

Renowned attorney Raymond M. Brown to receive NJSBF 2022 Medal of Honor

Prominent criminal defense and civil rights attorney Raymond M. Brown will receive the New Jersey State Bar Foundation's 2022 Medal of Honor, the Foundation's most prestigious award.

Brown is an internationally recognized litigator who focuses his practice on white-collar criminal defense, international human rights compliance, internal investigations and complex commercial litigation. He has significant international experience and has represented victims in the Darfur genocide before the International Criminal Court in The Hague, as well as an accused at the Special Court of Sierra Leone.

Brown, along with retired New Jersey Supreme Court Justice Jaynee LaVecchia, will be honored during an awards ceremony at the Park Chateau in East Brunswick on Sept. 20.

"The Foundation's Medal of Honor recognizes professional excellence, leadership, commitment, and service to the public and legal community. Justice LaVecchia and Ray Brown exemplify all these qualities," said Kathleen N. Fennelly, president of the NJSBF. "We congratulate them, and applaud their outstanding contributions to the legal profession and to the advancement and improvement of the justice system in New Jersey."

Brown spoke recently about his life, career and winning Medal of Honor.

You've enjoyed a long and illustrious career as criminal defense and civil rights attorney. How and when did you develop an interest in the law?

As a young person, people would always ask, "Are you going to be a lawyer like your father?" And my instinct was to say, "No, of course not." It wasn't until I was in college at Columbia University where I was a leader of the Black student movement and involved with demonstrations that my attitude began to change. We wound up getting arrested and I was charged with some serious crimes, which I've had to explain to every bar committee ever since. I think that was when I began to see the law as a tool



of social engineering and economic independence.

Your father, Raymond A. Brown, is regarded as the first prominent Black trial attorney in New Jersey, who took many high-profile cases in his career. What was it like growing up as his son?

My father was a giant as a human being, forget being a lawyer. He was very prominent nationally in human and civil rights. And on top of that, a premier lawyer. So I don't know how you could grow up and not be profoundly affected by that. He was very prescient in that he tried to create the space for me to be myself, because we are different in persona and personality, but you couldn't help but be affected by it. As for the practice of law, he was a tremendous role model in terms of basic habits. His work habits, his commitment to preparation, the sense of how he related to people, are all secrets of the craft. I've known children of prominent people, including lawyers, who were crushed by the weight of it. I think my father did his best to allow me to find my own footing and establish something of a persona. I still don't think I'm the lawyer he was, but I haven't met anyone who is. He was the kind of person who could walk into a room of a thousand people and you could feel his presence. Not from the

loudness of his voice but from the strength of his persona. He was a remarkable person.

He believed we should do a third of our work pro bono, which is not a very viable economic model. We tend to think of him in terms of cases like Hurricane Carter and Dr. X, but his view was that it isn't causes célèbres that matter, it's the ugly, the unwashed, the unpopular, the ungrateful clients, the people at the bottom, who need representation.

Though he was one of the strongest human beings I ever met, he believed in grace. On the surface it was a contrast. You can learn those traits and try to emulate them. He was fearless. I'm not fearless but I've learned to not let it affect me.

He has profoundly affected my persona, my commitment to larger causes and my abilities as a lawyer.

Describe your experience coming up as a Black attorney and how the profession has changed over time.

Certainly, the sheer number of Black lawyers has increased. There were very small numbers when I started. The environment has changed as well. My first murder trial was in Somerville in 1975, where the defendants had shot someone while robbing the Bound Brook Hotel. I went down there for the trial, and during the six weeks I was in Somerville, not a person in the town spoke to me. It was an interesting challenge workwise. New Jersey was still a de facto segregated state in those times.

I would say by the time I had been practicing 10 years, some of the premier lawyers in the state on the criminal side were Black lawyers—guys like my dad, Tom Ashley, Ted Wells, Alan Bowman, Peter Harvey and others. If I weren't so modest I'd include myself in that group. So there was a gradual transition, where it became more common to see Black lawyers, especially in the urban communities. Still, the problem was that most of the Black lawyers were on the criminal side. It was another five or 10 years before Black lawyers started to do work at the state or other levels.

In a career that has spanned nearly five decades, what are the most important cases you've handled?

