



Hon. David C. Bury

U.S. District Judge, District of Arizona

by Greer Barkley

Greer Barkley has served as the law clerk to Hon. David C. Bury from the inception of his judgeship in 2002. Formerly, she clerked from 1994–2002 for Hon. Alfredo C. Marquez, U.S. District Court Judge, and from 1992–1994 for Hon. Earl H. Carrol, U.S. District Court Judge. She obtained her J.D. from the University of Arizona College of Law in 1991.

On March 15, 2002, President George W. Bush appointed Hon. David C. Bury to the United States District Court for the District of Arizona.

David C. Bury was born in Tulsa, Oklahoma in 1942. He decided to attend law school after taking an undergraduate class in business law at Oklahoma State University. He was the first in his family to pursue a legal career and worked during law school selling Fuller Brush products door-to-door. He chose the University of Arizona law school because of its stellar reputation and, he will laughingly admit, because of the Arizona climate. He describes being mesmerized by the cacti and palm trees, so he packed up his Volkswagen Beetle car and moved to Tucson, Arizona.

Judge Bury graduated in 1967 and began practicing law with Robertson, Childers, Burke, and Drachman before starting his own firm, Everett and Bury, which would later become Bury, Moeller, Humphrey, and O'Meara P.C. Primarily, he practiced insurance defense and litigation, excelling at presenting difficult issues clearly and concisely to juries. His trial work was extensive. He was one of the youngest lawyers ever inducted into the American College of Trial Lawyers in 1986.

In 1974, he met and married his wife, Debby, a Tucson native. They have three children and nine grandchildren.

I saw David Bury's trial expertise first-hand in 1995, when I was clerking for another district court judge. He successfully represented Walmart during a trial involving the rape of a young girl by a store security officer. I was very impressed by his trial acumen, including how he handled the sensitive nature of the case and the victim.

By 2001–2002, Judge Bury became interested in doing something different and was honored to be considered for a judicial appointment. I was honored to become his career law clerk. We came from different cultural, social, and legal backgrounds, but the differences have complimented our working relationship because Judge Bury is a listener and thoughtful decisionmaker. He welcomes and respects other opinions. That is why he is such an exceptionally good judge.

Surprisingly, the criminal docket, rather than the



civil docket, has been the most meaningful judicial work for Judge Bury. He engages with each defendant's personal story. He understands his obligation to enforce the law fairly and justly to dissuade criminal conduct, but he also believes people can accept responsibility for their actions and learn from their mistakes to become productive members of the community. Judge Bury once received a thank you letter from a defendant after sentencing for the "thoughtful words spoken to me at my sentencing ... and for showing me there still remains a human side in our judicial system, at least in your courtroom."

Judge Bury administers justice without regard for social position, public opinion, or even his own opinion. He presided over a jury trial convicting former Arizona Congressman Rick Renzi of public corruption and money laundering, working overtime keeping up with voluminous filings from out-of-town Washington, D.C., attorneys addressing complicated First Amendment political speech and wiretap issues. The judge denied Renzi's request for probation and sentenced him to prison. After the conviction and sentence were affirmed on appeal, Renzi was pardoned by President Donald Trump.

In addition to the Renzi case, Judge Bury presided over numerous other high-profile cases, including an immigration/murder case involving multiple defendants who crossed illegally into the United States as a rip-crew to steal loads of marijuana from smugglers. Instead, they encountered and exchanged gun fire

with a Border Patrol tactical unit, killing Agent Brian Terry. Subsequently, it was forensically discovered that the gun used to kill Agent Terry was from the government's clandestine operation Fast and Furious. The trials stretched over multiple years as the codefendants were apprehended in Mexico, arrested, and extradited—raising interesting *Miranda* issues.

Judge Bury also granted a writ of habeas corpus, resulting in the release of a 34-year-old woman, who was convicted of murder at the age of 14, because her trial was fundamentally unfair. He found evidence was improperly precluded at trial that would have corroborated her claim she killed the victim in self-defense.

