

OBITUARY

District Judge Gerhard Gesell Dies at Age 82

By Claudia Levy
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Gerhard A. Gesell, 82, the outspoken and liberal U.S. district judge who presided over some of Washington's most pivotal challenges to First Amendment rights and government power, died of liver cancer Feb. 19 at his home in Washington.

In 25 years as a jurist, he ruled on issues that shaped society in that period, including the Iran-contra controversy, AIDS, genetic engineering, voting rights, homosexuality, draft problems, the war on drugs and the individual rights of women, antiwar demonstrators and publishers.

He presided over the Pentagon Papers case, which set new standards concerning government secrecy and shed light on the way Washington goes to war. In that case, he rejected an effort by the Nixon administration to enjoin The Washington Post from publishing the war studies, which also were published by the New York Times.

Other celebrated cases included the Watergate-era trials, shared with the late Judge John J. Sirica, of former Nixon White House aides and operatives for a 1972 break-in at Democratic Party headquarters in Washington. Among those he sent to jail were Charles Colson, Dwight Chapin, Egil Krogh Jr. and Donald Segretti.

Gesell tried presidential aide John Ehrlichman and others accused of authorizing the burglary of a psychiatrist's office to obtain information about Daniel Ellsberg, who had brought the Pentagon Papers to the attention of the press.

Judge Gesell later was to rule

that the office tape recordings of President Nixon were in public domain because they had been played during a Watergate trial, a finding upheld by the Supreme Court.

He also ruled that Nixon's attempt to dismiss Archibald Cox, the first Watergate special prosecutor, was illegal.

The Nixon scandals gave the public its first real look at Judge Gesell's aggressive, quick-draw judicial style. At one point, he threatened to hold Nixon in contempt of court for withholding evidence and accused him of delaying tactics that were "totally offensive to all our concepts of justice."

In another showdown, he chastised the president's lawyer, James St. Clair, for being "ignorant" of the law and lectured him like a young law student.

In the late 1980s, Judge Gesell presided over the trial of a Reagan White House aide, Oliver North, on charges that he conspired to defraud the government. North was accused of covering up illegal activities and setting up a secret operation to provide money to the Nicaraguan contras and conduct other unauthorized covert operations. North's conviction on one count was later overturned.

In 1969, Judge Gesell issued one of the first major rulings liberalizing abortion, striking down the District of Columbia's abortion law as so "unconstitutionally vague" as to be unenforceable. In 1983, he struck down the Reagan administration's "Baby Doe" regulations as interfering in the decisions of parents and doctors to forgo life-sustaining techniques on severely ill newborns.

Judge Gesell also ruled that a woman could not be denied partnership in a national accounting firm for failing to behave more "femininely," one of a number of his precedents that later were endorsed by the Supreme Court.

William H. Jeffress Jr. and his daughter, Dorothy Ames Jeffress, who both served as law clerks to Judge Gesell, wrote in a tribute that, aside from the more celebrated cases, the judge had distinguished himself "in his day-by-day handling of an enormous variety of cases immediately important only to the parties and lawyers.

"He demanded much of himself,

regularly arriving at the courthouse at 7 a.m. and promptly deciding every matter that came before him. He had an extraordinary ability to cut through to the heart of a case and bring it to a speedy and just conclusion."

Impatient with collateral matters and unnecessary delays, Judge Gesell was known to thunder at lawyers to stop their "lawyering," or delaying, and get on with it. "That's just a stump speech," he said in one trial, cutting off a rambling lawyer. "I don't want speeches like that in this court, and I don't want to hear any more of them."

Appointed to the bench by Pres-

ident Johnson in 1967, Judge Gesell was one of the oldest active federal judges in the country, taking senior status only a month ago to allow for a reduced caseload. Among his final rulings was one that allowed the Agriculture Department to suspend a quota system that had governed naval orange sales for 55 years.

Born in Los Angeles, he was raised in New Haven, Conn., where his father, Arnold Gesell, was head of the Gesell Institute of Child Psychology and a widely respected authority on child raising whose books—emphasizing patience, forbearance and understanding—influenced generations of parents.

Judge Gesell, a graduate of Yale University and its law school, came to Washington in 1935, at the height of the New Deal. The young trial lawyer established his reputation as a giant killer when, as an assistant to the new head of the Securities and Exchange Commission, William O. Douglas, he successfully prosecuted Richard Whitney, president of the New York Stock Exchange, for misappropriating a client's securities. The opposing counsel in the case was Dean Acheson, then of the powerful Washington law firm Covington & Burling.

It was Judge Gesell's first experience with efforts within the power structure to cover up scandal. Douglas, who later retired as an associate justice of the U.S. Supreme Court, wrote in his memoirs that his young assistant "did a masterful job, disclosing the whole anat-

omy of Wall Street chicanery and corruption."

While still in his twenties, Judge Gesell was special counsel for a temporary national economic committee conducting a congressional investigation into the insurance industry, an 18-month assignment that drew him national attention.

He left the SEC in 1941 to accept an offer from Covington & Burling, where he became one of the country's most successful defense lawyers in anti-trust cases. He took a leave of absence after World War II to be chief assistant counsel for a joint congressional committee investigating the attack on Pearl Harbor.

Among his corporate clients at Covington & Burling was The Washington Post, whom he advised during its foundation-building acquisition in 1954 of the city's only other morning newspaper, the Washington-Times Herald. Judge Gesell was later to preside over a case, now pending before another judge, against The Post by reporters seeking a guarantee of overtime pay.

Judge Gesell stayed with Covington & Burling as a senior partner specializing in corporate and insurance law until he was appointed a judge at the relatively advanced age of 57.

In a conversation with a Post reporter last month, Judge Gesell lamented what he saw as the declining role of federal judges, particularly compared with the rising influence of the U.S. attorney's office. The judge said he thought Congress

had placed too much power in the federal sentencing guidelines, which have drawn criticism from numerous judges since they became effective in 1987.

Looking back on his career, Judge Gesell said he felt "very fortunate to have gotten some cases, not so fortunate to have gotten some others." In particular, he said, he enjoyed deciding the Pentagon Papers case as well as presiding over many of the Watergate cases.

Judge Gesell was awarded the Edward J. Devitt Distinguished Service in Justice Award and the Yale University Citation of Merit.

Under Presidents Kennedy and Johnson, he was chairman of the presidential commission on equal opportunity in the armed forces. He served on the boards of St. Albans School and Children's Hospital and was a fellow of the American College of Trial Lawyers. He was a lecturer at the University of Virginia and a member of the American Law Institute and the Lawyers Committee for Civil Rights Under Law.

Survivors include his wife, Marion "Peggy" Pike Gesell of Washington; two children, Peter Gesell of Cambridge, Mass., and Patricia Pike Gesell of New York; a sister, Katherine Walden of Guilford, Conn.; and three grandchildren.

Staff writer Michael York contributed to this report.