

**OCTOBER 2001 ANNUAL REPORT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

The expiration of the tenure of a chief judge provides a convenient marker in recording a court's history. On October 19, 2001 Judge Frederic N. Smalkin will become the chief judge of the United States District Court for the District of Maryland, succeeding Judge J. Frederick Motz, who has served in the position since October 22, 1994. In recognition of that transition, this year's "annual report" for the District of Maryland will encompass events that have occurred throughout the last seven years.<sup>1</sup>

This has been a time of substantial change. Indeed, in many respects the change has been so rapid that it is fitting that the period covered by this report fell at the turn of a century. The greatest accomplishment, however, has been one of preserving, not altering, that which we inherited. Our predecessors left to us two great traditions: collegiality and commitment to quality in our work. It is not for us to judge the quality of our work product, but we know we cherish our collegiality. When we disagree, we do so without rancor; when we have differences of opinion, we discuss them amicably with a view to reaching a common ground. The success of our efforts is demonstrated by the fact that virtually all of the decisions we made during the past seven years were reached by consensus. Our debt to our predecessors who taught us the practical importance of mutual affection and respect is incalculable.

Significant developments during the past seven years include:

- Our new courthouse in Greenbelt was opened on October 3, 1994. Since that time the Court's two divisions have been successfully integrated.
- We have managed our docket with great efficiency and timeliness, as reflected in the infrequency of trial postponements and our performance in promptly deciding motions.
- The management and morale of our constituent agencies has been substantially improved.
- We have used emerging technologies to improve our operations, increase the effectiveness and speed of our communications, and enhance the quality and efficiency of in-court presentations.

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<sup>1</sup>Accompanying this report is another document entitled "2001 Summary of Highlights of the District of Maryland" which identifies particularly significant events that occurred during 2001.

- We have made substantial improvements in the management of our Criminal Justice Act program. Today the quality of the representation provided by our CJA lawyers to indigent defendants, the fiscal integrity of our case budgeting and voucher review process, and the morale of the members of our CJA panel are unsurpassed by any other district.
- We instituted a strategic planning process that has enabled us to focus upon and formalize our existing operations, identify what we can do better, and address our future needs.
- We further strengthened our relationship with the members of our bar and drew upon their expertise to help us improve our rules, practices, and procedures.
- Magistrate judges continued to perform a vital role in both civil and criminal cases. They also became full partners with district judges in the management and administration of the court.
- The excellent relationship between the bankruptcy court and the district court continued.
- Through the appointment of Judge Catherine C. Blake as the court's administrative judge, we have assured continuity in the court's management and constancy in its sense of direction.

## **Milestones**

We lost four district judges during the past seven years: John R. Hargrove, Joseph C. Howard, Frank M. Kaufman, and Herbert F. Murray. Two new district judges, Andre M. Davis and Catherine C. Blake, were appointed.

Four full-time magistrate judges retired: Clarence E. Goetz, James E. Kenkel, Paul M. Rosenberg, and Daniel E. Klein, Jr. Judge Klein continues to serve in recalled status. All seven of our current full-time magistrate judges were appointed during the past seven years: Jillyn K. Schulze, William G. Connelly, Susan K. Gauvey, Paul W. Grimm, Charles B. Day, James K. Bredar and Beth P. Gesner. Donald E. Beachley, a part-time magistrate judge, resigned to become a judge on the Circuit Court for Washington County. He was replaced by Thomas M. DiGirolamo. Our other part-time magistrate judge, Victor Laws, continues to serve in Salisbury. Judge Klein became the chief magistrate judge when Judge Goetz retired, and Judge Schulze was appointed to the position upon Judge Klein's retirement.

Paul Mannes continues to serve as the chief bankruptcy judge. He, Judge E. Stephen Derby, and Judge James F. Schneider all were reappointed to new terms during the past seven years. Judge Duncan W. Keir had been appointed to his position in November 1993 and continues to serve under his original appointment.

Three different clerks served the district court from October 1994 to October 2001: Joseph H. Haas, Frank Monge, and Felicia C. Cannon. Mr. Monge had served as the clerk of the district's bankruptcy court, and he was replaced in that position by Richard M. Donovan.

