

# 2003 Annual Report

<a href="#">Contents</a>	<a href="#">Part 1</a>	<a href="#">Part 2</a>	<a href="#">Part 3</a>	<a href="#">Part 4</a>	<a href="#">Part 5</a>	<a href="#">Statistics</a>
--------------------------	------------------------	------------------------	------------------------	------------------------	------------------------	----------------------------

[Annual Reports](#)

[Judicial Conference](#)

[2d Cir. Judges](#)

[2d Cir. Handbook](#)

[C.A.M.P.](#)

[Court Directions](#)

[Clerk's Office](#)

[PACER](#)

[5 Digit Docket #s](#)

[Decisions](#)

[Circuit Executive](#)

[Judicial Council](#)

[Legal Affairs Office](#)

[Job Postings](#)

[Links](#)

[Feedback](#)

[Security](#)

[Home](#)

## Table of Contents

### [Part 1 - Structure of the Federal Judiciary](#)

### [Part 2 - Judicial Business of the Second Circuit](#)

- Chief Judges' Reports
- Court of Appeals
- District of Connecticut
- Eastern District of New York
- Northern District of New York
- Southern District of New York
- District of Vermont
- Western District of New York

### [Part 3- Judicial Administration](#)

- Improving the Work of the Courts
- Judicial Council of the Second Circuit
- Second Circuit Judges Serving on U.S. Judicial Conference Committees and Special Courts Committees of the Second Judicial Circuit of the United States
- Judicial Conference (Second Circuit) and Judicial Council

### [Part 4 - Protecting The Quality Of The Judicial Process](#)

- Attorney Discipline
- Judicial Misconduct

### [Part 5 - Operational Support and Services](#)

- 2003 Fair Employment Practices Report
- Judges and Judgeships
- Judicial Status Update

### [Statistics](#)

# **STRUCTURE OF THE FEDERAL JUDICIARY**

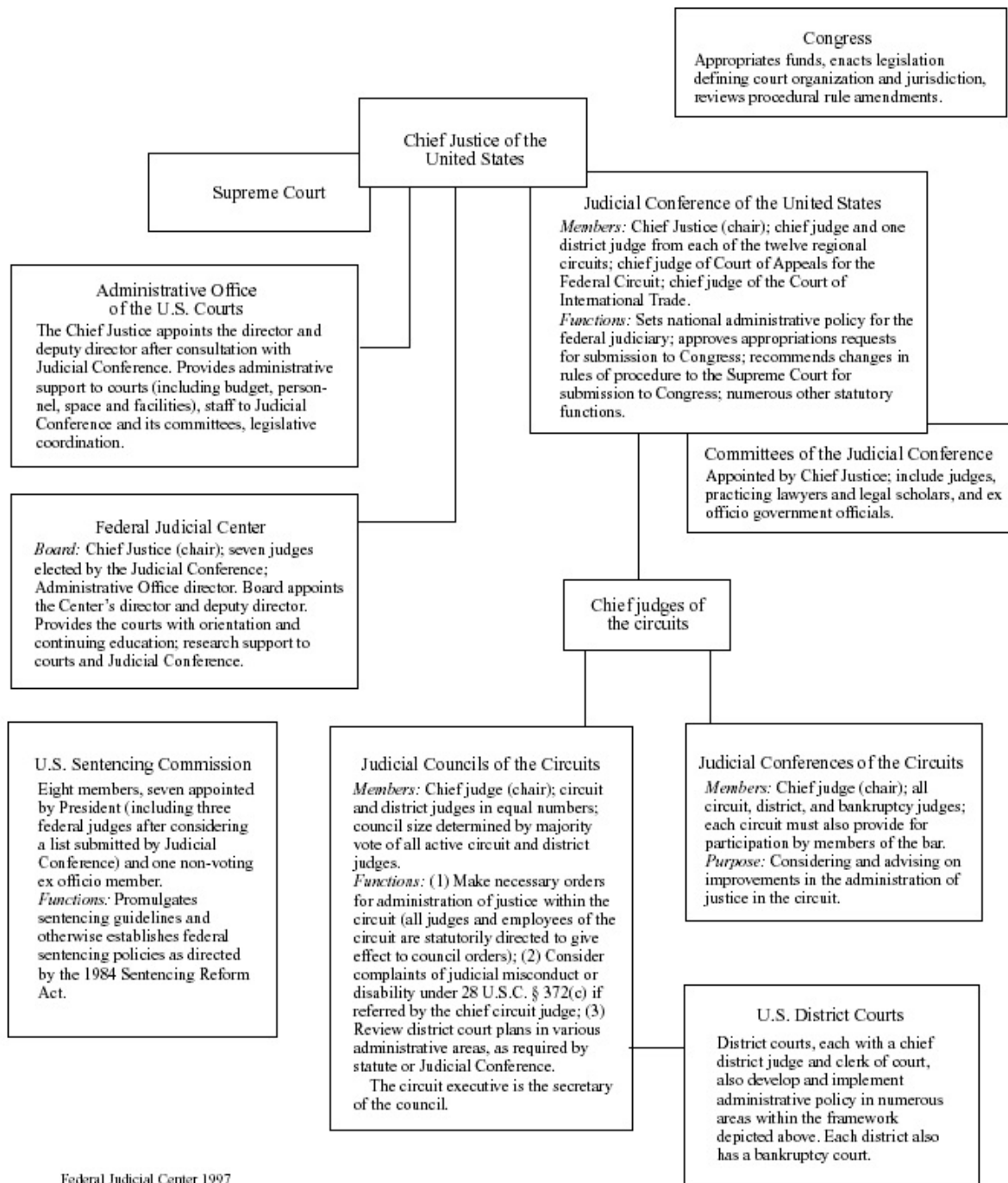
**STRUCTURE OF THE FEDERAL JUDICIARY**

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court and “such inferior courts” as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2004, the Court of Appeals has 12 active judges in 13 judgeships, 11 senior judges (nominally retired judges, most of whom carry heavy caseloads) and one vacancy. The district courts have a total of 57 active judges, 39 senior judges, 45 magistrate judges and 28 bankruptcy judges. There are five district judgeship vacancies.

# Federal Judicial Administration



Federal Judicial Center 1997

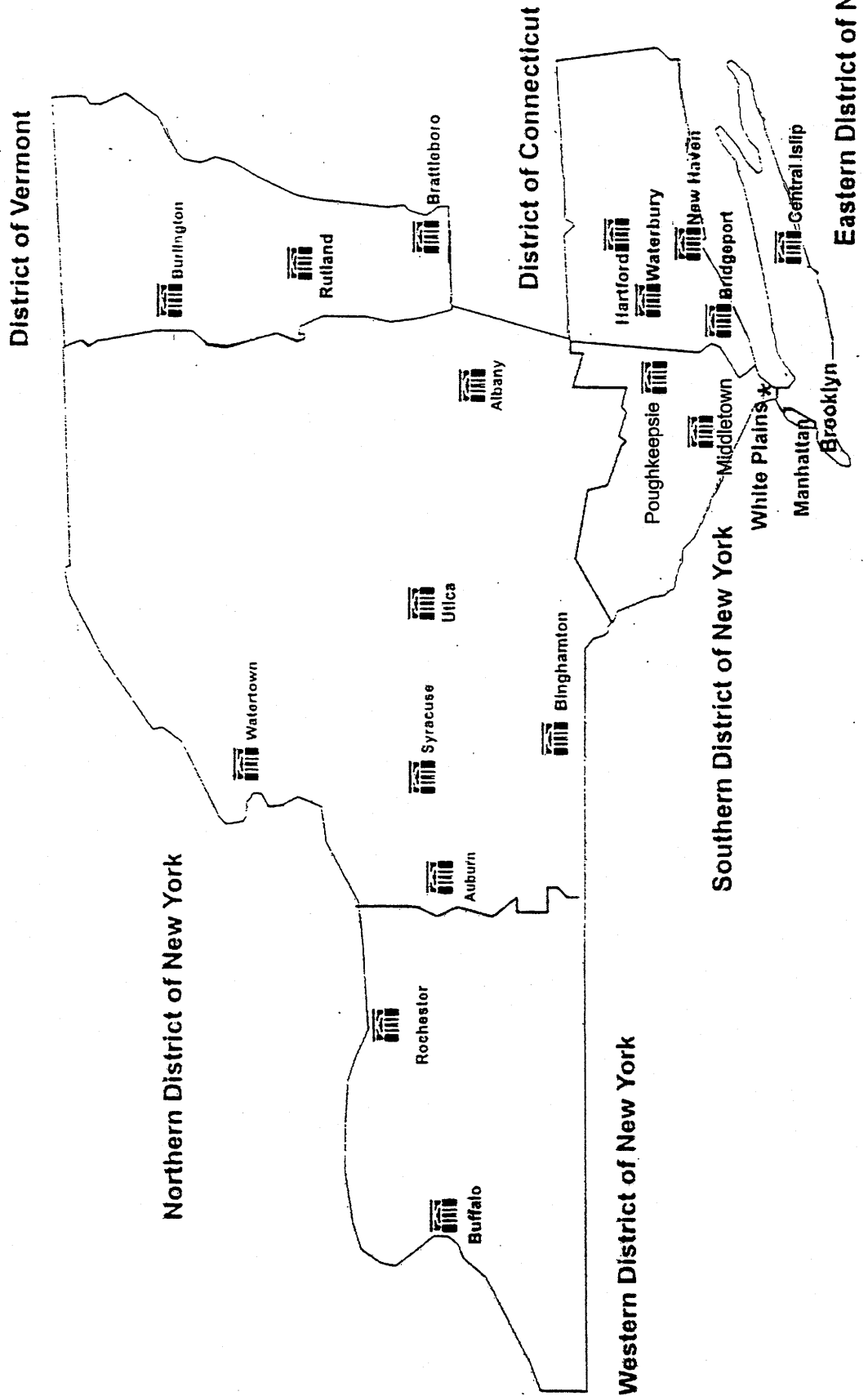
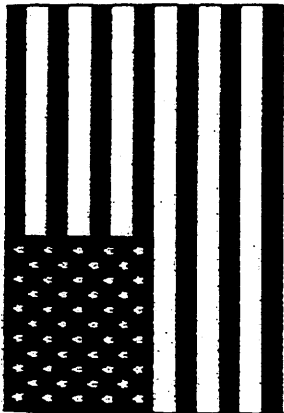
**JUDICIAL BUSINESS**

**OF THE**

**SECOND CIRCUIT**

# THE SECOND JUDICIAL CIRCUIT

## PLACES OF HOLDING COURT



**CHIEF JUDGES'  
REPORTS OF THE  
SECOND CIRCUIT**

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT



**Chief Judge John M. Walker, Jr.**

On August 12, 2003, our Court suffered a grievous loss with the death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or “FIP”, as he was affectionately known to his circuit court colleagues, joined our Court on October 11, 1994 after serving as a United States District Judge in the District of Vermont from 1990 to 1994 and as that district’s Chief Judge from 1991 to 1994. A graduate of the University of Massachusetts and Georgetown Law School where he was Managing Editor of the Law Review, Judge Parker joined the law firm of Lyne Woodworth & Evarts in 1965 after graduation from law school. From 1966 to 1969, he was an associate in the law firm of Yardell & Page and later was a name partner in the Vermont law firm of Langrock Sperry Parker & Wool from 1972 until his 1990 appointment to the district court bench. Judge Parker served as Deputy Attorney General for Vermont from 1969 to 1972, chair of the Vermont Criminal Justice Training Council from 1973 to 1979 and as chair of the Vermont Supreme Court’s Special Committee on the Reform of the Judiciary from 1988 to 1989, among other public service endeavors. As a federal judge, from 1993 to 2003 he represented the Second Circuit on the Judicial Branch Committee of the Judicial Conference of the United States from 1993 to 2002.

Judge Parker’s sudden death was a terrible loss for our Court. A hard working and able jurist, he was a “judge’s judge,” who held no personal agenda and hewed to the path of the law. His opinions were models of clear, concise and well-crafted judicial prose that did not stray from deciding the issue at hand. He delighted in his family, his adored wife and constant companion, Barbie, and his

two sons, Hawkeye and Bruce. And he loved his adopted state of Vermont and all of the outdoor activities for which that state is famous. His fifth floor chambers in the Burlington Courthouse overlooked Lake Champlain. Most of all, Fred Parker was a warm and wonderful colleague. All of us loved FIP and we will miss his dry sense of humor, his wise counsel and his strong friendship which we had hoped would be with us for many years. Our hearts and deepest sympathies remain with Barbie, Hawkeye and Bruce and his colleagues and friends in his beloved Vermont.

In 2003, with our Court's overall filings rising 31%, we were one of seven regional courts of appeals reporting increases in filings. This increase was attributable primarily to a flood of immigration appeals, the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the Immigration and Naturalization Service ("INS"). While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remain with the DOJ. Appeals from the Bureau of Immigration Appeals ("BIA") are taken directly to the Court of Appeals.

In 2002, the Attorney General directed the BIA to clear its backlog of cases, with the result that filings of appeals of BIA decisions nationwide climbed 153 % from 2001 to 2002 and 99% from 2002 to 2003. Most of these increases were felt in the Ninth and Second Circuits with considerable impact on the Fifth and Eleventh Circuits as well. The disposition of these cases is a challenge not just for our Court, but also for the attorneys: the United States Attorney's Office for the Southern District of New York and the private immigration bar, where a small handful of attorneys represent most of the aliens in counseled appeals.

At the same time, the Court of Appeals has had to deal with a significant upward spike in habeas corpus appeals and motions for certificates of appealability from the Eastern District of New York. A backlog of approximately 500 habeas corpus petitions were assigned to one district judge for review and disposition and their appeals have stretched our resources. To handle this severe caseload increase, our Court increased the number of double panels for the 2003-2004 Term to twelve with three additional optional panels standing by if circumstances warranted. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next term of our Court.

In 2002, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and pro se. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges in 2004 allowed us to schedule sittings

that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

Last year, on August 16, 2002, Judge Pierre N. Leval took senior status. The judicial vacancy created by Judge Leval's change in status was filled on June 13, 2003 when Richard C. Wesley, an Associate Judge of the New York State Court of Appeals, was elevated to our Court. Until Judge Fred I. Parker's untimely death on August 12th, our Court briefly enjoyed a full complement of thirteen active judges with no judicial vacancies.

In 2001, our magnificent building at 40 Foley Square in Manhattan was renamed in honor of the late Associate Justice of the United States Supreme Court Thurgood Marshall. On Monday, April 14, 2003, we formally dedicated the Foley Square United States Courthouse to Justice Marshall, who was a member of our Court from 1961 to 1965. Justice Marshall's widow, Cissy, her two sons and their families joined Senators Charles Schumer and Hillary Rodham Clinton, Congressmen Jerrold Nadler, Eliot Engel and Charles Rangel, GSA Administrator Stephen Perry, Deputy Attorney General Larry Thompson, Senior Circuit Judge Ralph K. Winter (Justice Marshall's first law clerk as a circuit judge), Chief Southern District Judge Michael B. Mukasey and myself in paying tribute to the late Justice Marshall. In the Main Lobby of the now Thurgood Marshall United States Courthouse a bronze plaque is affixed to the wall which bears a likeness of the late Justice from his days on the Supreme Court. The plaque that commemorates Justice Marshall's life tells all who enter our building that this imposing courthouse is forever dedicated to an "American hero", the civil rights leader, who in addition to his distinguished judicial career as an Associate Justice of the United States Supreme Court, a United States Circuit Judge for the Second Circuit, successfully argued Brown v. Board of Education before the United States Supreme Court.

Last year, I reported that our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse ultimately proved unsuccessful. Early in 2003, GSA Administrator Perry asked the courts and the AO to work with his agency in re-examining the costs of our project in an effort to secure approval from the Office of Management and Budget ("OMB") for inclusion in GSA's FY 2005 budget. Two months after we began this review, GSA Administrator Perry, in his remarks at the April 13th dedication of our Courthouse, publicly acknowledged the pressing need to remedy the Courthouse's deteriorated infrastructure and pledged his agency's support in securing the necessary funding from Congress. Members of Congress, including Senator Clinton and Congressman Nadler, in whose district our Courthouse is located, followed suit, pledging their support for our prospectus project.

As the 2003 calendar year ends, I am pleased to report that our efforts over the past three years to secure prospectus level funding to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse through an appropriation from Congress have been successful. In February 2004, GSA's request for \$16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, was included in GSA's FY 2005 budget request to Congress. Construction monies will be phased over a two-fiscal-year cycle in FY 2007 and FY 2008. In order to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems, both the Court of Appeals and the Southern District have agreed to vacate the courthouse prior to the construction phase of the project and to remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude will require an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that we replace the aging infrastructure of the Thurgood Marshall Courthouse with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts ("AO") and his Assistant Director for Security and Facilities Ross Eisenman, who continued to retain the services of the Philadelphia-based architectural and engineering firm Vitetta Associates for us and who worked with us, Vitetta and GSA Region 2 throughout much of 2003 to re-examine and reduce the costs of the prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2, Senators Charles Schumer and Hillary Clinton, Congressman Nadler and the members of the Citizen's Committee to Restore the Thurgood Marshall Courthouse for their support in helping us secure the necessary monies to preserve this stately and magnificent building for generations to come.

Finally, I want to mention the strong support that we received from the late Senator Daniel Patrick Moynihan over the past several years before his untimely death in 2003. Senator Moynihan served as the Co-Chair of the Citizen's Committee to renovate the Thurgood Marshall Courthouse and played an active role in our efforts. Our project is evidence of just another way in which this great public servant will be missed by the citizens of the State of New York and the country.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences changes in personnel and workload trends, we continue our tradition of scholarship,

collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Judicial vacancies must be filled and increased caseloads must be dealt with. Thanks to our thirteen active and eleven senior judges, I am confident that we will carry into the future the Second Circuit's proud traditions of craft in decision-making and expeditious docket management.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

[PHOTO UNAVAILABLE]

**Chief Judge Robert N. Chatigny**

**JUDICIAL OFFICERS**

On February 4, 2003, Alfred V. Covello took senior status after more than ten years of service as a District Judge, the last five as Chief Judge of the District Court. He was succeeded as Chief Judge by Robert N. Chatigny, the 12th person to serve the District Court in that capacity.

On June 12, 2003, President George W. Bush appointed Mark R. Kravitz to the seat vacated by Judge Covello. Judge Kravitz was sworn-in by Chief Justice William H. Rehnquist on August 18, 2003, thus becoming the 34th District Judge in the history of the Court. A formal investiture ceremony for Judge Kravitz was conducted at the New Haven Courthouse on November 10, 2003.

With the appointment of Judge Kravitz, the District Court returned to a full complement of eight active District Judges. The Court continued to benefit enormously from the work of its Senior District Judges, Ellen Bree Burns, Warren W. Eginton, Peter C. Dorsey, Alan H. Nevas, and Alfred V. Covello. Senior District Judge Gerard L. Goettel of the Southern District of New York, sitting by designation, also continued to provide exemplary service to the Court.

On February 28, 2003, Albert S. Dabrowski was appointed to succeed Alan H. W. Shiff as Chief Judge of the Bankruptcy Court, effective March 1, 2003.

Thomas P. Smith was appointed to a fourth term as a Magistrate Judge on September 26, 2003. His new eight-year term began November 1st.

The District Judges voted to seek the reappointment of Magistrate Judge William I. Garfinkel, whose first term expires November 22, 2004.

### **CASE STATISTICS**

In 2003, the District Court opened 2,304 civil cases and disposed of 2,024 civil cases. At year-end, 3,159 civil cases were pending.

The Court opened 288 criminal cases involving a total of 368 defendants and disposed of 317 cases involving a total of 511 defendants. At the end of the year, 368 defendants had charges pending.

