

Judicial Profile

BOB FREY

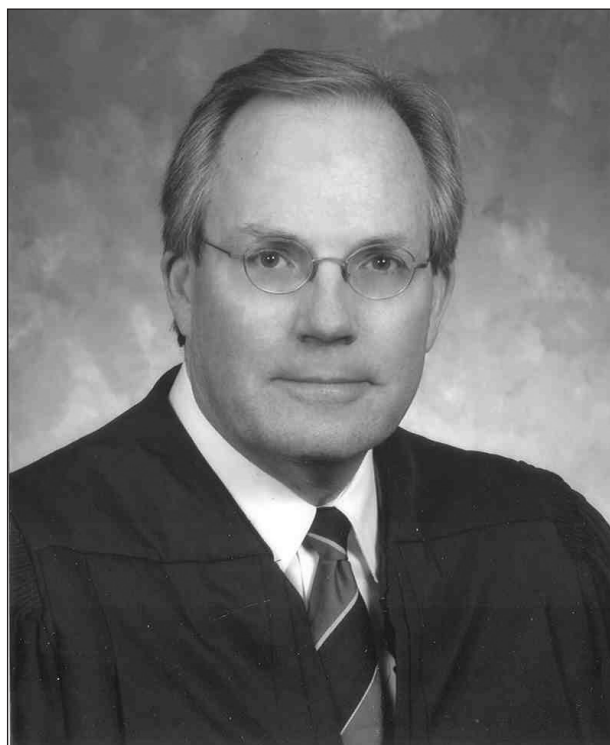
Hon. Rhesa Hawkins Barksdale U.S. Circuit Judge, U.S. Court of Appeals for the Fifth Circuit

GEN. DOUGLAS MACARTHUR closed his famous 1962 farewell address to the Corps of Cadets at the U.S. Military Academy with this promise: “When I cross the river, my last conscious thoughts will be of the Corps, and the Corps, and the Corps.” Similarly, a visitor to the chambers of Fifth Circuit Judge Rhesa Hawkins Barksdale can readily conclude that West Point, from which the judge graduated almost 42 years ago, is never far from his thoughts and never will be. In the antechamber are two paintings of West Point: one of the campus seen from aloft, the other of

line of cadets in their full-dress gray-over-white uniforms—the living end of the famous “Long Gray Line.” On the judge’s desk are a half-dozen back issues of *Assembly*, the West Point alumni magazine. Elsewhere in the chambers are various mementos from the judge’s days as a cadet, including his “tarbucket” (full dress cap), breastplate, saber, and numerous photographs.

The Barksdales are an old Mississippi family. Both of the judge’s parents and all five of his brothers attended the University of Mississippi. When he passed up Ole Miss to accept an appointment to West Point, however, the judge was continuing in another family tradition: his Uncle Battle Barksdale is a member of the West Point Class of 1937; his grandfather, Dr. J.W. Barksdale, served in France in World War I; his great-grandfather, Rhesa Hawkins (for whom he is named), served in the Confederate Army, was wounded at Sharpsburg, and was captured during Pickett’s charge; he was imprisoned at the infamous Fort Delaware and was not released until June 11, 1865, when he finally consented to sign an oath of allegiance. The oath hangs framed in the judge’s chambers.

While on the banks of the Hudson River, Cadet Barksdale—described in a 1967 *Newsweek* magazine profile of 10 cadets who had volunteered for service in Vietnam as “the soft-spoken, handsome son of a banker”—managed to make the Dean’s List at the same time that he pursued a variety of activities. He sang in the Glee Club and the Cadet Chapel Choir,



received an invitation to attend the Student Conference on U.S. Affairs, boxed in the Brigade Open (his fighting weight was 147 pounds), and served as head manager of the academy’s football team.

Quoted in a graduation-day article in the *New York Times* headlined “West Point Class of 1966 Eager to Fight,” Cadet Barksdale spoke for all of his nearly 100 classmates who volunteered for service in Vietnam: “I look forward to going to Vietnam. Every American has a definite commitment to go to Vietnam to do his part. I wish there wasn’t trouble there, but there is, and we have to do something about it.” The judge recalls that his class graduated in June, and “by early ‘67, classmates were dying in Vietnam.”

After completing airborne training at Fort Benning and Ranger training at Eglin Air Force Base and elsewhere, Lt. Barksdale’s next stop was Fort Hood, where he prepared a 55-man armored cavalry platoon for combat. With infantry, machine guns, M-79s, seven armored cavalry assault vehicles, three tanks, and a mortar, the platoon was, the judge recalls, “truly a combined arms team.”