William F. Henry was appointed as chief of the Pretrial Services Department in 1995. In 2001, upon the retirement of the chief probation officer, David E. Johnson, the Pretrial Services Department and the Probation Department were consolidated. Mr. Henry became the chief of the combined agency.

## **Administration and Management**

### *Court Governance*

In accordance with long-established practice, the bankruptcy judges meet monthly, the magistrate judges meet weekly, and the district judges meet weekly together with the clerk of court. Once a month the district judges' meeting is also attended by the bankruptcy judges, the magistrate judges, the unit chiefs, and representatives of all other court-related agencies.

Also in accordance with long-established practice, much of the work of the court is done by committee. There are presently fifteen standing committees, covering the following areas: attorney admissions fund, budget, courthouse facilities (Baltimore), Criminal Justice Act, disciplinary and admissions, history, information technology, jury, library, personnel and operations liaison, pretrial and probation, rules and forms, security (Baltimore), southern division (including facilities and security in Greenbelt), and strategic planning. Magistrate judges serve on all the committees and co-chair four of them. Bankruptcy judges serve on all committees with jurisdiction over court-wide matters. On matters of exclusive concern to the bankruptcy court, the four bankruptcy judges sit as a committee of the whole. The clerk or a representative of her office also serves on most of the court's committees.

As we have increasingly recognized in recent years, the court and its agencies comprise a complex and delicate organization. When we adopted our strategic report in 1999, we found it helpful to describe the organizational relationships by reference to a corporate model. Under this model the judges constitute the board of directors, and the chief judge (or his or her delegate) serves as the board's chair. The bankruptcy court is an affiliate of the district court, and the clerk's office and the pretrial/probation offices are its subsidiaries. Thus, we view the clerk and the pretrial/probation chief (as well as the clerk of the bankruptcy court) as chief executive officers of the units which they head. This is an important concept because it reminds us that we

cannot as individual judges treat the unit chiefs or the members of their staffs as marionettes who must answer to each one of us. We also recognize that in matters of court-wide concern, such as expenditure requests and budgeting, allocation of computers and furniture, forms revision, and the establishment of courtroom practices and procedures, it is essential that we act through our established committees. It is equally essential that we not place our unit chiefs and their staffs in the middle by individually placing conflicting demands upon them.

### *Administrative Judge*

In April 1999 Judge Blake, with the consent of all the judges, was appointed as the court's administrative judge. She served effectively in that capacity and earned the respect of everyone who worked with her. On May 1, 2001, again with the consent of all the judges, an order was entered delegating to Judge Blake all of the responsibilities and powers of the chief judge. Judge Smalkin has indicated that he intends to enter a similar delegation order when he becomes the chief judge.

### *Constituent Agencies*

Two of our constituent agencies - the clerk's office and the pretrial services department - underwent significant change during the past seven years. New leaders brought fresh ideas, and healthier workplaces were created. As the changes were made, five major themes emerged.

First, the two agencies - like the court as a whole - were reoriented from status-based organizations to performance-based organizations. For example, the grades of newly appointed courtroom deputies do not depend upon whether they work with district or magistrate judges.

Second, again like the court as a whole, a culture of corporate responsibility and individual accountability was created.

Third, openness to change became recognized as an essential quality for effective job performance. At the same time, the necessity for managers to recognize and deal with the individual and organizational pain that change frequently entails also became evident.

Fourth, as the decision in Monell v. Department of Social Services teaches, the adoption of sound policy is a necessary, but not a sufficient, condition of sound management. Equally important are training, supervision, and the existence of a process subjecting the adopted policy to continuous critique. Our experience over the past seven years confirms that each of these elements is as critical as any other.

Fifth, amidst all the change, there was one governing principle that guided us: our commitment to serving the public. Tangible evidence of that commitment is provided by a letter that has been posted at numerous places throughout the courthouses in Greenbelt and Baltimore.<sup>2</sup> The letter, signed by our administrative judge and addressed "Dear Courthouse Visitor," reads as follows:

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<sup>2</sup>The letter was suggested by one of our judges who saw a similar notice posted in the Law Courts in London. The notice there, however, was not prominently displayed but only appeared on a small bulletin board.

The United States District Court for the District of Maryland is committed to providing the best service we can to the members of the public. If any of us goes out of our way to be helpful, we would like to know about it. If, on the other hand, one of us fails to meet the standards we set for ourselves by being rude or discourteous, we need to know that as well.