### **ATTORNEY DISCIPLINE**

The Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

### **CLERK' S OFFICE AWARDS CEREMONY**

The annual awards ceremony honoring members of the Clerk' s Office was held in the Bridgeport Courthouse on April 11, 2003. Fidelis Basile, Alyssa Esposito and Kenneth Ghilardi received 10-year service pins; Maria Carpenter received a 15-year service pin; Victoria C. Minor received a 20-year service pin; Patricia Corbett received a 25-year service pin; and Sharon Collins received a 30-year service pin. Government Service Awards were given to Shirlee Ann Brown, who received a 10-year certificate, and Judi D' Auria, who received a 25-year certificate. Special Act Awards went to Cassandra Warren and Cheryl Conte for conducting food and toy drives for the benefit of local charities. Stephen Bates received the Rookie of the Year Award. Betsy Lopez received the Distinguished Service Award.

### **TRAINING**

During 2003, the Court' s internal training programs focused on implementing the new Case Management/Electronic Case Files system.

In addition, the Clerk' s Office began offering CM/ECF training to members of the Bar and their staffs. Lawyers attending the training class received

CLE credit. An on-line tutorial for CM/ECF also was made available to the public through the Court's website.

At the Clerk's Office annual retreat, a program dealing with attitudes at work and interaction with co-workers was presented by the Clerk of the Middle District of Florida, Sheryl Loesch.

Federal Judicial Center programs on effective writing were presented to members of the Clerk's Office by Hillary Gaylin, Deputy Clerk, Eastern District of Virginia.

### **AUTOMATION**

During 2003, plans were finalized for installing digital evidence presentation systems at each seat of court. The work is expected to be completed in 2004.

### **CONSTRUCTION PROJECTS**

Construction of the new grand jury room in the Bridgeport Courthouse was completed in April 2003.

During 2003, two new construction projects were designated by the District Court as priority projects for funding. The first involves construction of a new courtroom on the third floor of the New Haven Courthouse. The second involves redesigning the witness box and expanding the jury box in Courtroom 2 of the New Haven Courthouse. The Space and Facilities Committee for the Second Circuit approved these designations and provided funds for the first project. Funds for the second project were allocated by the District Court, with the approval of the Second Circuit Committee. Both projects are scheduled to be done by the General Services Administration in 2004.

The Court provided GSA with design requirements for a new jury assembly room on the second floor of the Hartford Courthouse. Because the affected space previously belonged to the U.S. Marshal's Service, GSA is funding the project in its entirety.

### **LONG-RANGE SPACE PLAN**

During the week of March 24, 2003, Elizabeth McGrath, Chief, Long-Range Space Planning, AOUSC, Scott Teman, Assistant Circuit Executive, and representatives from Fentress Associates, met with Chief Judge Chatigny, the Court Unit Executives, the Public Defender, the U. S. Attorney, the U. S.

Marshal, and representatives from GSA to update the Long Range Space Plan originally prepared in 1994. As a result of the meetings and subsequent comments, the Court received a final draft of a Long-Range Plan in December 2003. The draft makes it clear that the Court faces, and must soon confront, worsening space shortages, significant security risks, and other issues that may require building one or more new courthouses.

**UNITED STATES PROBATION OFFICE  
DISTRICT OF CONNECTICUT  
2nd Circuit Annual Report  
Fiscal Year 2003**

**NOTABLE EVENTS IN FISCAL YEAR 2003**

Fiscal Year 2003 was a very busy year with several important events. First and foremost was the budget crisis. Receiving the budget so late in the year impacted all of us, delaying purchases, reducing services and forcing us to make tough choices in hiring. The District of Connecticut completed the Long-Range Space Planning process. This took place in March of 2003. In April 2003, the Probation Office went through a District Review, by the Probation and Pretrial Services Office. This process involved months of preparation and more than a week of review. We feel that the review was a positive experience and a worthwhile endeavor. Fiscal Year 2003 was a contract year for us for aftercare services. We also had to contract for electronic monitoring services as the national contract failed to meet our needs. Also, for the first time, we leased GSA fleet cars. The purpose of this was to reduce travel costs. We will evaluate this program in 2004 to determine if leased cars are a cost saving measure. We implemented PACTS ECM in 2003. This program was an eight-month process, with a live date of June 2003. And finally, utilizing some of the recommendations from the review, we fine-tuned several of our manuals, the most important one being the Internal Controls Manual.

**STAFFING**

At the close of Fiscal Year 2003, the Probation Office staff consisted of 57 individuals filling 56.2 full-time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. The position categories were as follows, one chief and two assistant deputies, three supervising probation officers and 31 line probation officers, 19 administrative and clerical support and three automation support. Our statistical workload justified 67.94 positions, thus indicating we were understaffed eight positions, even with the two new officers. We intended to fill all vacant positions, however, additional hiring had to be put on hold, due to budget uncertainties.

During the year, our office was critically understaffed due to unfilled positions and officers out on extended leave, for illness or maternity/family leave situations. We were able to continue functioning despite our inability to hire, through the use of temporary help in officer and support job categories.

The District of Connecticut recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court's policy with the two largest minority groups, African Americans and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.

### **TRAINING**

Training is a priority in the Probation Office. In FY 2003, a significant number of training hours were devoted to PACTS ECM. The total number of hours of training for PACTS ECM was approximately 700 hours. Other in-service training provided during the year included District Personnel Policies, Officer Safety, and Sentencing Guidelines. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for PACTS ECM and FJTN training, probation office staff participated in 1,300 hours of training.

### **WORKLOAD**

**Pretrial:** In 2003, the District of Connecticut experienced a slight increase in the workload. We activated 463 pretrial cases, down slightly from 2002. Officers attended 1,062 hearings. Thirty-seven violations were reported to the Court, with eight of them resulting on bond revocations.

In FY 2003, our detention rate began to decline, but the number of defendants on supervision increased. The changes are a reflection of a change in the focus of Government prosecutions to more white-collar crimes and fewer multi-defendant drug distribution cases. But, some credit should also be given to our Court for the attention and analysis of our role and contribution to our high detention rates. In response to our recognition of and the AO's criticisms of our high detention rate, Chief Judge Chatigny opened dialogue between Judges and Magistrate Judges, the Probation Office, the Federal Defender and the United States Attorney. Also, a local Criminal Law Committee was formed, which also included representation from the private bar. This committee was to serve as a forum for discussion and resolution of various matters of concern, including the detention rate. Additionally, Magistrate Judges and Probation Officers responded by making a sincere effort to find appropriate alternatives to detention.

Substance abuse and mental health treatment were provided to approximately 70 defendants in 2003. The total cost of treatment for all defendants was \$172,232. Approximately 95 defendants were released on home confinement during pretrial supervision. The cost for home confinement was \$31,925. Approximately 25% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled \$51,475, reducing the cost to the Probation Office to \$152,683. This amount was a 36% increase above 2002 costs, reflecting an increase in the use of alternatives to detention, but still a bargain considering that the cost of detention averages \$68 per day or \$25,000 per year, per person.

**Probation:** The Probation Office completed 431 presentence investigations in 2003, a 29% increase above the prior year. This increase was largely due to several high-profile, multi-defendant cases reaching final disposition after pending for several years. We do not expect that rate of increase to continue.

We supervised 880 offenders in the community, up 6% from the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled \$230,978, for the provision of services for approximately 140 offenders. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling \$26,735, reducing the actual costs to the Government to \$204,243. Mental health treatment costs totaled \$57,961, providing services for approximately 40 individuals. Co-payments totaled \$5,258, reducing costs to the Probation Office to \$52,258.

During FY 2003, 55 post-conviction offenders were placed on home confinement. Costs for these services were \$31,391. Offender co-payments collected totaled \$11,822, reducing the cost to the Probation Office by one-third, to \$19,570.

The total cost for all treatment and alternatives to detention was \$524,488. Co-payments collected totaled \$95,290, reducing our actual costs for all services to \$429,199.

The Probation Office is also a key player in the collection of fines and restitution. During FY 2003, the Probation Office recorded collections of \$83,635

in fines, \$342,103 in restitution and \$3,770 in special assessments, for a total of \$429,508.

**PLANNED EVENTS IN 2004**

A major event for our District in 2004 is the implementation of FAS<sub>4</sub>T. This is a huge step for us, being a manual court. We will also be implementing the new supervision monographs for probation and pretrial services.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**



**Chief Judge Edward R. Korman**

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by 651,915, to 7.9 million. This was an increase of 8.5%. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the population is likely to reach 8 million in 2004, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

**CASELOAD PROFILE**

The Eastern District's judicial caseload profile remained high, but declined somewhat in 2003. Weighted filings per judgeship were 658, lower than last year's five-year high average. The Eastern District of New York remains first within the Second Circuit in weighted filings, and well above the national average of 532. Several other rankings of actions per judgeship also remain high, including total filings (553) – which is based on fifteen (15) judgeship positions when only thirteen (13) positions presently are filled; civil filings (449); pending cases (684); terminations (567) and trials completed (25). These statistics are through December 2003.

On September 30, 2003, pending total civil actions were 8, 111, down from 8,536; civil case filings were 6,742, down from 7,601; criminal case filings were 1,293, down from 1,369; and criminal defendants totaled 1,927, down from 1,969.

This high workload per judge would not have been managed without the extraordinary assistance rendered by our senior judges. Six (6) of the nineteen (19) judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 529 trial and non-trial bench hours were logged by eight (8) visiting judges who presided over 19 trials. A significant number of settlements also resulted from their efforts.

### **THE DELAYS IN FILLING VACANCIES**

Our ability to process our heavy caseload has been undermined significantly by the delays in filling vacancies. We have not had a full complement of judges since February 1, 2001. The vacancy created when Judge Reena Raggi was appointed to the Court of Appeals for the Second Circuit on October 14, 2002 has not been filled. A second vacancy created when Judge Sterling Johnson, Jr. took senior status on June 1, 2003, also remains unfilled. Yet, another vacancy, which went unfilled for more than two years, was created when Judge Thomas C. Platt took senior status on February 1, 2001. On September 22, 2003, Judge Sandra J. Feuerstein was appointed. Judge Feuerstein comes to the Eastern District from the Appellate Division, where she was the first woman from Nassau County to be appointed to that court. She previously served on the New York State Supreme Court in Nassau County, and as Judge of the Nassau County District Court. She was educated at the University of Vermont, at Hunter College, and she received her J.D. degree from Benjamin Cardozo School of Law of the Yeshiva University, where last year she received the Distinguished Alumnus Award.

### **JUDGE JACOB MISHLER**

The Judges of the Eastern District lost a treasured colleague with the death of Judge Jacob Mishler on January 26, 2004. Judge Mishler was appointed by President Eisenhower on July 6, 1960. He served for more than 42 years and as Chief Judge from 1965 to 1980. Judge Mishler was one of the ablest trial judges to grace the federal bench where he served longer than any judge appointed to our Court.

The qualities that made him so special were eloquently described by Gregory Wallace, one of his former law clerks, at a Special Session of the Court that convened on the occasion of the fortieth anniversary of Judge Mishler's appointment:

“ I deeply appreciate, from personal experience as a clerk in the late 1970s, Judge Mishler’ s skills in seeking objective truth, applying the law, and even down field running and punting. But what stands out for me is the extraordinary judicial humanity that he brings to the intensely human process that is the modern federal district court.

I remember the unusual human intuition that Judge Mishler brought to sentencing because, despite the Sentencing Commission’ s insistence, this is the most supremely human moment in the entire legal process.

I observed deadlocked, frustrated and angry juries that he calmed, not so much with words but by communicating, through his manner, his action and sympathy for their ordeal and optimism that more effort would ultimately be productive.

I recall the status conferences that Judge Mishler enlivened with humor and a wonderful, broad smile that relaxed otherwise-uptight attorneys and allowed everyone to get on with the business at hand. And I remember how much pure, sheer fun it was to be his law clerk.

So yes, applying the law is part of what judges do. But that alone in my view does not make a great judge.

We are here today to honor a great judge because not only does he extremely ably apply the law, but because he so skillfully understands and appreciates the people he is applying it to.”

### **HABEAS CASE PROJECT**

The Eastern District had a backlog of approximately 700 pending Habeas Corpus petitions. Senior District Judge Jack B. Weinstein with his legendary generosity of spirit volunteered to accept all habeas cases reassignments, and also promised to resolve all cases so assigned before the end of the calendar year. A total of 500 Habeas Corpus cases were assigned to Judge Weinstein in May 2003, and all 500 cases were decided by December 2003. An extensive written report suggesting administrative action to avoid future backlogs in deciding Habeas Petitions also was prepared by Judge Weinstein and issued on December 11, 2003. Writs were granted in ten (10) cases and, in 68 cases, a certificate of appealability was granted by Judge Weinstein. The Board of Judges owes a debt of gratitude to our senior colleague, who continues to work as hard, if not harder, than any district judge anywhere in the United States.

## THE JUDICIARY BUDGET

The Judicial Branch is experiencing a severe budget crunch. The results of this funding shortfall are being felt throughout the judicial system, most particularly in the district courts and their Clerk' s Offices. In the Eastern District of New York, the Clerk' s Office, Pretrial Services, and the Probation Service have been significantly affected by the current budget crisis. The Clerk' s Office started the fiscal year with an estimated shortfall in the personnel account well in excess of a million dollars. In July, 2003, the Clerk' s Office staff was at 162 permanent staff positions. Presently, the Clerk' s Office is down to 152 positions, and must reduce staff to 142 positions. There is a hiring freeze on all replacement staff needs, a freeze on grade increases, a freeze on even minor longevity bonuses, and five staff members have accepted buy-out retirement offers. The balance of the salary shortfall is coming out of our automation and general accounts, even after these non-personnel accounts had been reduced by approximately 32 percent, as mandated by the Judicial Conference.

The outlook for FY 2005 is not any better. Funding levels for the Clerk' s Office are projected to drop even further, and may only support a total of 132 permanent staff. The budget crunch was intensified by a decision by the AO to reset salary allotments, separate from, and even prior to, a final fiscal year budget, so there was a double salary reduction in FY 2004. Further adjustments to the so-called " work measurement formula" are projected for FY 2005, so this double reduction effect will likely be repeated. A loss of 30 staff positions, if the 132 staff level projection in FY 2005 proves accurate, will be an unprecedented 18.5 percent drop in personnel within less than two years.

## BROOKLYN COURTHOUSE

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA' s failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn, and not enough to house the number of judges who are likely to be sitting there when the project is completed. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it would have delayed and made more expensive the long-planned renovation of the present courthouse, because it would have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriates the additional 39.5 million dollars needed to build out the remaining eight (8) courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration has identified sufficient funds for reprogramming from other available funds. GSA will request that OMB approve the administrative transfer of these funds.

The projects, District and Bankruptcy, have yet again been delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor's surety company, Fireman's Fund, has accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. The new estimated completion dates (although not official) are March 2005 for the Bankruptcy Court, and October 2005 for the District Court.

GSA has spent all of the \$39.5 million appropriated for our eight (8) additional courtroom and chambers just to keep the jobs going. It will be requesting an additional \$74.7 million in reprogramming authority in May to complete both projects. The source of that money will be the \$65 million Congress

appropriated this year for the Repair and Alteration project on the current Cadman Plaza building, and \$9 million from some other undisclosed source. GSA then intends to again ask Congress for Repair and Alteration money for Cadman Plaza in the amount of \$91 million in the 2006 budget. The extensive delays encountered in delivering the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the complete repair and renovation of the existing courthouse. The plan, first designed ten years ago, called for the complete vacating of the existing courthouse to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-examined as to scope, feasibility and cost at that time.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least \$100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is no reason to believe that the current projections will be met. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.



Detailed reports on operations throughout the Eastern District with statistical information for fiscal year 2003 (October 1, 2002 through September 30, 2003), and in some instances through December 2003 are set forth below.

### THE BANKRUPTCY COURT

Bankruptcy Court case filings in Fiscal Year 2003 increased overall by 3.5 percent. Total cases filed were 25,733. Chapter 7 filings increased by 4.0 percent, to 19,856; Chapter 11 filings increased by 14.2 percent to 209; and Chapter 13 filings increased by 1.6 percent, to 5,667. In addition, 1,345 adversary proceedings were opened.

The Bankruptcy Court, effective January 1, 2003, requires all motions, pleadings, memoranda of law or other documents filed by an attorney in connection with a case, other than proofs of claim, to be electronically filed or submitted on a diskette in PDF format. Previously, from April 1, 2002 through December 31, 2002, this requirement only pertained to Chapter 11 petitions and pleadings. *Pro se* filers continue to file their petitions and pleadings using traditional methods since the Court does not permit them to file electronically.

Judge Elizabeth S. Stong was appointed to the Eastern District's Bankruptcy Court on September 2, 2003. Judge Stong replaced Judge Dorothy Eisenberg who retired on March 27, 2003. The Second Circuit immediately recalled Judge Eisenberg due to continued high case filings in the Bankruptcy Court.

The Bankruptcy Court lost a special colleague with the death of Judge Cecelia H. Goetz on January 18, 2004. Judge Goetz was an outstanding member of the Bankruptcy Court, serving first at the Brooklyn Courthouse, and later at the Long Island Courthouse from 1978 until 1993 when she retired. Judge Goetz graduated *cum laude* in 1940 from New York University Law School, where she was the first woman to serve as Editor-in-Chief of the NYU Law Review. Shortly after her graduation, she entered a career in government service, which included a post as Special Assistant to the Attorney General. After World War II, she went to Nuremberg as part of the staff of the Office of Chief Counsel for War Crimes, where she participated in the prosecution of major German industrial complexes. Before becoming a bankruptcy judge, she had been a partner in her father's firm, and had then spent years in association with several prestigious law firms in New York City, finally ending her career as a partner in Herzfeld & Rubin, P.C. At the expiration of her six-year term as a bankruptcy judge in 1978, she was reappointed in May of 1985 by then Chief Judge Jack B. Weinstein for a term of 14 years. Known for her learned opinions and as an extraordinarily capable bankruptcy judge, she was cited in many opinions by other bankruptcy judges and appellate courts throughout the nation.

### **THE MAGISTRATE JUDGES**

Our magistrate judges were assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,545 pending civil cases in Fiscal Year 2003 for pretrial preparation, a 4.6 percent decrease over the high level of the prior fiscal year. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges limited the term of Chief Magistrate Judge to three years in 2000, with each future Chief Magistrate Judge to be determined by seniority. Chief Magistrate Judge Joan Azrack has served in this administrative capacity with distinction. Effective April 2004, U.S. Magistrate Judge Michael L. Orenstein will become Chief Magistrate Judge succeeding Judge Azrack.

Due to the heavy and substantial criminal and civil case workload assigned

to Eastern District magistrate judges, a survey of our magistrate judge utilization was conducted by the Administrative Office of the United States Courts, and the Judicial Conference of the United States subsequently authorized two (2) additional full-time U.S. Magistrate Judge positions for the Eastern District. The Magistrate Judge Selection Committee recommended ten final candidates to the Board of Judges, and interviews were held by the Board with the expectation that both positions will be filled by early summer, 2004. On March 17, 2004, the Board of Judges selected Kiyo Matsumoto and James Orenstein to fill the new U.S. Magistrate Judge positions at Brooklyn and Long Island, respectively.

### **PROBATION DEPARTMENT**

The work of the Probation Department remained at essentially the same high levels as in 2002, and supervised 3,709 individuals, and conducted 3,747 investigations in Fiscal Year 2003. Separately, collateral reports (requests from other federal districts) totaled 856, a decrease of 14 percent.

Chief Probation Officer James M. Fox retired on January 2, 2004. The Board of Judges appointed Tony Garoppolo, who was Deputy Chief Probation Officer since July 2000, to succeed him. Mr. Garoppolo is an acknowledged expert on the U.S. Sentencing Guidelines, and is the author of "The Sentencing Reform Act, A Guide for Defense Counsel." The third edition was recently published by the Federal Bar Council.

### **PRETRIAL SERVICES**

Pretrial Services conducted 2,234 bail investigations in FY 2003, a decrease of 7.8 percent over 2002. Separately, pretrial supervision cases, a significant part of the workload, totaled 899, a number not reported last year. Collateral investigations increased by 25 percent to 185 cases. There also were 49 diversion investigations, and 43 diversion supervision cases.

### **ADR PROGRAMS**

A total of 390 civil cases, representing 5.8 percent of new civil filings, were assigned to the mandatory Arbitration program for cases valued at \$150,000 or less. The Mediation program for complex civil actions had a total of 191 cases referred, representing 2.8 percent of civil filings during Fiscal Year 2003. Sixty-six (66) cases were settled through mediation.