Lt. Barksdale’s platoon was part of the 1st Squadron,

1st Armored Cavalry Regiment (1st Regiment of Dragoons), which had been organized in 1832 to fight in the Black Hawk War. Known thereafter as the “Blackhawk Regiment,” it is the oldest cavalry regiment in the U.S. Army and was the first to be completely mechanized. With 101 campaign streamers, the most of any regular Army unit, it was said at the time to be “the most battle-decorated unit in the Army.”

Arriving in Vietnam in August 1967, the squadron deployed initially in the southern part of I Corps in the coastal lowlands near Da Nang. Committed to battle two days after its arrival, the squadron was in the field operating against the enemy continuously thereafter. Much of its mission consisted of patrols that were not unlike those conducted in Iraq today, searching for an enemy that was seldom seen except when and where they wanted to be seen. Then, as now, explosives hidden in the roadways were a constant threat; on Sept. 13, 1967, a land mine exploded under Lt. Barksdale’s armored personnel carrier. The driver was killed outright, and every other man (including the platoon medic) was wounded—some severely. For his part in organizing a defense and aiding the wounded, Lt. Barksdale was awarded the Bronze Star with “V” device for valor. The driver, Pfc. Lawrence M. Svobodny, is memorialized not only on the Vietnam Memorial Wall in Washington, D.C., but also on a wall in Judge Barksdale’s chambers, where a rubbing of his colleague’s name taken from the wall hangs on the chamber’s wall. Next to the rubbing of Svobodny’s name hangs a rubbing from the Vietnam Memorial Wall bearing the name of Thomas J. Hayes IV, a West Point classmate, who was killed moments after rescuing two wounded men under his command. The judge describes Hayes as someone who had “unlimited potential”; one of the gyms at West Point is named for Hayes.

Even on the other side of the world, Lt. Barksdale had thoughts of West Point. When he learned that the Army-Navy game would be broadcast on the radio, he thought that getting up at 2 a.m. on Dec. 3, 1967, seemed well worth doing. His plans changed when Communist troops breached the wire at his troop’s base camp, opening fire with rocket-propelled grenades and running through the camp, throwing grenades onto the tents. Lt. Barksdale was in command of the defense that drove the enemy off and left a dozen dead on the wire. For his part in the fight, Lt. Barksdale was awarded the Silver Star.

From platoon leader, Lt. Barksdale moved up to executive officer of his troop (about 250 soldiers). Later, about halfway through his tour of duty, he was transferred to the staff for the 23rd (“Americal”) Infantry Division, where he served as an assistant division operations officer. Here he saw the war from a far larger perspective, but he voluntarily returned to combat unexpectedly in May 1968, when the Special Forces camp at Kham Duc was surrounded and attacked by large numbers of North Vietnamese regulars and Viet

Cong guerrillas. After the Americal Division inserted reinforcements, a volunteer was needed to fly in and obtain a map of their positions. Lt. Barksdale went and returned, but the Americal’s efforts were in vain, and the camp fell a day later.

Leafing through old photographs from Vietnam the judge remarks—to himself as much as to the interviewer—“He was killed. He was killed.” From his Class of 1966 alone, 30 men were killed in the Republic of Vietnam, the largest number for any West Point class in that war. A plaque bearing their names and the name of a classmate murdered in 1976 by North Koreans in the demilitarized zone is the first thing that one sees when entering the judge’s chambers.

Barksdale returned to the United States in July 1968. In addition to his Silver Star and Bronze Star for valor, he brought home a Purple Heart, a Bronze Star for meritorious service, and the Vietnamese Cross of Gallantry with a Silver Star for his combat operations with a South Vietnamese unit.

Oliver Wendell Holmes, in his famous “hearts touched by fire” Memorial Day address, said of his fellow veterans: “We admit that, if we would be worthy of the past, we must find new fields for action or thought, and make for ourselves new careers.” Barksdale’s search for a new field began immediately. While completing his military service as an ROTC instructor, he began studying law at night at the University of Akron. Upon separation from the Army in 1970 (with a final rank of captain), Barksdale came home to Mississippi and “home” to the University of Mississippi, where he completed his legal schooling. At Ole Miss he served as a member of the law journal’s editorial board, was selected outstanding graduate (he was also Phi Delta Phi’s national graduate of the year), and finished first in the Class of 1972.

Christmas of his final year was especially merry for Judge Barksdale; U.S. Supreme Court Justice Byron White had telephoned the day before with an offer of a clerkship. A year in Washington, D.C., left Barksdale with a profound and lasting respect for Justice White, whom he once described as “a national treasure, one of the greatest sons our nation has produced.” R.H. Barksdale, “A Tribute to Justice Byron R. White,” 107 HARV. L. REV. 3, 7 (November 1993). Justice White was also, the judge adds, “a *great* lawyer” and “everything a judge should be.”

