

October 13, 2006

The Honorable William W. Wilkins  
Chief Judge  
United States Court of Appeals  
for the Fourth Circuit  
Federal Building, Suite 225  
Greenville, South Carolina 29601

Dear Chief Judge Wilkins:

Attached is my annual report as Chief Judge of the United States District Court for the District of Maryland. This report covers the period from October 1, 2005 until September 30, 2006. Most of the information in this report came from our Court unit executives, managers, and supervisors.

If you have any questions, please do not hesitate to call.

Respectfully,

Benson Everett Legg  
Chief Judge

cc: All District Judges  
Samuel W. Phillips, Circuit Executive  
Felicia C. Cannon, Clerk

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MARYLAND**

**FISCAL YEAR 2006**



**ANNUAL REPORT**

Benson Everett Legg  
Chief Judge

Felicia C. Cannon  
Clerk

**DISTRICT JUDGES**  
(No Vacancies)

Active Judges

Catherine C. Blake  
Richard D. Bennett  
Deborah K. Chasanow  
Andre M. Davis  
Benson Everett Legg, Chief  
Peter J. Messitte  
J. Frederick Motz

William D. Quarles, Jr.  
Roger W. Titus  
Alexander Williams, Jr.

Senior Judges

Walter E. Black, Jr. (retired)  
Marvin J. Garbis  
Alexander Harvey, II (retired)  
William M. Nickerson  
Frederic N. Smalkin (retired)  
Joseph H. Young (retired)

**MAGISTRATE JUDGES**  
(No Vacancies)

Full-Time

James K. Bredar  
William Connelly  
Charles B. Day  
Thomas M. DiGirolamo  
Susan K. Gauvey  
Beth P. Gesner  
Paul W. Grimm, Chief  
Jillyn K. Schulze

Part-Time

Victor H. Laws, III

**BANKRUPTCY JUDGES**  
(No Vacancies)

Active Judges

Nancy M. Alquist  
Thomas J. Catliota  
Robert A. Gordon  
Duncan W. Keir, Chief  
Wendelin I. Lipp  
Paul Mannes  
James F. Schneider

Senior Recalled Judges

E. Stephen Derby

**COURT UNIT EXECUTIVES**

Felicia C. Cannon, Clerk, U.S. District Court  
Mark Sammons, Clerk, U.S. Bankruptcy Court  
William Henry, Chief, U.S. Probation and Pretrial Services Office

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## **MILESTONES**

The fiscal year began with a biennial Bench Bar Conference on October 21, 2005 in the Greenbelt Courthouse. The conference was well attended by the bar and ended with the presentation of the Pro Bono Service Award to Richard L. Wasserman, Esquire, for his tireless efforts in revising the Bankruptcy Court's local rules.

On October 25, 2005, the Baltimore City Bar Association hosted a ceremony and reception at the Mitchell Courthouse in Baltimore for the re-dedication of the portrait of Judge Joseph Howard. Prior to his appointment to the federal bench, Judge Howard served on the Supreme Bench of Baltimore City for ten years.

In November 2005, Judge Solomon Baylor retired after many years of distinguished service to our district as a Land Commissioner. Judge Baylor was replaced by Alternate Land Commissioner Thomas Rymer, and Judges Joseph S. Casula, John F. Fader and Kenneth Johnson were named Alternate Land Commissioners. Judge Rymer retired in August 2006, and was replaced by alternate Judge Fader.

On April 5, 2006, the University of Maryland School of Law honored Magistrate Judge Paul W. Grimm at its 3rd annual judges' night. In May, Magistrate Judge Jillyn K. Schulze ended her term as Chief Magistrate Judge, and the district bench named Magistrate Judge Grimm as the new Chief.

Three new bankruptcy judges joined the bench in 2006. Judges Thomas J. Catliota and Wendelin I. Lipp were appointed on April 3, 2006, and their public investiture ceremony was held on June 9, 2006, in the Greenbelt courthouse. On June 19, 2006, Robert A. Gordon was appointed as the seventh bankruptcy judge and a public investiture ceremony was held in Baltimore on September 13, 2006. In light of these appointments, Judge Nancy V. Alquist changed her duty station to Baltimore resulting in four active bankruptcy judges in Baltimore and three in Greenbelt.

## **DISTRICT COURT**

### **General Case Statistics**

During the statistical year ending June 30, 2006, 3,449 civil cases and 640 criminal cases (involving 827 defendants) were filed. On average, each district judge presided over 18 jury trials. Our district weighted case filing per judgeship was 470.