Our ADR website (<http://www.nyed.uscourts.gov/adr/>) posts extensive

information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee, chaired by Magistrate Judge Robert M. Levy, held its third annual ADR workshop in 2003. A review of ADR procedures with the assistance of the Federal Judicial Center and private ADR experts also was conducted this year.

### **THE CJA PANEL**

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's third annual training workshop for Panel members in November 2003.

The CJA Panel Committee also added specialized Habeas Corpus and Capital Case Panels to the available counsel resources for the Court's discretionary use in assigning counsel in these case categories.

### **NATURALIZATION CEREMONIES**

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 14.7 percent in the number of final naturalization hearings scheduled by INS, now part of the new U.S. Department of Homeland Security. The Eastern District of New York naturalized 40,245 new citizens in Fiscal Year 2003 at the Brooklyn Courthouse. The Court continues to hold four (4) naturalization hearings each week throughout the year. Only one other judicial district court, CA-Central, naturalized more citizens this fiscal year.

### **COURT ADMINISTRATION**

The district court and Clerk's Office continued to move toward full participation in the Electronic Case Filing (ECF) system in 2003. An additional three (3) district judges were added as participating judges in electronic filing during the fiscal year. A total of thirteen (13) of the district's nineteen (19) active and senior district judges now participate fully in civil electronic case filing, and all thirteen (13) current magistrate judges participate fully. Two of the remaining six (6) district judges have had one or more large civil cases on the electronic filing

system now or in the past. The district hopes to move toward full participation in the future.

The Clerk's Office transferred all docketing from the old ICMS database to the ECF database on May 11, 2003, representing another major clerical step in the availability of e-filing for all dockets. Although criminal cases are not yet filed electronically, the Clerk's Office is electronically filing all initiating documents (indictments and informations); Judgment and Commitment Orders; and any memorandum and order of major public interest.

### **JURY ADMINISTRATION**

The district's percent of underutilized jurors dropped slightly in 2003 to 41.7 percent. This has moved the Eastern District of New York very close to the national average for all district courts, which was 40 percent in 2003. The district's number of high profile cases and questionnaire cases for jury panels often results in higher utilization percentages. Although the Eastern District of New York has more than its share of both, juror utilization has improved this year. The Court's goal is to get below 40 percent in unused jurors, or at least equal or do better than the national average in the year ahead.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**



**Chief Judge Frederick J. Scullin, Jr.**

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**JUDICIAL RESOURCES**

\_\_\_\_\_ The Northern District is authorized five Article III positions. Magistrate Judge Gary L. Sharpe was elevated to a seat on the District Court Bench on January 29, 2004. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Court Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. Judge Sharpe moved his chambers from Syracuse to Albany to help the Court deal with the workload on the eastern half of the district. On February 10, 2004, Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2003, the Court received designations for seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven

judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges issued decisions in 48 dispositive motions and closed 34 prisoner cases during 2003. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota, and the Honorable James K. Singleton - District of Alaska. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

Senior Judges Howard G. Munson and Neal P. McCurn continue to take a variety of cases and provide valuable assistance to the Court. We are indebted to these judges for their many contributions over the last two and one half decades. We welcome Senior Judge Thomas J. McAvoy who will continue to take a full caseload.

#### STATISTICAL DATA

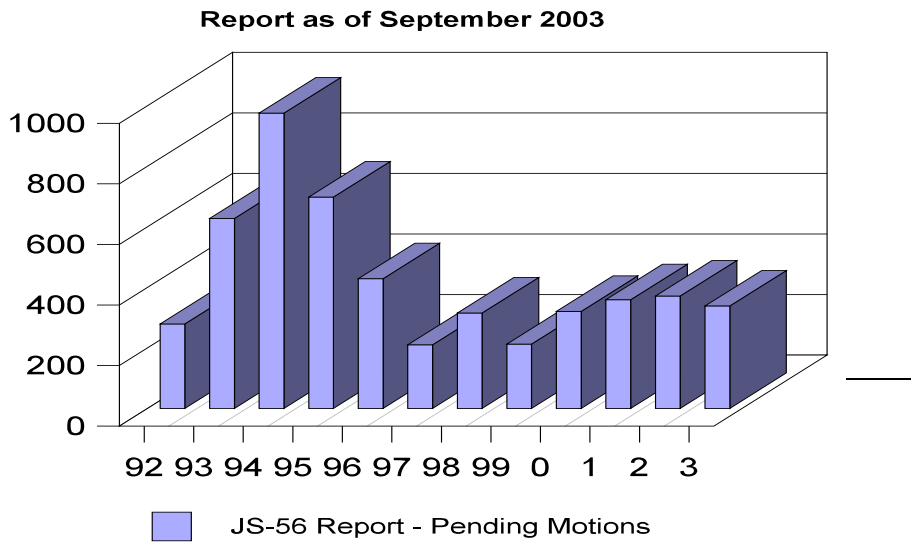
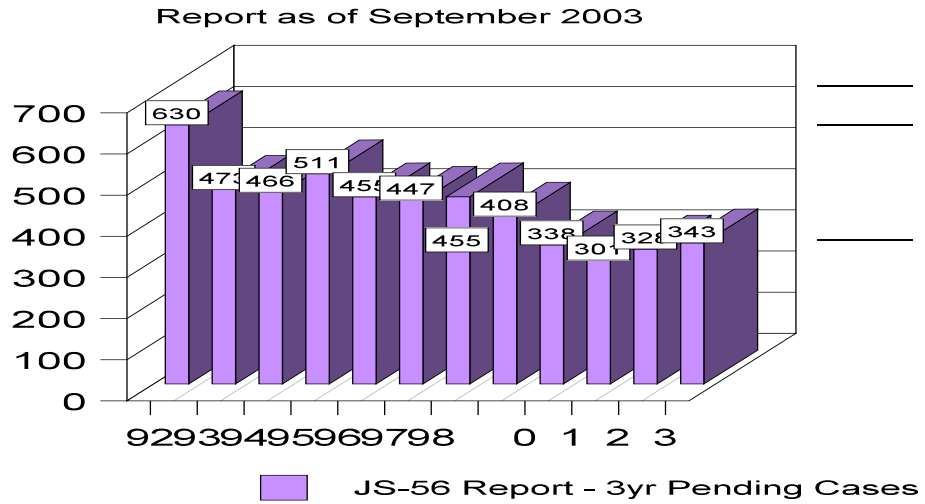
\_\_\_\_\_ Our most challenging task over the last five years has been in addressing the case pending docket. New civil filings fell slightly from the previous year, filings were down by **8.6%** in statistical year 2003. The number of criminal filings rose in SY 2003 by **3%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border. The number of trials completed per judge in SY 2003 decreased slightly when compared to SY 2002, this seems to be consistent with the decrease experienced by courts on a national level.

#### PENDING MOTIONS AND THREE YEAR PENDING CASES

\_\_\_\_\_ The disposition of motions is critical to the efficient operation of the Court. The Court filed **2,728** motions during statistical year 2003. During the same time period the Court disposed of **2,888** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district's pending motions (*as of September 30, 2003*) increased **5.2%** over 2002, and three year pending cases increased **10%** over 2002.

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**SPACE AND FACILITIES**

Albany: A new grand jury room will be constructed in Albany. We had hoped to have this project completed in 2003, however, funding issues have delayed the project. The new projected completion date is April 2005.

**Syracuse**: The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The current plan is for site selection and design in FY 2006, funding in FY 2008 and completed construction in FY 2010. However, this schedule will most likely be delayed due to national budget issues concerning space and facilities projects. Construction on our special proceedings courtroom was completed in March of 2003. Judge David E. Peebles moved into his new chambers and courtroom in June of 2003.

**DISTRICT COURT CLERK' S OFFICE**

During 2003, the District Court Clerk' s Office began the process of preparing both the bench and bar for the implementation of the new case management / electronic case filing system known as CM/ECF. During the summer months, the Clerk, Lawrence K. Baerman, and Chief Deputy Clerk John Domurad, traveled throughout the district to present information and provide demonstrations on the new system to the bar. The Court worked closely with our Federal Court Bar Association on the development of the rules and procedures for the bar to follow when filing electronic documents. In November, the Clerk' s Office began training the bar. In the course of the last few months, the Clerk' s Office has trained over 2,500 lawyers. The first full month of filing (January of 2004) resulted in over 15% of the total filings coming in over the internet. The bar and bench have found the system to be reliable, user friendly and cost effective.

Budget issues were once again a major concern for the Clerk' s Office and the Court. In the Northern District, we have lost nine staff members in less than three years due to budget cuts coupled with a decline in the number of filings. The Clerk has worked closely with the Probation Office on a project that will consolidate several of our administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

**PROBATION / PRETRIAL OFFICE**

\_\_\_\_\_ The Probation Office is experiencing a slight increase in workload following two years of a downward cycle. Like other districts, budget cuts and decreasing caseloads have affected our staffing. We have lost authorized work units, and through attrition, our staffing has decreased as well. We are or will be well below our full work strength by the end of this fiscal year.

In Albany, after a long process, we are nearing the end of our renovation projects. Our first floor space is undergoing a small renovation while our third floor space is undergoing major reconstruction. Both projects should be completed during FY 04. This will satisfy the Probation Office's space requirements as well as bringing it up to court standards.

In the area of operations, one major initiative is the investigation and monitoring of individuals involved in cybercrime offenses. In the new age of the 21st century offender, computer crimes, including frauds committed via the internet and access to websites promoting child pornography, have presented new challenges in supervision. In order to enforce Court imposed restrictions on computer use, the Probation Office has employed internet monitoring technology which allows the Probation Office to determine if offenders are accessing inappropriate Internet sites. Supervising cybercrime defendants presents the additional challenge of keeping pace with the latest trends in information technology because as the technology improves, our detection and monitoring devices will need to keep pace to adequately supervise this more technically sophisticated offenders.

**ATTORNEY DISCIPLINE REPORT FOR 2003**

\_\_\_\_\_ In calendar year 2003 the Northern District had the following attorney discipline cases.

- Five Attorneys were disbarred.
- Five Attorneys were suspended.
- A stay of suspension was issued for two attorneys.
- Four Attorneys were censured.
- Seven Attorneys were reinstated following suspension.

**NORTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT**

\_\_\_\_\_The Bankruptcy Court for the Northern District of New York focused most of its attention on CM/ECF in 2003. The Court went live on CM/ECF on December 28, 2002 and devoted most of 2003 to putting processes and procedures in place to support CM/ECF. The training of internal and external users occurred throughout the year. Training for attorneys began in early spring and continued throughout the year in both Albany and Utica. Attorneys were provided with hands-on training by the Court's trainers and were eligible for seven hours of CLE credit. In addition, members of the Court's staff spoke at several seminars sponsored by the local bankruptcy bars. Training for standing trustees and panel trustees also occurred in 2003. At the end of 2003 only three panel trustees were not yet trained. Plans were also made to train the Assistant United States Trustees in early 2004. The conversion to CM/ECF required the Court to undertake a complete work flow analysis of the flow of paper and information in the agency. The completion of the work flow analysis required the Court to revamp and revise most of its existing case processing procedures. During the latter half of 2003, creditors were allowed to electronically file proofs of claims and transfers of claims. Some of the larger creditor filers brought on board include Beckett and Lee and Sears. Out-of-district attorneys were also allowed to file electronically upon passing the Court's on-line test. In November 2003, members of the bar received notice of the Court's intention to mandate electronic case filing on July 1, 2004. Scanners were purchased for placement at the public counters and plans are underway to allow attorneys to scan documents to the Court from the public counters.

Although most of 2003 was devoted to CM/ECF tasks, a long planned space project was finally completed. Unused chambers space was transformed into a conference room and suite of offices for the Clerk and his administrative staff.

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**ANNUAL REPORT OF THE NORTHERN DISTRICT OF NEW YORK  
ON GENDER, RACIAL AND ETHNIC FAIRNESS  
IN THE COURT**

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\_\_\_\_\_The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



**Chief Judge Michael B. Mukasey**

During the past year, three judicial vacancies were filled. Stephen C. Robinson was inducted on October 30, 2003, P. Kevin Castel was inducted on November 4, 2003 and Richard J. Holwell was inducted on November 20, 2003. One vacancy remains open. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Allen G. Schwartz on March 22, 2003 and the Honorable Robert J. Ward on August 5, 2003. They made important contributions to the Court, and their presence will be missed. The past year also saw the retirement of the Honorable John S. Martin, Jr. who had served with distinction since his appointment in 1990. His outstanding service to the Court is to be commended.

For the period October 1, 2002 to September 30, 2003 there were 12,321 cases filed.

During the past year, the Board of Judges amended Local Civil Rule 5.2 relating to electronic service and filing of documents and approved Local Civil Rule 5.3 relating to service by overnight delivery and facsimile, and 12.1 relating to notice to *pro se* litigants opposing motions to dismiss or for judgement on the pleadings treated as motions for summary judgement. The Court's Lawyers Advisory Committee on Local Rules also reviewed the revisions.

Also, during the past year, the Court adopted a district-wide Continuity of Operations Plan (COOP) which has been used as a model plan for other districts.

### **CLERK' S OFFICE**

The Clerk' s Office for the Southern District of New York operates with a staff of 216 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk' s Office provides record keeping, case management, financial and other services for the District Court. The operating budget for Fiscal Year 2003 was \$ 12,913,576 for personnel, automation and administrative expenses.

During calendar year 2003, the Clerk' s Office went live with the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the existing ICMS program to the new system. The Clerk' s Office has created a docket support team to plan, train and execute the CM/ECF process for Chambers staff, court employees and members of the Bar and the Public. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges will join the system over the course of the next year.

The financial and systems staff of the Clerk' s Office spent much of the second half of the year preparing for the implementation of FAS4T, a new automated financial system. Preparation included training, workflow process mapping and development of new security controls.

Individual departments of the Clerk' s Office report some of the following activities in the year 2003:

**White Plains:** The White Plains Courthouse saw signs of continued growth in 2003. One thousand one hundred and thirty four new civil cases were filed in White Plains in 2003. The Hon. Stephen C. Robinson, U.S.D.J., took the bench in White Plains in October. This returned the White Plains Court to its full complement of four District Judges and three Magistrate Judges. The Clerk' s Office staff increased by two employees to help accommodate this growth. As of December 1st, all Judges in White Plains began requiring cases to be electronically filed as part of the Court' s ECF program. After two years of preparation and training the inauguration of the ECF program is expected to streamline the docketing process by reducing paper filings.

**Jury Department:** The Jury Department has been working on the new Jury Management System (JMS) for over one year. The system has produced some

challenging scenarios when producing jurors to the Judges, establishing follow-up instructions for returning jurors, as well as payroll situations. During 2003, we submitted various modification requests to the software provider and to the Administrative Office of the U.S. Courts. Some of these modification requests were ground-breaking procedures for JMS and between the A.O., ACS (software company) and SDSD in San Antonio Texas, these modifications made the final product. JMS also requires us to qualify jurors on a larger scale and throughout the year we sent out close to 200,000 questionnaires for Pearl Street and White Plains. We were able to qualify over 40,000 jurors for the year 2003 alone and in light of the anticipated busy year of 2004 (including high profile cases such as Martha Stewart, Lynne Stewart and Rigas) we anticipate the abilities of this department and its staff to be tested to the fullest.

**Finance:** In 2003, The Finance Department issued 36,649 checks and processed 14,276 vouchers. At the intake window, 10,333 complaints were filed and 53,971 receipts were issued. For the year. the office receipted \$118,527,618.39 and disbursed \$111,075,895.54. The office oversaw 299 interest-bearing accounts and 766 non-interest-bearing registry accounts. At the end of the year, the balance in interest-bearing accounts was \$239,897,507.25.

**Personnel:** During calendar year 2003, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; disseminated benefit information and processed forms; provided Open Seasons for FEHB and TSP changes; and recruited for available positions, prepared vacancy announcements, and assisted managerial staff with interviews and testing. The need for background checks on all new employees, interns and contracted staff has become routine. A hiring freeze at the end of the year due to greatly reduced budget allowances has prevented the court from filling vacancies and has required the development of new strategies to meet operating needs in the coming year.

**Training:** Much of the year was dedicated primarily to coordinating training operations for the Court's conversion to CM/ECF. CM/ECF training was provided throughout the year to Clerk's Office employees, Judges, Magistrate Judges, Chambers Staff, Probation, Pretrial, Court Reporters, Press Agents, Federal Defenders and US attorneys, based on their required job performance duties. In addition, the training department continued throughout the year to provide CM/ECF training to members of the bar and their legal staff in both civil and criminal cases.

The highlight event of the year for the training department was the opening of a new state-of-the-art training room which is used to conduct training operations

for the District Court and is shared with other agencies to engage in large training events.

**Audio-Visual:** The Audio-Visual Department has completed installation and commenced operation of the multi-media displays in courtrooms 12D and 110. These multi-media systems allow the parties to an action to display exhibits and other case-related materials to the judge and jury in electronic form. Additionally, there are two mobile multi-media systems which can be set up in any courtroom upon request. Testing has begun on the Courtflow Audio Digital Recording System. Currently, the system is being used to record pretrial conferences. Results are very promising, and four additional systems are waiting to be installed after preliminary testing results have been fully reviewed. Anticipated installation of these additional systems is Summer of 2004.

The Audio-Visual Department helped design and plan the District Court's new training room, located at 500 Pearl Street, Room 249. The training room facilitates video-conferencing, tele-conferencing, and Smart Board annotation integrated into a video projection system. The Audio-Visual Department also designed and planned a state-of-the-art teleconferencing system in conference room 850.

The Audio-Visual Department also organized over fifty video-conferences for the Court, including three video-conferences for the Federal Bar Council's CLE programs involving sites located in Syracuse, Buffalo, White Plains, Albany and the Eastern District of New York.

Transcripts produced from audio-taped proceedings continue to grow. This year, the Department was instrumental in coordinating the production of over 1,200 transcripts. The Department now uses a digital fingerprint imaging system in the processing of new employees and student interns. This past year, the Department has processed over 500 new employees and student interns.

**Records Management:** During calendar year 2003, the Records Management Department handled 57,675 requests for files between the open records room and the closed records room at 500 Pearl Street and the file room at Foley Square. The office processed 1,635 opinions from the Judge and Magistrate Judges. During the year, the office generated \$143,438.00 through written correspondence and printing of docket sheets from ICMS. The Records Management Department received and logged 4,775 sealed envelopes and 318 subpoenaed records in 2003.

**Computer Systems:** During calendar year 2003, the Court inaugurated the new CM/ECF electronic case filing system, with nearly two dozen chambers going to a "totally electronic" docket for new cases filed as of December 1st. Additional chambers are scheduled to make the transition to the new system during 2004. The Computer Systems Department purchased and deployed scanners, additional computers, and trained the Court's training staff in the use of this new equipment. The new CM/ECF system necessitated the creation of an e-mail-based document exchange system with the bar and the Clerk's Office. This was designed, assembled and deployed throughout the Court in a matter of two weeks in order to assist the staff to manage a large and rapidly growing quantity of electronic documents.

We made great strides this year with respect to the centralized, remote administration of our nearly 1,100 desktop computers. We possess the capability to deploy urgent software patches, regular updates, and certain types of new application software on an as-needed basis to all the computers under our care irrespective of whether the PCs are in the courthouse or at employees' homes. As a result of these efforts, we have been almost entirely immune from this year's spate of computer viruses, worms and Internet-borne malicious mischief.

Multi-year Disaster Recovery and Continuity of Operations initiatives continued during 2003 in which the Court purchased laptop computers, secure wireless networking hardware, and advanced encryption and VPN software, to permit judges and select Clerk's Office staff to conduct all regular business from home, if necessary, during an emergency that might otherwise shut the courthouse proper.

One unofficial test of our emergency preparedness capability was conducted during the "Great Blackout" of August, 2003. In this situation, the Court's data center at 500 Pearl Street operated in its entirety, without a moment's interruption, throughout the entire blackout by virtue of the building's own electrical generating capability. Continuous, real-time connectivity with the DCN and the Internet was demonstrated during this period. As power was restored to various residential areas, remote access to e-mail and court files was immediately successful.

