

# UNITED STATES MAGISTRATE JUDGES— Middle District of Alabama

By Rudy Hill

EDITOR'S NOTE: U.S. Magistrate Judges have become increasingly important in recent years, handling many cases from start to finish. We are profiling the Magistrate Judges, district by district, starting with this issue of *The Alabama Lawyer*. We thank **Rudy Hill** for interviewing the Magistrate Judges from the Middle District and preparing biographical sketches of each of them.

The general feeling among litigators on the Editorial Board is that lawyers who practice in federal court are quite familiar with the Article III judges across the state, but that most of those lawyers only know their local U.S. Magistrate Judges. We hope that these profiles are both helpful and interesting. Thank you, judges!

## Chief Magistrate Judge Wallace Capel, Jr.

Chief Magistrate Judge Wallace Capel, Jr. has served on the federal bench for almost 20 years. He has served as a magistrate judge in the Middle District of Alabama for more than half of that time. His career has been devoted to public service in a variety of interesting capacities and places.



Judge Capel was born into a military family at Fort Bragg in North Carolina, although he thinks of Alabama—specifically, Tuskegee—as home. His father was from Andalusia, while his mother was from New Orleans. He has three siblings—two older sisters and a younger one.

Judge Capel's father was a quiet, disciplined and determined man. He served as a flight surgeon throughout a lengthy and distinguished military career, which he retired from as an Army Colonel when Judge Capel was 18. Judge Capel learned much from his father, including the importance of serving one's country and doing the right thing.

Judge Capel's family moved several times during his childhood. During his high school years, his father was stationed at a U.S. Army testing facility, Dugway Proving Ground or "Area 52," which is located in Utah about 85 miles southwest of Salt Lake City. So, Judge Capel attended and graduated from high school in Utah. Thereafter, he enrolled in college at the University of Utah, where he graduated from in 1977 with a B.S. degree in political science.

In the meantime, Judge Capel's father had retired from the military and begun serving as chief of staff at the VA Medical Center in Tuskegee. After college, Judge Capel rejoined his family in Tuskegee and obtained a master's in public administration from Auburn University at Montgomery. He then attended law school at Wayne State University in Detroit and graduated in 1982.

After law school, Judge Capel went to work as a public defender in Detroit. He tried a number of jury trials over the course of the next five years, most of which involved murder charges, thereby gaining invaluable experience in state courts. He then went into private practice for a period of time before moving to St. Croix in the U.S. Virgin Islands.

Judge Capel's change in practice at that time was almost as radical as his change in geography—he went



from a practice devoted primarily to representation of criminal defendants to the practice of a prosecutor, serving as an assistant attorney general in Christiansted, St. Croix. This change furthered the diversity and complexity of his experience, as he began prosecuting a wide variety of cases ranging from murder charges to paternity and child support matters as well as handling government civil suits. He enjoyed the change in scenery as well, learning advanced diving techniques and often taking swims in the ocean before work. Judge Capel was working in St. Croix when Hurricane Marilyn hit the island in 1995. The island sustained significant damage and was governed by martial law for a period of time. Not long afterward, Judge Capel returned to Michigan.

Upon his return, Judge Capel helped open a new branch of the Federal Defender Office for the Eastern District of Michigan in Flint. Not long thereafter, he was appointed to fill an open magistrate judge position in that district in 1999. He served in that position for seven years and then applied for a magistrate judge position in the Middle District of Alabama in 2006 to get back closer to home. He was offered the position and has been serving in that role ever since.

Judge Capel has a unique perspective, having served as a magistrate judge in multiple districts and states. He appreciates the diverse caseload enjoyed by the magistrate judges serving in the Middle District of Alabama and also the efficiency with which those cases are handled. He also appreciates the collegial relationship among the judges.

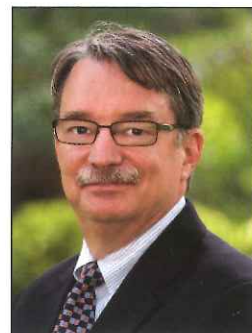
In his courtroom, Judge Capel values punctuality, preparedness and decorum. He also appreciates when attorneys before him are familiar with courtroom procedures. He has a lot of respect for and greatly enjoys good lawyers. For younger lawyers he has this advice: "He who knows that he knows not is a wise man." In other words, it is perfectly acceptable to answer a question honestly by saying, "I don't know, but I'll find out." It is not acceptable to pretend to know an answer and, in so doing, to misrepresent the facts or the law to the Court.