It's difficult because every case is its own microcosm. Certainly cases like the trial of Senator Menendez, or the trial of Labor Secretary Donovan. Those are high-profile cases where the exposure, the need to balance press, the presence of the federal government all add to the complexity of the case and force you to elevate your game. On the other hand, I grew up representing number runners, people charged with burglaries and murders and armed robberies, cases like the Somerville robbery. To me that was a big case.

I'm also proud of the work we've done internationally. We've been involved in cases in Sierra Leone and Darfur, where you're talking about crimes against humanity and genocide, involving thousands, if not millions of people. There, the question from a craft point of view was how to manage evidence that comes from an area of armed conflict over the course of weeks, months, years and hundreds of square kilometers and multiple languages and dialects. How do you organize the evidence and put that together? So, some of the international work we've done has had a profound impact on how we think about evidence and how we manage complex litigation.

It's hard to put a finger on a favorite case. Recently I appeared before the New Jersey Supreme Court in a number of important cases, representing amici, *State v. Andujar*, *Acoli v. New Jersey State Parole Board* and *State v. Nyema*, that were professionally satisfying and will perhaps have ramifications for the law in our state. However, to each individual accused, or to each client you represent, that case is the most important.

In your estimation, what makes a good attorney?

I'd say the first thing is commitment to the client's cause. There are attorneys who go through the motions. You can't win by virtue of commitment alone, but if you're not committed, I

don't think you can represent clients effectively.

The second is commitment to mastering craft. A lawyer's commitment to improvement and to continued growth, a lawyer's understanding of the human condition, those are important in every trial.

The wonderful thing about trial work is that if you maintain your health, you're not working with your back, you're working with your mind. After 50 years I feel like I'm just learning the craft. There are things I learn every day. How you manage strategy, tactics, how you approach witnesses, those are things you can continue to improve upon. As you become more mature, your people skills and your intuitive sense improves, and your ability to handle stress improves. In those ways it's a remarkable craft in which to engage. It also lets you be involved in the most intimate aspects of the people you represent. We have to penetrate into the deepest, sometimes darkest secrets people have, and find a way to find redemption or some other positive aspect.

What's the best piece of advice you've ever received?

My father's ability to cross examine was phenomenal. The best cross examiner I ever saw. When I finally pressed him for the most important piece of advice, he said, "listen." Every

lawyer who's read a transcript has seen a missed chance to exploit an answer, often because they have a lot going through their head at the time. The notion of having a mind that is at rest in the middle of chaos, and your ability to exploit that rest to advance your client's cause, is critical. We have several systems for developing strategic judgment, but at the heart of it is the ability to listen—to understand your client and what's happening as a trial unfolds.

How would you describe yourself as an attorney and your approach to the law?

As a trial lawyer, I like to think that I am committed to my client's cause. Within the limits of the rules of professional conduct, I will do what it takes to prevail for my client. I think I am also truthful with my clients. Sometimes you have to find ways of telling clients things they don't want to hear, but you can't have strategic judgment unless you have developed a rapport. The ability to evaluate, free of ego, the opposition—what are their strengths, weaknesses, and how do you exploit them—is important. I think my strategic sense and people skills are quite good, but I'm continuing to work on every other aspect of the craft.

I've been practicing for almost 50 years. There are still things I'm learn-

ing. Because when you first start out, in a trial you're sort of lurching from witness to witness, doing the best you can. But being able to put each witness in context, having some sense of where you are going with a witness, fitting everything into the larger whole, those are things you can learn at any time in your career. In sports they call it the game slowing down. That's something that only comes with time. Time and humility, which I like to think I have.

We tend to think of the law as an intellectual engagement, because it brings ideas to the resolution of the most pressing problems that human beings have. But it's more than ideas—it involves spirit and a feel for people. I think what set my father apart was his ability to combine intellectual freshness and openness to new ideas with a deep understanding of human beings and the human condition, and learning to set aside your own biases.

Many know you as an attorney, but what are your interests outside of the court?

I've been practicing yoga for 30 years, which makes me a beginner. Ultimately, the purpose of yoga is to control the fluctuations of the mind, to find a place of peace and an ability to be open to the universe. It's a great conditioner and healing art.

