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Devotion to law and motion

Whoever said "rules are made to be broken" never knew Judge Ira Brown or his local rules



By Dan Kelly

Judge Ira A. Brown, Jr. was a legendary San Francisco Superior Court judge. For 11 years he presided over the law and motion calendar and probably decided upwards of 50 motions a day. If you were prepared and focused, you were OK. But, your worst nightmare would be if you ran afoul in your preparation and/or presentation or, maybe worse, weren't compliant with the local rules.

I appeared before Judge Brown a number of times and worked really hard to prepare for those appearances out of abject fear. He was a large man with a large brain who could skewer you with one line.

As a young lawyer I got word that, coming up in a week on the order to show cause afternoon calendar, famed defense lawyer, F. Lee Bailey, would be appearing on behalf of his client who the State was trying to enjoin from running a claimed version of a Ponzi scheme called "Dare to be Great." On the day of the hearing it was a packed house consisting mainly of young lawyers like me and a large contingent of law students.

The Deputy Attorney General argued first. When he concluded, Mr. Bailey slowly rose and began in his well-known voice: "F. Lee Bailey, your honor, on behalf of the respondent." Judge Brown commented, "Based on the number of spectators here, Mr. Bailey, it appears that your notoriety has preceded your arrival in San Francisco." Bailey replied, "Thank you your honor." Brown then stated, "It is too bad your pro hac vice application and association of counsel papers did not precede your arrival. You therefore will not be allowed to argue." Bailey then stammered, "But your honor, I would like to be heard." Judge Brown then glowered (as only he could) and boomed (as only he could): "*Please sit down, Mr. Bailey*." There was a collective groan from the packed house because Mr. Bailey was silenced. But, deep down, I thought it was refreshing to know that Judge Brown did not tolerate missed deadlines whether by a young lawyer or the seasoned and famous F. Lee Bailey.

On another occasion I remember watching Bob Seligson, a distinguished and highly regarded appellate lawyer, launch into his announced "conclusion of my argument." He was eventually interrupted by Judge Brown who said, "By my watch, your conclusion is now a minute longer than your entire argument. I can go back to looking at my watch or you can say the matter is submitted." The suggestion was quickly heeded. So, you soon learned that brevity was something you could not rise above.

Judge Brown also had an unwritten rule that was based on common sense and a sense of legal decorum. That rule: *never* get up to argue while still wearing your raincoat. That rule was violated a number of times and each time the offending lawyer soon realized that the apocalypse was only 20 feet and just seconds away in usually this form: "Counsel, the reason it is not raining in this building is because the Board of Supervisors paid a lot of money to put a roof on it. Take off your raincoat, *now*, or go outside and argue in the rain. Your choice."

Judge Brown, presiding

Judge Brown also served a stint as Presiding Judge – overseeing all departments of the Superior Court. He was extremely stingy when it came to granting continuances and once stated he would only grant a continuance for a reason he'd not heard before.

On a Monday morning before a typically packed trial calendar call, Judge Brown called the case name and attorney Richard Bridgeman rose and with his booming voice requested a continuance. When asked the basis of the request Bridgeman responded, "Diarrhea – in fact I ask for an immediate continuance." Brown said "granted" as Bridgeman literally scooted out the door.

On another packed Monday I fondly remember seeing an exchange between Judge Brown and attorney Tony Griffin. When a case was called, plaintiff's counsel answered ready and named his client. There was a lineup of defense counsel who stated their appearances and named their respective defendants – all except one. Tony answered ready but was obviously having difficulty identifying his defendant. Judge Brown looked at Tony and said: "Mr. Griffin, your case could well be sent to start trial today and you apparently don't know who you represent." Tony, who had a laid-back manner, calmly replied, "Your honor, in a case like this with multiple defendants, I usually figure out who I represent by the third day of trial." Laughter broke out and Judge Brown raised his eyebrows and peered over his glasses at Tony, but was

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unable to stifle a smile as he shook his head.

As Presiding Judge he could also be a little tough in assigning cases to new judges. When she first began work on civil calendar cases, Judge Lucy Kelly McCabe was assigned her first case – a real property brouhaha involving six Chinese parties. None spoke English and, in fact, three spoke different dialects, requiring separate translators. As the six parties and their lawyers and the band of translators piled into Judge McCabe's chambers, she ordered an immediate recess and went down the hall to see Judge Brown. As confirmed by one of them and hesitatingly confirmed by the other, Judge McCabe said, "Are you trying to mess with me?" Those that knew Judge McCabe will realize I have inserted "mess" in the above quote for another four-letter word. She was reassigned a more mundane case. To quote Charlie Brown of Peanuts fame: "Don't ever mess with Lucy."