When he is not serving as a judge, Judge Capel enjoys a variety of activities, including sport shooting, flying drones, building computers, reading and traveling, and he engages in many of these activities with his family. He has two children.

Judge Capel is currently serving as Chief Magistrate Judge for the Middle District. He appreciates the tremendous workload and significant responsibilities that his office holds. The Middle District is fortunate to have someone with his experience and dedication to hard work on the bench.

## Magistrate Judge David A. Baker

Judge David A. Baker has served as a federal magistrate judge for 27 years. He was first appointed to the bench in the Middle District of Florida in 1991. He retired in 2016, but was immediately recalled to continue his service. And he did not just return to his home district; after talking to then-Chief Magistrate Judge Susan Russ Walker about openings in the Middle District of Alabama, he volunteered to assist in our state as well.



Judge Baker grew up in northern Virginia, just outside of Washington, D.C. He attended college at the University of North Carolina–Chapel Hill where he was awarded degrees in mathematics and English. After completing his undergraduate studies, he attended the University of Virginia School of Law. He describes law school as an "interesting experience" for several reasons. First, the University of Virginia was, and still is, home to the U.S. Army Judge Advocate General's Legal Center and School, which placed Army officers in many of Judge Baker's classes. Second, the university had just begun to admit women into its undergraduate programs during Judge Baker's time there. Third, his class was the first one to move into new facilities. Finally, the Watergate scandal occurred during that time. It was simply a fascinating time to be a law student at the University of Virginia.

Following law school, Judge Baker clerked with Judge Calvitt Clarke, Jr. on the U.S. District Court for the Eastern District of Virginia in Norfolk. He then joined the Foley & Lardner firm in its Milwaukee office. He became a partner in the firm and handled litigation and administrative law matters concerning environmental issues, intellectual property, commercial disputes, employment and a number of other matters.



When the firm merged with an Orlando firm, Judge Baker agreed to join the Orlando office after the merger, and he has been there ever since.

In private practice, Judge Baker thought from time to time about serving on the bench, and when a magistrate judge position opened in the Middle District of Florida, he applied for it. The broad scope of matters handled by magistrate judges appealed to him, and he had always enjoyed procedural and jurisdictional matters in private practice. He was awarded the position and appointed to serve in 1991.

Judge Baker explained that, having come from a civil practice, he had to become an expert on a lot of new topics very quickly upon taking the bench. This was particularly so in criminal matters, and he could tell that prosecutors and defense attorneys were testing him in his first few criminal cases, not to mention that the Middle District of Florida is much like the Middle District of Alabama in that the magistrate judges are fully utilized and preside over all types of matters.

Since his appointment to assist in Alabama, Judge Baker has primarily presided over contested civil cases and civil rights cases. While he has had to learn some Alabama law here and there as well as some local procedural requirements and nuances, the incorporation of Alabama cases into his docket has gone smoothly.

Judge Baker has also made numerous contributions to the federal court system during his time as a magistrate judge. Technology has changed drastically and entered the courtroom in many new ways since his appointment in 1991. Judge Baker has worked tirelessly on many issues related to courtroom technology, electronic dockets and the electronic case files used by judges. Indeed, he served two terms as a member of the Information Technology Committee of the Judicial Conference of the United States. One needs to look no further than a case docket on PACER to see his work—Judge Baker is responsible for the coloring and bolding on the docket sheets.

Judge Baker has also been active in continuing legal education. He has been a speaker and panelist at numerous bar and judicial seminars and workshops on various topics, including professionalism, intellectual property, federal practice and procedure, multidistrict litigation, electronic discovery and technology and the law. He also taught a course in legal ethics as an

adjunct instructor for the Legal Studies Department at the University of Central Florida. And just to be sure, if anyone had occasion to question Judge Baker's commitment to serving the legal profession (which no one ever would), the fact that he taught his college class on Saturday mornings should end the discussion.

Judge Baker often challenges young lawyers to develop the habit of viewing their cases and arguments from the perspectives of their opponent and the presiding judge. Doing so may highlight the futility of a position or the need to remove an argument from a brief. He also encourages lawyers of all ages to keep their submissions uncluttered and limited to the materials that are needed; shorter briefs are almost always better.

When he is not at work, Judge Baker can likely be found spending time with his children and grandchildren. He also enjoys hiking—especially in national parks—cooking and reading. His favorite subjects include history, historical fiction and thrillers.

Judge Baker has found it both challenging and rewarding to serve in the Middle District of Alabama and to spend time in Montgomery. His time here likely will wind down in 2018, but the citizens of this state and members of the bar will be indebted and grateful to him long afterward for the service he has provided to our state.

