

DISTRICT OF MARYLAND



FISCAL YEAR 2005 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
Jillyn K. Schulze, Chief

Part-Time

Victor H. Laws, III

BANKRUPTCY JUDGES

(Three Vacancies)

Active Judges

Nancy M. Alquist
Duncan W. Keir, Chief
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 celebration of the tenth anniversary of the opening of the Greenbelt Courthouse. The celebration featured the inaugural Northrop Lecture, named in honor of the late Edward S. Northrop. The biennial lectures are jointly sponsored by Judge Northrop's alma mater, George Washington University Law School. Associate Justice Sandra Day O'Connor delivered the address on October 7, 2004 before a large audience.

On June 30, 2004, Thomas M. DiGirolamo, who had served in a part-time post, was sworn in as a full-time magistrate judge. His ceremonial investiture was held on November 5, 2004.

In a public ceremony held on October 28, 2004, the Bankruptcy Court marked the 25th anniversary of the enactment of the Bankruptcy Code. A transcript of the proceedings can be found in West's Bankruptcy Reporter, 324 B.R. xxxiii.

In July 2005, J. Frederick Motz, who served as Chief Judge from 1994-2001, celebrated his twenty year anniversary on the District Court. His former law clerks marked the occasion by taking Judge Motz to a Baltimore Orioles' game, where he threw out the first pitch. Observers described the pitch as a hard slider that broke over the outside corner of the plate.

In July 2005, James F. Schneider stepped down as Chief Bankruptcy Judge, a position that he had held since November 2001. To preserve a tradition under which each bankruptcy judge serves as chief judge, E. Stephen Derby held the post for one month. On September 8, 2005, Duncan W. Keir became the new chief judge in a joint ceremony honoring Judges Schneider, Derby, and Keir.

In July 2005, Rod J. Rosenstein was sworn in as the new United States Attorney, succeeding Alan Loucks, who had held the post on an interim basis. Mr. Rosenstein's formal swearing-in ceremony took place on August 11, 2005, and included remarks by Judge Kenneth W. Starr, Dean of the Pepperdine School of Law, and Douglas H. Ginsburg, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit.

At the close of the fiscal year, a panel chaired by Karen Rothenberg, the Dean of the University of Maryland Law School, was formed to interview candidates for the three new bankruptcy judgeships created by the new bankruptcy law.

DISTRICT COURT

General Case Statistics

During FY 2005, 3,647 civil cases and 565 criminal cases (involving 755 defendants) were filed. On average, each district judge presided over 21 jury trials. Our district weighted case filing per judgeship was 513.

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 seventeen pending cases;
- (ii) Royal Ahold Securities/ERISA Litigation, which is assigned to Judge Catherine C. Blake and has thirty-seven pending cases;
- (iii) ProtoGen Sling and Vesica System Products Liability Litigation, which is assigned to Chief Judge Benson Everett Legg and has eleven pending cases;
- (iv) Microsoft Corporation Operating Systems Antitrust Litigation, which is assigned to Judge J. Frederick Motz and has sixteen 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 four judges: Judges Blake, Davis and Motz from our District and Judge Frederick P. Stamp, Jr. from the Northern District of West Virginia. Judge Motz, who serves on the Judicial Panel on Multidistrict Litigation, is the lead judge. The MDL has 430 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, 2005	2
September 30, 2005	13

Death Penalty Cases

At the end of September 2005, sixteen capital-eligible cases were pending (including four that were filed in FY 2005). Of the sixteen cases, the Attorney General has authorized the United States Attorney's Office to seek the death penalty in five.

During FY 2005, one capital case was tried to completion before Judge Deborah K. Chasanow. As of September 30, 2005, two more capital trials were underway, one before Judge Chasanow and one before Judge Messitte.

Arson Case

In August 2005, Judge Roger W. Titus presided over a highly-publicized, five week arson trial. The defendant was convicted of setting fire to a new housing development in Charles County, Maryland.