The letter goes on to provide the mailing and website addresses where complaints or compliments can be sent. Although few of either have been received, the message itself communicates to the members of the public the spirit of service we have sought to instill in ourselves.

### **Bankruptcy Court**

Although statutorily a unit of the district court, the bankruptcy court has its own budget, administrative structure, and caseload. It also has its own distinctive name. Since the rest of the court does not, the term “district court” has two different meanings: the court inclusive of the bankruptcy court, on the one hand, and the court exclusive of the bankruptcy court, on the other.

This duality of meaning could be a source of misunderstanding, implying - when the term “district court” is used in its narrower sense - that the non-bankruptcy components of the court do not appreciate the work performed by their bankruptcy court colleagues. Nothing could be further from the truth. All of the court’s units respect each other’s separate responsibilities and contributions, while working with one another to establish uniform policies on matters of court-wide concern. The bankruptcy, magistrate, and district judges meet monthly, and they sit on court committees together. Similarly, the clerk of the bankruptcy court meets regularly with the clerk of the district court and the chief of the pretrial services/probation office, and their managers regularly communicate with one another. All three unit chiefs also meet monthly with the chief judge and the administrative judge of the district court.

During the past seven years our bankruptcy court has had one of the heaviest dockets in the country. This docket provides justification for the creation of as many as four new bankruptcy judgeships, and legislation authorizing additional judgeships for the district has been pending in Congress for many years. Unfortunately, the legislation has not been enacted because authorization of the new judgeships has been tied up with controversial proposed amendments to substantive provisions of the bankruptcy code.

Because the new judgeships have not been created, we rely heavily upon visiting bankruptcy judges from other districts. Occasionally, district judges have provided assistance to the bankruptcy judges by withdrawing the reference (with the consent of the bankruptcy judge) in certain contested matters requiring lengthy proceedings. Primarily, however, it is the hard work of our own bankruptcy judges and the staff of the bankruptcy court clerk’s office that have prevented the bankruptcy docket from going into arrears.

Like the rest of the district court, the bankruptcy court enjoys an excellent relationship with the members of its bar. In recent years the bankruptcy bar committee has assisted the bankruptcy court in three major projects: preparation of a handbook outlining bankruptcy practice, revision of the local rules, and establishing a program to provide legal assistance to those in need. There is regular communication between the bankruptcy bar committee and the bankruptcy judges on routine matters as well, and the bankruptcy bar committee periodically meets with the chief judge and the administrative judge of the district court to discuss court-wide issues.

## **Bench/Bar Relationships**

### *The Bar's Assistance to the Court*

The relationship between the bench and the bar in this district traditionally has been quite strong. Judges are often asked to speak at bar association functions, and lawyers have served on many of the court's committees.

The Federal Court Liaison Committee, a joint committee of the Federal Bar Association and the Maryland State Bar Association on which several judges serve, meets bi-monthly and provides a forum for a candid exchange of views in an informal setting. In recent years the committee has assisted the court in numerous ways, including publicizing the need for a federal pretrial detention center in Maryland, participating in the planning of our "high tech" courtrooms and the purchase of mobile electronic evidence presentation equipment, and providing a user's perspective in the development of our website.

Several years ago the Federal Court Liaison Committee also took the lead in drafting standard interrogatories, standard requests for production of documents, a standard confidentiality order, and a standard order relating to the sealing of documents,. These forms were approved by the court and made appendices to our Local Rules.

In addition, the committee was responsible for organizing two bench/bar conferences. The conferences have been quite well received by lawyers and judges alike, and we hope they will become a biennial event. Several good ideas have emerged from them. For example, in response to a suggestion made at one of the conferences, several judges now regularly reserve on their calendars a "discovery hour" for the informal resolution of routine discovery disputes.

### *The Court's Recognition of the Bar*

Our CJA felony panel is composed of the most distinguished criminal defense lawyers in the district. We are deeply indebted to them for the services they render to indigent defendants appearing before us. In acknowledgment of that debt, since 1997, the court has awarded the "John Adams Award" (so named because of John Adams's representation of the British soldiers accused of murder

in the Boston Massacre) to a member of the panel who has rendered exceptionally valuable service during the preceding year. This award is presented at one of the two semi-annual training sessions for our CJA lawyers.