### **Multidistrict Litigation**

The following six multidistrict litigation (MDL) cases are assigned to judges on our Court:

- (i) Allegheny Energy Securities Litigation, which is assigned to Judge Andre M.

Davis and has sixteen pending cases;

- (ii) Royal Ahold Securities/ERISA Litigation, which is assigned to Judge Catherine C. Blake and has thirty-five pending cases;
- (iii) ProtoGen Sling and Vesica System Products Liability Litigation, which is assigned to Chief Judge Benson Everett Legg and has seven pending cases;
- (iv) Microsoft Corporation Operating Systems Antitrust Litigation, which is assigned to Judge J. Frederick Motz and has eight pending cases;
- (v) Wireless Telephone Radio Frequency Emission Products Litigation, which is assigned to Judge Blake and has three pending cases; and
- (vi) Mutual Funds Investment Litigation. Because of the complexity of this litigation, it is assigned to three judges: Judges Blake, Davis and Motz. Judge Motz, who serves on the Judicial Panel on Multidistrict Litigation, is the lead judge. The MDL has 435 cases, with new cases arriving monthly.

#### Civil Justice Reform Act (“CJRA”)

Our bench reported the following motions that were pending for six months or longer:

| <u>Report Date</u> | <u>Number of Motions Pending for Six Months or Longer</u> |
|--------------------|---|
| March 31, 2006     | 5   |
| September 30, 2006 | 13  |

#### Death Penalty Cases

At the end of September 2006, there were fourteen capital-eligible defendants facing charges in the District of Maryland. Of the fourteen defendants, the Attorney General has authorized the United States Attorney’s Office to seek the death penalty against four.

During FY 2006, two capital cases were tried to completion, one before Judge Deborah K. Chasanow and one before Judge Peter J. Messitte. Also during FY 2006, the Attorney General denied authorization for the United States Attorney’s Office to seek the death penalty against nine capital-eligible defendants.

#### Clerk’s Office

In FY 2006, the Clerk's Office was allotted 75.9 work units, including two temporary additives, and twelve court reporters. During the year, three employees retired and four separated from service. Only the vacant positions which were essential to the mission of the court were filled. As a result of this conservative approach, our "on-board" staffing at the end of September 2006 was 72.15 work units and ten court reporters. From March until May, the Clerk's Office benefitted from the work of three student interns from Patterson High School.

The Clerk's Office continues to support alternative work arrangements. Some members of the Clerk's Office staff in both Baltimore and Greenbelt telework from home, and others work flexible schedules. The compressed work schedule, which was piloted in Greenbelt, was made available in the Baltimore office.

Monthly CM/ECF training for attorneys and support staff continues as law firms hire new employees. In August, the court began allowing attorneys in social security cases to open new cases electronically after attending required training. Clerk's Office employees attended training on a variety of topics, including information technology, finance systems, jury, COOP planning, disability awareness, leadership and management skills, and training for courtroom deputy clerks regarding Judgment and Commitment Orders. In addition, staff attended the United States Marshal's Service training regarding improvised explosive devices. Additionally, the District continues to mentor other courts regarding systems such as CM/ECF and CCAM. We hosted a visit from Baltimore City Circuit Court staff interested in electronic case filing.

The Clerk's Office continues to upgrade its automated systems. The internet site was rebuilt this fiscal year, and we successfully migrated the CM/ECF system from Solaris to a Linux platform and to Active Directory for our network access. We also set up dual monitors for chambers staff and began installing FTR Gold in all of our courtrooms to give staff and chambers the ability to access proceedings from their desktops. For the Finance Department, we fully automated the Bureau of Prisons restitution check process, created pamphlets to better explain the new travel regulations for staff and judges, and began testing pay.gov for online payments of Clerk's Office fees.

This year also saw the implementation of a web based juror summons and questionnaire system. Jurors now have the option of entering their information via the court's internet website or by mail. We have received a very favorable response from Maryland jurors.

The Clerk's Office participated in initial discussions with the Administrative Office of the Courts for nationwide consolidation of the fast servers pilot project. Our court was selected to participate in Beta Wave 2 of this project.

The Clerk's Office in Greenbelt moved into its new space at the beginning of the year, making way for the construction of the two remaining courtrooms for which there is space.

#### Public Outreach

Several of our judges serve on the Federal Court Liaison Committee, which includes members of the federal and state bar associations. The Committee meets every other month to discuss local rules and procedures and joint ventures of the Bench and Bar.

