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**NEWS RELEASE**

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## **Ninth Circuit Mourns Loss of Legendary Chief Judge Emeritus James R. Browning**

**SAN FRANCISCO** – The Honorable James R. Browning, a legendary Chief Judge *Emeritus* of the United States Court of Appeals for the Ninth Circuit and the longest serving appellate judge in the history of the federal judiciary, died peacefully Saturday night (May 5, 2012) at a Marin County hospital. He was 93.

“While we are always saddened by the loss of a valued colleague, the passing of Judge Browning truly marks the end of an era for the Ninth Circuit. Judge Browning served on our court for more than 50 years, including 12 years as our chief judge. In that time, his name became synonymous with that of the Ninth Circuit and he is rightfully the eponym for our historic headquarters building in San Francisco,” said Chief Judge Alex Kozinski.

“On the bench, Judge Browning was a distinguished jurist who cared deeply about achieving justice. In judicial governance, he was an innovative administrator, who cajoled the court into the computer age. As importantly, perhaps, he was a genuinely warm and caring human being, famous for the twinkle in his eye, who brightened the lives of everyone around him,” Judge Kozinski added.

Other colleagues offered similar sentiments:

“Judge Browning was a perfect match of heart and mind. He was a brilliant jurist and chief judge. But his more enduring legacy may be his compassion, his relentless optimism, and his uncanny ability to draw the best out of everyone around him. He was a great mentor and a close friend. I will miss him terribly.” – Judge Sidney R. Thomas

“Judge Browning was a remarkably capable judge who wrote carefully crafted opinions. Even more important was his effect on the collegiality of the judges. He and his wife, Marie Rose, did much to create the tradition of friendship among the judges and spouses on our court.” – Senior Judge Procter R. Hug, Jr.

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“Chief Judge Emeritus James Browning was an extraordinary leader, progressive administrator, outstanding judge and friend. It was a joy to share a courtroom with him for his warm, open, compassionate and friendly demeanor encouraged judges and lawyers alike to focus on what was "just" and "fair". His support for the Western Justice Center as a member of its Board helped promote the peaceful resolution of conflict among children, the courts, and in the community. He is irreplaceable.” – Senior Judge Dorothy W. Nelson

“He is remembered by his colleagues for his mellow and collegial personality, which over his 12 years as chief contributed to building a culture of collegiality and civility that made for pleasant working conditions for everyone on a very busy court.” – Senior Judge Alfred T. Goodwin.

“I have known Jim Browning and considered him a good friend since 1970 when I first became a judge. Jim served on a committee I chaired, reorganizing the Judicial Conference of the circuit - a three-year project during the time Dick Chambers was Chief Judge. When Jim became Chief Judge, he assigned me to be his representative for the Circuit Conference Executive Committee and my reports to him and discussions were frequent. He had a unique understanding of judicial administration which led us through the growth years. Jim felt that there should be no bumps on the road, and if there were any problems between judges, the judges themselves should solve them – and he encouraged us to do so. Jim had a quiet leadership technique which was always pleasant and rarely assertive. Jim took a great interest in the work of the Judicial Conference of the United States and when Bill Rehnquist became Chief Justice, he asked Jim to chair a committee on the committees of the conference which not only resulted in change of committee jurisdiction but also the establishment of the Executive Committee. All in all, I think Jim Browning has made a great contribution to the federal courts.” – Senior Judge J. Clifford Wallace

“Judge Browning was a truly remarkable judge and the finest of men I have ever known. He was foresighted in transforming the court to adapt to the increased numbers of judges and the vastly increased number of cases, helping us all into the computer age. All the while, he was gracious, kind and understanding.” – Senior Judge Betty Binns Fletcher

“I can still see the twinkle in Judge James Browning’s eye the day I interviewed to be his clerk in 1972. He hired me, a woman with a year old child, when most other judges in San Francisco would never have done such a thing at the time. That hiring decision was typical of him. Throughout his more than 50 years on the bench, Judge Browning’s proceeded from a basic sense of justice, and of doing the right thing, quietly and without any desire for recognition. As a result, and certainly not because he intended to be, Judge Browning was a guiding light for me, for my colleagues on the Ninth Circuit, and for the judiciary and bar nationally. He was a judge who grasped the core of a case quickly and communicated his views – often in “per curiam” opinions, but no one was fooled – succinctly but completely, always keeping the fact that individual people’s welfare was at stake firmly in mind. And he was a leader who lead by

persuasion and vision; all who dealt with him knew they had been listened to and taken into account, yet he did not yield on issues that most mattered to him and was tenacious in pursuing them. I remember him saying once that the Ninth Circuit was his life, and in large part it was. That I will be working for the rest of my judicial career in the James R. Browning United States Courthouse will be a daily reminder of his dedication to and enormous impact on what he always reminded us was the best Circuit. We will all miss him – including the twinkle in his eye, which never left him – profoundly.” – Judge Marsha Berzon, a former law clerk to Judge Browning