At our bench/bar conference held last year, we replicated the award on the civil side, giving recognition to a member of the bar whose pro bono service to the court has been particularly noteworthy. We anticipate that this award too will be presented annually.

With the approval of the bar, we have used monies from our attorney admissions fund to renovate space in both the Baltimore and Greenbelt courthouses for attorney conference rooms and lounges. These rooms have been tastefully decorated and furnished to provide suitable surroundings for cordial meetings between professional adversaries. We recognize the critical role that lawyers play in the administration of justice, and the rooms are intended to be a material manifestation of the ideal of civility to which the members of our bar aspire.

## **Case Assignment and Management**

### *Trials and motions*

The court utilizes, as it has for decades, an individual case assignment system. In our judgment, the benefits of that system far outweigh its costs. We recognize, however, that the individual assignment is a means to an end, not an end in itself, and that each of us bears joint, as well as several, responsibility for the entire caseload of the court. We also are aware that one of the system's disadvantages is that it can deprive a court of the power of its collective resources. If it is strictly adhered to as the exclusive method of case assignment and management, a case set before one judge may have to be postponed even if another judge is available to try it.

To overcome this disadvantage, we have instituted the practice of supplementing the individual assignment system by agreeing to back one another up when one of us is faced with conflicting trial dates. The results of this practice have been remarkable. Since it was commenced, trial postponements have become extremely rare. Moreover, we have found that the reputation the court has established for keeping its trial dates firm, combined with the superb job our magistrate judges do in conducting ADR conferences, has led to more timely settlements. Counsel and their clients no longer wait until the morning of trial to reach an out-of-court resolution of their dispute.

Our performance in keeping current on our motions has also been exceptional. The reports we have filed under the Civil Justice Reform Act for the last four reporting periods reflect the following number of total motions pending for six months or more:

<u>Period Ending</u>	<u>Total Number of Reportable Motions</u>
March 31, 2000	19

September 30, 2000	13
March 31, 2001	9
September 30, 2001	9

We have achieved these results with the same cooperative efforts that have enabled us to manage our trial calendars effectively. When unusual circumstances (such as a judge's illness) have required, we have backed one another up in deciding motions just as we have backed one another up on trials. Further, some of our senior judges, rather than simply taking a set percentage of a regular case draw, have agreed to assist other judges who temporarily have fallen behind. We have found this to be an extremely valuable use of their time.

#### *Inter-divisional cooperation*

Our statistics reflect that approximately 40% of the non-prisoner civil cases instituted in the district are filed in the southern division. Only three of our ten active district judges, however, sit in the southern division. Therefore, in order to prevent an imbalance in caseload, the active judges in the northern division take one out of every four civil non-prisoner cases filed in the southern division.<sup>3</sup>

Approximately 40% of the district's felony prosecutions likewise are instituted in the southern division. Because there usually are more court appearances in criminal cases than in civil cases, it would be a great inconvenience to counsel and the parties if northern division judges handled a full twenty-five per cent of the felony cases arising in the southern division. Therefore, northern division judges instead take over trials in southern division felony cases when the trial schedules of southern division judges become congested.

#### *Alternative Dispute Resolution*

Perhaps the primary reason we have been able to remain current on our civil docket is the mediation expertise our magistrate judges have developed over the years. They have earned the respect of the bar for their skill and hard work in forging settlements in every type of case that comes before the court. As a result, parties routinely request mediation conferences before our magistrate judges, and only rarely does a district judge presiding over a case refer the parties to a non-judicial mediator.<sup>4</sup> This is the way we believe it should be. In our view, mediation has become an integral part of the dispute resolution process which should be part of a court's own processes and made available to litigants free of charge. We also believe that, as a general proposition, parties who are not used to litigation are more likely to believe that they have been treated fairly by the legal system and have more confidence in a mediated settlement if a judge has been instrumental in achieving it.

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<sup>3</sup>By the same token, judges in the southern division take an equal share of prisoner cases even though most of those cases arise from prisons and detention facilities located in the northern division.

<sup>4</sup>The bankruptcy court does have a program of referring cases for mediation to members of the bankruptcy bar. The mediators are paid for their services by the parties.