The Baltimore and Greenbelt Courthouses hosted judges from a number of foreign countries including Algeria, Argentina, Brazil, Cambodia, Egypt, El Salvador, Ireland, Japan, Kazakhstan, Korea, Malta, Mexico, Middle and Near East, Moldova, Nepal, Nigeria, Pakistan, Peru, Portugal, Russia, Turkey and Ukraine. Some of our judges traveled to Malta, Peru and Portugal for judicial education programs.

On November 10, 2005, the ABA sponsored a program in the Baltimore Courthouse regarding pro bono representation in death penalty cases. On that same day, Magistrate Judge Susan Gauvey hosted an Open Doors program in Baltimore. The program, which involved children from various local high schools, included mock trials, discussions with unit executives and judges, and lunch with the Bench.

On November 16, 2005, law clerks attended an employment law program in Greenbelt, which was coordinated by Judge Titus. Donna Shearer and James Wyda conducted CJA Panel training in Greenbelt in December, and in Baltimore in May.

In April 2006, Magistrate Judge Beth P. Gesner presided over a naturalization ceremony that was sponsored by the fourth grade class of the Chesapeake Academy. The students prepared gift booklets, packets, and flags for each new citizen, led the Pledge of Allegiance, sang *America the Beautiful*, and hosted a reception following the ceremony. The Baltimore and Greenbelt divisions administered thirty-six naturalization ceremonies during the year, in which 1,928 applicants were naturalized and sworn in as new citizens.

In May, a class from Villa Julie College toured the courthouse and met with staff.

On May 18, 2006, the bench sat en banc for our annual Law Clerk Admissions Ceremony. Court of Appeals, District Court and Bankruptcy Court law clerks and their families attended this special ceremony admitting law clerks to the bars of the District Court and the Fourth Circuit Court of Appeals.

On June 31, 2006, we dedicated a park bench honoring the life of former Clerk's Office employee, Mary Jo Lauman, who died from breast cancer in November, 2003. Judge Nickerson, Deputy Marshal Karen Shelton, and Clerk of Court Felicia Cannon recounted stories, remembering Mary Jo's many significant contributions to our court and the tremendous impact she had on each of us personally.

On July 20, 2006, Magistrate Judge Paul W. Grimm presented an "Overview of the Federal Court System" to summer associates and law clerks at a reception sponsored by the Federal Bar Association.



On July 21, 2006, Chief Judge Legg hosted a brown bag lunch for summer associates and law clerks.

On September 21, 2006, we held an employee recognition event for District Court staff and judges in Baltimore. On September 28, 2006, we held a similar event in Greenbelt. In celebration of Constitution Day, we distributed a copy of the Constitution to staff.

Throughout the year, artwork from local arts councils was on display in the Greenbelt courthouse.

### Space and Facilities

A new Baltimore courthouse and an annex to the Greenbelt Courthouse are on the current Five Year Courthouse Project Plan. In addition, both are included in the new Asset Management Plan. Both projects, however, are on hold because of the lean budget. Because the Greenbelt Courthouse is out of space, the indefinite delay in building the annex continues to pose problems.

Several projects were completed or are underway in Baltimore, including renovations to Magistrate Judge Beth P. Gesner's chambers, Judge Richard D. Bennett's chambers, visiting judges' chambers, the District Court Clerk's Office and the relocation of the staff attorney's office to the seventh floor.

Several projects were also completed or are underway in Greenbelt, including a courtroom for Judge Titus and the relocation of the District Court Clerk's Office. Magistrate Judge DiGirolamo has been housed in temporary chambers since his appointment as a full-time magistrate judge in June 2004. Because we are in the midst of a number of other construction projects, building permanent space for Judge DiGirolamo is not contemplated before January 2007.

The Clerk's Office also completed the design and began installation of new audio systems, including FR Gold digital recording software, for all district court courtrooms in both divisions. The installation process will take six months to complete.

### CRIMINAL JUSTICE ACT (CJA) SUPERVISING ATTORNEY

The salary of the CJA Supervising Attorney, Donna Shearer, is shared by the Clerk's Office and the Probation and Pretrial Services Office, both of which benefit from her work. Ms. Shearer is the liaison between the bench and the CJA panel attorneys. She assigns panel attorneys to criminal cases. In FY 2006, she made 681 CJA assignments. Ms. Shearer also reviews and

approves CJA vouchers.<sup>1</sup> The number of vouchers has almost doubled since FY 2000.<sup>2</sup>

Ms. Shearer has developed expertise in setting budgets in capital and mega-cases. In FY 2006, she developed budgets in ten death-eligible cases. She is working to develop budgets in the mega racketeering case involving the Mara Slavatrucha, also known as the MS-13 gang. This case has twenty-two defendants, nine of which are eligible for the death penalty. This case has strained the resources of the court and the CJA felony panel. More than 75 attorneys out of the 100-member felony panel have either been appointed in the case or are conflicted from taking part in the case. Case budgets will be required for each defendant.

