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Ninth Circuit Court of Appeals Mourns Death of Senior Judge David R. Thompson

SAN FRANCISCO – The Hon. David R. Thompson of San Diego, an esteemed senior judge of the United States Court of Appeals for the Ninth Circuit, died Saturday, February 19, 2011, after a sudden illness. He was 80.

Judge Thompson became ill while in San Francisco to hear oral arguments in several cases. He died at St. Mary’s Medical Center there.

“We are deeply saddened by the passing of Judge Thompson, who served this court with distinction for 25 years,” said Chief Judge Alex Kozinski of the Ninth Circuit Court of Appeals. “He was an esteemed jurist, highly regarded by his colleagues and by the many lawyers who argued before him.”

Nominated by President Reagan, Judge Thompson was appointed to the Ninth Circuit Court of Appeals on December 17, 1985. He took senior status on December 31, 1998, but continued to carry a substantial caseload and served as the court’s Death Penalty Case Coordinator for several years. At the time of his death, he ranked 19th in seniority among the court’s 48 active and senior judges.

“David Thompson was one of our finest judges. His analysis was always careful and thorough but with an eye to the justice of the situation. He was a great friend that we all will miss,” said Ninth Circuit Senior Judge Procter Hug, Jr., of Reno.

“On the bench and in deliberations, Judge Thompson was a quiet force of common sense and fairness but he never lost his analytical edge, and never lost his heart,” said Ninth Circuit Judge M. Margaret McKeown of San Diego. “I will miss him on the court and as my friend.”

Added Ninth Circuit Judge Barry G. Silverman of Phoenix, “Judge Thompson was uncommonly kind, and one of the nicest, gentlest, most decent human beings I’ve ever known.”

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“The bench and bar have lost a great friend,” said San Francisco attorney Jerry Braun, a close friend of Judge Thompson. “He was adulated by those of us at the bar who had the privilege of appearing before him.”

Notable opinions written by Judge Thompson include:

- *Wood v. Ostrander*, a 1989 decision which established the standard for deliberate indifference in police misconduct cases. The case involved a woman passenger in a car pulled over by police. After arresting the driver for driving while intoxicated and confiscating the car keys, the officer left the woman alone in a known high-crime area at 2:30 a.m. She was raped on her way home. The Ninth Circuit reversed the district court’s grant of summary judgment in favor of the officer, concluding that the woman raised a genuine issue of fact as to whether the officer was deliberately indifferent to her safety, and whether his actions affirmatively placed her in danger.
- *Coleman v. McCormick*, a 1989 *en banc* ruling involving a Montana man sentenced to death under two different state sentencing schemes. The appellant was first sentenced under a statute later held unconstitutional. After a new statute that allowed additional factors to be considered was enacted, the man was again sentenced to death. The court reversed the second death sentence, holding that the re-sentencing violated the man’s right to due process. The court concluded that the death sentence imposed under the new statute hinged on factors appellant could not possibly have known were relevant to sentencing when his trial took place.
- *Oregonian Publishing Company v. U.S. District Court for the District of Oregon*, a 1990 decision involving a high-profile criminal case in which the defendant sought to have sealed a plea agreement with the government. Several newspapers intervened to oppose the motion to seal. After the district court sealed the records, the Ninth Circuit granted a writ of mandamus and ordered them released, reasoning that plea agreements have typically been open to the public.
- *Bunnell v. Sullivan*, a 1991 *en banc* ruling that established the standard for evaluating complaints of disabling pain in Social Security cases. The appeal involved two cases in which administrative law judges disregarded claims of disabling pain because the claimants failed to present objective medical findings to fully corroborate the severity of pain alleged. The court held that although the claimant must produce medical evidence establishing the underlying impairment, medical findings that support the severity of that pain are not required, and the adjudicator may not discredit the claimant’s allegations of severity of pain solely on the ground that allegations are unsupported by objective medical evidence.

In addition to his work on the bench, Judge Thompson also was active in court governance. From 2006 to 2009, he was the senior circuit judge representative to the Judicial Council of the Ninth Circuit, governing body for federal courts in the western states. At the national level, he served on the Committee on the Administration of the Bankruptcy System from 1991 to 1999, the last three years as chair. The committee advises the Judicial Conference of the United States, the judiciary's national governing body.

Judge Thompson also chaired a special Evaluation Committee established by the court to evaluate the recommendations issued in a 1998 report by the Commission on Structural Alternatives for the Federal Courts of Appeals. The commission looked at restructuring the federal appellate courts, including splitting the Ninth Circuit.

“He was an ideal chairman of our Evaluation Committee. His efforts resulted in numerous suggestions that we have since followed,” recalled Judge Hug, who was chief judge of the circuit at that time.

Born in San Diego, Judge Thompson received his B.S. from the University of Southern California in 1952, and his LL.B. from the USC Law School in 1955. Following law school, he served in the Navy from 1955 until 1957. After his honorable discharge from military service, he began practicing law in San Diego. A substantial portion of his 28-year private practice was devoted to business litigation and general trial practice.

Judge Thompson is a past president of the San Diego Chapter of the American Board of Trial Advocates and a former vice-president of the San Diego County Bar Association.

Judge Thompson comes from a prominent legal family in San Diego. His father, the late Gordon Thompson, Sr., was a Superior Court judge in San Diego County and his grandfather, Adam Thompson also practiced law in San Diego, starting in 1908. An uncle, A. Renwick Thompson, was a lawyer in San Diego as well. His brother, Gordon Thompson, Jr., is a judge of the U.S. District Court for the Southern District of California, and his nephew, John M. Thompson, is a Superior Court Judge in San Diego. His daughter, Carolyn Thompson Kelly, is a lawyer admitted to practice in California and Vermont, and works as a lawyer in Sonoma County, California. Another nephew, Peter R. Thompson, is also a lawyer and lives in Napa Valley, California.

In addition to his daughter, Judge Thompson is survived by his sons, Daniel, a San Diego County employee, and Adam, a music teacher in China; and four grandchildren, Robert William Fraser, IV, Theadora Dupree Thompson, Kobe Dupree Thompson and Arie Dupree Thompson. He was preceded in death by his wife of 54 years, Arna.

The funeral will be Saturday, February 26, 2011, at 1 p.m. at Point Loma Community Presbyterian Church, 2128 Chatsworth Blvd., San Diego.

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