Clerk's Office

In FY 2005, the Clerk's Office was allotted 79.1 work units, including 1.5 temporary additives, and twelve court reporters. During the year, four employees retired and four resigned. To save money, we chose not to replace four of the employees, including the Director of Information Technology. The IT Director's duties have been assumed by the Director of Administrative Services. As a result of our downsizing, our "on-board" staffing at the end of September 2005 was 75.125 work units and ten court reporters. So that the Clerk's Office may continue to fulfill its duties with an ever-decreasing staff, we continue to cross-train deputy clerks to enable them to perform a variety of tasks.

The Clerk's Office upgraded its automated systems. We implemented a new cash register system ("CCAM"), installed digital recording systems in three courtrooms, and expanded e-filing to include most pro se prisoner cases. Staff began using the CM/ECF case assignment module, and we are preparing to migrate the CM/ECF system from a Linux platform to Solaris.

We did not renew our contract with our copy service because many of our files are now available on-line. In the event that a member of the public requests a copy of a file that exists in paper format only, our records department will make the copy.

The Clerk's Office allows alternative work arrangements for staff. For example, some deputy clerks are teleworking from home, and deputy clerks in Greenbelt participated in a pilot program during which they worked a compressed schedule.

The Clerk's Office conducts monthly CM/ECF training for attorneys and support staff. Clerk's Office employees attended training on a variety of topics, including information technology, finance systems, jury, COOP planning, records disaster recovery, and the duties of a certifying officer. Additionally, the District mentors other courts regarding systems such as CM/ECF and CCAM.

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.

In December 2004, 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.

In April 2005, we celebrated Take Your Child to Work Day. Chief Judge Legg conducted a mock trial, and the children toured the Baltimore courthouse.

In April 2005, the Baltimore courthouse hosted visitors from Chile. Because of its proximity to Washington, D.C, the Greenbelt Courthouse hosted visits throughout the year from judges from a number of foreign countries including Argentina, Armenia, Brazil, Cambodia, Ecuador, Egypt, El Salvador, Georgia, Haiti, Hungary, Israel, Japan, Korea, Moldova, Pakistan, Philippines, Peru, Serbia, Sierra Leone, South Africa, Turkey, and Uruguay.

On June 14, 2005, Chief Judge Legg hosted a brown bag lunch for summer associates and law clerks.

On July 14, 2005, 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 September 9 and 10, 2005, law clerks attended the Institute for Federal Judicial Law Clerks at the University of Richmond Law School. Judge Catherine C. Blake, Federal Public Defender James Wyda, and Clerk Felicia C. Cannon participated as faculty members.

On September 16, 2005, we held an employee recognition event for District Court staff and judges. In celebration of Constitution Day, we distributed a copy of the Constitution to staff.

On September 30, 2005, the Federal Bar Association and the District Court co-sponsored a ceremony honoring CJA and pro bono attorneys.

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

Space and Facilities

Although a new Baltimore courthouse and an annex to the Greenbelt Courthouse are on

the current Five Year Courthouse Project Plan, both projects 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. We are currently participating in an AO study of alternative methods for evaluating the judiciary's space needs.

Several projects were completed or are underway in Baltimore, including renovations to the Courthouse lobby, Judge Richard D. Bennett's chambers, and the relocation of Chief Judge Legg's chambers.

Several projects were also completed or are underway in Greenbelt, including permanent chambers and a courtroom for Judge Titus, a new jury assembly area, and 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.

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 2005, she made 712 CJA assignments. Ms. Shearer also reviews and approves CJA vouchers.¹ The number of vouchers has almost doubled since FY 2000.²

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

Payments	FY 2002	FY 2003	FY 2004	FY 2005
Attorneys	\$ 1,339,922.00	\$ 2,636,592.33	\$ 2,810,010.44	\$ 3,269,871.07
Experts (felony & capital cases)	\$ 56,895.69	\$ 201,862.18	\$ 302,185.54	\$ 396,328.80
Total Paid*	\$ 1,527,595.36	\$ 2,975,871.41	\$ 3,112,195.98	\$ 3,805,417.16
Total Capital Case Costs	\$ 191,524.23	\$ 986,193.74	\$ 1,295,774.41	\$ 1,045,009.78
% CJA Costs attributed to capital cases	12%	33%	42%	27%

² The voucher totals for the past six fiscal years are:

FY 2000 692 vouchers processed for payment
 FY 2001 788 vouchers processed for payment

Ms. Shearer has developed an expertise in setting budgets in capital cases. In FY 2005, she developed budgets in ten death-eligible cases and one complex, non-capital case involving 31 defendants. Ms. Shearer has from time-to-time been called upon to assist the Office of Defender Services and the Federal Judicial Center in providing budgeting services to other courts.