All this notwithstanding, a great deal of telecommunications and other infrastructure work remains to be completed in this area during 2004 and beyond, specifically with regard to the off-site, real-time replication of the Court's electronic data, backup electrical systems at White Plains, and the integration of the new CM/ECF and FAS4T systems into our fault-tolerant operational environment.

The Computer Systems staff has continued the work begun last year with respect to wireless computer networking, encryption technologies, firewalls and geographically distributed systems. We continued to make recommendations to the Administrative Office with regard to these technologies, as well as for the elimination of "spam" from the judiciary's e-mail systems, and have communicated to them our findings with respect to fault-tolerance and disaster recovery practices.

We successfully deployed six Macintosh laptop computers and two Macintosh file servers within the Court's all-Windows infrastructure. The machines are a joy to use and they interoperate seamlessly with our extant hardware inventory, demonstrating that these are cost-effective replacements for Windows systems of all stripes.

We have also successfully introduced several Linux systems into our back office operations in anticipation of the judiciary's transition from Solaris to Linux in the next year or so.

We conducted our first live trials of the CourtFlow system, which makes audio recordings instead of typed transcriptions, of court proceedings.

We began the implementation of the new FAS4T accounting system, which is to be scheduled to go live on March 1, 2004.

**Magistrate Judges Unit:** The Magistrate Judges Unit has seen several changes in the past Year. First, we have gone in full capacity on the Electronic Case Filing System, and second, as of the beginning of January 2004, in an effort to backup Sealed Vital Records (COOP), we began storing Seizure/Search Warrant and Pen Register ....Info on 3.5" Computer Discs. Upon completion of filling all disc space, the disc is copied onto another 3.5" disc and forwarded to the White Plains Courthouse as a back-up, in the event that the records in Manhattan become damaged or inaccessible.

**Mediation Department:** During 2003, the Mediation Department relocated to 40 Centre Street, Suite 205. The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court's mediation program.

### **Interpreters Office**

**SDNY Interpreter Usage:** In FY 2003, interpreters of 36 languages provided foreign language interpretation during 6,152 separate proceedings, a six

percent increase in activity over last year. Of these, 4,126 were in-court events, a marked increase of 27% over last Fiscal Year. Out-of-court events (pretrial, probation, attorney-client interviews, document translations) totaled 1,930 for all languages. [Note: Interpreter usage figures are reported to the Administrative Office of the U.S. Courts for fiscal years, not calendar years.]

Spanish continues to be the most frequently requested foreign language, but in FY 2003, only 55% of the total interpreter unit caseload was for Spanish, a dramatic drop from the previous year when Spanish represented 78% of the cases covered. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Requests for Punjabi, Pashto and Urdu increased noticeably over previous years.

Total expenditures on interpreter services, paid from a central Administrative Office account, was \$542,358, only a slight increase over FY 2002, despite the increase in interpreter activity. A total of 46 criminal trials required foreign language interpretation: 33 Spanish, four Fuzhou, three Russian, two Arabic and one each in Bengali, Fulani, Hebrew, Cantonese, Urdu and Yiddish. In the aggregate, interpreters worked a total of 275 days of the year on trials.

### **Orientation and Recruitment**

Our yearly orientation program has been suspended because the district has sufficient interpreter resources at this time, however, recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue to be undertaken as needed. Interpreters in lesser-used languages require more training than interpreters for the European languages because of the differing skill levels of the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year.

### **A0 Spanish Certification Testing**

In July, two staff interpreters participated as raters for the oral section of the Spanish certification examination. In the latest round of testing, five interpreters were newly certified in the New York area, but of these, most are state court employees and not generally available for the freelance pool. Available Spanish certified interpreters in our area number approximately 40.

### **Committees and Professional Associations**

The Chief Interpreter was invited to join the Interpreter Service Model

Program for Law Enforcement Committee organized through the Summit County Sheriff's Office in Ohio. The Committee's mission is to develop interpreter protocol and routines for law enforcement settings. She is also currently serving as interim member of the Board of Directors of the National Association of Judiciary Interpreters and Translators.

### **Cooperation with State Courts**

The Chief Interpreter presented a half-day training session for the Connecticut state court system on interpreter ethics.

### **Office Management**

The online scheduling program designed by staff interpreter David Mintz is in its third year of usage and continues to function efficiently. All interpreter and translation usage provided to the Court and its units is recorded in a MySQL database via a web interface written in PHP.

Development of the next version of our interpreter management software is underway. This upgrade will include numerous improvements in code efficiency and maintainability as well as an expanded feature set based on user feedback.

Our office's website (<http://interpreters.nysd.circ2.dcn/> and its public mirror <http://sdnyinterpreters.org>) underwent an extensive redesign and expansion. Nancy Festinger and David Mintz jointly created, edited, organized and published online numerous documents containing information aimed at attorneys, judges, interpreters and the general public, and made them accessible through an attractive navigational interface.

The SDNY online glossary application, designed and built by David Mintz, has been added to by staff and student interns. The glossary was ranked second in a field of over 50 in its category on Lexicool.com, an online search utility for linguists. The rating criteria were presentation and usability.

## **BANKRUPTCY COURT**

This court experienced an overall increase in filings of 8.7%; however, adversary proceedings increased 280%. Although the Court's Chapter 11 case filings declined by 37%, this court's weighted case filings per judge are 3,112 as compared to the national median of 1,493. Therefore, the judges in this district are carrying a caseload more than twice the national median. There are more than

6,600 attorneys registered to use the Court's Electronic Case File System (ECF) and during Fiscal Year 2003, 1,300 new attorneys were added and 1,659 orders to appear *pro hac vice* were signed. The Court continues to conduct training classes for new users of the system on an average of twice a week.

**FILINGS DURING FISCAL YEAR 2003**

<u>Chapter</u>	<u>Number of Filings</u>	<u>Percent Change</u>
7	14,262	13%
11	924	(37%)
12	1	- 0 -
13	2,061	12.8%
304	50	92%
Adversary Proceedings	6,770	280.5%

During Fiscal Year 2002, there were some very noteworthy cases filed here, namely Enron Corp., Global Crossing Ltd., Adelphia Business Solutions, Ogden New York Services, Inc., and WorldCom, Inc. Numerous affiliated cases continue to be filed.

The cases designated as the case in the "mega" cases commenced during this reporting period are as follows:

<u>Case Name</u>	<u>Case Number</u>	<u>Filed Date</u>
Genuity Inc.	02-43558-pcb	11/27/2002
Cenargo International Plc	03-10196-rdd	01/14/2003
Regus Business Centre Corp.	03-20026-ash	01/14/2003
Magellan Health Services, Inc.	03-40515-pcb	03/11/2003
Spiegel, Inc.	03-11540-cb	03/17/2003
Aerovias Nacionales de Colombia S.A.		
Avianca and Avianca, Inc.	03-11678-alg	03/21/2003
Air Canada	3-11971-pcb	04/01/2003
Recoton Corporation	03-12180-alg	04/08/2003
Acterna Corporation	03-12837-brl	05/06/2003
NRG Energy, Inc.	03-13024-pcb	05/14/2003
Allegiance Telecom, Inc.	03-13057-rdd	05/14/2003
The Penn Traffic Company	03-22945-ash	05/30/2003
WestPoint Stevens Inc.	03-13532-rdd	06/01/2003
Loral Space & Communications Ltd.	03-41710-rdd	07/15/2003
Impath Inc.	03-16113-pcb	09/28/2003

The Court is continuing its efforts to provide current, correct information utilizing all means available, including the Court's web site, printed pamphlets for *pro se* filers, using a Clerk's Office staff member to act as a court services coordinator to assist filers unfamiliar with court operations and insuring a "help desk" line is answered by an employee during core court hours of operation.

### U.S. PROBATION OFFICE

The Probation Office provides services to the Court, the community and to offenders. The office is divided into three branches: presentence investigation, supervision and administrative services. During the period ending September 30, 2003, there were 173 staff members.

**Presentence Investigations:** Probation officers working in the presentence investigation division completed increasing numbers of presentence investigations. FY 03 saw another substantial increase in the number of presentence reports completed. The division continues to create innovative ways of fulfilling their obligation, while maintaining their high quality of work.

**Supervision:** The supervision division, which provides direct supervision to offenders, has developed efficient ways of completing their responsibilities. Increased presence in the field, during non-traditional field hours continue to be emphasized. Laptop computers have been issued to individual officers in both divisions that replaced their desktops, allowing officers increased portability and flexibility. Safety measures, including mandatory defensive tactics, handgun retention, and safety scenario training have become the policy of the office.

**Administrative Services:** The administrative services branch includes automation, data quality analysis, personnel, records, supplies and purchasing/budget. The members of this division are dedicated to engaging in quality behind-the-scenes work that supports operations staff.

### PRETRIAL SERVICES

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non appearance and danger to the community for every defendant appearing before the Court following arrest. While working under the guidance of the Court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.

The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2003. The workload grew from 2,199 bail interviews the previous year to 2,309 this year. Of those defendants interviewed by Pretrial Services, 95% were interviewed prior to their initial appearance in court. Our district continues to have a low detention rate, especially when compared to other large metropolitan district courts.

At the end of the Fiscal Year, September 30, 2003, there were 1,019 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety-six percent of those released appeared in court as required and 98.5% of defendants were not arrested during their bail period. Officers reported 249 total violations resulting in a modification of bail conditions on 46 occasions and 65 defendants were detained following bail violation hearings. The majority of these violations were technical violations for noncompliance with release conditions such as continued drug use, failure to attend a treatment program or reporting violations.

This year we placed a strong emphasis on community supervision with officers increasing home visits in addition to the defendant reporting to our office. The goal was to verify residential information, explain our role and establish collateral contacts with the defendant's family as well as continuing to identify any risks of nonappearance or danger to the community. Officers responded by completing over 2,000 home visits and 98 employment visits in FY 2003.

While numbers do not tell the whole story these are the average activities happening every day in Pretrial Services-

daily telephone contacts with defendants =	119	daily contacts with assistant US attorney =	14
daily office visits with defendants =	57	daily contacts with defense attorney =	14
daily home visits to defendants =	10	daily law enforcement contact =	35
daily drug tests administered =	21	daily criminal record inquiries =	30
daily docket searches =	54		

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last and so prevent the front door of the system from becoming a revolving door.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT



**Chief Judge William K. Sessions III**

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**U.S. DISTRICT COURT CLERK' S OFFICE**

**Judicial Assistance**

\_\_\_\_\_ During calendar year 2003, both of Vermont' s district judges assisted other districts with caseload needs. In February 2003, Chief Judge William K. Sessions III, accompanied by his courtroom deputy, traveled and spent two weeks in Las Cruces, New Mexico, providing assistance with the district' s criminal caseload. In November 2003, District Judge J. Garvan Murtha sat by designation in the Eastern District of New York at Brooklyn assisting with that district' s civil caseload.

**District Court Clerk' s Office**

During 2003, the District Court Clerk' s Office continued to maintain its characteristically stable staffing level and the office experienced only one separation for the entire year. This vacancy was filled during early January and a replacement deputy clerk was hired for the Burlington in-take section. No other personnel changes to permanent staff occurred within the District for the remainder of the year other than the District' s part-time *pro se* law clerk position was

eliminated at the close of the calendar year. Prior to December 31, 2003, although Vermont was authorized 1.0 *pro se* law clerk positions, budget and policy considerations allowed the District to retain an additional half-time *pro se* law clerk position. Based upon the Judiciary's financial plan for FY 2003 and a change in Judicial Conference staffing policy which eliminated funding for excess *pro se* law clerk positions, the District's half-time position was eliminated effective December 31, 2003.

In anticipation of being designated as an electronic filing court, the district court's executive management team traveled to the District of Maine during May 2003 to discuss Case Management/Electronic Case Filing CM/ECF strategy. Similar to the District of Maine, Vermont's electronic filing strategy is to implement the "CM" portion of electronic filing first before moving on to full-electronic filing capability. In November 2003, Vermont was officially included as an electronic filing court in the national round-out and was listed as Implementation Wave No. 17. Vermont's target "go-live" date is tentatively set for September 2004. During December 2003, eight deputy clerks underwent CM/ECF Applications training at the San Antonio, Texas Training Center. Additional personnel will attend both Dictionary and Editor/Quality Control training during 2004.

During August 2003, the Clerk's Office converted without incident to the most current version of the Financial Accounting System For Tomorrow (FAS<sub>4</sub>T), Version 3.7.3.2. The Clerk's Office continues to implement the Certifying Officer authority delegated to Court Unit Executives during the summer of 2002.

#### **Automation and Information Technology Activities**

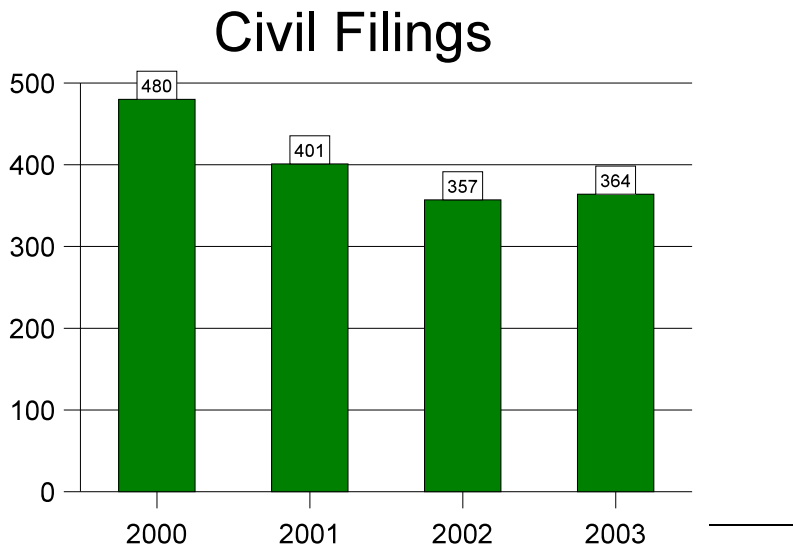
During calendar year 2003, the Clerk's Office continued to refine and expand automation and IT-related activities, with particular emphasis on enhancing the Court's external website. Jury instructions for each of the Court's duty locations have been added to the website along with instructions for using the Court's two Burlington-based evidence presentation systems. The Clerk's Office is also investigating the possibility of using the internet as a juror notification tool supplementing its toll-free phone notification system.

Two other significant accomplishments which took place during 2003 in the systems arena were the addition of a new web-based opinion review and retrieval system and the fielding of a completely new, web-based court scheduling calendar. The opinion review system makes available to the public and bar both published and non-published court opinions and also allows for electronic notification to a

user or party when an opinion first becomes available. Enhancements made to the Court's internal website included affording employees the ability to listen to courtroom proceedings via their desktop computer and the ability to view Federal Judicial Television Network (FJTN) programs at individual workstations. These last two enhancements were particularly well-received by Court and Clerk's Office staff. Other applications enhancements included upgrading all user workstations with the Windows "XP" platform, upgrading all file servers with Novell Release No. 6, and as mentioned earlier, installing the latest new release for the FAS<sub>4</sub>T financial application.

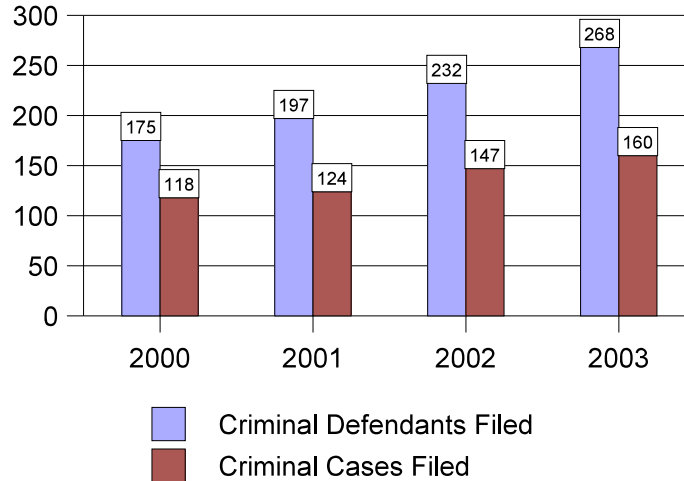
**Caseload Statistics**

As shown below, Vermont's civil case filings for calendar year 2003 remained essentially constant when compared to calendar year 2002. The District experienced only a very slight increase in civil filings - seven cases - in the total number of civil cases commenced. Based upon historical data, we believe that this upward trend will continue as the District's long-term average caseload filing on a per annum basis centers on roughly 400 civil filings per year.



Unlike its civil counterpart, however, Vermont's criminal caseload continues to expand. Calendar year 2003 saw an increase of thirteen cases and thirty-six defendants, representing increases of sixteen and ten percent, respectively, over calendar year 2002. The increased caseload activity is attributed to a staffing increase placed in effect by the Office of the United States Attorney during late 2002 when two additional AUSA positions were filled.

## Criminal Filings



### Criminal Justice Act (CJA) Panel Operations

The total number of Criminal Justice Act appointments made by the District during 2003 decreased approximately five percent, from a high of 291 appointments made in 2002 to 277 appointments made for 2003. The discrepancy of having more criminal cases and defendants filed during 2003 while still experiencing a decline in the number of actual CJA Panel appointments made is attributable to the fact that the District simply had more fugitive defendant filings.

During 2002, the District applied to establish a separate, independent Office of the Public Defender within its jurisdiction as it continues to meet the qualifying criteria set forth by 28 U.S.C. § 3006A(g) - making more than 200 individual CJA appointments on a per year basis. On June 5, 2003, the Second Circuit Judicial Counsel approved Vermont's application to establish a separate office, contingent upon the Defender Services Division securing adequate funding through Congress. Vermont remains hopeful that funding will be approved during 2004 and that a separate Federal Public Defender Office will be established.

### Early Neutral Evaluation (ENE) Program

The Court continues to rely upon its Early Neutral Evaluation Program to reduce the cost of litigation and its delay to the parties. Although the number of ENE sessions held during 2003 increased more than fourfold – from 17 to 74

sessions held – the rate of full case settlement remained constant at thirty-three percent. Currently, the Court's ENE Panel consists of forty-eight attorneys who are trained in various alternative dispute resolution techniques. The program will enter its tenth year of operation in 2004.

### **Space and Facilities**

During May 2003, representatives from the Administrative Office's Space and Facilities Division assisted the District's Long-Range Space Planning Committee with updating Vermont's Long-Range Space Plan. Due to the untimely death of Circuit Judge Fred I. Parker during August 2003, the District is currently in the process of modifying its Plan to account for this unplanned event. Vermont is currently included on the national courthouse construction schedule for initial site acquisition and building design for Fiscal Year 2007.

No major court-driven tenant alteration projects took place within the District during calendar year 2003. Work on the GSA prospectus-level HVAC replacement project for the Burlington Federal Building continued ahead of schedule during the year. While the anticipated completion date is sometime during the fall of 2004, the formal contract completion date is set for March 2005. The Burlington elevator replacement project was completed during the summer of 2003. The building's existing Otis elevators installed when the building was built in 1960 were completely replaced with more modern Thyssen elevators.

### **Attorney Discipline**

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District's proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court's federal bar during the year.

**PROBATION & PRETRIAL SERVICES  
District of Vermont**

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 22.9 units, an increase of 1.8 units from the previous year. This increase in authorized work units brought us back to where we had been in FY 2001. The increase in workload was, in part, a result of last years' significant increase in Pretrial Services' workload and an increase in Post-Conviction Supervision cases. Unfortunately the Judiciary' s budget was not finalized until early in the calendar year of 2003. Funding for new work units was provided for only one-half of the year. Consequently, we were unable to add to our staff and we finished the year with 21.6 employees.

The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers and one probation clerk. There is also an un-staffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. A recent Administrative Office Long-Range Planning Report highlighted the space shortages in each of the three offices. At present, there is no room for additional staff in Burlington, Rutland or Brattleboro.