## *Expediting Litigation*

### Standard Forms

For many years each judge issued a different form of scheduling order. Most of us have now departed from that practice, using a standard form the court has adopted. The uniform order has three benefits. First, it expedites and reduces the cost of litigation, at least for lawyers who regularly practice before the court and are familiar with the order. Second, particularly now that the court's forms are electronically stored, when revisions are made to the order (at the direction of the court upon the recommendation of the court's rules and forms committee), the revisions can easily be implemented. Third, uniformity in our orders conveys to the bar that we are working together and instills a sense of public confidence that the affairs of the court are being well managed.

As previously mentioned in the section on bench/bar relationships, with the assistance of the bar we also have adopted various standard forms, including standard interrogatories and requests for production of documents, a stipulated confidentiality order, and a stipulated sealing order. These forms appear as appendices to our Local Rules.

### Fees Guidelines

Another appendix to our Local Rules is entitled "Rules and Guidelines for Determining Lodestar Attorneys' Fees in Civil Rights and Discrimination Cases." These rules and guidelines were adopted by the court upon the recommendation of an ad hoc committee composed of judges and lawyers who practice in the affected areas. They require that lawyers who anticipate recovering fees and expenses from their adversaries record their time in a defined format related to litigation phase. This format makes fee requests more easily reviewable and provides a means for comparison among similar cases. The rules and guidelines also set presumptive fee ranges within which fees and expenses will be awarded.

We have also addressed by local rule a recurrent and vexing problem concerning the payment of fees to treating physicians who are not to be called as expert witnesses. Treating physicians (particularly ones who had no prior relationship with a plaintiff and treated him by chance) sometimes demand payment of an inordinately high hourly rate for deposition testimony. Confronted with such a demand, the party seeking to depose the physician sometimes contends that the physician is simply a fact witness and entitled to no more than the basic witness fee prescribed by the Federal Rules. We have sought to resolve that issue (apparently with success) by adopting a local rule which provides that, unless otherwise ordered by the court in a particular case, a treating physician may not charge a fee higher than the hourly fee he or she customarily charges for in-office patient consultation, or \$200 per hour, whichever is lower.

## Curbing Abusive Tactics

In recent years many of us have taken various steps to curb discovery abuse, including (1) limiting the total aggregate hours of fact witness depositions to a number that prevents the cost of litigation from being disproportionate to the amount in controversy, (2) publishing opinions that take to task attorneys who have been guilty of particularly abusive conduct, (3) advising the bar that we will make ourselves available to hear by telephone disputes that arise during the course of a deposition, and (4) regularly reserving “discovery hours” on our calendars for resolving routine disputes on an informal and expedited basis.<sup>5</sup>

Removal of small ERISA claims filed by pro se plaintiffs in small claims courts in counties distant from Baltimore and Greenbelt is another practice that some of us have attempted to discourage. We do so by suggesting to defense counsel that they consent to a remand and by advising them that, unless they do so: (1) we will appoint counsel (from the county in which the action was originally filed) to represent the plaintiff, (2) we will hold a telephone conference call to set a schedule, (3) we will limit discovery to that available in the small claims court, and (4) we will travel to the distant county to conduct the trial. The effect of this advice usually is to restore to the plaintiff her choice of forum.

## *Complex Litigation*

The Judicial Panel on Multidistrict Litigation has assigned several MDL proceedings to the district in recent years. We have also applied MDL management techniques to coordinate a number of cases on an intra-district basis, including bone screw litigation, breast implant litigation, repetitive stress litigation, FELA hearing loss litigation, and (for settlement purposes) a series of cases brought under the ADA by advocacy groups against local business establishments.

## *Sabbatical Program*

In 1997, we borrowed from the Northern District of Illinois the idea of a “sabbatical program” for active district judges. Under this program two judges are authorized to take a sabbatical each year. When judges are on sabbatical, no new case assignments are made to them for three months. Since there are ten active district judges in the district, this means that each judge is eligible to take a sabbatical every five years. Of course, the sabbatical program does not actually reduce the total number of cases assigned to any judge over a five-year period. When judges are on sabbatical, the

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<sup>5</sup>Those of us who follow the latter two practices have found that the fact of our availability is usually itself sufficient to enable counsel to resolve their dispute before our actual intervention is required. We also have found that when counsel cannot do so, their disagreement usually involves an issue on which reasonable people can differ. Indeed, one of the indirect benefits of our conversing with lawyers about discovery disputes is that it reminds us how difficult their job can be.

cases that would have been assigned to them are assigned to their colleagues and an equal number from their colleagues are eventually assigned to them. However, the program has the psychological benefit of “turning off the faucet” for three months and providing a judge with an opportunity for deciding any overdue opinions, travel, or continuing education.