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Upon completing his clerkship with Justice White, Barksdale returned to Mississippi and spent 17 years practicing law at the Jackson firm of Butler Snow O'Mara Stevens & Cannada. Despite a heavy professional schedule, the judge taught briefly at the Mississippi College School of Law and the University of Mississippi, and he worked tirelessly on behalf of the Arthritis Foundation, St. James' Episcopal Church (where he served as a member of the vestry), and St. Andrew's school. Barksdale also took an active interest in politics, especially in George H.W. Bush's 1988 campaign for President. When one of the state's electors had to be replaced, Barksdale was asked to step in, thus joining the elite club of those few thousand Americans who have ever voted directly for a President.

While in private practice, Barksdale handled a wide variety of cases but concentrated on commercial litigation. He came to believe that his experience could prove useful on the bench, and when the first President Bush asked the judge to serve his country again, he readily accepted. After a quiet confirmation hearing, Judge Barksdale was sworn in and began serving on April 1, 1990. He is fond of pointing out that the seat he holds was once held by the late John Minor Wisdom, thus making it "the Wisdom Seat." R.H. Barksdale, "Tribute to John Minor Wisdom," 20 Miss. C. L. REV. 235 (Spring 2000).

In the 17 years since he took the bench, Judge Barksdale has won a reputation for hard work, fairness, and careful attention to precedent and the record. An interviewer can manage to pry only a little advice out of the judge: At trial, the advocate must speak not only to the judge and the jury but also to the court of appeals. On appeal, issues must be clearly presented; the appellate judge "is not a knight-errant, roaming at will in pursuit" of error. *U.S. v. Brace*, 145 F.3d 247, 256 (5th Cir. 1998) (en banc) (Barksdale, J.) (quoting Cardozo). And, of course, the issues must be framed in a way that acknowledges the procedural posture; "Trial," the judge reminds the interviewer, "takes place in the district court, not the court of appeals. Preserve any issues in the district court." (More extensive advice can be found in his "The Role of Civility in Appellate Advocacy," 50 S. C. L. REV. 573 (Spring 1999).)

During the interview, the judge steers the conversation away from the law to people: he has the highest praise for his Fifth Circuit colleagues—both judges and staff. "Every person, in every position," he says with evident satisfaction, performs "superbly." The judge is especially effusive in his praise for the way the staff kept the busy court operating after Hurricane Katrina; last year the Fifth Circuit dealt with an average of 1,456 actions per panel—considerably more than the national average of 983.

In his prologue to *We Were Soldiers*, Col. Hal Moore writes that a "transcendent love came to us unbidden on the battlefields. ... We discovered in that depressing, hellish place, where death was our constant companion, that we loved each other ... as brothers."

Even after hanging up his uniform, Judge Barksdale devoted himself to the soldiers under his command. He served, for example, as chair of the Mississippi Chapter of the Vietnam Veterans Leadership Program, a network of successful Vietnam veterans who volunteered to assist fellow veterans in their efforts to build their skills, develop their careers, and establish small businesses. The judge stays in touch with many of the men who were under his command; one of his former troopers says: "Even today we consider him our platoon leader."

These days Judge Barksdale looks every bit the Airborne- and Ranger-qualified former boxer that he is, although by his own admission he is not entirely as lean as he was some years ago, when his schedule permitted him to train for and run in marathons. Looking back over his life thus far, the judge returns repeatedly to the influence of his family. His parents, he reflects, "were very bright and capable people—very talented. I wish I'd taken every bit of advice my dad gave me. He gave great advice. My mother, confined to a wheelchair the last 21 years of her life because of arthritis, was a courageous and remarkable lady, who was an inspiration to anyone she met." Although the judge's parents were never demanding—"they never pushed us, never told us when to be home, never asked if we'd done our homework"—they instilled in their six boys a love of family, education, sports, church, and excellence. And all six were proof of their parents' training: Jack, the oldest, had an outstanding career with IBM; Tom, two years younger, was a highly successful banker; the next child, Jim, founded Netscape and, later, the Barksdale Reading Institute at Ole Miss; the judge's younger brother, Bryan, is a cardiologist; and Claiborne, the youngest boy, is a lawyer who now heads the Reading Institute.

Gen. MacArthur's theme in his farewell speech was the famous West Point motto, "Duty. Honor. Country." "Those three hallowed words," MacArthur told the cadets, "reverently dictate what you ought to be, what you can be, what you will be. They are your rallying points." Duty, honor, and country have been Judge Barksdale's rallying points and certainly always will be. Long may he serve. TFL

Bob Frey practices at the Butler Snow firm in Jackson, Miss., where he concentrates in appeals, commercial disputes, and litigation. He received a B.A. from Furman University in 1981 and his J.D. from Vanderbilt University in 1984.