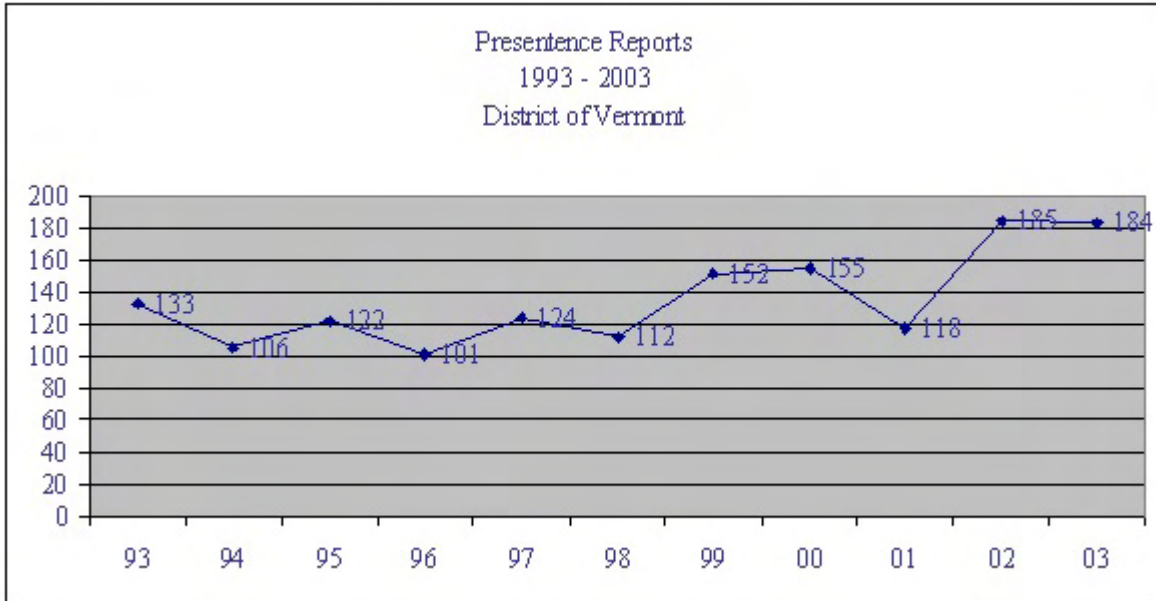
The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including New Officer Orientation, Officer Safety, Firearms, CapStun, Dealing with Mental Health Disorders, Myers Briggs, General First Aid and CPR certification.

We had one officer complete the Leadership Development Program and one officer acting as a trainer for New Officer Orientation. We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager assisted the Office of

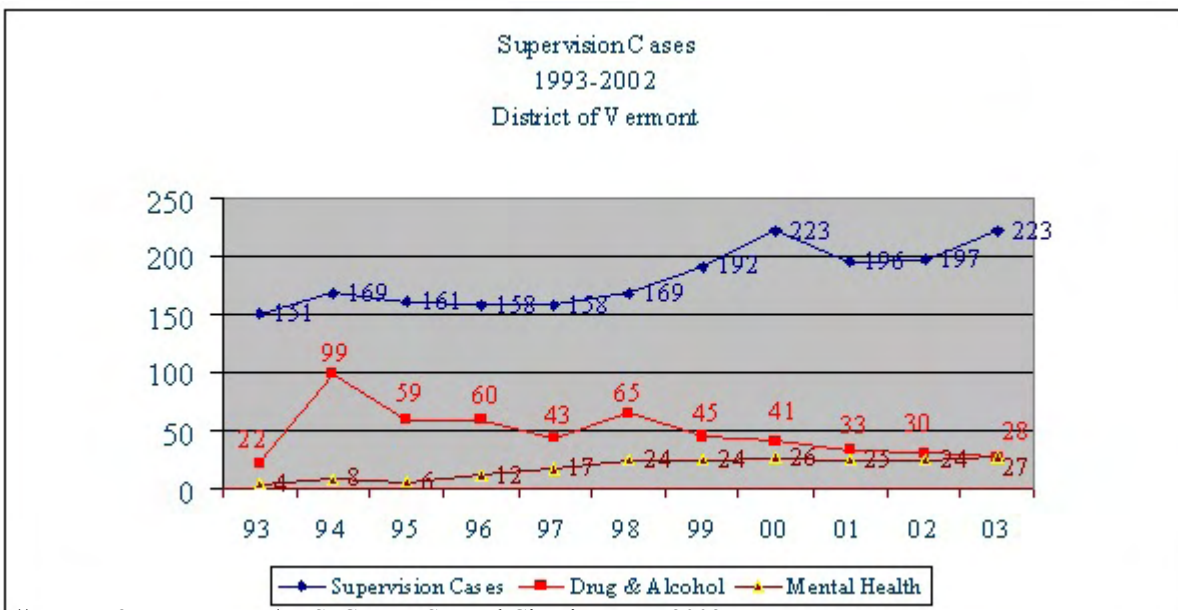
## Chief Judges' Reports

Probation & Pretrial Services with district reviews as a subject matter expert on budget and human resources. In addition, she served as a mentor in the implementation of FAS:T.

The District of Vermont's Presentence Investigation workload remained stable. After last year's record high of presentence investigation reports, we completed one less this year.



Our Post-Conviction Supervision cases increased by 13% over last year. The number of defendant's receiving drug and alcohol treatment, similar to the previous years. During the year a total of 90 offenders under post-conviction supervision received substance abuse treatment. We had a 14% increase in collateral investigations completed and a significant 39% decrease in violations.

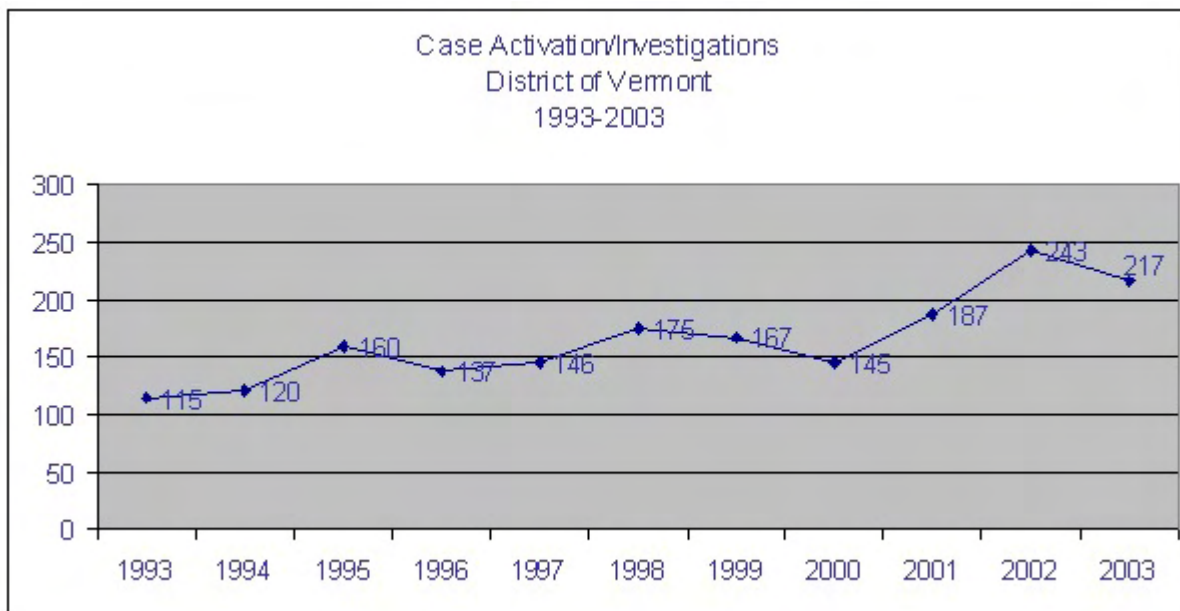


## Chief Judges' Reports

During FY 2003, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District's DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a 17% decrease in drug treatment expenditures and an 83.3% increase in mental health expenditures. We had 25.4% offender co-payments for drug treatment and 27.3% for mental health.

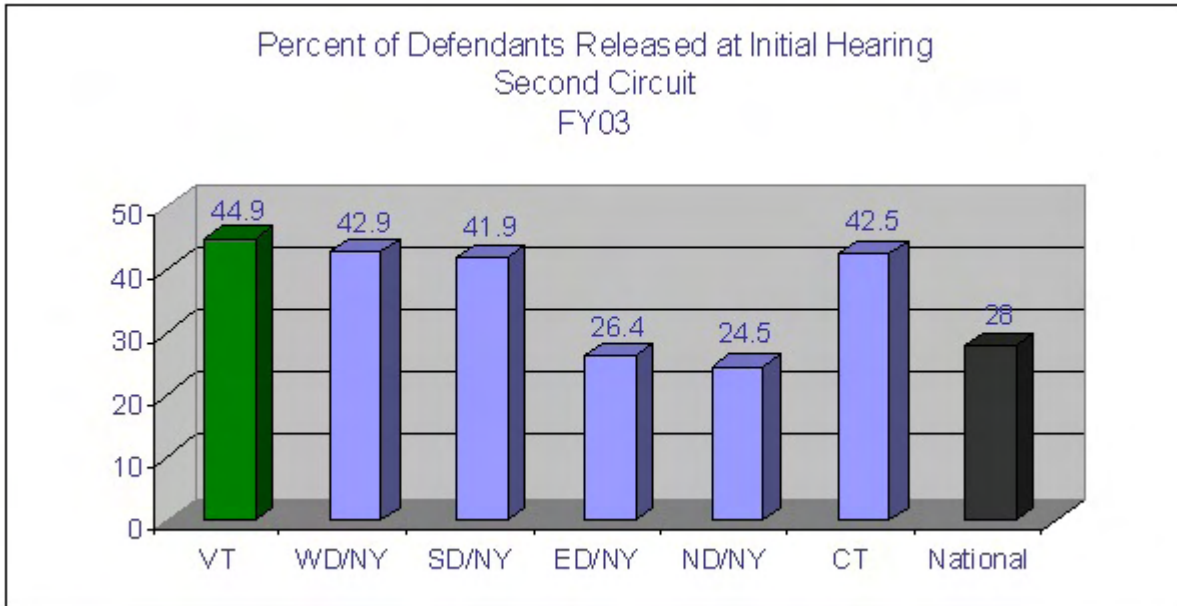
During the fiscal year, we continued to use electronic monitoring as a sanction and in lieu of halfway house placements. Sixty post-conviction offenders were under electronic monitoring services during the fiscal year and 23 offenders in Bureau of Prison custody were monitored with the electronic monitoring systems as part of their reintegration to the community because Vermont has no halfway house facilities.

During FY 2003, we experienced a 10.6% decrease in Pretrial Services cases activated, with a total of 217 cases for the year.



At the end of FY 2003, we had 94 defendants under supervision, the same number as last year. We had an 11.0% decrease in offenders released with substance abuse treatment conditions. We expended 19.5% less for drug and alcohol treatment and 70% more for mental health treatment than the previous year. We collected 13.5% of our total pretrial alternative detention funds in offender co-payments. Within the Second Circuit, Vermont had the highest release at initial

hearing, 44.9% and the lowest rate, 26.9% of defendant' s detained and never released.



The majority of offenses charged in the District of Vermont were drug related offenses, totaling 53.2%, down from 61% last year, 7.9% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 50.2% of drug law violators and 14.5% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 106 investigative reports to other districts relating to Canadian offenders.

**U.S. Bankruptcy Court  
District of Vermont**

**CM/ECF**

We successfully converted to CM/ECF Version 2 in early 2003. We also completed construction of an 8-station training room in Rutland and began holding monthly classes for attorneys and their staff. We had trained a total of 185 attorneys as of the end of 2003, about 34% of whom were trained on-site in attorneys' offices. Attorneys filed documents online on behalf of their clients 4,445 times in 2003, and trustees filed online 1,578 times. Together, this accounts for approximately 49% of all filings, up from 31% in 2002. Attorneys opened 966 bankruptcy cases and 14 adversary proceedings electronically, which constituted approximately 51% and 22% of those categories, respectively. This reflects a significant increase from 2002. By December 31, 2003, over 64% of all attorney transactions were being completed online.

**Community Outreach**

Several members of the Clerk's Office staff have formed a Community Outreach Task Force for the purpose of creating and presenting a community outreach program that is very similar to the CARE program which is being initiated throughout the circuit. The task force has been very active in several different projects, all of which focus primarily on disseminating information to *pro se* parties and educating young people about the risks associated with imprudent use of credit.

In late 2003, the task force completed a revised *pro se* packet which we have made available to persons who choose to seek bankruptcy relief without benefit of counsel, communicated the existence of this information to the Vermont agencies that provide legal services to the indigent, obtained information from these agencies about how best to coordinate the task force's efforts with the services the agencies provide, made the bar aware of this new *pro se* information packet, and posted the *pro se* packet of information on the Court's web page.

During spring 2003, the task force created and finalized a one-hour interactive educational mini-course entitled **Start Smart**. During the summer of 2003, the task force disseminated information about this program to many colleges in Vermont, offering to give this presentation on site for no fee. On September 27, 2003, members of the task force made their initial presentation of **Start Smart** at the College of St. Joseph (in Rutland, VT). The response from students who have

participated in the program has been very positive, and the task force is currently planning to offer this course several more times in 2004, to both college and high school students.

In a similar vein, the Court created a *pro se* litigant information sheet and instituted a procedure whereby the Clerk's Office sends out a form to both parties explaining the notice, service, filing and local rule requirements whenever one of the parties to a summary judgment motion is *pro se*.

Judge Brown implemented a Judicial Performance Appraisal system in 2003, in which attorneys are encouraged to offer candid comments to a third party (an attorney who does not practice in this court), who then passes the comments along to Judge Brown. As of December 2003, this attorney had heard from and/or contacted 15 attorneys who have practiced in this court. (This is a significant number, and an excellent level of response, since our bar is so small: about 45 attorneys filed approximately 80% of all papers filed by attorneys in 2003.) We are pleased to report that the comments were overwhelmingly positive. Certain questions were raised as to court operations, to which we responded via an article in the Vermont Bar Association journal.

### **Mega-Case and Jury Trial**

This court received its first “mega-case” in 2003, involving over 19,000 creditors. This is an exceptionally large case for the District of Vermont, and the staff managed to process 2,720 claims without any outside assistance.

In June 2003, Judge Brown also held the first jury trial in Vermont's bankruptcy court since she took the bench. It lasted five days before the parties settled the lender liability and other claims in issue.

### **Also in 2003...**

- Judge Brown was appointed to serve as the Second Circuit Representative to the Administrative Office's Bankruptcy Judges' Advisory Group.
- We implemented new rules regarding privacy.
- The Court successfully converted to a new time and attendance system (ELMR).
- We, in collaboration with the U.S. District Court, constructed a courtroom and chambers space for the Bankruptcy Court in the courthouse in Burlington.

- The Clerks Office staff created and populated new databases in Lotus Notes, including:
  - a policy database containing this court' s Employee Handbook;
  - a VTB Documents Library containing meeting agendas and minutes, financial procedures, the Internal Control Manual, and job descriptions for each employee; and
  - a CM/ECF Procedures database.
- The Court sponsored *Take Your Kids to Work Day* during which attorneys and staff were encouraged to bring their children to the Court to learn about what their parents do all day.
- Judge Brown traveled to Petrozovodsk, Karelia, in the former Soviet Union, for 10 days in May 2003 to speak to about 200 Karelian judges of the Arbitrage [commercial] Court about their new bankruptcy system and how it compared to the American Bankruptcy law, and participate in the Russian American Rule of Law Consortium (RAROLC) on the American adversarial system.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**



**Chief Judge Richard J. Arcara**

**SUMMARY OF HIGHLIGHTS AND ACTIVITIES IN THE  
WESTERN DISTRICT OF NEW YORK**

Statistical Year 2003 was yet another year during which case filings, both civil and criminal, increased in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the District's workload continues to be substantial. The District ranks second in the Circuit and 22nd nationally with regard to civil filings, and first in the Circuit and 21st nationally with regard to criminal filings. With respect to pending cases per judgeship, the District ranks first in the Circuit and 6th nationally, with 727 cases per judgeship. Overall, civil filings in the District were up 5.5% over the preceding reporting period, while criminal filings were up 13% for the same period. The total civil and criminal filings place the District 10th nationally in this category.

Despite the heavy workload, the District continues to make great strides in disposing of cases. The District ranks first in the Circuit and 10th in the nation

with regard to terminations per judgeship. This result is even better than last year when the District was 18th nationally in this category. In view of the District's increasing caseload, however, it will be difficult for the District to keep up this pace without the creation of any new judgeships.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress has begun to create additional judgeships but, unfortunately, the Western District has not been included in the new authorizations. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court second in the Circuit and 19th nationally. This district is well above the national average of 611 weighted filings per judgeship versus 523 nationally.

Plans proceed apace with two major construction projects in the District. The first project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration, the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand-alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration is in the process of negotiating for the purchase of the parcels of land on which the new courthouse will be constructed. The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.



Artist renderings of concept design of the new Buffalo Courthouse

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2007 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2003, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continues to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II was appointed to the Second Circuit Judicial Council on Bankruptcy. Chief Judge Ninfo continued to expand the Credit Abuse Resistance Education (CARE) program within the District and, as a result of a November 13, 2003 letter from Second Circuit Chief Judge John M. Walker, Jr. to Chief District Judges, the CARE program expanded throughout the Second Circuit and to some extent nationally as the result of a number of initiatives within the Federal Judiciary.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS<sub>4</sub>T, continued

to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court acted as a mentor and advisor to the Southern District of New York, the Northern District of Georgia, and the Eastern District of North Carolina.

During the period October 1, 2002 through September 30, 2003, the District implemented the CM/ECF case management system as part of Wave 11, going live on the case management module on October 4, 2003. The final conversion was accomplished over the weekend of October 1, 2003 through October 3, 2003, with over a million and a half records converted without error. Over 500 attorneys have been trained on and registered for the system to date, and attorneys began e-filing on January 4, 2004.

## **PERSONNEL**

### **Judicial Officers**

Active District Court Judges include Richard J. Arcara (Chief Judge) and William M. Skretny in Buffalo and David G. Larimer and Charles J. Siragusa in Rochester. Senior Judges include John T. Curtin and John T. Elfvin in Buffalo and Michael A. Telesca in Rochester. Judge Telesca celebrated his 20th anniversary on the bench in May 2003. Magistrate Judges include Leslie G. Foschio, Hugh B. Scott, and H. Kenneth Schroeder, Jr. in Buffalo and Jonathan W. Feldman and Marian W. Payson in Rochester. Bankruptcy Court Judges include John C. Ninfo, II (Chief Judge) in Rochester and Michael J. Kaplan and Carl L. Bucki in Buffalo. Fiscal Year 2003 marked the tenth anniversary on the bench for Judge Bucki.

### **Administrative Officers**

Court Unit Executives are Rodney C. Early, Clerk of Court, United States District Court, Paul Warren, Clerk of Court, United States Bankruptcy Court, and Joseph A. Giacobbe, Chief Probation and Pretrial Services Officer. The United States Marshal is Peter Lawrence. The District Court's Chief Deputy Clerk is Jeanne M. Spampata. The Rochester Division Clerk's Office is administered by Deputy Clerk-In-Charge, Rachel Bandyach (Ms. Bandyach resigned effective December 28, 2003). The Bankruptcy Court's Chief Deputy Clerk is Michelle Pierce. The Buffalo Division of the Bankruptcy Court is administered by Deputy-In-Charge JoAnn Walker, the Rochester Division Office is administered by Deputy-In-Charge Todd Stickle. Deputy Chief Probation Officer Anthony San Giacomo oversees the operation of the Buffalo Office, while Deputy Chief

Probation Officer Thomas McGlynn supervises the Rochester Division Probation Office (Mr. McGlynn retired at the end of December, 2003.)

### **Magistrate Judges**

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the District.

## **STATISTICS**

### **District Court**

Civil filings for the year ending September 30, 2003 were 1,697, which is a 5.5% increase over the prior year's civil filings. Buffalo's filings were up 3% and Rochester's filings were up 9.5%. Total criminal case filings for the year ending September 30, 2003 were 439, a 13% increase over the prior year. Filings were up 2.3% in Buffalo, and 34.6% in Rochester.