On December 7, 2005, Ms. Shearer represented the Fourth Circuit at a meeting regarding the creation of circuit case budgeting positions. Ms. Shearer also participated in two case budgeting presentations at seminars for CJA panel attorneys.

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<sup>1</sup> *The following is a comparison of Yearly CJA expenditures:*

| Payments                                      | FY 2003         | FY 2004         | FY 2005         | FY 2006         |
|---|-----------------|-----------------|-----------------|-----------------|
| Attorneys                                     | \$ 2,636,592.33 | \$ 2,810,010.44 | \$ 3,269,871.07 | \$ 3,973,951.52 |
| Experts<br>(felony & capital<br>cases)        | \$ 201,862.18   | \$ 302,185.54   | \$ 396,328.80   | \$ 340,575.01   |
| Total Paid*                                   | \$ 2,975,871.41 | \$ 3,112,195.98 | \$3,805,417.16  | \$ 4,475,612.74 |
| Total Capital Case<br>Costs                   | \$ 986,193.74   | \$ 1,295,774.41 | \$1,045,009.78  | \$ 1,844,631.22 |
| % CJA Costs<br>attributed to capital<br>cases | 33%             | 42%             | 27%             | 41%             |

<sup>2</sup> The voucher totals since FY 2000 are:

FY 2000 692 vouchers processed for payment  
 FY 2001 788 vouchers processed for payment  
 FY 2002 723 vouchers processed for payment  
 FY 2003 1,048 vouchers processed for payment  
 FY 2004 1,162 vouchers processed for payment  
 FY 2005 1,335 vouchers processed for payment  
 FY 2006 1,294 vouchers processed for payment

## **PRO SE STAFF ATTORNEYS**

In FY 2006, approximately one-third of the district's new civil cases were filed by pro se (prisoner and non-prisoner) litigants.<sup>3</sup> Once again, more than half of the filings by prisoners represented challenges to conviction or detention as opposed to other alleged civil rights violations. We believe that the high number of habeas cases can be attributed in part to the *Blakely*<sup>4</sup> and *Booker*<sup>5</sup> decisions and an increase in the number of aliens seeking release from detention pending deportation under *Zadvydas* and its progeny.<sup>6</sup> Additional factors contributing to this increase include prisoner awareness of the availability of the common law writ of habeas corpus as an avenue for bringing grievances before the court, and prisoners' concerns about the proper calculation of their sentences by state and federal parole commissions and the Bureau of Prisons.

Fewer cases are being dismissed on procedural grounds than in the past. Increasingly, prisoners are aware of the "three strikes and you are out" provisions of the PLRA and the time limits for filing habeas corpus petitions. Thus, the time needed to process the average case continues to increase.

## **UNITED STATES MAGISTRATE JUDGES**

While the Magistrate Judges sit primarily in the Baltimore and Greenbelt Courthouses, they also hold hearings in off-site locations including Salisbury, Hyattsville, the Aberdeen Proving Grounds, Andrews Air Force Base, the Naval Academy, Fort Ritchie/Fort Detrick, Fort Meade, and the Patuxent River Naval Air Station.

While in Hyattsville, the Magistrate Judges hear cases on the United States Park Police (USPP) docket and dockets covering the National Institutes of Health (NIH) and five other federal facilities. These dockets involve the largest volume of traffic and parking violations in the country as well as the largest miscellaneous and class A misdemeanor dockets in the federal judiciary.

The Magistrate Judges presided over 7,945 mandatory appearances and 10,342 collateral

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<sup>3</sup> Although most litigants appealing social security agency decisions have counsel, their appeals are included in this number because the staff attorneys must review *in forma pauperis* requests in virtually all of them.

<sup>4</sup> *Blakely v. Washington*, 542 U.S. 296 (2004).

<sup>5</sup> *United States v. Booker*, 543 U.S. 220 (2005).

<sup>6</sup> *Zadvydas v. Davis*, 533 U.S. 678 (2001). The scope of *Zadvydas* has been broadened to afford the same due process protections to inadmissible aliens. See *Clark v. Suarez-Martinez*, 543 U.S. 371 (2005).

appearances during FY 2006. They also handled 36,070 new misdemeanor and petty offense citations, and they closed 35,776 citations.

