

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
BENSON EVERETT LEGG
Chief Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0723

October 30, 2007

The Honorable Karen J. Williams
Chief Judge
United States Court of Appeals for the Fourth Circuit
1021 Middleton Street
Orangeburg, South Carolina 29115

Dear Chief Judge Williams:

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, 2006 until September 30, 2007. 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 2007

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 the second biennial Judge Edward S. Northrop lecture at the Greenbelt Courthouse, on Tuesday October 24, 2006. Linda Greenhouse, the Supreme Court correspondent for the New York Times, was the guest speaker.

On April 16, 2007, a portrait of retired Bankruptcy Judge E. Stephen Derby was unveiled at a ceremony and reception given in his honor. The portrait hangs in Courtroom 9C, where Judge Derby presided over bankruptcy matters in this district for more than thirty years.

On June 6, 2007, the Federal Bar Association honored Magistrate Judge Susan K. Gauvey and Special Master Amy Totenberg with the Peter A. Dirito award for outstanding and dedicated service to the federal legal community. Nina Totenberg, National Public Radio's legal affairs correspondent, was the guest speaker.

On June 7, 2007, the FJTN aired a Court-to-Court program focusing on life in a divisional office within the Judiciary. Our judges and staff in the Southern Division Courthouse in Greenbelt were featured.

DISTRICT COURT

General Case Statistics

During the fiscal year ending September 30, 2007, 3,625 civil cases and 576 criminal cases (involving 836 defendants) were filed. On average, each district judge presided over 18 jury trials. As of June 2007, our district weighted case filing per judgeship was 497.

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, was closed on June 25, 2007;
- (ii) Royal Ahold Securities/ERISA Litigation, which is assigned to Judge Catherine C. Blake, currently includes thirty-seven cases in which settlement is pending;
- (iii) ProtoGen Sling and Vesica System Products Liability Litigation, which is assigned to Chief Judge Benson Everett Legg, has four pending cases;
- (iv) Microsoft Corporation Operating Systems Antitrust Litigation, which is assigned to Judge J. Frederick Motz, has one pending case;

- (v) Wireless Telephone Radio Frequency Emission Products Litigation, which is assigned to Judge Blake, 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 423 pending cases.

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, 2007	5
September 30, 2007	12

Death Penalty Cases

At the end of September 2007, there were ten death-eligible defendants facing charges in the District of Maryland. Of the ten defendants, the Attorney General has authorized the United States Attorney’s Office to seek the death penalty against three.

During FY 2007, the Attorney General granted permission to withdraw the notice of intention to seek the death penalty in four authorized cases. One of the cases ended in a guilty plea; three defendants face trial. The Attorney General denied authorization for the United States Attorney’s Office to seek the death penalty against twelve capital-eligible defendants.

Clerk’s Office

In FY 2007, the Clerk’s Office was allotted 82.1 work units, including two temporary additives, and twelve court reporters. During the year, two employees retired and three separated from service or transferred to other court units. On-board staffing at the end of September 2007 was 72.15 work units and ten court reporters. Maintaining our conservative approach to staffing, only essential vacant positions are being filled.

The Clerk’s Office continues to support alternative work arrangements. Members of the Clerk’s Office staff in both Baltimore and Greenbelt telework from home, work flexible schedules or compressed work schedules.

Monthly CM/ECF training for attorneys and support staff continues as law firms hire new

employees. Clerk's Office employees participated in training on a variety of topics, including information technology, human resources information systems, online electronic filing systems, and leadership and management skills. Pilots for the Federal Judicial Center's e-learning programs on the Code of Conduct and "Is It Legal Advice?" were sponsored in November 2006 and July 2007. Managers and supervisors attended a working retreat at Rocky Gap Lodge in June 2007. In August 2007, the court began preparing for electronic filing in criminal cases and broadening the types of new cases which attorneys will be able to open electronically.

The Clerk's Office continues to upgrade its automated systems. During this fiscal year we successfully migrated to a managed Lotus Notes Server, implemented an automated receipting and inventory program and an automated help desk ticketing system, provided Internet access to jurors in both courthouses, and upgraded our information technology infrastructure by rewiring with Category 6 cabling and switches. We also completed the installation of new sound systems and FTR Gold digital recording systems in all courtrooms, developed written procedures for their use, and provided training to chambers and clerk's office staff. We established a broadcast email system to send announcements, such as upcoming bench and/or bar events and weather emergency instructions, to all registered attorneys. For the CJA attorneys, we provided interactive forms on the Court's Internet website. In the Finance Department, we implemented pay.gov for online payments of Clerk's Office fees.

