



Hon. Jerry A. Brown

Judge, U.S. Bankruptcy Court for the Eastern District of Louisiana

by Erin Arnold and Joseph P. Briggett



Erin Arnold is the career law clerk for Judge Jerry A. Brown. She was supposed to start her clerkship on August 29, 2005, but that was the day Hurricane Katrina hit New Orleans. Judge Brown forgave her for missing her first day of work, and they have enjoyed working together ever since. Joseph P. Briggett, Esq., is a shareholder at Lugenbuhl, Wheaton, Peck, Rankin & Hubbard in New Orleans, practicing in the firm's Bankruptcy, Restructuring and Creditor's Rights and Commercial Litigation practice groups.

Judge Jerry A. Brown remarks that he was lucky in his legal career: lucky to have had the opportunity to study at Tulane Law School, lucky to have been selected as a law clerk to legendary Judge John Minor Wisdom, and lucky to have been appointed as a bankruptcy judge. But his story shows that he made his own luck. From his upbringing in a small village in western Kentucky, he's led a life guided by hard work, a deep appreciation for the law, and a love of his chosen home of New Orleans.

Early Years

Brown was born in Crayne, Ky., in 1932. Crayne is a small village, at the time populated by 119 people. As a child, the rigors of education did not agree with Brown. He was resistant to his grandmother's home reading lessons, and she declared that there was no need to send him to school. Nevertheless, at the age of almost 7, he started his studies in Crayne's two-room schoolhouse.

Brown worked many jobs through his early years. His first job was at the counter in his family's country general store. To give his mother and father a chance to eat together, Brown was required to manage the store, which was located across the road from their house. In his teen years, he worked during his summers off from school. In the summer of 1949, he worked on an assembly line in a Chevrolet factory in Detroit, producing gears and axles. In 1950 he worked on another assembly line at a Chrysler plant in Evansville, Ind.

Back in Kentucky, Brown commuted to the city high school in Marion. He would walk or hitchhike—any way he could get to school. He played basketball and ran cross country for the one year the school had a track team. He also honed his debate skills competing as a member of the high school debate team.

Brown went on to study at Murray State University. In college, he continued debating for three years. He still laughs at his debate teammate who would often begin his arguments by theatrically declaring that he had four points, while holding up four fingers, ticking off three, but then never seeming to make it to the fourth one. His claim was that this held the judges' attention.



Something did, because Brown's debate team at Murray State was rated superior at various tournaments around the country.

In college, Brown most enjoyed history and social science classes but was not particularly focused on the law. No one in his family was a lawyer or had any connection with the law, but as a small child he reportedly expressed a desire to be a lawyer. In his economics class, he had an eccentric professor who pushed him to go to law school. Brown considered going to law school at Washington University in St. Louis or Tulane University in New Orleans, both of which had offered him scholarships. He chose Tulane. One major influence in this decision was his radio, which picked up a clear channel from New Orleans, Leon Kelner's jazz orchestra from the Roosevelt Hotel's Blue Room. He knew that he wanted to go to the source of that music. Although he acknowledges that St. Louis is a great city, he chose to go to Tulane based in great part on the allure of New Orleans.

Tulane University Law School

Brown served honorably in the U.S. Army. He attended the Counterintelligence Corps school at Fort Holabird in Baltimore and a German-language school in Berchtesgaden, Germany. Because of his service, however,

he missed the first two weeks of his first-year law classes at Tulane. Later, when he was mystified by a professor's lecture or a particular statement in class, he would turn to his classmates, wondering if there was a key point he had missed in those first two weeks. They assured him that he had missed nothing—no one in the first year of Tulane Law School understood everything the amazing professor Mitch Franklin put out. Despite missing those first two weeks, Brown found academic success. Much to his surprise, Brown, with no legal background and a late start, was invited to join the *Tulane Law Review*.

While at law school, Brown took another summer job, working at the now-defunct Jackson Brewery at Jackson Square in the French Quarter. Jackson Brewery was the largest brewery in the South at the time, known for its trademark "Jax Beer." The job paid well, and the employees could drink as much beer as they wanted. They were even allowed to drink beer while on the job. He was not the only Tulane Law student who worked there during the summer, as it was a highly sought-after job; not very hard work and all the beer you wanted to drink (but you couldn't take it home).

Influence of John Minor Wisdom

When Brown graduated from Tulane in 1959, Judge Wisdom had been on the bench as a judge only a short time. Judge Wisdom's first law clerk, Martin L.C. Feldman (now a district judge for the Eastern District of Louisiana), was a Tulane Law graduate two years ahead of Judge Brown. Judge Wisdom selected Judge Brown as his second law clerk, and Max Nathan Jr. was the third. All were graduates of Tulane Law School, where Nathan is now an adjunct professor of law.

Brown's law clerk duties included driving Judge Wisdom from his Garden District home to the court in the morning and sometimes driving him home in the evening. They also spent 10 to 12 weeks of the year traveling the circuit. They would drive to and from the five states then within the Fifth Circuit's jurisdiction: Texas, Louisiana, Mississippi, Alabama, and Florida.

Judge Wisdom was both a gifted legal scholar and a talented writer. As a boss, he was also a taskmaster who always made corrections to Brown's draft opinions. On one occasion, however, Brown had finally drafted an opinion that Judge Wisdom had approved with very few changes. Judge Wisdom commented at the time that Brown should be proud of his work, getting the opinion published with so few changes. The losing litigant, however, cast some doubt on his work by filing a scathing motion for reconsideration that Brown still remembers.