“I believe I speak on behalf of all his former law clerks who share the privilege of working for a judge who possessed a rare combination of a piercing intellect, passion for justice and fairness, a calm temperament which engendered collegiality in time of controversy, and a genuine and disarming humility. We learned from a judge who listened attentively, contemplated with care, and wrote with precision, clarity and economy.” – District Judge Edward Chen of San Francisco, a former law clerk to Judge Browning

“I shall always treasure the warm friendship Judge Browning shared with me and my family, from the day in 1986 he administered the oath of office to me in his San Francisco chambers to our last panel sitting together a few years ago. He was the prototypical Chief Judge, supremely collegial, caring and self-effacing yet relentlessly effective and a national pace-setter in the United States Judiciary. My wife Maura joins me in extending our deepest condolences to Marie Rose and their family.” – Judge Diarmuid F. O’Scainnlain

Judge Browning's passing was quickly noted in his home state of Montana.

"Judge Browning shaped the Ninth Circuit Court and the law of the West, and Montanans are proud to have called him one of us. Mel and I send our thoughts and prayers to his family and friends. As we all mourn the loss of a great jurist and a great Montanan, we know his legacy will live on for generations to come." – U.S. Senator Max Baucus, who carried the legislation that named the San Francisco courthouse after Judge Browning.

Judge James Robert Browning was born in Great Falls, Montana, on October 1, 1918. He received his law degree from the University of Montana School of Law in 1941, graduating with the highest scholastic record in his class and serving as editor-in-chief of the law review. With the onset of World War II, Judge Browning entered the Army. He served from 1943 to 1946, rising to the rank of first lieutenant and winning a Bronze Star Medal.

Judge Browning began his professional career in 1941 as an attorney in the Antitrust Division of the U.S. Department of Justice. Returning to the Antitrust Division after the war, he held a number of positions of increasing authority and responsibility before serving as the Executive Assistant to U.S. Attorney General James P. McGranery from 1952 to 1953. He left the Justice Dept. in 1953 to become a partner in a law firm formed by Philip Perlman, a former Solicitor General.

In 1958, Chief Justice Earl Warren appointed Judge Browning to serve as Clerk of the Supreme Court of the United States. As the clerk, he held the Bible when President John F. Kennedy was sworn into office on January 20, 1961. He was the last clerk to do so as that later became the task of the President-elect's spouse.

President Kennedy nominated Judge Browning to the Ninth Circuit Court of Appeals on September 6, 1961. He was confirmed by the Senate on September 14, 1961, and received his judicial commission on September 18, 1961.

Judge Browning served as an active judge for nearly 40 years. He took senior status on September 1, 2000, but continued to hear cases for many more years. He was astoundingly productive. He sat on 7,987 panels, either three-judge or en banc. He authored 388 majority opinions, 60 dissenting opinions, 34 concurring opinions, and possibly thousands of unpublished dispositions. Judge Browning was known for advocating 'per curiam' opinions and panels on which he sat published 1,005 'per curiam' opinions.

Judge Browning's contributions to Ninth Circuit jurisprudence include Lessig v. Tidewater Oil Co., 327 F.2d 459 (1964), a watershed antitrust ruling that held an exclusive-dealing and tying agreement between an oil company and a service station operator could violate antitrust law without proof that defendants may achieve a monopoly. While still influential today, the decision was ultimately overruled by the Supreme Court.

Judge Browning also authored one of the first decisions to set aside a criminal conviction because of ineffectiveness of defense counsel. Brubaker v. Dickson, 310 F.2d 30 (1962). In Brubaker, Judge Browning held that a trial in which defendant's counsel ignored obvious defenses would not constitute the fair trial for an accused as contemplated by the Due Process Clause. In Cooper v. Fitzharris, 586 F.2d 1325 (1978), he elaborated a standard for ineffectiveness of counsel that presaged the standard later adopted by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984).

As chief judge, Judge Browning was renowned for court administration, demonstrating how a large appellate circuit can work effectively. He introduced the use of technology in court administration; created administrative units to help manage the circuit; championed the adoption of a limited en banc court; and played a leading role in the adoption of the 1980 Judicial Conduct and Disability Act.

Judge Browning was the recipient of numerous awards, most notably the Edward J. Devitt Distinguished Service to Justice Award in 1991, and the American Judicature Society's Herbert Harley Award in 1984.

Judge Browning is survived by his wife of 70 years, Marie Rose. The couple met in high school and married soon after he graduated from law school. Marie Rose was well known to many judges and their spouses through her work on circuit conferences and other endeavors. Judge Browning is also survived by his daughter and son-in-law, Jeanne and Scott Sommer, and three grandchildren, Lauren, Greg and Mark Sommer.

Services are pending.

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