The civil pending caseload is up a combined 6.4% over last year. Buffalo is up 7.9%, and Rochester is up 4.5%. Rochester's share of the pending civil caseload stands at 42%, down one percentage point from last year's share.

The criminal pending caseload is up 9.2% overall, and now stands at 570 cases.

One thousand five hundred and forty two civil cases were terminated during the period October 1, 2002 - September 30, 2003. That number is one more than was terminated during the prior twelve-month period. Buffalo closed 904 cases, while Rochester closed 638 cases.

### **Bankruptcy Court**

Bankruptcy filings in the Western District of New York for the preceding twelve-month period increased, as has been the national trend. A total of 14,579 cases were filed during Fiscal Year 2003, which represents a district-wide increase of 12.95% from the previous twelve-month period. The percentage increase in bankruptcy filings in the District was significantly greater than the national average of 7.4%. Chapter 7 cases continue to comprise the majority of the cases in this district, representing approximately 74% of the total cases filed. A total of 527 Adversary Proceedings were filed during Fiscal Year 2003, representing a slight decrease from last year.

According to the most recent Bankruptcy Program Indicators, the Court continues to rank nationally in the median range with respect to the number of case filings, disposition time and average age of pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability Adversary Proceedings and second in the Circuit for the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the increased workload and the inability to fill new authorized work units.

### **Probation and Pretrial Services**

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2003, the U.S. Probation and Pretrial Services office updated its strategic plan and the staff continued their commitment towards Total Quality Service. The plan identifies major performance outcome areas involving improvement of quality and service in pretrial service reports, supervision services, presentence reports, automation services, training, diversity of the organization and management. Staff members, representing all job types, are assigned to work on goals supporting these outcome areas.

During this reporting period, a number of individuals participated in regional and national initiatives outside of the district. Two probation officers participated as trainers for the Federal Judicial Center's new officer training program. One member of the management team assisted the Office of Probation

and Pretrial Services on the Committee for the Development of the AO' s updated post sentence and pretrial services supervision monographs. One of the senior probation officers was selected as the Second Circuit' s representative on the U.S. Sentencing Commission' s Advisory Board.

In statistical year 2003, 698 cases were activated on pretrial release, representing a bail release rate of 65.7%. The percentage of pretrial defendants who successfully completed supervision was 80%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 365, which includes pretrial diversion defendants. Of this number, 160 defendants were referred for substance abuse testing and/or treatment. A total of 52 pretrial services defendants were referred for mental health treatment.

A total of 198 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid approximately \$16,000 toward co-payment orders. The successful EMS completion rate continued in the mid-80% range. Use of pretrial EMS resulted in a potential savings to the government of \$1,921,177.

The presentence investigation unit completed 495 investigations. District-wide, 71% of sentenced defendants were remanded, 22% were placed on probation, 15% were ordered to pay a fine and 15% were directed to make restitution.

During the reporting period, 1,277 post-sentence offenders were under supervision. Of this number, 1,211 offenders, or 95%, completed their term of supervision successfully. A total of 160 offenders received drug treatment, while 71 offenders received mental health treatment. Two Hundred Forty offenders were placed under electronic monitoring conditions which produced a successful completion rate of 99%. Offenders paid \$11,885 towards co-payment orders. The average monthly number of individuals on post-sentence electronic monitoring was 55. Had these individuals been incarcerated, the cost to the government would have been approximately \$1,606,000. A total of 2,098 hours of community service were completed by 58 offenders. Restitution and fine collections totaled \$1,146,255. A total of 47 individuals were processed through the probation office' s employment program, resulting in 61% of the offenders either securing work, completing a training program, or becoming involved in an educational program.

AUTOMATION

District Court

During this reporting period, a significant amount of time was spent by the systems staff preparing for implementation of the new case management/electronic case filing (CM/ECF) system. New servers were successfully installed and configured for use in the CM/ECF project. The entire ICMS database was successfully migrated to the new system.

In addition to the technical work performed, the systems staff provided extensive training, both internally and externally, in support of the CM/ECF project. This included more than ten on-site training classes for members of the Bar as well as many in-house technical training seminars for court staff.

The new digital telephone system in Buffalo and Rochester continues to provide the Court with many new opportunities. The Bankruptcy Court's Rochester Office was successfully migrated to the new telephone system during this reporting period. The process of migrating the District Court Clerk's Office and Chambers in Rochester to the new system is nearing completion. This migration to the digital telephone switch promises to save the District Court and Bankruptcy Court significant budget resources. Shortly, the remaining chambers in Buffalo will be migrated to the new digital system as well.

In an effort to obtain more competitive telephone service rates, the District Clerk's Office has provided the Probation and Pretrial Services Unit with consulting expertise to assist them in their move to a less expensive service.

The systems staff continued throughout the year to process all necessary work station and server cyclical replacements and began to truly utilize the SAN for storage of digital audio recording data.

A new FAS<sub>4</sub>T server has been installed and the FAS<sub>4</sub>T application migrated to it. At the conclusion of this reporting period, the systems staff was preparing to upgrade to the new version of FAS<sub>4</sub>T, version 3.7.

On the whole, the systems staff participated greatly in the training opportunities throughout the year. Deborah Trowse completed a computer forensics class while Brian Loliger actively participated in the CM/ECF on-site training program. Systems Manager Patrick Healy continues to provide on-site training to the Bar and others with respect to the new case management/electronic case file system.

This Fiscal Year saw the completion of the infrastructure and technical installation of expanded courtroom technology in two district courtrooms, one in Rochester and one in Buffalo.

### **Bankruptcy Court**

On June 13, 2003, the Bankruptcy Court switched its case management system from BANCAP to CM/ECF, ending the use of the case management system that the Court had used for nearly 15 years. Conversion to CM/ECF required a significant commitment of IT personnel and budget resources to adequately train, test and convert existing case records and to support the Court in using the new case management system. The IT staff converted approximately 165,000 case records from BANCAP to CM/ECF, making that case information available to internal and external users without the need to keep two case management systems operating. For the period from June 30, 2003 through January 30, 2004, attorneys “ e-filed” a total of 811 cases with the Court representing 8.90% of the Court’ s total case filings for that period. During that same period of time, through the use of a scanning system developed by the Court’ s IT staff, the Court was able to electronically image 166,592 documents, consisting of over 659,000 pages. Consequently, the Court was able to remain timely in its docketing, while at the same time making all documents filed with the Court since June 13, 2003 available electronically through CM/ECF. The IT staff has developed a “ CM/ECF off-line program” for use by judges that hold court in remote locations without high-speed internet access, enabling a judge to take a notebook or CD to that location and have available all of the documents for the matters being heard that day without the need to rely on dial-up connections. The program has been very well received by other Bankruptcy Courts around the country.

Chief Deputy Clerk Michelle Pierce, served as CM/ECF Project Manager, while performing all other duties, in an admirable fashion. The Court registered 90 attorneys as e-filers, and has trained over 130 attorneys, together with the support staff for many of those attorneys. The Court is certified by the New York State Bar as a continuing legal education provider, offering a four credit-hour course to attorneys in the Court’ s training facilities.

## **FINANCIAL OPERATIONS**

### **District Court**

Statistics for the Financial Department show a slight increase across the board in various measures of workload. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over \$2.9 million

representing a 5% increase over the prior year, with the actual number of receipts issued (10,492) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which rose by 7%. Additionally, our registry deposits grew by 88% with \$3.5 million being collateralized through the Federal Reserve.

The volume of criminal debt activity overseen by the Financial Department significantly increased this year particularly due to joint and several restitution cases. Our current caseload involves the monitoring, tracking and collections on debt totaling over \$27 million for these types of cases alone which represents a 40% increase over what was ordered last year. Early in the year, our Financial Operations Supervisor initiated an inter-agency meeting with the District's U.S. Attorney's Office and the United States Probation Office to resolve outstanding issues with joint and several restitution cases. Countless hours were spent by the Financial staff identifying issues, communicating with the various agency leaders, attending a multitude of meetings, questioning and understanding the legal ramifications of various situations, and ultimately adjusting our records accordingly. This resulted in our ability to reduce the District's Deposit Fund by 23% by year end.

During the year, the Court's Financial staff processed over 6,600 payment vouchers and issued 13,078 checks. Combined Registry and Treasury disbursements totaled almost \$6.4 million. These statistics remained relatively stable from last fiscal year; however, one significant change in this area of financial operations involved the implementation of Certifying Officers legislation in October, 2002. Although the Clerk of Court remains the sole disbursing officer for the Western District of New York, the Financial Department continues to print the checks for all court units within the district but is no longer required to review vouchers for the other court units. Payments are now initiated electronically upon certification by the Unit Executives and/or their designees.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 387 vouchers were certified for payment during the year, with over \$1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 9% and 84% respectively primarily due to the assignment of multiple panel attorneys in two very significant cases. Numerous hours were spent reviewing, researching, and communicating with experts in the area of high profile criminal matters similar to USA vs. Goba, et al., after which the presiding Judge approved our proposed Order which included a rather significant departure from the **Guide to Judiciary Policies and Procedures**. The Administrative Office was very pleased with the Court's decision and brought it

to the attention of the Defender Services Committee which met shortly thereafter. Coincidentally, one of their primary agenda items included the management of large non-death penalty cases whereby possible guidelines were being decided upon. As a result, they commended the Hon. William M. Skretny for his efforts in this area. Furthermore, the provision of recommendations on CJA-related death penalty guidelines and a subsequent proposed Order in the matter of USA vs. Diaz, et al, were also completed.

Other accomplishments in the area of CJA, upon the Chief Judge's direction, involved the drafting of new local policies and procedures for CJA Panel Attorneys regarding appointments, prior expenditure approvals, submissions deadlines, and other details, which are now provided at the time of assignment. New attorneys to the Panel are also provided with written material, as well as an overview of the CJA appointment system and resources. And finally, our public web page now includes various CJA documentation, voucher forms and instructions.

Early February also brought many FAS<sub>4</sub>T related activities (Financial Accounting System for Tomorrow). Our Financial Operations Supervisor assisted the Administrative Office with training their team leads on Certifying Officer implementation simultaneously with FAS<sub>4</sub>T, which resulted in a request by the Chief Accounting Officer for the Accounting and Financial Systems Division (AFSD) to write an article on Certifying Officer Preparations that was subsequently published in the nationwide FAS<sub>4</sub>T flyer. Assistance was also provided in the presentation of Project Management Training to new FAS<sub>4</sub>T implementation courts. This was followed by a member of the Financial Department mentoring the Eastern District of North Carolina as they converted their financial operations to FAS<sub>4</sub>T. Additionally, we were asked to participate with the Administrative Office in an Operational Assessment and Audit of Texas Southern's budget, financial, and systems operations.

And lastly, we completed the reconciliation of our district's Deposit, Registry and Unclaimed Funds accounts with the Administrative Office's Central Accounting System (CAS) data. This task took two months to complete resulting in our initiating appropriate corrections to errors dating back to the 1960's. This was the first step required in the preparation for Civil/Criminal Accounting Module (CCAM) which is beginning to be rolled out to the courts in Fiscal Year 2004.

### **Bankruptcy Court**

The Bankruptcy Court and the District Court identified the need to replace outdated telephone equipment being used by both courts in the Rochester

Courthouse during Fiscal Year 2003. The Bankruptcy Court fully funded the cost of purchasing a telephone system for the courts to share, at a total cost of approximately \$80,000. The cost for each court to purchase its own telephone system would have been approximately \$75,000. Consequently, the Court saved approximately \$65,000 by partnering to purchase a single telephone system. District Court provided technical support to the Bankruptcy Court in operating and maintaining this system, further reducing the operating cost of the new equipment. In addition, the Bankruptcy Court reprogrammed funds into the District Court budget to assist District Court in performing building improvements and upgrades.

The Bankruptcy Court's inventory control system has been made available to other courts through the Administrative Office, and the Court regularly assists other courts in addressing their inventory control issues. The Court witnessed an increase in the use of credit cards by attorneys to pay filing fees from 1.5% of all fees paid in Fiscal Year 2002 to 19% of all fees paid during Fiscal Year 2003. It is expected that attorneys' use of credit cards to pay filing fees will continue to increase as the number of cases filed by attorneys electronically through CM/ECF increases.

**ATTORNEY DISCIPLINARY STATISTICS**

_____ Suspensions	0
Disbarment	0
Resignation	0

It came to the attention of the District Court that the Appellate Division, 4th Department, has failed to provide this Court with notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year's Annual Report.

**JUDICIAL MISCONDUCT COMPLAINTS**

None

**JUDICIAL  
ADMINISTRATION**

**IMPROVING THE WORK OF THE COURTS**

**Judicial Conference of the United States**

The federal judiciary as a whole is governed for administrative purposes by the Judicial Conference of the United States, a national body constituted pursuant to 28 U.S.C. § 331. Consisting of representatives of all the federal courts, the Judicial Conference roughly resembles a legislature for the judicial branch, or perhaps a board of directors.

The tabulation following indicates Second Circuit representation on the various committees of the Conference. The names of the committees provide a kind of summary of the issues dealt with by the Judicial Conference. These are highly important bodies because the full Conference meets only twice each year, primarily to act upon committee reports. Most business is transacted on the “ consent calendar,” adopting committee proposals. The committees are generally staffed by the Administrative Office of the United States Courts, the Washington agency responsible for judicial branch administration and support at the national level. In addition, the Federal Judicial Center conducts research for many committees.

As Chief Judge of the Second Circuit, Chief Judge John M. Walker, Jr. is the statutory Second Circuit representative on the Judicial Conference of the United States. He will continue in this role during his tenure as the Chief Judge of the Circuit. The current Second Circuit District Court representative is Chief Judge Frederick J. Scullin, Jr., of the Northern District of New York, whose term expires on September 30, 2004.

The Judicial Conference met in Washington, D.C., on March 18, and September 23, 2003. At the March 18th meeting, the Judicial Conference, at the recommendation of the Committee on Federal-State Jurisdiction, unanimously adopted a resolution expressing the Conference’s continued opposition to legislation pending in the 108th Congress that, if passed, will expand federal jurisdiction over class action litigation by permitting, through the use of minimal diversity citizenship, the initial filing in or removal to federal court of almost all such actions now brought in state court. Since 1999, the Conference has expressed its concern that such legislation would be inconsistent with principles of federalism and would add substantially to the workload of the federal courts. In the March 18th resolution, the Conference, while recognizing that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, noted that Congress, in the event it passed such legislation, should be encouraged to include sufficient limitations and

threshold requirements so that federal courts were not unduly burdened and states' jurisdiction over in-state class actions remained undisturbed. The Conference further resolved to continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that did not unduly intrude on state courts or burden federal courts.

Also at the March 14th meeting, the Committee on Judicial Resources, as part of the biennial Article III judgeship survey, recommended and the Judicial Conference agreed to transmit to Congress a request for additional Article III judgeships, including two circuit judgeships for the Second Circuit Court of Appeals, three permanent and one temporary district court judgeships for the Eastern District of New York and one temporary judgeship for the Western District of New York. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference approved the redesignation of the part-time Southern District Magistrate Judge from Newburgh, New York to Middletown, New York. The Conference also approved the Magistrate Judges Committee's recommendation that the number, locations and arrangements of the Magistrate Judges in the Western District of New York remain unchanged in the district.

On March 27, 2003, the House of Representatives approved a floor amendment (the "Feeney Amendment") to H.R. 1104, 108th Congress, the then-pending, "Child Abduction Prevention Act," which would have, among other things, restricted district courts' authority to depart downward from the sentencing guidelines to grounds specifically identified by the United States Sentencing Commission. It also would have required, in appeals of downward departures, *de novo* review by the courts of appeals of sentencing judges' application of the guidelines to the facts. The House substituted H.R. 1104 for an earlier-passed Senate bill dealing with child pornography, and a conference was scheduled forthwith. By mail ballot concluded on April 3, 2003, the Executive Committee of the Conference, adopted the recommendations of the Committee on Criminal Law, that the Conference oppose legislation eliminating the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for departure; oppose legislation that directly amended the sentencing guidelines and suggest that Congress should instruct the Sentencing Commission to study changes to particular guidelines and to report to Congress if it determines not to make the recommended changes; oppose legislation that would alter the standard of review in 18 U.S.C. §3742(e) from "due deference" regarding a sentencing judge's applications of the guidelines to the facts of a case to a "*de novo*" standard of review; and urge Congress not to pursue legislation in this area until after the Judicial Conference, the Sentencing Commission and the Senate have had an opportunity to consider

more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system. On April 30, 2003, a somewhat narrower version of the bill subsequently passed by Congress was signed into law as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 or “ PROTECT Act” (Public Law No. 108-21). At the September 23, 2003 meeting, the Conference voted to support repeal of certain provisions of the PROTECT Act that did not relate to child kidnaping or sex abuse, including the provisions previously acted upon on behalf of the Conference by the Executive Committee as well as certain provisions of the Act on which the Conference had not previously taken positions, including, among others:

The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure; the requirement directing that the Sentencing Commission release data files containing judge-specific information to the Attorney General; the requirement directing the Department of Justice to submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees and the requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures.

Also at the September 23rd session, the Conference endorsed the recommended changes to the miscellaneous fee schedule by the Committee on Court Administration and Case Management (“CACM”), following a comprehensive review undertaken by CACM of the miscellaneous fees set by the Judicial Conference for the courts of appeals, the district courts, the United States Court of Claims, the bankruptcy courts and the Judicial Panel on Multi-District Litigation. These changes included adopting inflationary increases to most miscellaneous, increasing the fee in the courts of appeals for docketing a case on appeal or review, or docketing any other proceeding, from \$100 to \$250, establishing a new, optional fee to the court of appeals miscellaneous fee schedule of \$200 per remote location for the use, at the request of counsel, of videoconferencing equipment in connection with an oral argument to defray the cost of transmission lines and maintaining the videoconferencing equipment used by the courts, and that the fee for filing a lift stay motion in bankruptcy courts be increased from one-half the filing fee prescribed in 28 U.S.C. §1914(a) to the full filing fee which is currently \$150.

At its September 23rd meeting, the Conference approved the recommendation of the Committee on Defenders Services to create a new section

in the guidelines for the administration of the Criminal Justice Act and related statutes encouraging courts to use case budgeting techniques in complex, non-capital panel attorney representations that appear likely to become or have become extraordinary in terms of cost. These new provisions parallel those already pertaining to managing the CJA representation costs in capital cases.