After being Judge Wisdom's law clerk, Brown knew that he wanted to one day be a judge. Brown learned a lot from Judge Wisdom. He came to admire not only Judge Wisdom's brilliant legal mind but also his commitment to fairness and equal justice through the cases he weighed in on, and the important decisions he authored during his career.

Career in Private Practice

Upon entering private practice, Brown joined one of New Orleans' white-shoe law firms of the time, Monroe & Lemann. Early on, the duties of a new attorney at the firm consisted of the "court run"—sending young lawyers to court to handle filings and appearances in a potpourri of cases. Brown became the right-hand man to the then head of the firm, Malcolm L. Monroe. Unlike in today's legal practice, where specialization predominates, in that time a well-rounded civil lawyer was expected to handle any and all court business, from successions to obtaining default judgments, trying cases and every other aspect of a civil practice.

Although not a specialist, Brown did work a great deal in corporate reorganizations, which were then governed by Chapter X of the Bankruptcy Act, the predecessor to the modern Chapter 11 framework. Coincidentally, one of his most memorable cases was reorganization of the same brewery he worked for as a law student, Jackson Brewery. The company had fallen on hard financial times. Brown's client, the American Can Company, had acquired a strong position as a secured creditor that became owner of the stock of Jackson Brewery. American Can, as an absentee owner of the stock, wound down the dwindling Jax business and oversaw the dissolution of what few assets remained. Much of the valued property of Jax had been transferred by its former owner for inadequate consideration to certain preferred creditors of Jax. Multiple suits were involved, and all of it ended up in two reported decisions from the Fifth Circuit, one of which was won by Brown's client, American Can, and one which was lost. The Fifth Circuit opinion, *In re Jackson Brewing Co.*,¹ is still often cited in bankruptcy settlement disputes today. It is one of the many decisions appealed in the Jax matter, extolling the importance of settlements in bankruptcy. Brown laughingly remembers the Jackson Brewery case because it was so ironic that he, who unloaded beer cases in the summer of 1958 while still a law student, became the ad hoc executive of Jax Brewery when it was first in reorganization. (This was because American Can, the owner of the stock, no longer had a representative in the New Orleans area to make day-to-day decisions as to what to do with its few remaining assets and the litigation.)

Brown preferred trial work and often tried cases for those of his partners who were not accustomed to or did not particularly like to appear in court. He also gained a reputation for his work in major Chapter 11 bankruptcies. He worked on just about every major reorganization case in New Orleans during the 1970s and 1980s. Toward the end of his private practice, he moved to a boutique bankruptcy firm, then known as Bronfin & Heller. He did not stay there long, however. In 1992, he was appointed as a bankruptcy judge for the Eastern District of Louisiana.

Service on the Bench

Judge Brown has now been serving as a bankruptcy judge for 27 years. At 87 years old, he is the oldest among the federal judges of the Eastern District of Louisiana.

In 2020, he will have completed the equivalent of two 14 terms as bankruptcy judge, and he hopes to live long enough to serve another few years. He comments jokingly that at 87 years of age he is “not buying any green bananas.”

As a bankruptcy judge, he is cognizant of the changes in jurisdiction of bankruptcy courts. Bankruptcy courts exercise nationwide jurisdiction. Bankruptcy court is perhaps the part of the federal judiciary that most often affects ordinary Americans. There are certainly limitations on the power of bankruptcy judges, most recently highlighted by the Supreme Court in *Stern v. Marshall* and its progeny. But these decisions have not greatly limited the scope of cases before the bankruptcy courts as a practical matter. Judge Brown observes that many cases once considered outside of the core bankruptcy jurisdiction can be tried by bankruptcy courts with the consent of the parties.

As far as his judicial philosophy, Judge Brown endeavors to make predictable decisions and to follow the law. He is generally conservative but nevertheless gives special consideration to the rights of debtors in his court, many of whom are honest and hard-working individuals who simply met unfortunate financial circumstances. He believes that all litigants in his court, right or wrong, deserve a fair chance to be heard. Therefore, he does not mind going to trial. He aims to give parties a prompt trial date (whether they like it or not).

Judge Brown has a few pet peeves. He believes in the importance of open courts, and therefore, he generally does not lightly grant motions to seal pleadings or to keep settlements secret. He also lacks sympathy for those litigants where attorneys fail to cooperate with opposing

counsel in formulating an acceptable pre-trial order, as required by the court’s rules. Generally, he appreciates attorneys who come to court prepared.

Family

Returning to the subject of luck, Judge Brown’s remark that he was lucky to have had the opportunity to study at Tulane has a greater significance. That was how he, a young man from Kentucky, came to meet his wife, Florence, who was born and raised in Arizona. She had been studying political science at Tulane (then Newcomb College) and graduated before Brown enrolled in the law school. They met while he was at Tulane Law School and have now been married 59 years. They have three children and five grandchildren who have come to see the proceedings in his courtroom first-hand. His son, Scott, is a lawyer, and he is hopeful that one of his grandchildren may pursue a legal career, too.

Judge Brown’s sincere appreciation for the practice of law truly stands out. He does not fall into the usual trappings of cynicism about the legal profession, and in fact, staunchly rejects them. The undersigned authors of this article, his career law clerk and former extern, are of a younger generation where cynicism about the practice of law unfortunately predominates. Those attitudes do not enter Judge Brown’s outlook. He relishes the intellectual challenges, the camaraderie, and the spirit of honorable competition among opponents. It is this attitude—not luck—that has led to his great successes as a lawyer and judge. ☺

Endnote

¹*In re Jackson Brewing Co.*, 624 F.2d 599 (5th Cir. 1980).



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