### **CJA Panel Management**

A federal district court’s relationship with lawyers whom it appoints under the Criminal Justice Act is hybrid in nature. On the one hand, CJA lawyers stand in the same status as any other attorneys representing clients before the court. On the other hand, since the CJA budget is part of the court’s budget, the court, in effect, retains CJA counsel to represent indigent defendants appearing before it.

In its latter role, the court can appropriately be analogized to a corporation that hires outside counsel to handle litigation on its behalf. This is a function quite different from the adjudicative role that is the court’s primary mission, and it is one that requires careful and continuous management. We therefore established the position of “CJA Supervising Attorney” and obtained funding for it from the Administrative Office as a pilot project. We selected as our CJA Supervising Attorney Donna Shearer, a former assistant State public defender with extensive supervisory experience and an outstanding reputation among the members of the criminal defense bar. Ms. Shearer serves the same role for the court that in-house counsel does for many corporations, monitoring the billings and the quality of the work product of lawyers whom we retain.

Before hiring Ms. Shearer, we had begun the task of reconstituting our CJA felony panel, winnowing it down from approximately 300 lawyers to the approximately 100 best qualified defense lawyers in the district. This was a monumental task, and we could not have performed it ourselves with only clerical assistance. Moreover, many of us had also been concerned for many years that we were not acting responsibly when we approved (or disapproved) CJA vouchers. No matter how seriously we undertook this task individually, there was a systemic defect in the review process. When we are called upon to make decisions in our usual judicial role, we have the benefit of the adversary process in reaching our judgment. That is not so when we review CJA vouchers. The United States Attorney’s Office does not respond to requests for payment made by CJA lawyers (and certainly should not be asked to do so). Thus, we found that we were being asked to make a judgment about fees in isolation, without knowledge of relevant information that would enable us to know whether the fee request was reasonable.

Ms. Shearer has filled this gap in our knowledge. By reviewing vouchers in a systematic manner and comparing a fee request to others made in similar cases, she can exercise far better judgment than an individual judge in assessing the reasonableness of an attorney’s bill. Even with her broader knowledge base, this is no easy task since the determination of what constitutes a “similar case” requires professional, not clerical, judgment. But that is not all Ms. Shearer does for us. She also assists attorneys in preparing budgets in capital and other complex cases, negotiates court-wide

rates for expert witnesses, and analyzes the validity of attorneys' requests for expert witnesses and investigative services. Further, she oversees our CJA committee's annual review of the performance of CJA counsel and assists the committee in determining the qualifications of new applicants to the panel. In addition, just as in-house counsel do in the private sector, she serves as a resource for CJA attorneys, saving time and resultant expense by providing answers to recurring administrative questions.

Our experiment with the CJA Supervising Attorney position has been a resounding success. Ms. Shearer has brought fiscal integrity to the voucher review process and has saved judges untold hours agonizing over fee decisions on the basis of inadequate information. There has also been a dramatic increase in the morale of the CJA panel, attributable in large measure to Ms. Shearer's work . Although she frequently recommends reductions in fee and expense requests, the members of the panel know that the reductions are based upon a careful review of comparable fees in similar cases, not the whim or predilections of a particular judge. They believe they are being treated fairly and, in fact, they are.

## **Facilities**

Our southern division colleagues have made the courthouse in Greenbelt a gathering place for the community. The courthouse's four-story atrium, circled by balconies and intersected by an escalator suggestive of a waterfall, provides space that is airy, open, and light. It is as inviting as a well designed gallery or museum, and at the court's invitation local artists regularly exhibit their work on its walls. It is also a source of pride for local bar associations, which (with the court's permission) frequently use it for meetings, seminars, and receptions.