The Clerk's Office participated in the Beta Wave 2 of the Administrative Office of the Courts' nationwide consolidation of the fast servers pilot project. Our servers were successfully migrated to the consolidated servers located at the FAST Phoenix Data Center in February, 2007.

The renovation of the Clerk's Office in Baltimore was completed this fiscal year with the relocation of the Information Technology Department and the purchase and installation of systems furniture throughout the office.

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 Argentina, Brazil, Bolivia, Columbia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Honduras, Israel, Japan, Jordan, Kazakhstan, Korea, Malaysia, Moldova, Nigeria, Paraguay, Philippines, Russia, Turkey, Uruguay and Venezuela. Some of our judges traveled to Argentina, China, Russia and Turkey for judicial education programs. In addition, Donna Shearer and James Wyda conducted several CJA Panel training sessions in Greenbelt and Baltimore for members of both the felony and misdemeanor CJA panels.

On October 5, 2006, law clerks attended an employment law program in Greenbelt, which was coordinated by Judge Titus. The following week, Judge Grimm presented his overview of the federal discovery rules to new law clerks following the annual Hargrove breakfast in Baltimore.

During fiscal year 2007, 1,570 applicants were naturalized and sworn in as new citizens in our Court. In December 2006, Magistrate Judge Beth P. Gesner presided over a special naturalization ceremony which was sponsored by the fourth grade class of Chesapeake Academy. The students prepared gift booklets, packets, and flags for each new citizen which commemorated the importance of the day. The students also led the Pledge of Allegiance. A reception followed the ceremony, which the students of Chesapeake Academy provided.

On February 9, 2007, 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 April 4, 2007, a delegation of judges and attorneys from the Western Hemisphere visited Greenbelt as part of a program organized by the United States Department of State International Visitor Leadership Program. This year, the Greenbelt courthouse also hosted the National Youth Leadership Forum for high school students around the country interested in a career in law, and the annual Humphrey Fellows program for lawyers, professors and judges from the world who are studying at the Washington College of Law at American University.

In May 2007, a Law Day program, including a mock trial, was hosted in Greenbelt for Prince George's County High School students. Later that month, class from Villa Julie College toured the Baltimore courthouse and met with staff.

On May 3, 2007, 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 22, 2007, Chief Judge Legg and Judge Richard Bennett hosted a brown bag lunch for summer associates and law clerks. The program was repeated on July 20, 2007 with Judge Catherine Blake and Judge J. Frederick Motz hosting.

On August 30, 2007, we held a district-wide employee recognition event for District Court staff and judges in Baltimore. At this event, the court celebrated its accomplishments and the vast contributions of its dedicated staff throughout the year.

On September 14, 2007 Judge Andre Davis again hosted the annual Hargrove breakfast for the fiscal year 2007 incoming law clerks. This year the law clerk's orientation program was expanded to a full day program. In addition to Chief Magistrate Judge Paul Grimm's annual presentation on discovery in the federal courts, unit executives and practicing attorneys from the

public and private sector addressed the law clerks.

Throughout the year, artwork from local arts councils was on display in the Greenbelt courthouse and several receptions were held to honor the various local artists who display their work in the Greenbelt courthouse.

Space and Facilities

The Greenbelt Courthouse is desperately out of space. In September 2007, the Judicial Conference placed the Greenbelt Courthouse on the current Five Year Courthouse Project Plan for an addition to the Courthouse's existing structure. We acknowledge the tireless efforts of Judges, Clerk's Office staff, the Fourth Circuit, and the Administrative Office of the Courts in achieving placement of this much needed addition on the plan.

Because of new cost containment initiatives at the Administrative Office of the Courts, the Baltimore Courthouse is no longer on the Five Year Courthouse Project Plan for a new courthouse. The draft Asset Management Plan currently under review recommends a series of renovations to the Baltimore Courthouse as a means of containing court growth through the year 2035.

Several projects were completed or are underway in Baltimore, including renovations to the grand jury rooms, a visiting judges chambers, Chief Judge Benson Everett Legg's chambers, District Judge William M. Nickerson's chambers, and Magistrate Judge Beth P. Gesner's chambers. Additional security doors were added to the entrance of the staff attorney's office on the seventh floor.

This year marked the completion of Judge Roger W. Titus's courtroom in Greenbelt, including state of the art evidence presentation equipment. This year also saw the start of construction on the last chambers and courtroom that can be constructed in the existing Greenbelt courthouse. Magistrate Judge Thomas M. DiGirolamo continues to be housed in the temporary office space he has occupied since his appointment as a full-time magistrate judge in June 2004. Until the addition to the courthouse is completed or another court related agency moves out of the existing Greenbelt Courthouse, there will be no available space to build permanent chambers for Judge DiGirolamo.