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



**Top row, left to right:**

Circuit Judge Chester J. Straub  
Chief Judge Robert N. Chatigny, District of Connecticut  
Circuit Judge Guido Calabresi  
Circuit Judge Dennis Jacobs  
Circuit Judge Rosemary S. Pooler  
Chief Judge William Sessions III, District of Vermont  
Circuit Judge Robert D. Sack

**Bottom row, left to right:**

Chief Judge Michael B. Mukasey, Southern District of New York  
Circuit Judge José A. Cabranes  
Chief Circuit Judge John M. Walker, Jr.  
Chief Judge Edward R. Korman, Eastern District of New York  
Chief Judge Richard J. Arcara, Western District of New York

**Absent:**

Chief Judge Frederick J. Scullin, Jr., Northern District of New York

**SECOND CIRCUIT JUDGES SERVING ON U.S. JUDICIAL  
CONFERENCE COMMITTEES AND SPECIAL COURTS  
FEBRUARY 2004**

John M. Walker, Jr.	Court of Appeals	The Executive Committee
Jed S. Rakoff	S.D.N.Y.	Committee on the Administration of the Bankruptcy System
Victor Marrero	S.D.N.Y.	Committee on the Budget
Denis R. Hurley	E.D.N.Y.	Committee on Codes of Conduct
John G. Koeltl	S.D.N.Y.	Committee on Court Administration and Case Management
Norman A. Mordue	N.D.N.Y.	Committee on Criminal Law
John Gleeson	E.D.N.Y.	Committee on Defender Services
Loretta A. Preska	S.D.N.Y.	Committee on Federal-State Jurisdiction
Robert D. Sack	Court of Appeals	Committee on Financial Disclosure
Rosemary S. Pooler	Court of Appeals	Committee on Information Technology
Janet Bond Arterton	Connecticut	Committee on International Judicial Relations

## Judicial Administration

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Robert A. Katzmann	Court of Appeals	Committee on the Judicial Branch
William K. Sessions, III	Vermont	Committee on the Judicial Branch
Dennis Jacobs, Chair	Court of Appeals	Committee on Judicial Resources
Nina Gershon	E.D.N.Y.	Committee on the Administration of the Magistrate Judges System
J. Garvan Murtha	Vermont	Committee on Rules of Practice and Procedure
Mark R. Kravitz	Connecticut	Committee on Rules of Practice and Procedure
Laura Taylor Swain	S.D.N.Y.	Advisory Committee on Bankruptcy Rules
Shira A. Scheindlin	S.D.N.Y.	Advisory Committee on Civil Rules
David G. Trager	E.D.N.Y.	Advisory Committee on Criminal Rules
David G. Trager <i>Ex-Officio</i>	E.D.N.Y.	Advisory Committee on Evidence Rules
Barrington D. Parker, Jr.	Court of Appeals	Committee on Security and Facilities
William K. Sessions, III	Vermont	U.S. Sentencing Commission

**COMMITTEES OF THE SECOND JUDICIAL CIRCUIT  
OF THE UNITED STATES**

Jed S. Rakoff, Chair	S.D.N.Y.	Bankruptcy Committee
Rosemary S. Pooler, Chair	Court of Appeals	Information Systems and Technology Committee
José A. Cabranes, Chair	Court of Appeals	Library Committee
Barrington D. Parker, Jr., Chair	Court of Appeals	Space & Facilities Committee
Carol Amon, Chair	E.D.N.Y.	Committee on Judges' Obligation under 28 U.S.C. § 455
Robert D. Sack, Chair	Court of Appeals	History & Commemorative Events Committee
John M. Walker, Jr., Chair	Court of Appeals	Public Affairs Committee
Alfred V. Covello, Chair	District of Connecticut	Committee on Local Holding Procedure for Filing Motions
Robert N. Chatigny Chair	District of Connecticut	Connecticut Federal/State Judicial Council
William K. Sessions, III Chair	District of Vermont	Vermont Federal/State Judicial Council
George B. Daniels, Chair	S.D.N.Y.	New York Federal/State Judicial Council

**JUDICIAL CONFERENCE (SECOND CIRCUIT) AND JUDICIAL COUNCIL**

Circuit judicial conferences are periodic circuit-wide meetings convened pursuant to 28 U.S.C. §333. A modification to this statute, which formerly mandated an annual conference, permits the Judicial Conference to be held in alternate years. A 1996 modification of §333 makes attendance optional; formerly, active circuit and district judges were required to attend unless excused.

The 2003 Judicial Conference was a bench-bar conference. It was held on June 5th through 8th at The Sagamore on Lake George in Bolton Landing, New York. The Hon. John M. Walker, Jr., Chief Judge, presided over the conference and the Hon. Denise Cote, United States District Judge for the Southern District of New York was the Conference Chair. Prior to the judges' Executive Session on the first day of the conference, Chief Judge Walker met with the members of the Second Circuit Judicial Council. At the Executive Session, William Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, appearing for AO Director, Leonidas Ralph Mecham, reported to the judges on AO initiatives concerning the federal judiciary. The Honorable Fern Smith, the Director of the Federal Judicial Center, also spoke to the judges about various education programs available to them. Following the Executive Session, members of the Federal Judges Association met.

At the Friday dinner program, the new district, bankruptcy and magistrate judges who had taken the bench since the 2002 Judicial Conference were introduced: Circuit Judge Reena Raggi, Western District Magistrate Judge Marian W. Payson and Court of International Trade Judge Timothy Stanceau. United States District Judge Barbara S. Jones of the Southern District of New York served as Toastmaster for the evening.

Friday morning June 6th, the Conference opened with Chief Judge Walker's Report on the State of the Second Circuit. The Chief Judge's speech focused on the continuing crisis of judicial vacancies among the federal courts, including the courts of the Second Circuit; the need to address the problems of aging and overcrowded courthouses throughout the Second Circuit; the caseload increase in the Court of Appeals due to a tremendous influx of immigration appeals over the past year and national bi-partisan efforts to redress the inequities of judicial pay. Following Chief Judge Walker's Report, two plenary sessions were held. Circuit Judge Robert A. Katzmann moderated a discussion entitled, *Federalism: Where Are We Heading?*, between Professor Marci A. Hamilton of the Benjamin N. Cardozo School of Law of Yeshiva University and former Solicitor General Seth P. Waxman, now with Wilmer, Cutler & Pickering in Washington, D.C. The second Friday morning plenary session was moderated by Senior Circuit Judge Ralph K. Winter. Judge Winter led a discussion based on the criminal, civil

and administrative investigations into the activities of a fictional corporation which bore a striking resemblance to the activities of a certain well known Houston, Texas corporation. Entitled, *Enron On My Mind*, the panel included James B. Comey, United States Attorney for the Southern District of New York, Stephen Fraidin of Kirkland & Ellis, Patricia M. Hynes of Milberg Weiss Bershad Hynes & Lerach, LLP, Lawrence B. Pedowitz of Wachtell Lipton Rosen & Katz, Linda C. Thomsen, Deputy Director of the Enforcement Division of the Securities and Exchange Commission in Washington, D.C., Richard Walker, General Counsel, Corporate and Investment Bank, Deutsche Bank AG and Theodore V. Wells of Paul Weiss Rifkind Wharton & Garrison. Eighth Circuit Court of Appeals Judge and Chair of the United States Sentencing Commission Diana E. Murphy provided closing remarks on federal sentencing guidelines issues in white collar criminal cases.

The second day of the Conference opened with a report on the 2002-2003 United States Supreme Court term by Circuit Justice Ruth Bader Ginsburg. Following her report, Justice Ginsburg and her colleague, Associate Justice Stephen G. Breyer participated in a dialogue with Southern District Judge Loretta A. Preska and Eastern District Judge John Gleeson. Both Justices joined Chief Judge Walker, Second Circuit Judge Dennis Jacobs, Chair of the Second Circuit Committee on the American Inns of Court Professionalism Award and Judge Randy J. Holland, President of the American Inns of Court, in presenting the second annual Second Circuit American Inns of Court Professionalism Award to Gerald Walpin, Esq. of KMZ Rosenman. Circuit Judge Dennis Jacobs, who chaired the selection committee, introduced Mr. Walpin and explained to the audience the basis for his selection by the Committee.

After the presentation of the Second Circuit American Inns of Court Professionalism Award to Mr. Walpin, Circuit Judge José Cabranes moderated a panel discussion, *The Role of Courts in Time of War*, with Professors Ruth Wedgwood of Johns Hopkins University, William C. Banks of Syracuse University College of Law, Burt Neuborne of New York University School of Law and Scott L. Silliman of Duke Law School.

The 2003 Judicial Conference concluded with the presentation of a rock opera, *There's Something Afoot*, written, produced and directed by Steven Edwards, Esq. of Hogan & Hartson and former President of the Federal Bar Council and starring The Federal Bar Council Players: Dennis Cariello, Jason Cooper, Carey Dunne, Jennifer Edlind, Suzanne Griffin, Carrie Kei Heim, Deirdre Kane, Fran Obeid, John Redmon, Yasuhiro Saito, Gary Sandelin, Spencer Schneider, Irene Vavulitsky, Frank Velie and Jim Zucker. After the performance

concluded, Mr. Edwards and his band of musician-attorneys provided music for dancing.

Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints, the states of the dockets of the courts of the Circuit, and Circuit-wide space, security and automation issues. The Council especially was concerned about the continuing difficulties being encountered in the Eastern District courthouse construction projects in Brooklyn, New York. At its June 5th meeting, the Council received a report from Eastern District Chief Judge Edward R. Korman outlining the latest problems, including the apparent lack of monies necessary to finish the project and the rumor that the general contractor, J.A. Jones, was in danger of filing for bankruptcy. The Council directed Circuit Judge Barrington D. Parker, Jr., Chair of the Second Circuit Committee on Space and Security, to contact GSA Administrator Stephen Perry regarding the Brooklyn courthouse project in an effort to resolve these and other issues.

Judge Parker along with Chief Judge Korman and Eastern District Judge Raymond Dearie held a series of meetings throughout the year with GSA Administrator Perry, GSA Commissioner of the Public Building Service Joseph Moravec and Deputy Commissioner Paul Chistolini to resolve the problems plaguing the Brooklyn courthouse project. As a result of these meetings, GSA replaced local GSA staff on the project and assigned Deputy Commissioner Chistolini to supervise the project. In November 2003, J.A. Jones, the general contractor, filed for Chapter 11 protection in the United States Bankruptcy Court for the Western District of North Carolina, forcing the surety Firemen's Fund Insurance Corporation ("FFIC") to take over the project and bring in a new general contractor. As 2003 drew to a close, discussions between GSA and FFIC were ongoing and it appeared that Bovis Lend Lease would be the new contractor on the Brooklyn courthouse construction project. It is clear, however, that the project's completion will be delayed until sometime in 2005.

Also, in 2003, the Office of Public Affairs continued its outreach efforts which included coordinating the expanded *Courts Visits Program* for New York City high school students in conjunction with the Federal Bar Council, the annual April *Take Our Children to Work Day* program with the New York Women's Bar Association and its Foundation and organizing the national *Open Doors to Federal Courts* program in the Manhattan federal courts. The Public Affairs Office also oversaw student mentoring and moot court programs and provided courthouse tours for visiting foreign judges and court administrators.

PROTECTING THE QUALITY OF THE JUDICIAL PROCESS

Attorney Discipline

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed in January, 1978, to assist the Court of Appeals in administering Local Rule 46(f)-(h). The Committee, composed of seven attorneys, may be called upon to conduct investigations and other proceedings in disciplinary matters involving attorneys admitted to practice before the Court. Pursuant to Local Rule 46(f), in 2003, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. In calendar year 2003, the Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2003, there were 43 disbarments, 33 suspensions, three interim suspensions, three public censures, one private reprimand and ten reinstatements in the Southern District. The Court had 18 cases pending at the end of the calendar year.

In the Eastern District of New York, 56 disciplinary orders were issued in 2003: 20 disbarments, 21 suspensions, seven resignations and eight censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

It came to the attention of the Western District of New York that the Appellate Division, 4th Department, has failed to provide this Court with

notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year' s Annual Report.

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District' s proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court' s federal bar during the year.

In the Northern District of New York, attorney disciplinary actions in calendar year 2003 were handled by Chief Judge Frederick J. Scullin, Jr. There were five disbarments, five attorney suspensions - a stay of suspension was issued for two attorneys, four censures, and seven reinstatements.

### **Judicial Misconduct**

The Judicial Council' s Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372©, creates a mechanism for addressing complaints of judicial misconduct or disability. The statute' s objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge “ has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts “ or” is unable to discharge all the duties of office by reason of physical or mental disability.”

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit' s Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of “ illustrative” rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk' s Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as “ frivolous” complaints and those “ directly related” to the merits of a decision or ruling. The Circuit Executive' s Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge's dismissal orders. Petitions for review are considered by a four-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge's disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) &©. The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2003, 63 judicial misconduct complaints were filed in the Second Circuit.

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**UNITED STATES COURTS  
SECOND CIRCUIT REPORT  
2004**

**John M. Walker, Jr.  
Chief Judge**

**Karen Greve Milton  
Circuit Executive**

The Annual Report will open in 1 seconds.

# UNITED STATES COURTS SECOND CIRCUIT REPORT 2004

## Table of Contents

[Structure of the Federal Judiciary](#)

[Judicial Business of the Second Circuit](#)

[Chief Judges' Reports](#)

[Court of Appeals](#)

[District of Connecticut](#)

[Eastern District of New York](#)

[Northern District of New York](#)

[Southern District of New York](#)

[District of Vermont](#)

[Western District of New York](#)

[Judicial Administration](#)

[Judicial Council of the Second Circuit](#)

[Second Circuit Judges Serving on U.S. Judicial Conference](#)

[Committees and Special Courts](#)

[Committees of the Second Judicial Circuit of the United States](#)

[Second Circuit Judicial Conference and Judicial Council](#)

[Protecting The Quality Of The Judicial Process](#)

[Operational Support and Services](#)

[2004 Fair Employment Practices Report](#)

[Judges and Judgeships](#)

[Judicial Status Update](#)

[Statistics](#) - Adobe Acrobat Reader Required

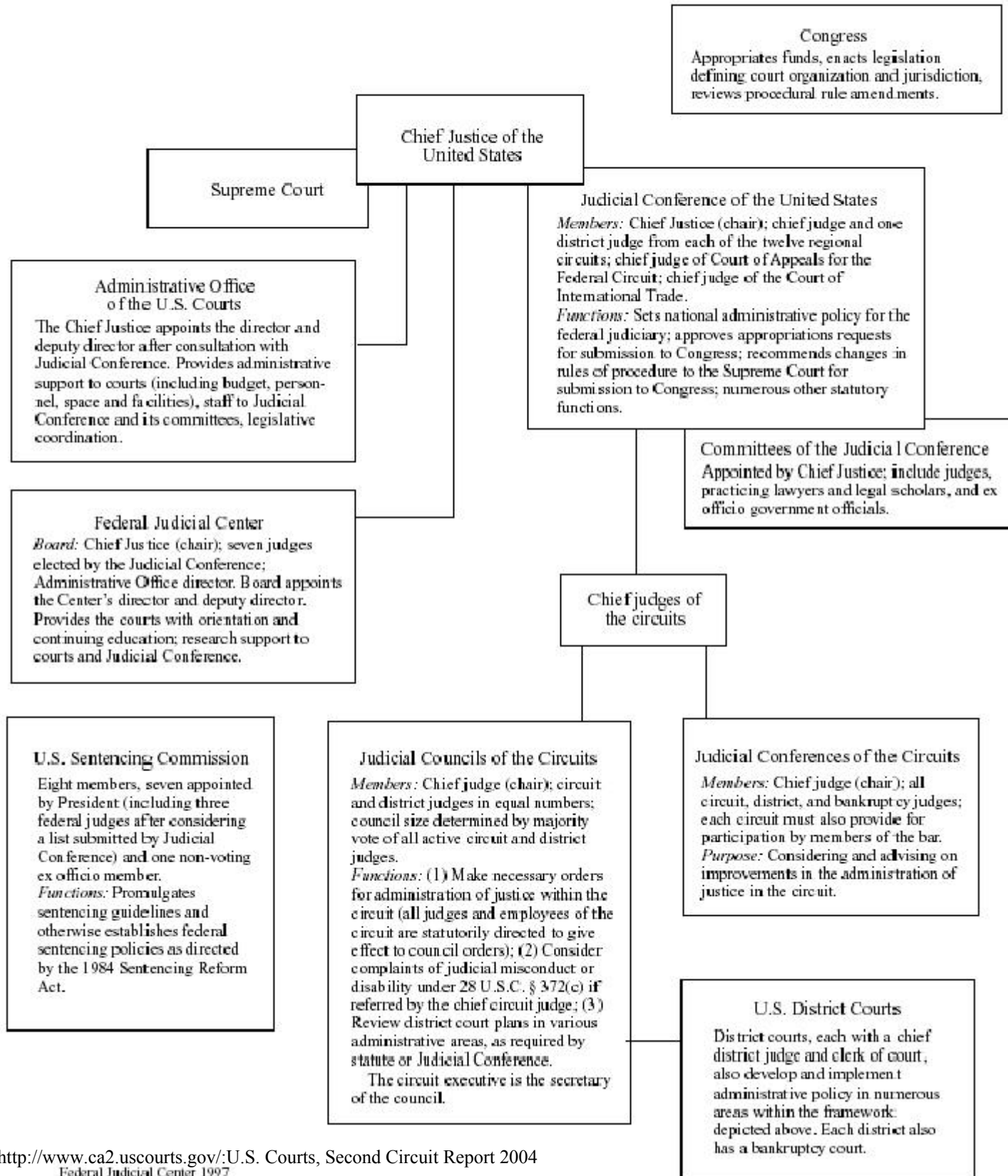
## **STRUCTURE OF THE FEDERAL JUDICIARY**

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court and “such inferior courts” as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2005, the Court of Appeals has 13 active judges in 13 judgeships, 10 senior judges (nominally retired judges, most of whom carry heavy caseloads). The district courts have a total of 59 active judges, 41 senior judges, 47 magistrate judges and 27 bankruptcy judges. There were three district judgeship vacancies.

# Federal Judicial Administration





# **CHIEF JUDGES' REPORTS OF THE SECOND CIRCUIT**

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**



Chief Judge John M. Walker, Jr.

In August of 2003, our Court suffered an enormous loss with the unexpected death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or “FIP”, as he was affectionately known to his circuit court colleagues, was a member of our Court for almost ten years. On July 7, 2004, FIP’s seat was filled by Peter W. Hall, the United States Attorney for Vermont. Judge Hall, or “PWH,” as he is now known to his colleagues served as the United States Attorney from 2001 until his appointment to our Court. A graduate of the University of North Carolina at Chapel Hill and Cornell Law School, Judge Hall clerked for Vermont District Judge Albert W. Coffrin following his graduation from law school and now occupies the same chambers in which he worked as a law clerk to Judge Coffrin. On October 25th, I had the pleasure and privilege of presiding at Judge Hall’s public induction held at the United States Courthouse and Federal Building in Burlington, Vermont. Judge Hall’s appointment to our Court completes our complement of thirteen active circuit judges. We welcome Judge Hall to our Court and look forward to many years of serving together.

On November 20, 2004, Senior Circuit Judge Ellsworth Van Graafeiland died at the age of 89, one month short of his thirtieth anniversary on our Court. Judge Van Graafeiland, or “Van” to his family, friends and colleagues served with great distinction on our Court, writing hundreds of opinions, carefully crafted and hewing to the belief that the judge’s limited, but important role is to interpret the law as he finds it. Although many considered Van a “law and order” judge, this reputation belies the true nature of a judge who was most firm when his keen sense of justice told him that a defendant had been unjustly treated. An example of this is in a case from one of the last three-judge panels on which he sat. Van was initially the only judge to believe that a criminal defendant was sentenced erroneously based on his co-conspirator’s conduct. Personally agitated by this perceived sense of injustice, Van began drafting a dissent. Ultimately, however, through an exchange of memoranda with his two colleagues, his dissent ultimately became the basis for a unanimous opinion.

The name Van Graafeiland evokes memories of New York State’s original Dutch settlers who became the members of New York’s landed aristocracy in its northern counties and along the Hudson Valley. Those who assume that Van was descended from these elites could not be more mistaken. To the contrary, Van came to the law from a Depression-era childhood of disadvantaged circumstances. As a child, he suffered a disability, scoliosis, which caused him to spend five years in a full body cast. The silver lining, however, was that Van developed a life-long love of reading. A graduate of Cornell University Law School, he joined the Rochester, New York law firm of Wiser, Shaw, Freeman, Van Graafeiland, Harter and Secrest (now Harter Secrest & Emery) where he practiced law until then New York Senator James L.

Buckley tapped him to fill the vacancy created when Judge Henry J. Friendly assumed senior status. At the time President Gerald R. Ford nominated him to our Court, Van was the immediate Past-President of the New York State Bar Association, having previously served as its Vice-President, as well as a past President of the Monroe County Bar Association. Van's rise from these humble beginnings to the pinnacle of his chosen profession exemplifies the meritocracy of the American bar.

Although Van enjoyed an almost folkloric reputation for irascibility on the bench and for his occasionally sharply worded dissenting opinions (he wrote about one hundred dissenting opinions in his thirty years on our Court), his character was marked by humility. Van called Judge Friendly "the last great judge" of the Second Circuit. When interviewed as part of the Court's oral history project, Van told the interviewer, "I'm walking in his footsteps, but I'm not filling his boots. I can claim to be an ordinary run of the mill judge who does the best he can, that's all." This statement is a characteristic understatement by someone who was far from "a run of the mill" jurist. Van was not a member of the social aristocracy of Dutch origin, but he was a brilliant specimen of the legal and judicial aristocracy that De Toqueville extolled in his writings in the first half of the nineteenth century and which we continue to celebrate today. As I write this report, I, together with my colleagues, feel a poignant sense of loss at Van's passing. All of us will remember Van with affection, admiration and profound respect. We extend our deepest sympathies to Van's wife, Rhodie, and their children, Gary, Anne, Suzanne, Joan, and Jack.