One of the primary duties of the Magistrate Judges is holding settlement conferences. This fiscal year, they conducted 423 conferences, an increase over last year's total of 414. This program has been very successful because the Magistrate Judges devote the time necessary to master the record and explore settlement with the parties and counsel. The bench frequently receives letters from counsel expressing gratitude that a seemingly intractable case has been resolved.

### **BANKRUPTCY COURT**

The Bankruptcy Court has experienced a significant decline in filings following the passing of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Filings for the year ending September 30, 2006, totaled approximately 18,000 new cases, which is a 40% drop from fiscal year 2005. This decrease in new filings, along with the addition of three new bankruptcy judges on the bench, has resulted in a long-awaited reduction in our judges' weighted caseloads.

In order to accommodate the new judges, recalled Judge E. Stephen Derby is vacating his chambers and relocating to a smaller office in the Baltimore courthouse. We are in the process of converting two small and outdated courtrooms on the second floor of the Baltimore Courthouse into a courtroom and chambers for Bankruptcy Judge Alquist. Although the Bankruptcy Court had planned to move out of the Greenbelt Courthouse into privately leased space, those plans have been abandoned because options were limited and procurement of leased space would have resulted in a less than desirable location. We will reconfigure existing bankruptcy space in Greenbelt to allow for construction of an additional courtroom and chambers.

### **UNITED STATES PROBATION AND PRETRIAL SERVICES OFFICE**

In Maryland, the probation and pretrial services functions have been consolidated under the overall leadership of William Henry. Mr. Henry has organized his office into three distinct departments: (i) the Pretrial Services Department, which has 15 employees, (ii) the Presentence Investigation Department, which has 26 employees, and (iii) the Supervision Department, which has 62 employees. In FY 2006, Mr. Henry's office supervised over 3,600 men and women and conducted approximately 2,515 pretrial and presentence investigations.

The following is a list of the most significant FY' 06 organizational initiatives and achievements:

- ★ participated as a pilot district for the E-Designate Program, a Department of Justice project that expedites the Bureau of Prison's designation process by

streamlining the workflow among participating agencies.

- ★ after consultation with the Court, we adjusted procedures in all departments to respond to the Judicial Conference's "Cost-containment" initiatives which reduced certain workload credit. Subsequently we worked with the Office of Probation & Pretrial Services Office to rescind provisions that affected DWI/DUI cases.
- ★ initial development of a comprehensive employment preparedness program available to all offenders.
- ★ began implementation of new technologies, specifically Global Positioning Systems (GPS) to be utilized in supervising the highest risk offenders and defendants.
- ★ began the use of state-of-the-art computer monitoring software to address the high risk defendants and offenders whose history involves computer related crime, and issued a comprehensive Computer Monitoring Policy to provide guidance to officers utilizing the software.
- ★ developed guidelines to minimize disparity and encourage consistency in officer recommendations for non-guideline reports.
- ★ worked with the Maryland Motor Vehicle Administration and Central Violations Bureau (CVB) to assure DWI/DUI convictions were reflected in MVA records.
- ★ increased productivity and efficiency in the handling of the mandatory park police docket by implementing streamlined intake and investigative procedures.

### **HOPE FOR A FEDERAL DETENTION CENTER**

On any given day, Johnny L. Hughes, the United States Marshal for the District of Maryland, is responsible for the custody of over 440 individuals awaiting trial or designation to a federal prison. This number has doubled since the late 1990s. Because there is no central federal or state facility that can house them all, these detainees and prisoners are dispersed among seventeen different facilities, including jails and detention centers as far away as Virginia, Ohio, and Tennessee. Marshal Hughes reports that this dispersion creates exceptional logistical difficulties for his organization, which has lost seven deputy positions in recent years. This dispersion also creates difficulties for the Public Defender and for CJA panel attorneys, who must drive long distances to visit their clients.

We are hopeful that a long-term solution to this problem can be found. One possibility is for the state to house all of the federal prisoners at an annex to be built at one of its prisons. Another possibility is a federal detention center (similar to Philadelphia's) provided that a site

acceptable to a local community could be found.

### **CONCLUSION**

The Bench thanks the visiting judges who have volunteered their time and effort to assist the District and Bankruptcy Courts, particularly Judges David A. Faber, Joseph R. Goodwin, and Frederick P. Stamp, Jr., who always say yes when we ask them to help. The Bench also thanks the hard working employees of the District and Bankruptcy Courts and the related agencies. These men and women have responded to personnel cuts with added hard work. We fear, however, that future budgetary constraints may pare away the bone and sinew necessary to carry out our constitutionally mandated work.