

Judicial Profile

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Hon. Mark E. Fuller Chief U.S. District Judge, Middle District of Alabama

CHIEF U.S. DISTRICT Judge Mark E. Fuller is almost embarrassed to admit it — in fact, he ducks his head down slightly as he says it, recognizing that it has become a veritable lawyer cliché by now — but one of his favorite books is *To Kill a Mockingbird*, the classic coming-of-age story set in the fictional town of Maycomb, Ala.

But unlike most fans of Harper Lee's seminal work, the novel resonates with Judge Fuller for a very personal reason — his late father was, in many respects, the Atticus Finch of Enterprise, Ala., the small southern town from which Judge Fuller, and several generations of the Fuller family, hale. Judge Fuller's father — an attorney who was passionate about his job — “was a very hard working, self-made, honest, highly motivated person,” Judge Fuller notes, a man who, despite growing up poor and on a farm, “wasn't interested in becoming a millionaire.” Although Judge Fuller's father was a much admired attorney, a life in law for Mark Fuller was not, in fact, preordained. Indeed, Judge Fuller first thought he would become a doctor, given that he had always gravitated toward mathematics and science while in school, and, as Fuller sheepishly admits, he “was always a skinny child,” who wasn't particularly athletic. In order to obtain hands-on medical experience, Judge Fuller worked in a hospital's surgical unit assisting the scrub nurses while he was enrolled at the University of Alabama. In the end, however, Fuller decided against a medical career, changing his major from chemistry and mathematics and earning a noless-daunting degree in chemical engineering.

Although he was never pushed to enter the legal profession, Judge Fuller decided to go to law school at the University of Alabama, having quickly found that his engineering degree was both a burden — he had little research and writing experience — and a blessing that gave him the ability to think through complicated issues in a logical manner. After law school, the freshly minted attorney returned to Enterprise to join his father's practice, where, he says, the training style was “sink or swim.” Indeed, Fuller was assigned to his first



trial right after he passed the Alabama bar, and he vividly recalls being handed the case file on Friday only to be told that he had to be picking a jury on Monday. The pressure was especially overwhelming in this particular case — it was the retrial of a case that Judge Fuller's father had originally won but had been reversed on appeal. The case did not go well for the younger Fuller. Although it was a relatively simple auto accident case, the young attorney neglected to argue contributory negligence — a move Fuller regrets to this day. He lost the case and marched back to the office with a head full of steam — furious with his father for handing him his first trial at the last possible moment and concerned that his father would be just as angry with him for losing the case. But when Fuller told his father about his failure to raise a critical defense, his father shrugged it off, assuring him that he would “never forget to do *that* again.” That lesson has remained with Judge Fuller to this day.

Judge Fuller practiced law with his father for 11

years, specializing in civil litigation, specifically insurance defense work. The judge also served as a part-time district attorney while working at the firm, later becoming chief assistant district attorney of the 12th Judicial Circuit in Alabama. Within a year of taking that position, he became the district attorney for the circuit, and, in 2002, within five years of rising to that position, Fuller was nominated by President George W. Bush to the U.S. District Court for the Middle District of Alabama. Judge Fuller currently serves as chief district judge of the district.

Fuller's background in criminal law has been a great help to him in his new role. For example, in *United States v. Davis*, 354 F. Supp. 2d 1271 (M.D.

Ala. 2005), the judge was faced with a tricky issue: When does a police officer have reasonable suspicion to detain a suspect, and when has the officer stopped someone based simply on the person's appearance and skin color? In *Davis*, the police stopped two young African-American men clad in football jerseys as they walked down a street in Montgomery, Ala. Just prior to the stop, the police officers received a radio report advising them that a man had been robbed by six to eight African-American males, and that the victim had been selling jerseys on the side of the road at the time. However, said the court, the police

lacked any knowledge from any source regarding (a) the robbery suspects' height, weight, skin color, clothes, or any other identifying features; (b) whether the suspects had been seen carrying anything in their hands; (c) the quantity, quality, color, type, or other descriptive features for the jerseys stolen, and how they were packaged at the time of the theft; (d) whether the victim or any witness saw any of the suspects wearing one of the stolen jerseys; (e) the quantity and type of gun(s) used in the robbery.