On February 11, 2005, the Maryland Chapter of the Federal Bar Association presented Ms. Shearer with the Peter A. DiRito award in recognition of her valuable work.

PRO SE STAFF ATTORNEYS

In FY 2005, nearly 40% of the district's new civil cases were filed by pro se (prisoner and non-prisoner) litigants.³ Prisoner filings increased by 16% over last year's total. Most of these cases involved challenges to the prisoner's conviction or detention as opposed to other alleged civil rights violations. We believe that the high number of habeas cases can be attributed to the *Blakely*⁴ and *Booker*⁵ decisions and an increase in the number of aliens seeking release

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

³ 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.

⁴ *Blakely v. Washington*, 124 S.Ct. 2531 (2004).

⁵ *United States v. Booker*, 125 S.Ct. 738 (2005).

from detention pending deportation under *Zadvydas* and its progeny.⁶

Adding to the workload is the fact that 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 number of filings is up and the time needed to process the average case is up as well.

If the current staffing formula used by the Administrative Office remains in place, the Court may seek to upgrade two part-time staff attorneys to full-time positions.

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 6,037 mandatory appearances and 9,879 collateral appearances during FY 2005. They also handled 39,061 new misdemeanor and petty offense citations, and they closed 36,588 citations.

One of the primary duties of the Magistrate Judges is holding settlement conferences. This fiscal year, they conducted 414 conferences, an increase over last year’s total of 308. 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

In FY 2005, 30,170 new bankruptcy cases were filed. The Bankruptcy Court has four

⁶ *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*, 125 S.Ct. 716, 722-23 (2005).

active judges. A fifth judge, E. Stephen Derby, is on recall status, meaning that he is essentially working for free. The District appreciates his help with the heavy bankruptcy caseload.

As you are aware, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) went into effect on October 17, 2005. The two weeks preceding that date witnessed an unprecedented number of filings (almost 11,000). Case filings have dropped off substantially since the effective date, however.

Under the new bankruptcy law, Maryland is slated to receive three new judges, two in Greenbelt and one in Baltimore. We anticipate that the new judges will be appointed by the spring of 2006. When the new judges arrive, Judge Alquist will relocate to Baltimore. After the new judges are on board and Judge Alquist has moved north, there will be five bankruptcy judges in Baltimore and three in Greenbelt.

The Baltimore courthouse has enough space to accommodate the Bankruptcy Court. We are hoping that our housing allotment for the new judges will permit us to turn most of the second floor over to the Bankruptcy Court on a permanent basis.

Unfortunately, the Greenbelt courthouse is out of space and the Bankruptcy Court is preparing to move off-site. If the move proceeds according to schedule, the Bankruptcy Court will be housed in private, leased space by September 2006. We regret this relocation, and we hope that when the long-awaited Greenbelt annex is built, the Bankruptcy Court will return to the courthouse.

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 16 employees, (ii) the Presentence Investigation Department, which has 26 employees, and (iii) the Supervision Department, which has 65 employees. In FY 2005, Mr. Henry's office supervised nearly 3,500 men and women and conducted approximately 2,100 pretrial and presentence investigations.

Because of the large number of gun prosecutions in Maryland, a high percentage of defendants awaiting trial are incarcerated. Mr. Henry has asked me to mention the exceptional job performed by his Supervision Department Officers, whose caseloads include a high percentage of individuals who have been convicted of serious felonies.⁷

⁷ The District of Maryland ranks:
1st in the number of offenders under supervision for Weapons/Firearms offenses,
1st in the number of offenders under supervision for Burglary,
2nd in the number of offenders under supervision for Homicide,
2nd in the number of offenders under supervision for Robbery, and
3rd in the number of offenders under supervision for Assault

Mr. Henry reports that, to a degree, the Booker decision has increased the time needed to prepare presentence reports because counsel are asking the officers to include more personal information about the defendants.

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 475 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.