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 and makes recommendations on all requests for expert or investigative funding. Ms. Shearer is assisted by a CJA Technician, Nicole Bierman. Ms. Bierman's salary is paid by the Clerk's Office. In FY 2007, her office made 833 CJA assignments. This is a 22 % increase from the number of case assignments in FY 2006. Ms. Shearer also reviews and approves CJA vouchers.¹ The number of vouchers processed for payment has doubled since FY 2000.²

Ms. Shearer has developed expertise in setting budgets in capital and mega-cases. She is working to develop budgets in the mega racketeering case involving the Mara Slavatrucha, also known as the MS-13 gang. Twenty-nine defendants have been charged in that indictment. Ms. Shearer also appointed death qualified counsel in eleven new death eligible cases opened in FY 2007. Budgets will be developed for those cases. To date, two of those death eligible cases have completed the budgeting process.

September 20, 2007 brought another mega-case to the District. "Operation Cash Out" was unsealed and forty-eight defendants were charged in four separate indictments. One indictment

¹ *The following is a comparison of Yearly CJA expenditures:*

Payments	FY 2004	FY 2005	FY 2006	FY 2007
Attorneys	\$ 2,810,010.44	\$ 3,269,871.07	\$ 3,973,951.52	\$ 4,062,221.59
Experts (felony & capital cases)	\$ 302,185.54	\$ 396,328.80	\$ 340,575.01	\$ 322,315.86
Total Paid*	\$ 3,112,195.98	\$ 3,805,417.16	\$ 4,475,712.74	\$ 4,498,246.02
Total Capital Case Costs	\$ 1,295,774.41	\$ 1,045,009.78	\$ 1,844,631.22	\$1,516,324.90
% CJA Costs attributed to capital cases	42%	27%	41%	33%

² 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
 FY 2007 1,413 vouchers processed for payment

charges concealment of terrorist financing. Ms. Shearer worked with Chief Magistrate Judge Grimm, the U.S. Marshal's Office, the Clerk's Office and Pretrial Services to insure that the initial appearances were staffed by counsel and interpreters so the court proceedings could run smoothly.

In 2007, Ms. Shearer participated in an Administrative Office of the Courts sponsored training program for the three new circuit case budgeting attorneys. In August of 2007, Ms. Shearer and Judge Chasanow presented at a Death Penalty workshop for District Judges. In September 2007, she also presented a program at the multi-track seminar for panel attorneys.

FY 2007 also saw the development of a form to certify voucher claims that do not exceed \$11,000.00, exclusive of reimbursable expenses. This amount was calculated by adjusting the \$7,000.00 compensation maximum in light of the corresponding increase in the hourly rates paid to panel attorneys. Ms. Shearer expects that the form will expedite payments to the panel attorneys. On August 14, 2007, Chief Judge Karen J. Williams circulated the form to other District Judges in the Fourth Circuit for their use.

PRO SE STAFF ATTORNEYS

This year, cases filed by pro se litigants represented roughly one-third of the civil filings in this district. Reversing a brief trend spurred by the *Blakely* and *Booker* decisions, actions involving attacks on convictions or detention did not exceed the number of prisoner civil rights filings. Furthermore, the number of habeas petitions filed pursuant to 28 U.S.C. § 2241 by aliens seeking release from detention pending deportation was down, although § 2241 motions filed by D.C. offenders are on the rise. Nonetheless, both state habeas petitions and federal motions to vacate are being filed at a steady rate because those seeking such relief are compelled to do so within one year of finality of conviction. In addition to a 10% increase in new case filings, the court has seen an increase in the number of motions filed in closed criminal cases, especially motions filed under Fed. R. Crim. P. 60, Rule 35 and 18 U.S.C. § 3582. Often, these motions must be converted into § 2255 motions to vacate.

Two interesting causes of actions filed by state prisoners present recurring themes. The first involves allegations that prison officials are unable or unwilling to protect prisoners (especially those on protective custody) from gang-related violence. This perception by prisoners has been fueled by the reassignment and movement of prisoners throughout the Division of Correction as a result of the closing of the Maryland House of Correction at Jessup and the reclassification of the North Branch Correctional Facility in Cumberland as a maximum security facility.