The only difficulty with the courthouse is that from the moment it was completed, it was underbuilt. All its chambers and courtrooms were filled. We averted an immediate crisis by negotiating a lease with the State of Maryland for use of space in a nearby State courthouse for handling the southern division's heavy misdemeanor docket. However, the need for additional space is acute, and since May 1995 we have been attempting to have construction of a Greenbelt annex accelerated on the federal judiciary's five year construction plan. The Fourth Circuit Judicial Council has been extremely supportive of our efforts. Unfortunately, those efforts have thus far been unavailing. In 2002 the Probation Department will be forced to vacate the courthouse to provide space for the clerk's offices of the district and bankruptcy court. Unless the annex is constructed, within a few years the U.S. Attorney's Office and the bankruptcy court will likewise have to move off site.

The courtroom used by the judicial officers and bankruptcy trustees in Salisbury is located on the second floor of an old post office building. Since there is no elevator to the second floor, the courtroom is not accessible to those with physical disabilities. To resolve this problem, in October 1999 the court obtained approval from the Administrative Office to move the courtroom to the first floor of the building where space is available. There has been an unacceptable delay in the implementation of that project. It is, however, due to be completed next year.

There also has been an interminable delay in the construction of two new courtrooms planned for the seventh floor in the Baltimore courthouse. Other improvements in that courthouse have, however, been made. Renovation of the four courtrooms on the fifth floor and of a bankruptcy courtroom on the ninth floor were completed. An attorney lounge and conference room was constructed on the third floor. A new conference room and history center on the second floor is under construction and will be completed later this year. Arrangements were made to hang portraits of judges in courtrooms throughout the courthouse, and the portraits of most of the judges who served during the chief judgeships of Judge Edward Northrop, Judge Frank Kaufman, Judge Alexander Harvey, and Judge Walter Black now hang in the ceremonial courtroom on the first floor.<sup>6</sup> The old cafeteria (which had fallen into disuse) was replaced by “The Daily Perk,” a small café whose appearance and food are both appetizing. This is a matter of no small importance to the welcoming atmosphere we have tried to create since jurors, witnesses, lawyers, and litigants, as well as courthouse employees, frequently meet over coffee or have lunch in the courthouse.

Exterior improvements have been made as well. In 1997, the corner on which the statue of Justice Thurgood Marshall stands was reconfigured and the statue itself reinstalled on a more dignified base. Likewise, the plaza on the Lombard Street side of the courthouse has recently been redesigned and re-landscaped. Chairs and tables have been placed on the porch for those who wish to rest or eat lunch outside. The Sugarman sculpture, which had stood directly along one of the courthouse wings, was moved to the corner of Lombard and Hanover Streets, where the freedom of its lines are more readily observable. That site is far more satisfactory from both an aesthetic and a security perspective.

### **Information Technology**

Technological changes during the past seven years have been breathtaking. At the start of the period covered by this report, many judges did not have computers on their desk, no e-mail system was in place, no court website existed, access to the Internet was extremely limited, video-conferencing was considered to be cost-prohibitive, and electronic evidence presentation was thought of (if at all) only as a vision of the future. All of this, of course, has now changed. Computers have become a part of the daily lives of all of us, even the most retrograde. E-mail has replaced the telephone as the most often used method of communication. All of the court’s standard forms are electronically stored, retrievable by all users. The court’s website is highly developed, and our opinions are published on-line. Likewise, our opinions and routine orders are imaged and sent to counsel electronically. All of our docket information (except information relating to sealed matters) and the schedule of our court proceedings are publicly accessible by computer. The “CM/ECF” (Case Management and Electronic Case Filing) system developed by the Administrative Office is being used in the Microsoft MDL

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<sup>6</sup>There are two exceptions: the portraits of Judge Harrison Winter and Judge Paul Niemeyer, together with the portrait of Judge Morris Soper, are hung in a separate courtroom. These judges spent (or, in the case of Judge Niemeyer, is spending) most of their career on the Fourth Circuit.

litigation pending in the district.

Video-conferencing of inter-divisional meetings, including the district judges' weekly bench meetings, has become routine. Video-conferencing equipment also is being installed in the attorney conference rooms in the Greenbelt and Baltimore courthouses and in several outlying detention centers to facilitate communication between defendants and their counsel or probation officers. One "high-tech" courtroom has been completed in the Greenbelt courthouse, and two such courtrooms are due to be constructed in the Baltimore courthouse. The use of portable electronic evidence presentation equipment has likewise become routine.