In civil cases, Judge Bury has ordered the government to reconsider how much land to designate as critical owl habitat because its limited designation was nonsensical, and he once ordered cattle off 140,000 acres of national forest land. He issued, then ultimately lifted, a preliminary injunction allowing the state to implement Proposition 200, requiring proof of citizenship to vote, mandating voter identification, and requiring state workers to demand proof of legal status from applicants for public benefits because the law applied only to benefits already denied noncitizens and only to state benefits, not federally mandated benefits. During the “Occupy” movement, he held that city regulations unconstitutionally targeted homeless people by limiting their access to public spaces but found the city was not without authority to remove homeless living pods from city sidewalks. Judge Bury also ordered Border Patrol to give immigrant detainees food, blankets, showers, and at least sleeping mats if they were held at border patrol stations for more than 12 hours before being transferred to detention facilities.

As a federal judge, Judge Bury presides over naturalization proceedings, and when a glut of Operation Streamline criminal proceedings threatened to eliminate courtroom availability for naturalization proceedings, he insisted they remain there because they are important events in the lives of participants and their families.

Judge Bury is a hard worker and team player. He took the bench when the District of Arizona had the second highest caseload of any district in the country. In 2002, the addition of his and one other judgeship brought the federal bench in Tucson to five, but the district remained overwhelmed with criminal cases increasing 65 percent between 2009 and 2011. During the first Obama administration, the Department of Homeland Security adopted policies to criminally prosecute anyone unlawfully crossing the border. Federal prosecutors were added in Tucson, but no new judges were authorized. President Obama was slow to name jurists to the federal bench, and the Senate Judiciary Committee was reticent to confirm them. On Jan. 8, 2011, Chief Judge John M. Roll was shot and killed when he went to a community event in Tucson to thank Congresswoman Gabrielle Giffords for supporting nominees for appointment to the Arizona federal courts. With the death of Judge Roll, the District of Arizona lost an exemplary chief judge and the Tucson bench was reduced

to four active judges and one senior judge. By mid-January, a judicial emergency was declared suspending the Speedy Trial Act for approximately one year. These were difficult times for the U.S. District Court for the District of Arizona—especially for the Tucson judges, who lost a distinguished colleague and dear friend.

In 2012, Judge Bury took senior status, opening the door for President Obama to appoint Hon. James A. Soto, who was confirmed in 2014. Judge Bury continued to carry a regular full case load until recently when he stopped trial work and began closing cases, but not taking new ones. It is important to Judge Bury that he does not leave the bench with any work pending.

This brings me to *Fisher/Mendoza v. TUSD*, a historic school desegregation case that was decided by Judge William C. Frey (1919-1979), who ordered a bussing plan to desegregate TUSD, one of the largest school districts in the state. Judicial oversight commenced and then continued under two other federal district court judges. When Judge Bury took the bench in 2002 and found this case pending on his docket, he firmly believed that the judiciary should not be running school districts, and he committed to close this case. He did so in 2006, but the case was remanded on appeal with a directive for judicial oversight until the court could find that the school district had in good faith attained unitary status to the extent practicable. Through the entirety of his judgeship, Judge Bury followed this directive and oversaw the development and implementation of one of the most ambitious plans in the country for improving a school district for the benefit of its minority students. He entered judgment and closed the case on July 20, 2022.

This case epitomizes Judge Bury's judicial tenure because it reflects his dedication to the law and his commitment to public service. His commitment to both of these values dissuaded him from reassigning the case to another judge as he wound down his case load. When judgment was entered, he thanked me for my work related to this case. He is at his core, gracious, humble, and generous in praise of others.

In summary, Judge Bury is prepared for every hearing, understands every subtlety of an issue, and asks pointed questions that enable him to render a timely and clear decision afterwards. Attorneys practicing before him frequently say they enjoy appearing before him due to both his demeanor and intellect. In 2019, he received a letter from an attorney who, upon retirement, said his most enduring smile-inducing memories centered around his trial experiences because of superb judges, including Judge Bury. He wrote: “Top to bottom, the Renzi trial remains my single most favorite trial experience—and I count many valuable lessons learned from appearing before you that I will not forget.” In 2019, Judge Bury was recognized by the defense bar at the Arizona Defense Attorneys Judicial Reception for his exemplary service as a member of the federal judiciary. It has truly been a privilege and an honor to be his law clerk through his tenure on the federal bench. ☺