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A TRIBUTE TO JUDGE JAMES R. BROWNING

It is fitting that the Montana Law Review's Symposium Series be dedicated to the Honorable James R. Browning. Judge Browning is not only the Chief Judge Emeritus of the largest federal appellate court and nationally recognized as an innovative judicial administrator and legal scholar, he is also a Montana native, a graduate of the University of Montana Law School and a former Editor-In-Chief of the Montana Law Review.

Following his graduation from law school in 1941, Judge Browning embarked upon a career of public service that has spanned a half century. He first joined the Antitrust Division of the Department of Justice where, by age 30, he was elevated from the position of Chief of the Northwest Regional Office to the Assistant Chief of the Department's Litigation Section in Washington, D.C. In 1952 Judge Browning became the Executive Assistant to the Attorney General of the United States, where he organized and acted as the first Chief of the Executive Office of United States Attorneys.

After a brief stint in private practice, Judge Browning became the clerk of the United States Supreme Court. In 1961 President Kennedy appointed him as a Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit. In 1976 Judge Browning became the Chief Judge of the Ninth Circuit and undertook the responsibility for the administration of justice in the country's biggest and busiest circuit.

When Judge Browning took over as Chief, the Ninth Circuit had a burgeoning caseload and a huge backlog of undecided appeals. There was a strong sentiment in Washington that the Ninth Circuit was too large to handle its caseload efficiently and needed to be split into two smaller circuits. Judge Browning committed himself to the task of proving the Ninth Circuit could deliver justice efficiently and effectively and did not need to be split.

Judge Browning was more than up to the task. Within a few short years under his leadership, the Court had eliminated its backlog and cut in half the time required to decide appeals. Courts throughout the country and the world have emulated the innovative measures Judge Browning conceived and implemented at the Ninth Circuit. In recognition of his significant contributions to the administration of justice, Judge Browning received the prestigious Edward J. Devitt Award for Distinguished Service to Justice.

Although Judge Browning is best known for his skills and accomplishments as a legal administrator, I have been most impressed by his approach to judging. In the course of my clerkship, I never saw Judge Browning let the administrative pressures diminish the care with which he decided cases.

Judge Browning always maintained respect for the litigants and their concerns and required his law clerks to do the same. Every issue raised in the parties' brief received his thoughtful analysis. He consulted with his law clerks and used them to assist in his consideration of the cases, but he never relinquished to them the role of deciding even the most minor issue.

The Judge often invited one of his clerks to "take a walk around the block" to discuss and ponder some particularly thorny legal issue. Although the clerk would then be asked to prepare a draft opinion, the finished product was always, unquestionably, the Judge's own work.

After ten years of private practice I have gained even greater appreciation for Judge Browning's approach to judging. I consider his deep respect for both legal precedent and the role of the legislature to be essential attributes for a judge. While Judge Browning often tried to rewrite the book on court administration, he has never tried to rewrite the law. He studies both the language and legislative history of every relevant statute and carefully considers existing case law before deciding each case. Judge Browning has never added yet another published opinion to the body of existing law unless it was absolutely necessary. When he does release an opinion, whether published or not, it is always written as concisely as possible, with the issues clearly framed and directly decided in short declarative sentences. As a law clerk, the Judge's style and approach meant long hours and few published opinions reflecting your efforts. As a practitioner, however, the approach provides the clarity and predictability in the law that permits one to accurately evaluate the strengths and weaknesses of one's case.

Judge Browning is also committed to legal education and scholarship. Throughout his career he made time in his schedule to lecture and teach at Georgetown, Gonzaga, New York University, the Human Rights Institute and the Universities of Georgia, Utah and Montana. He was a scholar in residence at Montana and Santa Clara Universities. His warm, gregarious and engaging manner along with his vast knowledge and experience

in the law has enriched the educations of hundreds, if not thousands, of law students, lawyers and judges throughout the country.

Knowing Judge Browning has certainly enriched my life in more ways than I can recount (he even introduced me to my wife Kathryn). I owe him a great debt of gratitude. I am proud to know him and grateful to have had the opportunity to work for him. It is an appropriate tribute to name the Montana Law Review's Symposium Series in his honor.

Jack Hursh