

My Year with Judge Rhesa H. Barksdale

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The day I met Judge Rhesa H. Barksdale changed my life. I received an invitation to interview for a federal judicial law clerk position in his chambers in September 2007. I had just started my final year at the University of Mississippi School of Law, and knew that a clerkship on the U.S. Court of Appeals for the Fifth Circuit would be a marvelous opportunity.

Naturally, my hopes of being hired were guarded. I was competing against hundreds of highly qualified applicants from top law schools all across the country. Still, as an immigrant who came to the United States from Ukraine in 2003, and a future attorney, I was thrilled to have an opportunity to meet and visit with a U.S. Circuit Court of Appeals judge.

THE INTERVIEW IN BARKSDALE CHAMBERS

The fateful day came, and I drove to Jackson to meet with Judge Barksdale. My husband did not calm me down any by telling me the night before, “Well, it’s only the most important interview of your life.” Upon arriving, I visited with his Judicial Assistant Jonna Welch, and then the Judge came out and invited me into his office.

The interview went smoothly. The gentleman that he is, Judge Barksdale was mostly interested in my personal story. He even asked me to repeat the name of my Ukrainian hometown, Chkalovo, so he could pronounce it as well. Due to my knowledge of Judge Barksdale’s education at West Point and his decorated service in Vietnam, it also came as no surprise that he wanted to talk about my recently completed summer internship with the U.S. Army J.A.G. Corps in Kaiserslautern, Germany.

Judge Barksdale introduced me to his four clerks, three of whom I already knew from my Mississippi Law Journal days. He took me back to his office, where both he and Jonna stressed how important it was that the clerks get along with each other. The Judge said he liked to hear laughter in his chambers. I did not realize the full value of collegiality in Barksdale chambers until I started working there one year later.

With that, I thought Judge Barksdale would wish me luck and tell me to expect a call about his decision. Instead, to my amazement, he offered me the position, and, of course, I immediately and enthusiastically accepted.

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For additional tributes to Judge Barksdale by Chief Judge Edith H. Jones, Judge E. Grady Jolly, Professor David W. Case, Judge Leslie H. Southwick, David E. Kendall, Professor Christopher R. Green, and Professor Andrew C.W. Lund, see 79 Miss. L.J. 219-301 (2010).

THE WORK IN BARKSDALE CHAMBERS

I reported for work in the Barksdale chambers on August 25, 2008, after summering with Steptoe & Johnson law firm in Washington, D.C. While driving to work, I wondered how I was going to fit in. By then, I knew that my fellow law clerks, Kyle Wallace, Lucien Smith, and Tom Pohl, obtained their undergraduate degrees from Stanford, Harvard, and Princeton universities, respectively. Kyle and Lucien were coming from the University of Virginia School of Law, and Tom from the Notre Dame Law School. My undergraduate degree was from Kherson State Pedagogical University in Kherson, Ukraine. When my clerkship started, I had only lived in the United States for five years.

Any trepidation quickly vanished when I met Kyle, Lucien, and Tom. All three of them had outgoing personalities, and over the course of the year, we became close friends. We worked hard, but we also had fun. Sometimes we were laughing so loudly that I was wondering if the Judge's wish of hearing laughter in his chambers was taken to a new level.

Judge Barksdale's experience in hiring clerks served us all well, and only through working with my fellow clerks did I fully understand his mantra that happy chambers are more productive chambers. If there had been a conflict among us, it would have been impossible to maintain the quality of our work product, which was, without question, the top priority.

On our first day, Judge Barksdale summoned us for a "pep talk." Each of us was issued a standard operating procedure manual, known as the SOP. It was painstakingly assembled over the years by the Judge and his staff, and was modified each year the Judge served on the bench. By the time we started clerking, it had evolved into a two-inch thick encyclopedia for Barksdale clerks. The SOP contained detailed step-by-step instructions on how to proceed with various types of work assignments, including, for example, how to write opinions in which an oral argument was heard; what to do with motions and petitions for rehearing; and how to prepare a bench memo or a case summary, and explaining the difference between the two.

The SOP contained a wealth of other important information such as the Judge's stylistic preferences; how to fix common computer problems; important telephone numbers; bailiff's duties; and even some of the Barksdale chambers' traditions. Looking back, it is hard to overstate the value of the SOP. It contained answers to virtually any questions we had, and it made the learning curve so much easier.

During his orientation, the Judge emphasized the important nature of the work we would be doing. People's property, and even lives, were at stake. He stressed the importance of confidentiality. Sometimes, he said, the work would become tedious, but we were still expected to do it. Needless to say, we were to handle our personal problems outside the chambers, and, of course, getting along was paramount.

As mentioned, before starting the clerkship with Judge Barksdale, I worked for Steptoe & Johnson law firm during the summer of 2008. The first day there was “orientation” day. Summer associates were shown around, introduced to different people, and learned how to select work assignments. The first day at Steptoe was eventful, but everything took place at an even pace.