A pat-down search of one of the detained suspects led to the discovery of a gun and drugs. (Although the officers excluded the man as a suspect in the reported robbery before transporting him to the police station, the contraband discovered in his possession led to

his prosecution by authorities.) The magistrate judge initially assigned to the case granted the defendant's motion to suppress the gun and drugs that had been found, ruling that "the fact that the [defendant] and his companion fit the reported description of the robbery suspects as 'young black men' cannot create the degree of reasonable suspicion necessary to warrant

a *Terry* investigative stop." Fuller adopted the magistrate judge's report and recommendation in full and published the resulting opinion in the hope that law enforcement would heed his warning regarding the legal boundaries the police must obey.

According to Elizabeth Adamo, who was a law clerk



Chief U.S. District Judge Fuller with three former law clerks — (l to r) Elizabeth Adamo, Jerusha Adams, and Barbara Wells.

for Judge Fuller last year and is currently an associate at Ropes & Gray in Boston, Judge Fuller "is always prepared, always fair, and perhaps most important, always willing to make the decision, even when it is a tough call." The judge also "has an amazing presence in the courtroom — without being overbearing, he is in control at every moment," says Adamo. "The most striking example of his control in the courtroom that I observed was a civil trial in which a prisoner represented himself pro se. During the course of the trial, the pro se prisoner-plaintiff conducted a direct examination of the warden at his prison, whom he had accused of abuse. Clearly this situation could have gone downhill fast. But Judge Fuller was able to keep the situation under complete control, while at the same time ensuring the pro se litigant received his day in court."

Judge Fuller says that his transition from advocate to judge has been difficult, and he laughingly admits that he still has a hard time fighting the urge to raise objections during court proceedings or to plan trial strategies along with the attorneys. The desire to jump into the fray and present a case cannot simply be "turned off," he notes. Rather, "you have to let it burn itself out." Nevertheless, Judge Fuller appreciates the freedom his position affords as well as "the ability to do what *you* think is the right thing to do." On the other hand, he finds that the life of a judge is definitely "more isolated" than that of an attorney, and, according to Judge Fuller, he had "very little understanding of what federal judges actually *did*" before he accept-

ed his current job. Judge Fuller also notes that he is very fortunate to have had many terrific staff members and law clerks helping him along the way.

Former clerks are equally appreciative of Judge Fuller. “When I think of Judge Fuller outside of the courtroom, I immediately think of a mentor,” says Adamo. “Judge Fuller viewed his clerks not just as employees, but also as people to whom he had a duty to teach. At every step in a case, Judge Fuller made sure to share his knowledge and experience with me; he made sure that after every assignment I completed for him, I came away a better attorney.” On a personal note, Adamo recalls, “When I think of Judge Fuller in chambers, I also immediately think of what a joy it was to go into work every day. Chambers was like a family — I looked forward to going to work each day to see the people I worked with. Judge Fuller really set that tone and fostered that sense of a court family, a home away from home. He was fond of saying that we didn’t work for him, we worked with him.”

Indeed, family is a theme that Judge Fuller returns to time and time again. Spending time with his wife,

a full-time homemaker, and their three children — currently in the 12th, ninth, and third grades — is one of his favorite activities. In addition to displaying photographs of his family, Fuller’s office also contains memorabilia from generations of the Fuller family. On the wall hangs a black-and-white photograph of Fuller’s grandfather, Luther Phillips, standing beneath a bridge. It turns out that Phillips was an excellent baseball player — he even had a chance to play with the Chicago Cubs — but, in deference to the needs of his family, Phillips ended up a manual laborer, building bridges and working as a farmer. Beneath the picture is a letter of recommendation written by one of Phillips’s former employers. In the letter — aged and worn, yet carefully preserved by Judge Fuller — Phillips is praised throughout and described as “honest and straightforward in every respect” — a description that clearly fits his grandson as well. **TFL**

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