I've also been doing calligraphy for 20 years, so I'm also a beginner there. I haven't made a living out of it, but I find it very peaceful and enjoyable. I'd hate to describe my grandson as a hobby, but I have two wonderful children, a grandson and a wonderful family. No lawyer as ever sat on their deathbed and wished they'd spent more time in the law library. That ability to spend time with family is important. I have a wife who's a wonderful lawyer. She challenges me. I think the ability to be immersed in an environment where people are respectful but are constantly challenging you is important. You tend to lose your edge when you're in an environment where everyone tells you you're the greatest thing since sliced bread.

What does receiving the NJSBF's Medal of Honor mean to you?

It is overwhelming to be considered with Justice LaVecchia, who is one of the giants of the legal community and our community at large in New Jersey. They say justice is our secular faith and we are all its servants. It's the relationship of craft to higher purpose. I'm happy to be recognized for that.

For more information about the Foundation's Medal of Honor Awards Dinner, visit moh.njsbf.org.

Olenowski Special Master: DRE testimony is reliable

The Special Master rendered findings on the reliability of drug recognition experts (DRE) evidence which, if approved by the Supreme Court, will allow such evidence to be presented in prosecutions for driving while under the influence of drugs, but also render it subject to cross-examination. The NJSBA participated as *amicus curiae* in the matter of *State v. Olenowski*, questioning the legitimacy of DRE testimony because it lacked the foundation to meet the *Frye* standard for expert opinions.

In its brief regarding the reliability of the evidence, the NJSBA joined the National College for DUI Defense, DUI Defense Lawyers Association and Association of Criminal Defense Lawyers of New Jersey, arguing that the state failed to establish its scientific reliability. John Menzel appeared on behalf of the NJSBA and helped author both briefs. Joshua H. Reinitz and former NJSBA Trustee Miles S. Winder III wrote the brief challenging the reliability of DRE testimony.

"The reliability is established that the DRE protocol replicates generally accepted medical practices for identifying the presence of impairing drugs and their likely identity through a toxidrome recognition process," Special Master Hon. Joseph F. Lisa, P.J.A.D., said in a 332 report. "This testimony has also established that the DRE matrix comports with the matrices designed for this purpose and gen-

erally accepted and used in the medical field."

Judge Lisa outlined the witness qualifications and credibility assessments of 16 experts who testified on various aspects of the analysis of whether DRE evidence meets the reliability standard of New Jersey Rules of



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Evidence 702. As part of that analysis, Judge Lisa was charged with determining whether each individual component of the 12-step protocol is reliable; whether all or part of the protocol is scientifically reliable and can form the basis of expert testimony; and whether components of the process present limitations, practical or otherwise.

The NJSBA urged a *Frye* analysis prior to permitting DRE evidence in order to ensure "that individuals charged with crimes are provided with a fair trial and that evidence relied upon to convict an individual of driving under the influence is valid."

The matter emanates from two arrests of Michael Olenowski for driving under the influence of drugs. He was evaluated by DREs in both instances, each of whom determined he was under the influence. Olenowski

moved to bar the DRE testimony and requested a *Frye* hearing to assess whether the proposed testimony was sufficiently reliable. After convictions at the municipal and Appellate Court levels were affirmed, the Supreme Court granted certification and held that a *Frye* hearing should have been

conducted.

Judge Lisa noted that DRE training is akin to medical technician training and therefore able "to reliably apply the protocol....Therefore, by implication, the DRE protocol as a whole and its individual components are generally accepted in the scientific community to which they belong, namely medicine and toxicology."

In a statement last week, the NJSBA said it was honored to be included in the Special Master's hearings and is examining the report closely to highlight the technique's limitations.

"The NJSBA will continue its advocacy in this case concerning these important issues when it files additional comments to the New Jersey Supreme Court, which will make the final decision," according to the statement.

The parties have 30 days to file responding briefs to the Special Master report, after which the Supreme Court is expected to schedule oral argument and issue its final decision.

This is a status report provided by the New Jersey State Bar Association on recently passed and pending legislation, regulations, gubernatorial nominations and/or appointments of interest to lawyers, as well as the involvement of the NJSBA as amicus in appellate court matters. To learn more, visit njsba.com.

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Information in the *Bar Report* is compiled by the New Jersey State Bar Association, which welcomes tips and story ideas from its readers and members. Contact Tom Nobile at tnobile@njsba.com or 732-937-7527.