## Magistrate Judge Gray M. Borden

Judge Gray M. Borden has served as a magistrate judge in the Middle District since October 2015. He was well-prepared to assume the significant responsibilities and diverse assignments that the position entails, having a wealth of experience in both criminal and civil matters prior to taking the bench.



Judge Borden was born and raised in Montgomery. After graduating from high school, he attended Washington and Lee University, where he obtained a B.S. degree in business administration. Of his undergraduate studies, Judge Borden recalls that the Honor System at Washington and Lee had a profound impact on



his personal and professional development. The Honor System is an all-encompassing system of trust based on principles of honor, civility and integrity that is self-regulated by, and governs, the student body at the university. Even today, it impacts Judge Borden's service on the bench, including his expectations of the lawyers who appear in his courtroom.

For a year between college and law school, Judge Borden worked at his father's accounting firm and also pursued two of his most salient interests—hiking and camping. During this time, he hiked a significant portion of the Appalachian Trail, including sections in Georgia, Tennessee and North Carolina, as well as Vermont's Long Trail.

Judge Borden then attended the University of Alabama School of Law, where he studied a variety of subjects, but particularly enjoyed criminal procedure. He also served as editor-in-chief of the *Alabama Law Review* and received several awards and honors, including the Jerome A. Hoffman Student Leadership Award. He was named to the Order of the Coif and recognized as a Hugo L. Black Scholar.

Following law school, Judge Borden clerked with Senior U.S. District Judge William M. Acker, Jr. in the Northern District of Alabama. Judge Borden still displays in his office the rather amusing letter he received from Judge Acker confirming his clerkship, and he has many fond memories from his time studying under the respected jurist. Judge Borden particularly remembers that Judge Acker was truly a legal encyclopedia and held a love of the law unmatched by others; perhaps most importantly, the clerkship allowed Judge Borden to observe in Judge Acker what it takes to serve as a respected and effective judge.

Following his clerkship, Judge Borden practiced in Birmingham at Lightfoot, Franklin & White. He primarily handled commercial litigation and products liability matters during his time there. He enjoyed private practice and particularly appreciated the balance that it provided between the complexity of the subject matter involved and the opportunities to perform substantive pre-trial and trial work.

Judge Borden's interest in criminal law and procedure eventually pulled him away from private practice and into public service. From 2010 until he assumed the bench in 2015, he served as an Assistant U.S. Attorney for the Middle District. In this role, he prosecuted a number of criminal offenders for white collar

and drug-trafficking offenses and eventually specialized in complex wiretapping operations. He also served on the Organized Crime Drug Enforcement Task Force (OCDETF), using his wiretapping expertise to build cases against high-level drug traffickers. The OCDETF program is the centerpiece of the U.S. Attorney General's drug strategy to reduce the availability of drugs by disrupting and dismantling major drug trafficking and money laundering organizations and related criminal enterprises. Judge Borden was integrally involved in these efforts as a federal prosecutor, as evidenced by his receipt of the Drug Enforcement Administration's 2013 Spartan Award for dedication and extraordinary effort in prosecuting organization-level drug trafficking crimes.

Judge Borden had thought of serving as a judge for most of his life, and those thoughts became a reality in 2015 when he applied for and was appointed to a position as a magistrate judge in the Middle District. The experience he gained in both civil and criminal matters before assuming the bench has proven to be invaluable, as well as the vast amount of institutional knowledge and experience that his fellow magistrate judges possess and are glad to share.

Judge Borden values preparedness, punctuality and efficiency from the lawyers appearing in his courtroom. Above all else, though, he appreciates and expects civility. Judge Borden has little tolerance for disrespect of the lawyers and litigants appearing before him, and he believes the best lawyers are strategic thinkers who can avoid most conflicts that might arise in litigation.

Judge Borden's service to the community extends well beyond the bench. He has served on the Board of Directors of the Alabama Appleseed Center for Law & Justice and the Family Guidance Center of Alabama in Montgomery, and the Freshwater Land Trust in Birmingham. He frequently returns to the University of Alabama School of Law to serve as a guest lecturer on criminal law and other topics.

In his free time, Judge Borden enjoys spending time with his wife and two boys. He has begun to share his love of the outdoors with his sons, and he particularly enjoys coaching them in baseball. His other interests include traveling, hunting, fishing and cooking. Judge Borden is truly a man of many interests and talents, and we are fortunate to have him serving in the Middle District.



## Magistrate Judge Charles S. Coody

Judge Charles S. Coody has served as a United States Magistrate Judge for the Middle District of Alabama for more than 30 years, presiding continuously since the date of his initial appointment on May 1, 1987. His career is as diverse as it is remarkable and revolves around a common theme: Service.