The second involves prisoners seeking treatment for Hepatitis C. After these actions were initiated and counsel became involved, the state promulgated and implemented a treatment protocol that has met with wide acceptance by the prison population. Lawsuits initiated several

years ago (before the protocol existed) are now being settled and at least one prisoner who has received treatment indicates that his condition has abated.

Fewer cases are being dismissed on procedural grounds than in the past. Increasingly, prisoners are aware of the “three strikes” provision 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, the Aberdeen Proving Grounds, Andrews Air Force Base, the Naval Academy, Fort Ritchie/Fort Detrick, Fort Meade, and the Patuxent River Naval Air Station. The former Hyattsville docket was permanently moved into the Greenbelt Courthouse at the end of September 2007, due to the termination of our lease with the state owned facility. The Magistrate Judges for this docket 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 4,662 mandatory appearances and 7,512 collateral appearances during FY 2007. They also handled 30,110 new misdemeanor and petty offense citations, and they closed 102,224 citations.

One of the primary duties of the Magistrate Judges is holding settlement conferences. This fiscal year, they conducted 373 conferences. 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

While the Bankruptcy Court continues to have fewer filings since the passing of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the amount of work in each case has increased for both the Judges and Clerk’s office. New bankruptcy case filing rates have started to rebound with steady increases noted in July, August and September of 2007. In fact, each month set new records for highest monthly volume of new cases post-BAPCPA. Filings for the year ending September 30, 2007, totaled approximately 12,000 new cases, which is a 33% drop from fiscal year 2006³. Year-to-date filings as of September 30 2007,

³ Fiscal Year 2006 total cases include the extraordinarily high level of filings preceding the effective date of BAPCPA on October 17, 2005. For October alone, approximately 11,242

indicate growth of 57% when compared to the same nine month period in 2006. Moreover, the makeup of cases is shifting with new Chapter 13 cases double in percentage of volume compared to pre-BAPCPA

The new law also brought three new bankruptcy judges to our bench. In order to accommodate the new judges, recalled Judge E. Stephen Derby vacated his chambers and relocated to a smaller office in the Baltimore courthouse. Renovations continue on the second floor of the Baltimore Courthouse to create a courtroom and chambers for Bankruptcy Judge Nancy V. Alquist. Likewise, in Greenbelt, construction of an additional courtroom and chambers using existing bankruptcy space is expected to start in early November, 2007. During construction, the Greenbelt intake function has temporarily moved to the first floor of the Courthouse. Staff attrition and a declining need for file storage due to CM/ECF are enabling the Bankruptcy Court to plan a relocation of the intake function in Baltimore into former case administration workspace in the upcoming year. Those plans include returning the resulting empty space to the General Services Administration.

UNITED STATES PROBATION AND PRETRIAL SERVICES OFFICE

In Maryland, the probation and pretrial services functions are consolidated under the leadership of William Henry. Mr. Henry has organized his office into three distinct departments: (i) the Pretrial Services Department, which has 19 employees, (ii) the Presentence Investigation Department, which has 26 employees, and (iii) the Supervision Department, which has 74 employees. Additionally, there are 38 employees that directly support the work of the officers in all departments. In FY 2007, Mr. Henry's office supervised over 3,500 men and women and conducted approximately 2,000 pretrial and presentence investigations.

The following is a list of the most significant FY' 07 organizational initiatives and achievements:

- ★ Participated in a successful three month pilot program to help ensure the accurate and timely completion of the Statement of Reasons.
- ★ Developed guidelines for officers to follow when making sentencing recommendations for defendants convicted of Driving Under the Influence. The recommendations are based on research which has shown to reduce DWI recidivism.
- ★ Prepared to implement Re-entry Supervision in Baltimore, which included training all Baltimore supervision officers. Officers are now supervising offenders who are in Residential Re-entry Centers or in BOP Custodial Facilities.

new cases were filed which is nearly 4 times the normal volume for a month.

- ★ Continued the development and implementation of the offender/defendant employment initiative. Two officers became certified as Offender Workforce Development Specialists and another officer is enrolled in the program. A Defendant/Offender Workforce Development Team was created which consists of supervisors and officers.
- ★ Expanded the use of Computer Monitoring and trained additional officers in utilizing the specialized software to monitor appropriate offenders.
- ★ Implemented Low Intensity Supervision. This entails identifying cases which qualify for lower levels of supervision consistent with AO policy guidance, freeing officer resources to focus on the highest risk offenders.
- ★ To address the increasing growth in supervision, 15 additional supervision staff were hired.

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 these individuals, these detainees and prisoners are scattered 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 the establishment of a federal detention center similar to Philadelphia's facility, 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.