

Judicial Profile

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Hon. Fred Biery Chief U.S. District Judge, Western District of Texas

IT IS NOT difficult to get a glimpse of who Western District of Texas Chief Judge Fred Biery is. You can read about him in a *Wall Street Journal* article on federal judges who aren't afraid to include some humor in their opinions. Or you can read an article in the *Washington Post* about a presidential candidate who has made the

impeachment of Judge Biery (and elimination of the Ninth Circuit Court of Appeals) planks of his campaign platform.

But to really know Judge Biery, you need to encounter him in three settings—all of them courts of one sort or another: (1) as a competitor on the basketball court, (2) as a referee in the court of law, and (3) as a stoic in the court of public opinion.

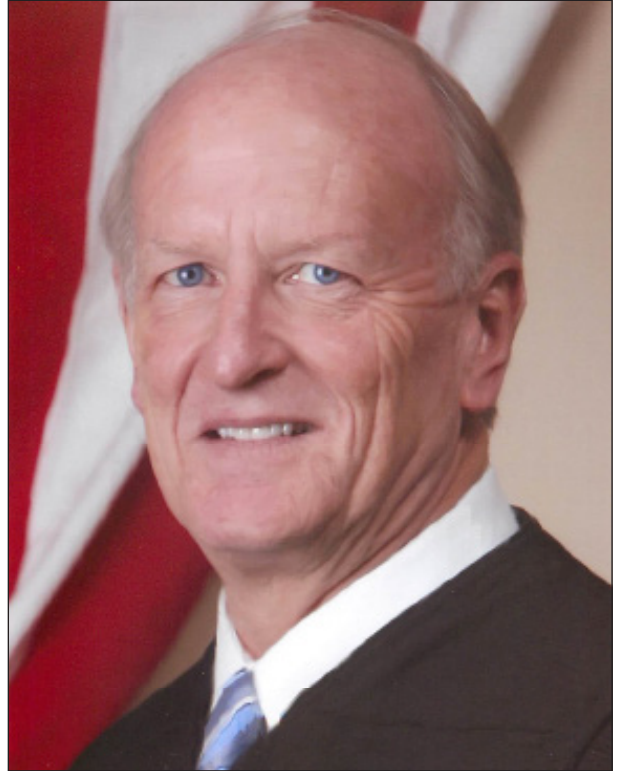
The Competitor

You learn from the judge's nontraditional résumé that among his "basic skills" is playing basketball with guys "half his age." A varsity basketball player at Texas Lutheran—where Judge Biery says he learned to be a judge by sitting on the bench a lot—he has not surrendered the ball to the passage of time. Walls both at his home and in his chambers display medals he has earned on the basketball court. Add them up and you realize he is an 18-time State of Texas gold and silver medalist in Senior Olympic basketball. A memento on his desk captures his desire to win in life, reminding him that, "You miss 100% of the shots you don't take."

Because Judge Biery lives in San Antonio, Texas, home of the National Basketball Association's Spurs, you might assume he would be a rabid fan of the team. Not so fast. As he explains, he spends all day refereeing in the courtroom. He is too much of a competitor at heart to follow his courtroom duties by spending his evenings watching someone else play ball.

The Referee

As chief judge for the Western District of Texas, Judge Biery hears cases and also has oversight responsibilities for more than 1,000 court-related staff, a \$100 million budget, and seven divisions covering



more than 91,000 square miles. He recalls that, when he became chief judge in 2010 at the age of 62, and after 32 years of judicial service in Texas and the United States, his father (a retired attorney) put his hands on the judge's shoulders and announced, "Son, you are a man now." It's a good thing he was named chief judge.

If you end up before him as a criminal defendant, Judge Biery advises that the acronym to remember is "GAS"—that is, he explains, almost all who appear before him are there because of greed, addiction, or sex, or all three. But if you wish to appear before him as an attorney for a party, the admonitions are quite different. He advises you to do three things (1) be on time, (2) proofread your submissions, and (3) tailor your questions to the education and background of the witness.