Judge Brown also served as a trial judge in a monumental marathon case involving asbestos producers and their insurers. Over 100 lawyers were involved. In fact, the case was so huge that it had to be tried in a school auditorium because no courtroom could handle the 26 counsel tables. After a two-year trial it was determined that the insurance carriers must cover the thousands of asbestos claims. It was apparent to courtroom observers that there were few judges other than Judge Brown capable of handling such an epic case.

Weil and Brown

For many years Judge Bob Weil of Los Angeles and Judge Brown co-authored the California Practice Guide on Civil Procedure. That became a best seller for The Rutter Group. They also did countless civil procedure seminars and programs up and down the state.

As a fellow co-author of a Rutter Group book (with far fewer sales), I overcame my temerity to do so and once asked Judge Weil how much money he and Judge Brown made each year on their book. Judge Weil then started verbally doing the math: book cost times annual sales and then factoring in royalty percentages. It became obvious Judge Weil was having problems with the math, probably in the guise of not wanting to answer my question. With some prodding it seemed he might give me the final number. Then he stopped short with this memorable line, "Well, Dan, I can't do the math, so here is your answer – as the monkey said when he peed in the cash register, this is running into some big money."

Trust me, I knew better than to ever ask that question of Judge Brown. But, I think the monkey was probably right.

Retirement

After 20 years, Judge Brown announced his retirement. I was honored to be asked to emcee his retirement dinner and roast. I didn't realize that with that job I was also obligated to sell some tickets to the event. So, I phoned numerous attorneys and asked if they would buy a table for 8 for $1,000. I was going great guns selling the event until I called a well-known senior partner in an insurance defense firm. He balked and said he would talk to their office manager and his partners and would get back to me. Two weeks went by, and I called to follow up and reminded him that he was to confer with his colleagues. Without a moment's hesitation he responded: "Well we have talked it over and we'll go to $750 and not a penny more." Then he couldn't stifle a laugh nor could I. "Not a penny more" must be taught on day one of Insurance Defense, 1A.

In his retirement, Judge Brown taught at USF Law School and was deservedly awarded an honorary degree for his dedication to the law. He also continued his participation in legal programs and seminars on both civil procedure and insurance law. Be it from the bench or from the legal program hustings, he was a great teacher who liked having large audiences. He literally proselytized the proper practice of law and motion.

His continuing influence

On Judge Brown's death in 2000, then-Justice Anthony Kline commented that few judges have been as influential as Judge Brown.

First, Judge Brown was influential in raising the bar for lawyers. Concise and focused briefs were expected and little hemming and hawing took place during oral arguments. In short, he was not tolerant of any ready, shoot, aim approach to law and motion practices.

His influence was felt in adjacent counties and, indeed, throughout the state. Law and motion assignments began being made to judges who could handle the burden of making decisions. That was not always the case. This was brought home to me when a lawyer in an adjacent county told me he envied that San Francisco had Judge Brown. He went on to say that their law and motion judge had difficulty making decisions as evidenced by the judge having a six-year-old son who was unnamed. Whether or not that is true, the point is Judge Brown set the standard of not letting undecided cases backlog.

Throughout his teaching and writing, Judge Brown profoundly influenced civil procedure practice in California. Indeed, "Weil and Brown on Civil Procedure" remains the "bible" on the subject. Harriet Chiang, who covered the courts for the San Francisco Chronicle, aptly described him as "a brilliant legal giant who simply believed lawyers should take the same pride in their profession that he did."

Final comments

Remember the wisdom of others when preparing your written and oral presentation in law and motion:

- Put yourself in the judge's shoes. "The acme of judicial distinction means the

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ability to look a lawyer straight in the eyes for two hours and not hear a damned word he says." — Chief Justice John Marshal

- "It wasn't by accident that the Gettysburg Address was so short." – Ernest Hemingway
- "In the pleading of cases nothing pleases so much as brevity." – Pliny the Younger
- "Using not a word to spare leaves not a moment for inattention to the hearer." – Thomas Jefferson
- Don't put off writing your brief because brevity takes time. "I would have written a shorter letter, but I did not have the time." – Mark Twain
- "To talk well eloquently is a very great act, but that and equally great one is to know the right moment to stop." – Mozart
- "Be prepared. Be sincere. Be brief. Be seated." – Franklin Delano Roosevelt
- And finally: "Never address the Court while wearing your raincoat." – Judge Ira A. Brown, Jr.

Keeping in mind all of the above quotes, this article is hereby "submitted."

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