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Memorial—Justice C. Stuart Brown

By Anthony T. Wendtland

There are people in each of our lives who influence our development. Stuart Brown was that kind of person for me. I am a different man for having known him.

After you met Stuart Brown you learned that the most important things in his life were private things. He was most proud of his marriage and his family. His devotion to family was grounded in his faith. He put his wife, his children, and his grandchildren first in his life. He made it a point to spend time with his family and to communicate with all of them regularly. To Stuart, one word of praise about a member of his family meant much more to him than personal acclaim or the idea that he was an important man somehow.

You did not have to be around Stuart long to appreciate his intelligence, wit, and his ability to bring out better things in other people. He was a person who befriended others quietly, taking a personal interest in them and listening to them patiently. He was credible when he gave advice or made observations about things because he rarely spoke with the intention of gaining attention for himself. His calm and friendly demeanor often made it hard for people who disagreed with him strongly to dislike him personally.

Stuart's contribution to the practice of law in Wyoming is important. He used his time as a judge to assure people that court was a fair place to resolve problems. He was not condescending to litigants or lawyers. He strove to be the example of politeness and fair behavior towards others that he believed all Wyoming lawyers should strive for. He was a persuasive person who presented himself in the form of a kind and unassuming friend.

Stuart was an accomplished author. He took special pride in his judicial opinions. His judicial work stands out because of his unique and careful use of language. He was the first person to instruct me in legal writing who could find ways to make regular and serious use of words like "wont," "foibles" and the phrase "not insubstantial." His tone and his ability to turn a phrase or analogize was his own special quality. He believed that the story told by each of his decisions should be interesting and should explain why the decision was important. He had a knack for using humor in his work without degrading the importance of the subject matter at hand. Often the humor was tinged with irony in a way that emphasized his point of view. He

was able to do this in both criminal and civil cases.

A fine example of Stuart's ability to use a few words to make his point can be found in his dissent in *Wright v. State* where he was criticizing what he perceived as the improper expansion of the use of writs of certiorari:

"The wind bloweth where it listeth, and thou hearest the sound thereof, but canst not tell whence it cometh, and whither it goeth * * *." (John 3:8) So it is with the writ of certiorari and it is the "whither it goeth" that troubles me.

In the beginning certiorari was a twinkle in the eye of the author of a concurring opinion in *State v. Faltynowicz*, Wyo., 660 P.2d 368 (1983). Although the time of conception is uncertain, certiorari was born under suspicious circumstances in *City of Laramie v. Mengel*, Wyo., 671 P.2d 340 (1983). Its legitimacy is questioned by respectable authority. In *City of Laramie v. Mengel*, the majority of the court on its own motion converted a petition to file a bill of exceptions into a petition for a writ of certiorari.

I kept myself unspotted from the foibles of my brethren on the court until *State v. Heiner*, Wyo., 683 P.2d 629 (1984). I then succumbed to the siren song of that temptress, expediency, and voted to grant a writ of certiorari. Having once fallen, it was easy to sin again. I voted to grant certiorari in *State v. Sodergren*, Wyo., 686 P.2d 521 (1984). "Commit a sin twice and it will not seem to thee a crime." (The Talmud)

This court has an addiction for the writ of certiorari and has granted it in situations undreamed of when the first writ issued. This writ is not unlike the "tar baby" in Uncle Remus. Once having gotten ahold of it, this court cannot let go. The court is so enamored by the writ that, in this case, it resurrected a petition for a writ after having killed it. This court's passion for the writ of certiorari will not be stilled. Under the authority of the certiorari cases coming out of this court since *City of Laramie v. Mengel*, a writ of certiorari could be used for any purpose a majority of this court can conceive. It is a utility writ or a writ for all seasons.

Had I anticipated the quagmire a majority of this court would fall into by granting the writ of certiorari, I would have made a compromise the first time around and opted to reverse because of an abuse of discretion in sentencing. I would not have been happy with this, but in my opinion it would be far better than jumping into the unknown as the majority has done. The majority has radically changed the law on criminal appeals to accommodate one person, and the criminal jurisprudence of this state will be the worse for it.

I would deny the petition for certiorari.

707 P.2d 153, 159-60 (Wyo. 1985) (Brown, J. dissenting).

Stuart was also effective with humor in dealing with day-to-day court business. He corresponded with other judges and lawyers extensively and kept numerous files on things that interested him. He kept a daily journal that he used to stay current on things going on around him. He often wrote letters to a "Letters Not Sent" file when he had strong feelings about a subject he knew he should not be making public comment about.

I recall one instance in which another judge sent Stuart a letter informing him that several words had been left out of the text of a recently released slip opinion in a way that made part of the opinion nonsensical. Stuart wrote the fellow back thanking him profusely in a letter that intentionally omitted the third or fourth word from every sentence in the first paragraph. Another time (while he was Chief Justice) he sent out an informational memorandum to all justices and court staff concerning writing style. In the memo he decried the literary evil of the use of footnotes in the court's opinions. The climax sentence of the memo urged the other justices and court staff to outlaw footnotes in opinions altogether. That sentence included a footnote providing additional information.

Stuart always managed to keep the Wyoming Supreme Court in context and was able to do his job there seriously, but with humility. He often joked that being Chief Justice was an administrative burden that placed him in charge of parking space assignments. He did not like it when people treated him like a dignitary. He regularly poked fun at other people who behaved that way.

Stuart felt that Wyoming lawyers were good people who believed in honesty and fair play. He liked to spend time with younger lawyers. He spent a few minutes every morning with the law clerks and other justices to tell stories and to find out what people at the court were up to. He would often tell his clerks that he liked spending time with young people because they made him feel alive. He regularly told non-lawyers who were critical of attorneys that he felt lawyers were the best people he knew.

There are many stories and many honors that could be listed about Stuart Brown in this tribute. I am convinced that Stuart would not want me to list his many accomplishments. Instead, he would want to know that we believed he worked hard, cared deeply about his faith, family and friends, and that we knew he cared about us personally. I hope he knows that all of us who knew and loved him understood him that way.