Frequent readers of Judge Biery's opinions know that, no matter how strictly he enforces the rules in his courtroom, he is not afraid to use humor sometimes to help make a point. One such opinion mentioned in the *Wall Street Journal* article includes a

history lesson about San Antonio. The opinion had so many literary references that Judge Biery ended up including credits for the briefing attorneys and clerks in the concluding footnotes.

His humor, however, should not be mistaken for an “anything goes” attitude. In a recent plea hearing, he warned the defendant that, when it came to sentencing, those who were given every opportunity in life to take a better path should not be surprised by the severity of the sentence that sometimes might follow when they nonetheless victimized others.

The Stoic

You now know Judge Biery for his competitive spirit on the basketball court and for the way he forces himself to set that aside to serve as the fair, firm, and occasionally sardonic referee in the court of law. But how does such a person respond when he is the subject of repeated public political attacks?

Having earlier served 16 years as a county, district, and appellate judge in Texas—where members of the judiciary are elected—he would certainly be capable of presenting his case in the court of public opinion. Instead, the judge remains largely silent, commenting only that his opinions speak for themselves. So do not expect him to appear on talk shows or submit to lengthy interviews. He raises no defense to the allegation that he is hostile to religion. (An opinion footnote bemoaning the demagoguing against the judiciary is fair game, however.)

The judge’s biographical information provides examples of work with his Texas Lutheran and Southern Methodist alma maters and their ministries that he could easily cite as proof that his opinions are intended to preserve religious freedom rather than diminish it. Or he could issue a press release noting the frequency with which he interlaces biblical references into his opinions, or note that he persuaded the parties in a particularly contentious case involving school prayer to meet and reason together, finally reaching an agreed-upon resolution as a role model for the students.

But Judge Biery does no such public relations work. Setting aside the inner competitor, as well as the referee’s temptation to blow the whistle and call a foul, he instead is publicly the stoic. Official silence is his weapon. How does he resist the urge to do otherwise? His threefold answer offers direction for other judges facing criticism for decisions they believe the law compels them to make.

First, like any good basketball player, he notes that “those are the rules” (in other words, judges do not get involved in political battles). Second, he appeals to the judicial canon of ethics, which calls upon judges to disregard both public praise and criticism, and, instead, to simply apply the law and render justice, without regard to the status of the parties before them. The third explanation is one that he does not volunteer but is something you realize upon visiting



Deer in Judge Biery’s backyard.

his backyard—his sanctuary that is full of gardens, whose products he can turn into a home-cooked meal. Even though many of his neighbors have gone to great lengths to get rid of the deer that come to visit, upon seeing Judge Biery these shy creatures approach him, knowing that he is a friend and has nothing more sinister in mind than feeding them. Sitting in a chair overlooking the gardens, in front of a small fire, listening to the birds and watching the deer, Judge Biery finds that the worries of the world and its political popularity contests grow strangely dim.

Post-Game Wrap-Up

Some will not have the time to get to know Judge Biery by reading the articles in *Wall Street Journal* and the *Washington Post* or by visiting him on the basketball court, in the court of law, and in the court of public opinion. Those who are in such a hurry can take a look at the advance obituary the judge has written to learn about the two foundations of his approach to life: family and humor.

Rather than detailing his 33 years in various judicial positions, his obituary identifies him as a father of two daughters. The description is followed by a four-line poem about life’s course, and concludes with these words: “P.S. I told y’all this was going to happen.” Thus, it comes as no surprise that Robert Pitman, the U.S. attorney for the Western District of Texas, recalls that “having my swearing-in ceremony conducted by Chief Judge Biery was such an honor—it was equal parts patriotic, sentimental, and, largely at my expense, irreverent. The judge takes serious things seriously, but puts the rest in proper perspective.” **TFL**

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