

<https://phs56.com/aclu-lawyer-finds-success-respect-in-texas/>

**ACLU Lawyer finds success, respect – in Texas** Reported by David Casstevens, Star-Telegram Staff Writer ~~ July 5, 2006 ~~

David Broiles, a partner in the Fort Worth law firm of Kirkley, Berryman & Broiles, was given the Blackstone Award by the Tarrant County Bar Association last month. Star Telegram/ Joyce Marshall

**David Broiles**, a partner in the Fort Worth law firm of Kirkley, Berryman & Broiles, was given the Blackstone Award by the Tarrant County Bar Association last month.

A 1949 Texas statute made it unlawful to sell horse meat for human consumption.

It is not a crime, however, for a person to slaughter a horse and serve it free of charge at a picnic.

David Broiles, palms cupped like parentheses, lifted an imaginary burger to his lips and then hesitated, as if struck by a thought, his eyes darting right and left.

“Where’s Old Paint?” he asked.

Rocking back in his office chair, Broiles burst into hearty laughter.

The 68-year-old partner in the Fort Worth law firm of Kirkley, Berryman & Broiles is something of a novelty in his conservative home state, a civil trial lawyer who wears tropical-print shirts and Bermuda shorts to work and whose wide-ranging client list includes war protesters at the president’s ranch and two North Texas slaughter plants that process horse meat for foreign tables.

When the Tarrant County Bar Association honored Broiles last month for his long and distinguished career, the recipient of the Blackstone Award accepted the applause and extended a special greeting to those in the audience who had heard of, but perhaps never seen, a real live, card-carrying American Civil Liberties Union lawyer.

**He proudly produced his membership card.**

A lifelong Democrat, Broiles is a Lone Star Liberal — capital L and proud of it.

He attends seminar cruises sponsored by The Nation, a weekly opinion magazine, the self-described flagship publication of the political left.

**He is welcome at the Peace House in Crawford.**

Among his treasured mementos is a small wooden bird that a Vietnam War draft resister, a former client, carved while in jail.

Broiles joined the ACLU in 1960. That was before he earned a master’s degree in philosophy at Southern Methodist University and his doctorate in philosophy at Ohio

State; before he burned a Confederate battle flag in his classroom at the University of Georgia; before he left that institution — to the administration's relief — and went to Yale Law School.

Broiles has been lawyering, trying cases before Republican judges, doing what he loves, for almost 40 years.

A grandfather, he and his wife, Patty, live with their two dogs in a stone home overlooking Lake Worth.

What draws him from his boathouse and keeps him young at heart is the joy of practicing law alongside his daughter, Karin Cagle. At this point in his career, Broiles picks and chooses his cases and immerses himself in the constitutional issues about which he feels most passionate. Broiles devotes much of his time to legal work for the ACLU of Texas.

"David Broiles emulates everything that is righteous about a true, honest, ethical civil rights lawyer," said Will Harrell, executive director of the ACLU of Texas. "He's so damn good. Some lawyers take civil rights cases, but they're interested in what's in it for them. With David, it's never about his ego or pocketbook. That's not even on the table."

Broiles has argued cases in traffic court and the U.S. Supreme Court.

He has represented Bell Helicopter and Fort Worth U.S. District Judge John McBryde, who faced sanctions for judicial misconduct.

"Everything David does is completely honest," McBryde said. "He's very aggressive, but one of his qualities is an ability to make his opponents think highly of him no matter how aggressive he becomes. That's very rare in a trial lawyer."

### **A federal judge ruled last year in favor of two of Broiles' clients.**

The Texas law that prohibits slaughtering horses for human consumption was declared unconstitutional.

In April, after Daniel Ellsberg and 13 other peace activists succeeded in being arrested to test the legal validity of county ordinances prohibiting parking and camping near President Bush's ranch, the attorney helped bail them out of jail.

Ellsberg, who leaked the Pentagon Papers to the news media during the Vietnam War, presented Broiles a signed copy of his memoirs, titled *Secrets*.

"Thank you for getting us out of jail so fast last night," the author wrote, "and for all you're doing to protect the Bill of Rights."

The Texas lawyer felt a sense of accomplishment, given his client's 35-year history as a war protester and political activist.

As Broiles said, with a note of admiration, "Ellsberg has been arrested 75 times."

### **A lasting impression**

Rowland Broiles had a special treat for his young son.

One April day in 1949 they drove to old LaGrave Field, home of the Fort Worth Cats.

David Broiles, then 11, loved the minor league club managed by Bobby Bragan and faithfully followed its fortunes. That afternoon the Cats played an exhibition against their parent team, the Brooklyn Dodgers, whose second baseman was the celebrated Jackie Robinson, who broke baseball's color barrier.

Robinson endured taunts, insults, threats of boycotts and immense pressure to become one of the game's best all-around players.

The Dodgers won that game, and Robinson collected three hits and scored twice.

But it wasn't Robinson's performance that made a lasting impression on the child who sat with his father in choice seats behind home plate. What he remembers is those in the crowd, and to this day he can see them, all those black faces huddled along the outfield fence, eager to watch Robinson play. For the boy it was a moment of dawning.