The first day in Barksdale chambers was nothing like Steptoe. After meeting with the Judge, we were thrown into the waters of the appellate process, to sink or swim. Each of us had to prepare a case summary for the next court sitting three weeks away, review an opinion from other chambers, read petitions and motions, and, of course, try to find all the answers in the SOP. Each assignment had a deadline, and we learned that deadlines were important in Barksdale chambers.

The work kept piling up, and I began wondering if the Judge may have made a mistake of hiring someone who could not do it. I was relieved to hear the Judge tell us that we would not have been hired if we could not handle it, and I was hoping the Judge was right.

After one week into the clerkship, things started clearing up. We became conversant in the SOP lingo and learned the basics of Word Perfect. After having done each type of an assignment at least once, we became even more proficient. A few months later, we started doing our jobs well, or so I thought. By March, no assignment was too tough to handle. The SOP, of course, was always there for us, and so were the Judge and Jonna.

In addition to handling daily matters, an active Fifth Circuit Court judge goes to seven or eight sittings of court per year. Appeals are heard by three-judge panels, and each panel hears about twenty matters per sitting. Normally, the three judges on each panel divide the workload among themselves and prepare bench memos for their portion of cases. Bench memos are written by clerks, who carefully read the briefs for each side, research and analyze the issues, check the record, and usually recommend an outcome. The three judges often “share” their bench memos with each other. Each judge’s clerks then double-check the research and analysis in the bench memos that came from other chambers.

Judge Barksdale is one of the few judges on the Fifth Circuit who does not share bench memos. His clerks prepare all bench memos from scratch. The Judge’s approach of doing things from the ground up reflects his character and tremendous work ethic. His approach meant that he worked long hours and came to work on weekends, but he would not take a chance at compromising his judicial independence. That is Judge Barksdale in a nutshell.

Judge Barksdale’s approach was to have his clerks deal with all phases of the appellate process. He told us that we were there to learn as well as do the work, and he made sure that we absorbed as much as possible. Everything that went through his chambers, such as motions, petitions, and briefs, came through us first. We were exposed

to every aspect of the Judge's work, and that made our clerkship experience even more invaluable and unique.

When the Judge asked me during the interview why I wanted to clerk, I told him I wanted to learn from the best in our profession. Judge Barksdale, who clerked for U.S. Supreme Court Justice Byron "Whizzer" White, is among America's judicial elite. It always amazed me to see his editing marks on drafts of opinions we submitted. In addition to making opinions better stylistically and substantively, he would sometimes rearrange sentences, paragraphs, and even pages, and invariably make the opinion flow better. It was like observing an artist, who already had a vision of the artwork in his head, and was now putting the pieces of it together.

Judge Barksdale is a brilliant jurist. No detail was too small for him to miss, and no issues were too complex for him to tackle. Before our last court sitting in New Orleans, I was assigned to prepare a bench memo. The parties, as usual, submitted their briefs, framing the issues and advocating their clients' positions.

While preparing the bench memo, I realized that the law the parties researched did not quite apply to the facts as neatly as the parties wanted the court to believe. This commonly occurs because the law does not always provide a clear answer to every question that arises. Judge Barksdale immediately discerned the problem. The parties failed to discuss a related, but distinct and complex question of law applicable to their dispute. The Judge was, of course, absolutely correct. He never failed to enlighten us with his judicial intellect, and, no doubt, he will continue to do so in the future.

THE FUN IN BARKSDALE CHAMBERS AND BARKSDALE TRADITIONS

The perks of clerking for a U.S. Circuit Judge for the Fifth Circuit Court of Appeals include the trips to New Orleans for court sittings. We usually arrived on Sunday, and worked three or four days. Other than enjoying the city and its eclectic cuisine, we observed the Judge and his colleagues on the bench, and watched some of the most skillful, and not so skillful, appellate litigators appearing before the court. It was especially nice to meet and compare notes with law clerks from other chambers, and also observe the judges interact with each other.

Before oral arguments, we always conferred with the Judge on the matters scheduled for that day. To prepare for that conference, we read all the bench memos compiled in the "bench book" prepared by our chambers. The Judge, of course, also read the parties' briefs and record excerpts. Each of the clerks was expected to comment on each matter, and say more than just "I agree with party X."

The Judge wanted us to read all bench memos, including those we had not worked on, because he wanted every matter looked at from as many different perspectives as possible. The conferences before oral arguments were an intellectual exchange at its finest, and each clerk had a "warm glow" moment, when a point we had just raised in chambers was brought up by the Judge during the subsequent oral argument.

Needless to say, our trips to New Orleans were not all work. Many times in the evenings after work, we became epicureans. Traditionally, one dinner during each court sitting was set aside as “chambers’ dinner.” It was an opportunity for us to visit with the Judge, his delightful wife Claire, and Jonna, outside the chambers. Our spouses or “significant others” were also welcome. The Judge was always a gracious and skilled host, and those occasions never ceased to be fun. After the dinner, as we parted ways with the Judge and Jonna to see some more of New Orleans, Judge Barksdale usually accompanied his farewell with a half-joking, “Don’t get arrested.”