Judge Coody was born and raised in Mobile, where he attended UMS-Wright Preparatory School. After graduating from high school, he attended Spring Hill College, where he served in the Army ROTC program and was a varsity debater. He received his B.S. degree in English in 1968 and was married that same year.

Judge Coody's service to our country is not limited to his 30 years on the bench. Instead, it began upon his graduation from college, when he was commissioned as a Second Lieutenant in the United States Army. He was first stationed at Fort Knox for Armored Officer Basic School and then at Fort Hood as an armored cavalry officer in the Second Armored Division. He later served on Advisory Team 80 in the Republic of Vietnam during the Vietnam War. In this role, he worked directly with the Vietnamese military to modernize their army and to provide assistance with combat planning, operations, training, intelligence, psychological warfare, communications, civil affairs, logistics and medicine. For his distinguished service, Judge Coody was promoted to captain and awarded two air medals and the Army Commendation Medal, the latter presented to those who distinguish themselves by heroism, meritorious achievement or meritorious service. After returning from Vietnam, Judge Coody continued to serve in the Alabama Army National Guard for many years.

While overseas, Judge Coody befriended a fellow army officer who inspired him to enroll in law school upon his return to the United States. He did just that, attending the University of Alabama School of Law from 1972 to 1975. During law school, Judge Coody was a founding editor of the *Law and Psychology Review* and a member of the Bench and Bar Legal Honor Society.

After graduating from law school, Judge Coody served as a law clerk to the Honorable T. Eric Embry,

associate justice of the Alabama Supreme Court. He then went to work for Smith, Bowman, Thagard, Crook & Culpepper in Montgomery, but not for long; in 1978, he was appointed general counsel for the Alabama State Board and State Department of Education, a position he held until he was appointed to the bench in 1987. During private practice, the board had been a client of Judge Coody's, and it was a natural transition for him to then serve as its first general counsel. During this time, he worked on a number of Title VII cases and desegregation issues and, in the process, gained a lot of experience practicing law in federal courts.

Judge Coody's experience made him a strong candidate and natural fit for a position on the bench, which he assumed in 1987. In his earlier years as a magistrate judge, he presided over a number of desegregation cases and prisoner cases. Since that time, he has presided over a variety of additional cases and proceedings, including civil jury trials and pre-trial proceedings; criminal proceedings including arraignments, motion to suppress hearings and guilty pleas; Social Security cases; military and veterans' affairs matters; and cases tied to the national park system.

Judge Coody has also been involved in many activities in addition to presiding over cases. He served as Chief Magistrate Judge for the Middle District from 2001 to 2008. He has also served on the Judicial Conference of the United States Committee on Court Administration, the Case Management and the Project Steering Group for development of the Next Generation CM/ECF and the Middle District's Information Technology Committee. He helped form the Middle District's Federal Defender Program, which provides representation to indigent defendants, and has devoted time to the Hugh Maddox Inn of Court, where he served as president, and as a member and chair of the Federal Bar Association's Bench & Bar Committee. He is also a firm proponent of civic engagement.

Judge Coody's advice to lawyers, young and old, is to be prepared when entering his courtroom, both with respect to the facts and the law. He enjoys and appreciates a well-prepared advocate. His greatest frustrations come from lawyers who do not devote the attention to detail required by the matter at hand. In reflecting on his time on the bench and how the practice of law has changed, Judge Coody is dispirited by the declining number of jury trials today, which he believes to be a loss both to lawyers and judges.



Outside of the courtroom, Judge Coody enjoys spending time with his family, which now includes five grandchildren. His first wife passed away in 2007, and he has since remarried. He also enjoys traveling and spending time in the mountains, as well as reading. His favorite subjects include political history and spy novels.

Perhaps the best example of Judge Coody's commitment to service is evidenced by how he described the celebration of his remarkable milestone of 30 years on the bench – "by having a bite of cake and returning to work." While he may begin to wind down his caseload a bit in 2018, Judge Coody plans to continue serving on the bench. The Middle District has truly been fortunate to have such a remarkable and distinguished jurist and servant leader in its ranks for the past 30 years.

## Magistrate Judge Susan Russ Walker

Judge Susan Russ Walker has served as a United States Magistrate Judge for the Middle District of Alabama for more than 20 years, presiding continuously since the date of her initial appointment on April 22, 1996. Both service and scholarship have defined her fascinating life and career.