"I realized that the only reason I got a seat behind home plate and they had to stand along the fence was because we were different colors," Broiles recalled. "I thought, 'Why me?' Here were these men and women who couldn't even get a seat. I became very race-conscious about the discriminatory practices here."

Seventeen years later, Broiles sat in the company of black friends and witnessed an event far more significant than a baseball game. The venue in that summer of 1966 was a courtroom in Athens, Ga. The federal government was trying two members of the Ku Klux Klan in a case related to the murder of a black man.

Two years earlier, a U.S. Army Reserve officer named Lemuel Penn was driving home to Washington, D.C., from summer active duty at Fort Benning, Ga., when a station wagon pulled alongside his car on a road outside Athens. Penn was killed, shot in the head. The driver later admitted his involvement and identified two Klansmen as the shooters, but an all-white jury found the defendants not guilty.

**Determined that justice be served, federal prosecutors charged the men with civil rights violations.**

Broiles was teaching philosophy and attending law school at the University of Georgia, and he witnessed the dramatic trial.

He watched intently as the prosecutor, a Georgia lawyer, covered his head with a hood, the symbol of terror in the South, and picked up a long-barreled pistol. In his summation, Floyd Buford paced theatrically before the jury box.

“What do we think about people who put on hoooooods and have little beady eyes?!”

Clack!

The pistol he clutched was bent, so the cylinder wouldn’t close. When he waved the weapon, the cylinder made a cold metallic sound. An exclamation point.

He developed a cadence, a rhythm that to Broiles brought to mind the pulpit oratory of a fire-and-brimstone preacher.

“What kind of people go around scarin’ other people?!” Clack!

“People who beat people up with bicycle chains?!” Clack!

At last the prosecutor snatched off the hood and slammed the weapon onto a desk. He wheeled toward the Klansmen and delivered his condemnation.

“I think they’re cowards! Cowards!”

**In the first conviction of its kind under the 1964 Civil Rights Act, the Klansmen were sentenced to 10 years.**

“That was something I’d never seen before or seen since,” Broiles recalled. “It inspired me. It had a big influence on my thinking I might want to practice law.”

Broiles demonstrated his own flair for showmanship. While teaching an ethics class at the university in Athens he led a provocative discussion on Confederate Memorial Day about the reasons for fighting the Civil War. He challenged students, pressing them when some mentioned tariffs or states’ rights.

“What should we think about people killing each other over slavery?” he asked finally.

In an answer to his own question Broiles took a cigarette lighter and lit a Confederate battle flag he had brought to class.

This was the mid-1960s. Students watched in disbelief as flames engulfed the banner and Broiles threw it out a window.

The university terminated Broiles’ contract, ostensibly because he was attending law school at the same time he served on the faculty. To his surprise and amusement, the university awarded him a Sarah Moss Fellowship, which provides outstanding

University of Georgia faculty “a broad outlook and acquaintance with conditions and standards in other parts of the world.”

“I was told that meant outside the South,” Broiles said. “I had never heard of the fellowship. I didn’t even apply. Believe me, they wanted me to leave.”

### **Before the Supreme Court**

Broiles headed to Yale, where he earned his law degree. In his first jury trial, a protest demonstration case, the young lawyer launched into a 90-minute closing argument during which he asserted that picketing a residence was an act of expression protected under the First Amendment.

Finally, the judge interrupted.

“Mr. Broiles, could I see you for a second?”

The young lawyer dutifully approached the bench.

“Counselor,” the judge confided, just above a whisper, “I’ve only got one kidney, and I’m about to explode. How much longer are you going to take?!”

Broiles lost — the jury was out only eight minutes — but the convictions were reversed on appeal.

In January 1973, he experienced the highlight of his career in an ACLU case. Fre le Poole Griffiths, a Dutch citizen and Yale Law School graduate, sought to practice law in Connecticut, but state law required her to be a U.S. citizen. Her application to the New Haven County Bar was rejected.

On appeal, the case went before the U.S. Supreme Court, where Broiles successfully argued that the citizenship requirement was unconstitutional.

He remembers preparing for the big day with the help of two ACLU lawyers. He remembers climbing the steps of that imposing marble edifice. Standing at last, alone, before the black-robed jurists. Broiles wore a tan polyester suit, the only suit he owned. “I’d probably just come from police court in White Settlement,” he recalled.

From the bench, Chief Justice Warren Burger leveled his gaze at the Texas attorney and posed the question Broiles had hoped for.

“What do you think is the highest position your client could have in the United States without being a citizen?”

“Yours,” Broiles flatly replied. “You don’t have to be a citizen or a lawyer to be chief justice of the Supreme Court of the United States.”

**Burger's countenance turned as cold as the winter weather outside.**

"I learned not to [anger] the chief justice if you want his vote," Broiles said.

The oral arguments over, his work done, Broiles found his mother, who had traveled from Fort Worth to the nation's capital to witness her son's performance. As they left the building, she turned to him.

"David, let me understand this," she said. "Are you saying that your client wants to be a lawyer, but she doesn't want to be an American citizen?"

"Yes, Mom," her attorney son replied. "That's the whole point."

"Well," Hazel Broiles replied. "I hope you lose."

David Casstevens, 817-390-7436

[dcasstevens@star-telegram.com](mailto:dcasstevens@star-telegram.com)