We have heartily welcomed these technological developments. We recognize that in many respects they have not only made our operations more efficient but have also improved their quality. E-mail, though a curse to those returning to the office after a few days' absence, has enabled us to disseminate information more broadly and to democratize the decision-making process. At the same time, we have also recognized that technology must be harnessed and not left to its own devices. Thus, as stated in an e-mail to all members of the courthouse staff soon after our electronic automation program had begun in earnest, we quickly established as one of our governing principles that "[a]utomation goals must not be considered as ends in themselves. Rather we must set our management and communications goals independently and then ask ourselves whether and to what extent computer technologies can assist us in achieving those goals." Adherence to that principle has served us well.

### **International Judicial Relations**

Judge Peter Messitte is a member of the Judicial Conference's International Judicial Relations Committee. He, with the other judges and the staff in the southern division, have hosted delegations of judges from thirty-four foreign nations.<sup>7</sup> Their warm hospitality, and the proximity of the Greenbelt courthouse to Washington, D.C., have made the courthouse a favorite site for international visitors to the nation's capital.

Judges from numerous countries have also visited the Baltimore courthouse through the auspices of the Central and Eastern European Law Initiative of the American Bar Association and the United States Information Agency. The court has worked extensively with the Honorable Alan M. Wilner of the Maryland Court of Appeals in hosting several other judicial delegations from Russia under exchange programs in which the Maryland judiciary are active participants.

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<sup>7</sup>Argentina, Armenia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Georgia, Guatemala, Guinea-Bissau, Honduras, Kazakhstan, Kyrgyzstan, Mexico, Moldova, Mongolia, Mozambique, Nicaragua, Panama, Paraguay, Peru, Portugal, Romania, Spain, Taiwan, Tajikistan, Ukraine, Venezuela, and Russia.

Many of our judges have been members of delegations that have visited other countries, including Brazil, Egypt, Ghana, Liberia, Mexico, Morocco, Mozambique, Russia., Turkey, and the Ukraine. In addition, Judge Messitte and Judge Marvin Garbis spent part of their sabbaticals visiting courts in Brazil and Australia, respectively. During the past year, Judge Andre Davis served as a member of a special commission investigating claims of human rights violations in Zimbabwe.

We hope that the judges with whom we have interacted have learned something from us. We know we have learned a great deal from them. If nothing else, we have come to appreciate how much we take for granted, both about practical matters - such as administrative support, technology, and security - and matters of high principle: respect for the rule of law and the independence of the judiciary. One of the most poignant moments of the past seven years occurred during a casual conversation with a visiting judge from Sarajevo. When it was explained to our visitor that the award given annually to one of our CJA attorneys is named after John Adams because he had defended British soldiers accused of murder during the Boston Massacre, her eyes lit up and she replied, "Oh, I understand, a member of the Resistance, yet he defended his enemy." That single sentence, ringing with the authenticity of personal experience, eloquently expresses the essence of the concept of the rule of law. It also is a reminder that what had become for us, before September 11th, the easy dignity of principle must be the courage of deed.

### **Outside Professional Activities**

The purpose of this report is to record our collective, not our individual, activities. It should be noted, however, that several of our judges are members of law school faculties, and a substantial number of us teach at continuing legal education programs. Likewise, as previously mentioned, many of us have participated in international judicial exchange programs, conducting seminars and making formal presentations about the processes of the common law and the jury system.

The legal impact of scientific developments, particularly the mapping of the human genome, is an issue of particular interest to several of our judges. They have become associated with organizations devoted to study of the subject. Other judges are active in various bar association activities. Likewise, during the past five years, judges from the district have served on five different Judicial Conference committees, and one of us is presently a member of the Judicial Panel on Multidistrict Litigation.

### **Pretrial Detention Center**

There has been a substantial need for a federal pretrial detention center in Maryland for at least 25 years. With the help of the FBA/MSBA Federal Court Liaison Committee, we have continued to make efforts to persuade public officials to construct such a facility. We have not been successful. As a result, federal pretrial detainees are now held in State and local detention facilities far away from our courthouses. In Baltimore pretrial detainees are held in Supermax, a prison designed for the most violent state offenders. Transporting detainees to court from distant locations obviously is costly,

J. Frederick Motz  
for all of the Bankruptcy, District, and Magistrate Judges