

The Honorable Donald E. O'Brien  
1923 - 2015

The judges and employees of the Northern District of Iowa are deeply saddened by the passing of our beloved colleague Donald E. O'Brien on August 18, 2015. He was an exceptional public servant and extraordinary federal district court judge known far and wide for his unsurpassed compassion, fairness, and commitment to doing justice.

Donald Eugene O'Brien was born 1923 in Marcus, Iowa. He moved with his family to Rock Rapids, Iowa, and then to Sioux City, Iowa, where he attended parochial schools. His education at Trinity College in Sioux City was interrupted during World War II. Judge O'Brien was in the United States Army Air Force from 1943 to 1945, attaining the rank of first lieutenant. He was a bombardier in a B-17 Flying Fortress and flew thirty missions over Europe with the Eighth Air Force. The Judge was awarded the Distinguished Flying Cross and five air medals. After his military duty, he returned to Trinity College for one semester of study, then transferred to Creighton University in Omaha, Nebraska. He graduated from Creighton with his law degree in 1948, was admitted to the Iowa bar, and commenced the practice of law in Sioux City.

From 1949 to 1953, he served as a part-time city prosecutor for Sioux City. He reentered private practice full time in 1954. Active in the Democratic party, he was elected and served as county attorney for Woodbury County, Iowa, from 1955 through 1958. In 1959, he became a municipal court judge in Sioux City. Judge O'Brien held that post for one year before returning to his law practice. In 1961, he was appointed United States Attorney for the Northern District of Iowa by President Kennedy. In 1965, he was reappointed U.S. Attorney by President Johnson. He resumed private practice again in 1967 and served as special counsel for a House of Representatives committee headed by Democratic Representative, Neal Smith, during 1977-1978.

He was appointed as judge of the Northern and Southern Districts of Iowa by President Carter in 1978. In 1985, he succeeded Judge McManus as chief judge of the Northern District. He was admired by his colleagues and the bar as a hardworking, conscientious, and able judge. He has served on the United States District Courts for the Districts of Nebraska, Minnesota, and South Dakota and served for ten years on the Budget Committee of the Judicial Conference of the United States.

Since 1978, Judge O'Brien has presided over a number of important trials. One was a controversial case involving the question of whether the United States had the responsibility to pay damages to a citizen who had, at the urging of then President Ford (in television appearances), participated in the National Swine Flu Immunization Program in 1976 and had suffered serious injuries as a result. Judge O'Brien held that the United States was responsible. This case was twice reviewed by the Eighth Circuit Court of Appeals, which affirmed the Judge's rulings.

In *Varsity Corp. v. Howe*, 516 U.S. 489, 116 S. Ct. 1065 (1996), a group of beneficiaries in Varsity's Employment Welfare Benefit Plan sued their employer, who had, through trickery, led the employees to withdraw from the Plan and forfeit their benefits. The Supreme Court agreed with the District Court, which had reinstated the beneficiaries back into the Welfare Plan and awarded damages. In *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 115 S. Ct. 788 (1995), a farmer had bought soybeans from Asgrow Seed Company, planted them, got a substantial increase in bushels, and then in the next year sold this soybean increase to many farmers in direct competition with Asgrow. The Supreme Court agreed with the District Court that under prevailing law, the only protected seed that the farmer could sell was seed that had been saved by that farmer to replant his own acres.

Judge O'Brien worked to ensure the rights of everyone, including prisoners and those incarcerated by the state. He worked tirelessly so that prisoners were treated humanely and fairly, and considered his work on behalf of prisoners his greatest accomplishment. In *Goff v. Harper*, 235 F.3d 410 (2000), judgment reinstated, No. 96-1018, 2002 WL 34541628 (8th Cir. 2002), the Circuit Court affirmed Judge O'Brien's order remedying various constitutional violations at the Iowa State Penitentiary, including his order that inmates with special mental health needs receive appropriate care. In *Hendrickson v. Griggs, et al.*, 672 F. Supp. 1126 (1987), the Court held, in a class action, that the state of Iowa was in violation of the Juvenile Justice and Delinquency Prevention Act and that juveniles in Iowa were entitled to relief from the state's noncompliance with requirements for removal of juvenile offenders from adult jails in Iowa. The state was ordered to submit a plan to accomplish this. They did. Several juvenile jails were erected in Iowa where juveniles from every county are now housed.

In 1991, Congress added another federal judge to the Southern District of Iowa and that same legislation relieved Judge O'Brien of being a "swing" judge, with the new judge in the Southern District taking over the assignment of Judge O'Brien in that district and Judge O'Brien being thereafter responsible only for cases in the Northern District.

On June 5, 1993, the Woodbury County Bar Association sponsored a dinner to honor Judge O'Brien's public service as a United States District Judge in Iowa. The event was one of the largest functions ever sponsored by the Bar of Sioux City with six hundred people in attendance. Chief Judge Richard Arnold of the Eighth Circuit Court of Appeals and his predecessor, Judge Donald Lay, praised Judge O'Brien's judicial career. Other speakers represented the clergy, the judiciary, the bar, and Judge O'Brien's family. A full transcript of the senior status program is set out at 922 F. Supp. in the opening pages of the book.

Judge O'Brien maintained chambers and continued to work on a reduced schedule up until his death.