Our last court sitting was also Judge Barksdale’s final sitting as an active judge. Knowing the Judge’s “tradition” of coming to New Orleans on Sundays and having dinner with Claire at Galatoire’s, his brothers and other family members surprised him by coming there ahead of time, and donning masks so that the Judge would not immediately identify them. Judge Barksdale told us afterwards that he thought the people in the masks looked strange, and he did not want to sit close to them, until he recognized one of his brothers. We saw the Judge after the surprise dinner, and he was delighted with his family’s visit.

The next morning, Judge Barksdale’s family came to court to observe the Judge preside. Before oral arguments began, the Judge announced that it was his last time to sit as an active judge, and he recognized his family in the courtroom. He said he hoped his family was there not only for their love for him, but also due to their respect for the rule of law. The Judge then proceeded with the court’s business with his usual aplomb.

We saw the Judge’s family in the hallway after the oral arguments were completed, and they were enthusiastically proud because “Rees” was “so good.” We were pleased that everyone could share the culmination of Judge Barksdale’s nineteen years of service as an active judge.

The fun in Barksdale chambers was not confined to the trips to New Orleans. Birthdays were big, as were “Barksdale traditions.” One such tradition is the annual Barksdale clerks’ reunion. It is held each September, right after the new Barksdale clerks arrive, so that the former clerks can meet the new ones, and everyone can catch up. Another tradition is chambers’ lunch at the Mississippi State Fair each October. Everyone has “chicken on a stick,” and afterwards, the clerks, if willing, are encouraged by the Judge to compete in scaling a rock climbing wall, usually wearing suits.

In December, Judge Barksdale invites all current and former clerks to Jackson for an annual Christmas luncheon at a local restaurant. The current clerks are also invited to the Judge’s home for a Christmas gathering. One tradition was unexpected – on the first warm and sunny Friday in the spring, the Judge suggested that we go home after lunch, “work permitting.” Also, on each clerk’s last day on the job, the Judge takes out the entire chambers staff for lunch.

The most memorable Barksdale event for me was the farewell dinner at the Judge’s home in July. We all had only a few weeks left, and most of our work was done.

Throughout the year, we worked hard, had fun, and learned about each other's personalities. By that time, we, the clerks, had become fast friends, and Judge Barksdale and Jonna had become our "parent" figures. Set in the Judge's Belhaven home and completed by a delicious meal prepared by Claire, it was more than a Barksdale chambers' dinner . . . it was a Barksdale chambers' *family* dinner.

THE "FIRSTS" AND "LASTS" IN BARKSDALE CHAMBERS, AUGUST 2008 – AUGUST 2009

On our first day at work, we learned ours was the last year the Judge would be serving on active status. He elected to take senior status on August 8, 2009, his sixty-fifth birthday. Accordingly, the year from August 2008 to August 2009 was one of many "lasts." It was the last year Judge Barksdale worked in his active-judge's chambers in New Orleans; the last year he worked on death-penalty cases; and the last year he had four, rather than three, law clerks to help him with his caseload.

But the year was also one of many "firsts." For the first time since Judge Barksdale took the bench in 1990, one of his law clerks, Tom Pohl, and his wife Carol, had a child, Patrick Joseph Pohl, born *during* the clerkship. The Judge affectionately called Patrick his first "Chambers' Grandbaby." The day Carol was giving birth, the Judge took us to the River Oaks Hospital to provide moral support. Looking at how happy the Judge was to see Tom come out holding Patrick, one would never guess the Judge was not a blood relative.

Further, Judge Barksdale's first grandchild, Biven Barksdale Patterson, was born in May 2009. Coincidentally, Patrick and Biven were born two weeks apart, both weighing over nine pounds. When Theresa, Judge Barksdale's daughter and Biven's mother, brought Biven to the chambers, we, of course, were not surprised to see him wear a West Point footie, the Judge's present.

From a personal standpoint, it was the first time a Barksdale law clerk became an American citizen during a clerkship. On that highly anticipated day, December 4, 2008, I e-mailed the Judge to thank him for giving me a day off to go to Columbus, Mississippi, to take my citizenship oath. In reply, the Judge wrote a warm note, as usual, putting words he wanted to emphasize in all caps, "ALL of us are so very proud of, and happy for, YOU. Have a wonderful, blessed citizenship day. AMERICA will be far better with you as a citizen." My becoming a United States citizen while clerking for Judge Barksdale could not have happened at a better time, because there is no better example of a United States citizen, and an American patriot, than Judge Barksdale himself.

What I learned from Judge Barksdale as an accomplished professional is invaluable, but getting to know Judge Barksdale as a person is a treasure I will carry through my whole life. He was patient when I made mistakes, and always voiced his appreciation when I did something well. He took his personal time to help me with my career advancement. He was there for me when I needed his advice, and he never asked for anything he was not doing himself.

I will always be grateful to Judge Barksdale for the opportunity he gave me. I hope his taking senior status will now give him more time to interact and change the lives of young people the way he changed mine—by becoming an inspiration and a role model. In addition to numerous career opportunities a clerkship offers, my clerkship in Judge Barksdale’s chambers gave me lifelong friends and wonderful memories, but more than anything, it gave me the honor of working for a man of exceptional character and integrity—Judge Rhesa H. Barksdale.