Judge Walker was born and raised in Kingsport, Tennessee. She calls her hometown a bit of a compromise between her mother, who was from Alabama, and her father, who was from New Jersey. The hills of eastern Tennessee had an indelible impact on her as she grew up and contributed much to her lifelong interests in art and natural history.

After graduating from high school, she attended Eckerd College in St. Petersburg, Florida. Eckerd is a small liberal arts college that was founded as Florida Presbyterian College in 1958, and it holds a special place in the hearts of Judge Walker and her family. It is one of only 40 liberal arts colleges selected for Loren Pope's *Colleges That Change Lives*. Judge Walker was the fourth person in her family to study there, and she has served on Eckerd's Board of Trustees for the last 15 years.

Judge Walker graduated with highest honors from Eckerd in 1977 with a degree in English literature and

a minor in philosophy. After a year of graduate work at the University of Virginia, she attended Oxford University on a Rhodes Scholarship. She became a Rhodes Scholar in only the second year that women could apply for the prestigious honor. She studied at Oxford for two years and completed a B.A. degree with first class honors in English language and literature in 1980. She was later awarded an M.A. degree from Oxford as well.

The confluence of Judge Walker's interest in writing and political theory and her time at Oxford eventually pushed her toward the study of law. After her studies at Oxford, she worked as a professional writer for a year and a half, and then attended Yale Law School. Of those studies she recalls "incredibly interesting professors" and the time she spent with the Yale Barrister's Union and the Green Haven Prison Project. She was recognized both for her writing and advocacy talents, winning Yale's Felix S. Cohen and Colby Townsend Memorial Prizes for legal writing



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and the John Currier Gallagher Prize for trial practice. She focused her studies on constitutional law and legal history, did summer work in public interest law and gained invaluable experience in prison and poverty law.

Upon the recommendation of her law professor Burke Marshall—who had previously served as Assistant Attorney General in charge of the Civil Rights Division under President Kennedy—Judge Walker clerked on the Eleventh Circuit Court of Appeals for Judge Frank M. Johnson, Jr. after law school. She describes her time with the famed jurist as “remarkable.” After the clerkship, she served as an assistant attorney general for the State of Alabama. She then went into private practice in Montgomery with the firm of Miller, Hamilton, Snider & Odom until her judicial appointment. At the firm she maintained a diverse litigation practice, representing both plaintiffs and defendants in a broad range of fields including education, disability and voting rights.

Judge Walker’s time as an advocate in federal courthouses eventually brought her to the federal bench. She was appointed as a Magistrate Judge in 1996 and has maintained a diverse caseload since that time. The role of Magistrate Judges in the Middle District has expanded during her time on the bench and now includes all manner of pretrial proceedings in both civil and criminal actions—as well as many civil cases that are tried to verdict by consent. Judge Walker and her colleagues also handle certain specialized cases, such as those involving Social Security or arising from military bases or federal lands, as well as a number of ancillary matters, including mediation. Judge Walker served as Chief Magistrate Judge for the Middle District from May 2008 to February 2017.

Judge Walker truly enjoys her role as a judge and, perhaps drawing upon her background in literature,

she finds the most interesting part of her job to be the way people talk about themselves and construct narrative in the cases before her. In her courtroom, she values high-quality research and writing and advocates who are well prepared. She also appreciates lawyers who are collegial with their adversaries. Her ire may be drawn by the ill-prepared or the disrespectful.

Judge Walker has also tirelessly served the profession and the community in many additional capacities. For example, she has served as president of the Board of Directors of the Middle District’s Federal Defender program; as an Alabama State Bar examiner in civil procedure; as a member of the Alabama Inns of Court; as a member of *The Alabama Lawyer* Editorial Board; and as the Alabama secretary for the American Rhodes Trust. She has also devoted tremendous amounts of time and energy to pro bono assistance programs and efforts to provide criminal defendants with appropriate mental health and drug treatment, as well as projects relating to the history of the court and art in the courthouse. In addition, she teaches other federal judges subjects such as law and literature and mediation at national seminars.

Judge Walker is a proponent of a strong work-life balance, advising lawyers to “learn to play the cello”—to enjoy other aspects of life outside of the practice of law. She certainly follows this advice, as her personal pursuits are diverse and many. She enjoys art of many kinds, including painting, working with fine metals, gilding and woodcarving, as well as literature and natural history. She enjoys spending time with her family, including her husband, her daughter and “lots of nieces and nephews.”

Perhaps the most amazing part of Judge Walker’s career and life story is the humility with which she tells it. The Alabama bar is truly fortunate to have called her Judge Walker for more than 20 years and for her continued service on the bench. ▲

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