASS, UNLIKELY HEROES: THE DRAMATIC STORY OF THE SOUTHERN JUDGES OF THE FIFTH CIRCUIT WHO TRANSLATED THE SUPREME COURT'S BROWN DECISION INTO A REVOLUTION FOR EQUALITY (1981).

9. Oleron is an island off the coast of France near the area of Aquataine. This maritime law dates from the Middle Ages and is often the point of reference in today's decisions. *See infra* text accompanying notes 20–23.

10. *See* Croft & Scully Co. v. M/V Skulptor Vuchetich, 664 F.2d 1277 (5th Cir. 1982).

11. 46 U.S.C. app. §§ 1300–1315 (2000).

declined to apply the COGSA package monetary limitation.[12] He noted that "Pepsi Cola Hits the Spot-On the Pavement"; "during the Refreshing Pause between the arrival of the container and the arrival of the *Skulptor*"; "42,120 cans of soft drinks crashed to the ground, never a thirst to quench"; "[i]n the Crush . . . . [t]he stevedore . . . was in no mood to have a Coke and a smile"; "the winds of judicial change Schwepped away the $500 shelter"; and the appellee's argument held "no water, carbonated or otherwise."[13] The opinion that a container is not a COGSA package for the $500 limitation represents the view that is now followed by all courts.

The "soda pop case" is not an isolated instance of judicial creative writing. In setting forth the scope of the Himalaya Clause, Judge Brown would not only relate that the *Himalaya* was not the vessel involved with the legal principles associated with the clause,[14] but add the comments "Scaling the Himalaya" and "it takes many Sherpas to carry away the Himalaya."[15] He would relate that a trial court's finding of fact "was well above the Plimsoll Line"[16] for the purpose of appellate scrutiny pursuant to Rule 52(a) of the Federal Rules of Civil Procedure. He would conclude that a congressional statute, the Death on the High Seas Act,[17] should "follow the rest of the hulk to an honorable rest in the briney deep."[18] He would scold attorneys for substandard briefs by noting that controlling decisions "were not cited by either counsel to [the trial judge] or for that matter to us on appeal. . . ."[19]

Judge Brown's interest in maritime history formed the basis

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12. *See Croft & Scully Co.*, 664 F.2d at 1278–82.

13. *Id.* at 1279–81.

14. *See* Brown & Root, Inc. v. M/V Peisander, 648 F.2d 415, 417 (5th Cir. 1981). This clause extends COGSA defenses to the vessel's contractors.

15. *Id.* at 417, 418.

16. Campbell v. Teledyne Movible Offshore, Inc., 714 F.2d 429, 430 (5th Cir. 1983). The Plimsoll Line is a series of marks on the side of a vessel for the purpose of indicating that it is overloaded. Obviously, if the trial court's finding of fact is below the line, the fact as found would be clearly erroneous pursuant to Rule 52(a). FED. R. CIV. P. 52(a).

17. 46 U.S.C. app. §§ 761–768 (2000).

18. Law v. Sea Drilling Corp., 523 F.2d 793, 798 (5th Cir. 1975).

19. Stevens v. Seacoast Co., 414 F.2d 1032, 1035 (5th Cir. 1969).

for his contemporary legal conclusions. To substantiate his conclusion that a vessel may be an *in rem* defendant for the purpose of enforcing a maritime lien,[20] he would refer to the time before "the Elizabethan era,"[21] and to support his conclusion that a compulsory pilot should be classified as a seaman for Jones Act purposes,[22] he would refer to Roman law and the Laws of Oleron.[23] The Fifth Circuit's rejection of a compulsory harbor pilot being classified as a seaman also illustrates Judge Brown's common-sense approach to maritime personal injury law that it is unreasonable for the most important person in the wheelhouse not being classified as a seaman.[24] The same is true of his dissent from the court's conclusion that the helicopter pilot who ferried offshore workers to platforms in the Gulf of Mexico could not be a seaman, while a pilot of a crewboat performing the same function would meet the classification requirements.[25] In fact, his talent and insight for solving difficult maritime legal problems led Justice William O. Douglas to refer to him as "our leading admiralty authority, Judge Brown."[26]

Throughout his life Judge Brown practiced the highest ethical standards. He was a deacon, an elder, and a Sunday school superintendent of his church. He often stated, "There is no doubt about it, you are your brother's keeper." He advised young attorneys, "Don't fudge with the judge." He related that the saddest day of each month occurred when he read the list of lawyers in the *Texas Bar Journal* who were the subject of grievance proceedings. He was a true friend of the University of Houston Law Center and met, each semester during the 1980s, with the maritime law classes to express his views regarding the qualities that make a good lawyer.

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20. *See* Merchants Nat'l Bank v. The Dredge Gen. G. L. Gillespie, 663 F.2d 1338 (5th Cir. Unit A Dec. 1981).

21. *Id.* at 1342 n.8.

22. 46 U.S.C. app. § 688.

23. *See* Bach v. Trident S.S. Co., 920 F.2d 322, 327 (Brown, J., dissenting), *vacated*, 500 U.S. 949, *remanded to* 947 F.2d 1290 (5th Cir. 1991).

24. *See id.* (Brown, J., dissenting).

25. *See* Barger v. Petroleum Helicopters, Inc., 692 F.2d 337, 341–45 (5th Cir. 1982) (Brown, J., dissenting).

26. Chevron Oil Co. v. Huson, 404 U.S. 97, 115 (1971).

Judge Brown often said that his greatest compliment as a lawyer came from Judge Thomas Kennerly in the 1950s. As an attorney, Brown defended a vessel that had been seized by another lawyer on behalf of his client. The interested parties agreed upon the arrangements for the release of the vessel, but it was necessary for a judge to sign the necessary order permitting the vessel to sail. When the order was presented to Judge Kennerly, he wrote the following instructions on a note to his courtroom deputy: "*If John Brown says the ship can sail, the ship can sail.*"

The comments set forth in this introduction represent only a brief part of Judge Brown's legacy. It is proper that we commemorate the legal principles that he gave to us by publishing his last speech, which he gave to the Maritime Law Association of the United States, as the initial speech in the Nicholas J. Healy Lecture Series sponsored by the New York University School of Law. His counsel, legal insight, work ethic in various phases of judicial activities, and friendship are missed. However, these qualities will always remain a part of our judicial system.