In 2004, our Court continued to struggle under a crushing burden of immigration appeals. These cases come to the federal courts through the Bureau of Immigration Appeals ("BIA") in the Immigration and Naturalization Service ("INS"). An alien who loses their appeal from an adverse decision of the BIA, following a decision rendered by an immigration judge, must file directly in a federal court of appeals. In FY 2001, 170 BIA appeals were filed with our Court. Over the last three years, our Court has witnessed a steady increase in these cases until it reached 2,632 in FY 2004, a 1,448% increase.

Initially, we believed this onslaught of appeals was the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the BIA. While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remained with the DOJ. From 2002 to 2003, filings of appeals of BIA decisions nationwide climbed 153% from 2001 to 2002 and 99% from 2002 to 2003. Due to venue provisions in the immigration law, most of these increases were felt in the Second and Ninth Circuits. The appeals finding their way to our Court are generally asylum cases filed by people claiming relief from oppression in their native countries. More specifically,

approximately 75% of the immigration appeals pending in the Second Circuit are filed by Chinese appellants claiming asylum based on their homeland's family planning policies. Despite expectations that most of these cases would be predominately *pro se*, in 80% of the cases the petitioner is represented by legal counsel. The Court is reviewing its longstanding practices as it undertakes to cope with the immigration backlog and is exploring innovative ways to deal with the problem.

At the same time, our Court's caseload continued to rise, increasing 10.2% from the prior fiscal year (the twelve-month period from October 1st to September 30th) or from 6,359 appeals filed in FY 2003 to 7,008 cases filed in FY 2004. To handle this severe caseload increase, our Court held 8 double panels during this Term and scheduled three triple-panel week sittings. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next Term of our Court.

In 2004, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and *pro se*. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges for most of 2004 allowed us to schedule sittings that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

In 2004, our Court marked the fiftieth anniversary of *Brown v. Board of Education*, by sponsoring, "Marching Toward Justice," an exhibition on the history of the Fourteenth Amendment to the United States Constitution. This exhibit, which we co-sponsored with Cardozo Law School, was set up for several months this year in the Main Lobby of our magnificent building at 40 Foley Square in Manhattan, which is named for the late Supreme Court Justice Thurgood Marshall, who successfully argued *Brown* before the United States Supreme Court.

On May 21, 2005, Senior Circuit Judge Amalya L. Kearse celebrated her twenty-fifth anniversary on the bench. Judge Kearse was appointed to our Court in 1979 when Congress created two additional new judgeships for our Court.

Notwithstanding rising caseloads in the federal courts nationwide, Congressional funding appropriations to the Third Branch over the past several fiscal years have been insufficient to sustain the judiciary's operations much less provide for

much needed increases. In FY 2004, the federal judiciary, as a whole, lost the services of 1,350 employees, the only branch of government so effected by budget constraints. The departure of so many court personnel came at a time of increasing workloads, rising rental payments to the General Services Administration (“GSA”) and the increased cost of providing necessary judicial services to the public and the bar.

This year, our Court also felt the impact of the judiciary’s budgetary difficulties. As a consequence, we were forced to close our independent Office of Public Affairs forcing us to let go our Assistant Circuit Executive for Public Affairs, Stephen Young. During his three-year tenure, Stephen raised the public profile of our Court and our Circuit by expanding our community outreach program, reviving our Court’s oral history program and documenting the experiences of our Court and our Circuit in the days following the tragic events of September 11, 2001. We thank Stephen for his service to our Court and our Circuit and wish him well in his new endeavors. Also, in recognition of our constrained fiscal circumstances, we cancelled our scheduled judges-only Circuit-wide judicial conference and our Court held its 2004 Court Retreat on site in the Judges Conference Center at the Thurgood Marshall Courthouse.

On October 22, 2004, Senior Circuit Judge Wilfred Feinberg became the 22nd recipient of the Edward J. Devitt Distinguished Service to Justice Award of the American Judicature Society in recognition of his outstanding legal scholarship and contributions to jurisprudence. Bill Feinberg is the first judge of our Court to receive this prestigious award. Joined on the bench by Circuit Justice Ruth Bader Ginsburg and Southern District Chief Judge Michael B. Mukasey, our Court sat in special session in the ceremonial courtroom of the Daniel Patrick Moynihan United States Courthouse in lower Manhattan. Speakers included Justice Ginsburg, Chief Judge Mukasey, Larry Hammond, President of the American Judicature Society, New York University School of Law Dean Richard Revez and Southern District Judge Gerard Lynch, two of Bill’s former law clerks and yours truly. Sixth Circuit Judge Julia Gibbons, a member of the selection committee, formally presented the Devitt Award to Bill.

First appointed to the Southern District bench in 1961 by President John F. Kennedy, Bill joined our Court on March 18, 1966. Throughout his almost forty-year judicial career, Bill made extensive contributions both to the jurisprudence of our Circuit by his thoughtful and well-crafted opinions and to the administration of justice in the federal courts by his service as Chief Circuit Judge from 1980 to 1988, as a member of the Judicial Conference of the United States, the national policy-making body of the federal judiciary, and many of its committees. The October ceremony was a fitting celebration of a remarkable jurist whose brilliant career has been

characterized by his unassuming and humble approach to his craft and his colleagues. We happily extend our most heartfelt congratulations to Bill, his wonderful wife Shirley and their family on the occasion of Bill's receipt of the Devitt Distinguished Service to Justice Award.

For the past three years, I have been reporting on the progress of our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse. I am pleased to report that Congress has approved GSA's FY 2005 request for \$16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, providing the "green light" for GSA and the courts to proceed to undertake a prospectus project to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems. Our joint project committee, co-chaired by Circuit Judge Barrington D. Parker, Jr. and Southern District Judge Barbara S. Jones, have been hard at work with the Circuit and District Executives and their staffs and members of GSA Region 2 to select an architectural and engineering firm to design our project and a construction management firm to provide quality oversight.

Our project is off to a good start with the selection of the pre-eminent New York City-based architectural firm of Beyer Blinder Belle in joint venture with architects Davis Brody Bond and engineers from Flack & Kurtz as the project's designers. Beyer Blinder Belle partner John Belle, who will oversee the design team for our project, was the principle architect for the renovation and restoration of historic Grand Central Terminal and Ellis Island, among other high profile projects. Bovis Lend Lease, whose construction work is visible throughout New York City, including the Brooklyn district courthouse construction project and renovation of the Beaux Arts General Post Office Building, was selected as the Construction Manager for our project. As this calendar year draws to a close, our "space" judges and Court staff are working hard to prepare both the Court of Appeals and the Southern District to vacate the courthouse in Summer 2006, just prior to the beginning of the project's construction phase. Both courts will remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude is requiring an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that the aging infrastructure of the Thurgood Marshall Courthouse be replaced with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts ("AO") and his Assistant Director for Security and Facilities Ross Eisenman, who helped us develop a viable prospectus project which respected

costs without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2 Administrator Eileen Long-Chelales and her staff for their continued support in helping us make this project a reality.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences a greater number of filings, we continue our tradition of scholarship, collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced in the new year as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Although judicial vacancies are being filled, rising caseloads and shrinking budgets are creating challenges for our Court that must be dealt with in the near future. Thanks to our thirteen active and ten senior judges, I am confident that we will carry into the future the Second Circuit's proud traditions of craft in decision-making and expeditious docket management.

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
CONNECTICUT**

**[PHOTO UNAVAILABLE]**

Chief Judge Robert N. Chatigny

On November 1, 2004, the Honorable Dominic J. Squatrito took senior status. Judge Squatrito was appointed to the bench by President Clinton on October 6, 1994. He intends to continue to maintain a courtroom and chambers in the Hartford courthouse.

On January 12, 2004, the Honorable Robert C. Zampano, a major figure in the history of the District of Connecticut, passed away in New Haven at the age of 75. Judge Zampano was appointed to the bench by President Johnson in 1964. Following his retirement in 1994, after nearly 30 years of judicial service, he continued to serve the Court as a special master. A memorial service honoring Judge Zampano was conducted at the New Haven Courthouse on May 14, 2004.

On July 24, 2004, the Honorable Warren W. Eginton celebrated his 25<sup>th</sup> anniversary on the bench. Judge Eginton continues to maintain chambers in the Bridgeport courthouse and often sits as a visiting judge in other Districts.

The District continues to benefit tremendously from the contributions of its senior judges. In addition to Judge Eginton and Judge Squatrito, the Court is served by the Honorable Ellen Bree Burns, the Honorable Peter C. Dorsey, and the Honorable Alan H. Nevas and Honorable Alfred V. Covello.

On May 28, 2004, the Honorable Gerard L. Goettel of the Southern District of New York, who sat by designation in Connecticut on a full-time basis, took inactive status. Judge Goettel carried a full assignment of civil cases in Connecticut for 10 years.

On July 19, 2004, Magistrate Judge William I. Garfinkel was appointed to a second eight-year term commencing November 22, 2004. The Court's merit selection committee enthusiastically recommended that Judge Garfinkel be reappointed and took particular note of his outstanding work as a mediator.

### **Case Statistics**

In 2004, the District Court opened 2,320 civil cases and 2,413 civil cases were closed. At year-end, 3,061 civil cases were pending.

The Court opened 305 criminal cases involving 501 defendants and disposed of 255 cases involving a total of 381 defendants. At the end of the year, 736 defendants had charges pending.

### **Clerk's Office Awards Ceremony**

The annual awards ceremony honoring members of the Clerk's Office was held in the Hartford Courthouse on April 2, 2004. Cheryl Conte, Judith Fazekas, Peter Milner, Regina McDaniel-Martin, Darlene Warner, Carol Sanders and Melissa Ruocco received 5-year service pins; Janet Barrille, Marion Bock, Cynthia Earle,

Dinah Milton-Kinney, Corinne Pike, and Donna Thomas received 10-year service pins; Susanne D'Andrea, Thea Finklestein, Martha Marshall, Barbara Sbabli, Betty Torday, and Robert Wood received 15-year service pins; Frank DePino, Diane Kolesnikoff and Susan Lamoureaux received 20-year service pins; Barbara Stokes and Cassandra Warren received 25-year service pins; and Kevin Rowe received a 30-year service pin. Government Service awards were given to Kathleen Falcone and Paul Seabrooke, who received a 10-year certificate, Mary Wiggins, who received a 30-year certificate and Maria Carpenter, who received a 35-year certificate.

## **Training**

Members of the Clerk's Office, Bankruptcy Clerk's Office, the Probation Office and Federal Public Defenders Office participated in a FAS4T training program conducted by Administrative Office.

The Clerk's Office continued its CM/ECF training program for members of the bar and their support staff.

Members of the Court family attended a security briefing conducted by the U.S. Marshal's Office and FBI related to handling suspicious packages, phone threats, and bomb scares.

In January 2004, members of the Court's integrated technology staff attended Dream Weaver/Cold Fusion training conducted by an outside vendor.

In September, the Court unit executives attended Certifying Officer training conducted by the Administrative Office in Providence, Rhode Island.

## **Automation**

The Court implemented FAS4T on July 1, 2004 and went live on certifying officer on January 1, 2005.

ACE Communications installed a digital evidence presentation system at each seat of court during June, August and October 2004.

## **Construction Projects**

In December 2004, GSA completed construction of a new courtroom on the third floor of the New Haven Courthouse. This courtroom will be used primarily by Magistrate Judge Joan G. Margolis. This new courtroom relieved the courtroom shortage that plagued the New Haven Courthouse for a number of years.

GSA provided the Court with preliminary drawings for the new jury assembly room on the second floor of the Hartford Courthouse which the Court approved in August. In December, GSA confirmed that they would pay the entire cost of this project.

## **PROBATION OFFICE**

The budget crisis was once again the major event of the year, as it influenced every decision from purchases to hiring. The second most important event in 2004 was the implementation of FAS4T. Training and implementation took the entire year and included hours of training and some significant changes in financial processes and record keeping.

### **Staffing**

The budget crisis had a huge impact on our staffing. At the start of fiscal year 2004, the Probation Office staff consisted of 57 individuals filling 56.2 full time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. Then, in November, Deputy Chief James R. LeBlanc passed away suddenly and unexpectedly. This was devastating for staff. Because of the looming budget crisis, it was decided to leave the position vacant for at least the remainder of the year. The position categories were as follows, one chief and one assistant deputy, three supervising probation officers and 33 line probation officers, 19 administrative and clerical support and two automation support. Our statistical workload justified 67.94 positions, thus suggesting we were still understaffed by eight positions. Within months “cost containment” became the buzz word and we were informed that the staffing formulas were going to be refreshed and that there would also be an across the board staffing reduction. We were eventually informed that our authorized staffing for 2005 would be decreased to 62.5 but only 59.3 positions would be funded. We were fortunate and did not have to resort to involuntary staff reductions because, in addition to loss of my deputy, two probation officers voluntarily resigned before the end of the year and two clerks accepted buyouts. This loss of five employees brought our total staffing to 55, filling 54 full time positions, approximately 88% of the reduced staffing formula.

The District of CT recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court’s policy with the two largest minority groups, Blacks and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.

## **Training**

Although training continues to be a priority in the Probation Office, we reduced travel and costly training because of the budget crisis. In FY 2004, a significant number of training hours were devoted to the implementation of FAS4T. The implementation team spent a week in Washington in February, then there were regular training and many meetings up through implementation in July 2004. We also sent two individuals to Contracting Officer training in New York in April 2004. Other in-service training provided during the year included, Ethics training; Officer Safety, including a three day Defensive Tactics program and certification for the use of capstun; a one day writing skills program; certification in Choice Point Searches; a one day training on the new presentence monograph; a one day training on supervision practices; and Sentencing Guidelines. It should also be noted that the new officers participated in a 30 day orientation and training program in October 2003 and ongoing in-services training throughout the year. They attended the new officers' orientation in Washington, D.C. in June 2004. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for FAS4T and FJTN training, probation office staff participated in well over 1000 hours of training.

## **Pretrial**

In 2004, the D/CT experienced a slight increase in the workload. We activated 549 pretrial cases; a 17% increase above FY 2003. Officers attended 903 hearings. According to the AO statistical reports, 27 violations were reported to the Court, with three of them resulting on bond revocations. These statistics are not accurate. In collecting this information we discovered an error in data entry. We should see more accurate violation data in the next report.

In FY 2004, our detention rate and the number of defendants on supervision increased. Of the 541 initial presentments, 61% were detained. Our supervision caseload increased from 262 in FY 2003 to 318 at the end of FY 2004.

Substance Abuse and mental health treatment were provided to approximately 196 defendants in 2004, more than double the number who received treatment in FY 2003. The total cost of treatment for all defendants was \$257,946. Approximately 106 defendants were released on home confinement during pretrial supervision. The cost for home confinement was \$41,473. Approximately 28% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled \$80,489, reducing the cost to the Probation

Office to \$214,930. Our total cost for Alternatives to Detention increased by 40%, reflecting an increase in the use of alternatives to detention. But our collection of co-payments also increased by 3%.

## **Probation**

The Probation Office completed 361 Presentence Investigations 2004, down 16% from the prior year. They expected this decrease. Rather than a decrease in prosecutions, the number reflects the final disposition of a number of cases that had been pending for several years.

We supervised 879 offenders in the community, nearly equal to the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled \$238,441. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling \$77,726, reducing the actual costs to the Government to \$160,716. Mental health treatment costs totaled \$50,918. Co-payments totaled \$5,571, reducing costs to the Probation Office to \$45,347.

During FY 2004 55 post-conviction offenders were placed on home confinement. Costs for these services were \$37,207. Offender co-payments collected totaled \$19,187, reducing the cost to the Probation Office by one half, to \$18,019.

The total cost for all treatment and alternatives to detention was \$625,987. Co-payments collected totaled \$186,074 reducing our actual costs for all services to \$439,013.

The Probation Office is also a key player in monitoring the collection of fines and restitution. Per AO requests, we are working with the Clerk's Office to gradually reduce the number of collected payments coming through the Probation Office. During fiscal year 2004 the Probation office recorded collections of \$56,755.30 in fines, \$24,914.10 in Cost of Probation (fines), \$356,874.70 in restitution and \$3,180 in Special Assessments, for a total of \$441,724.10.

## **Planned Events in 2005:**

A major undertaking for 2005 is to hire and train new officers. We also plan to focus on improving our statistical reports.

**Annual Report 2004**  
**United States Bankruptcy Court for the**  
**District of Connecticut**

The Bankruptcy Court maintains three Divisions – Hartford, New Haven and Bridgeport – served by three judges. In addition, the Court remains the beneficiary of the service of recalled judge, Robert L. Krechevsky, who handles the full Hartford Division caseload.

During calendar year 2004, Bankruptcy Court cases totaled 11,257 new filings, with an additional 230 cases reopened. Chapter 7 filings declined 6.22% to 9228; Chapter 11 filings declined 17.17% to 82; and Chapter 13 filings declined 6.21% to 1947. In addition, 356 new adversary proceedings were opened, 430 were closed, with 500 pending at the year end. The Bankruptcy Court continued to train and prepare for commencement of mandatory Electronic Case Filing, scheduled for full implementation on August 1, 2005.

Also during 2004, the Bankruptcy Court launched Connecticut's CARE Program, under which judges and attorneys visit area high schools to speak to Junior and Senior Year students about the dangers of overspending and credit abuse. During 2004, the Court obtained a CARE Program endorsement from the Connecticut Association of Public School Superintendents, conducted training programs, and with the generous assistance of approximately 30 members of the Connecticut Bar, commenced numerous visits to Connecticut's High schools.

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF**  
**NEW YORK**



Chief Judge Edward R. Korman

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by more than 8 percent, to 7.9 million. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the

population now exceeds 8 million, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

### **District Judge Appointments**

Two longstanding Article III vacancies were filled in 2004 with the appointments of Dora L. Irizarry on July 8, 2004, and Sandra L. Townes on August 2, 2004. Judge Irizarry fills the vacancy created by the appointment of Judge Reena Raggi to the Court of Appeals. Judge Irizarry most recently served as an acting Justice of the Supreme Court, both in Kings County and New York County. She is also the first member of the Hispanic community, which comprises such a significant part of the Eastern District, to be appointed. Judge Townes fills the vacancy created when Judge Sterling Johnson, Jr. took senior status. Prior to her appointment, Judge Townes was elected a Justice of the N.Y. State Supreme Court in 1999 and was appointed an Associate Justice of the Appellate Division, Second Department, in 2001. She also has served as a Judge of the City Court of Syracuse and as Chief Assistant District Attorney of Onondaga County.

### **Senior Status**

Two District Judges took senior status in 2004. Judge Arthur D. Spatt took senior status on December 1, 2004. Judge Spatt was appointed in November, 1989 and sits at the Long Island Courthouse. Judge Denis R. Hurley took senior status on December 18, 2004. Judge Hurley was appointed in November, 1991, and also sits at the Long Island Courthouse. Both Judge Spatt and Judge Hurley continue to carry a full caseload. The vacancies created when Judges Spatt and Hurley took senior status have not been filled.

### **Caseload Profile**

The Eastern District's judicial caseload profile remained high in statistical year 2004, which ended September 30, 2004, but civil case filings declined. Weighted filings per judgeship were 536. The Eastern District of New York is second within the Second Circuit in weighted filings, and above the national average of 529. Several other rankings of actions per judgeship remain high, including total filings (490), civil filings (397), pending cases (635), terminations (543), and trials completed (23), which is first within the Second Circuit. All statistics are based upon fifteen active judgeship positions.

On September 30, 2004, total pending actions were 9,529, total terminated cases were 8,149, and total filings for the twelve-month period were 7,351. Total

filings declined by 12.2 percent in the reporting period, with almost all of this change due to an 11.7 percent decline in civil case filings. Still among the highest in the country, this workload could not have been managed without the extraordinary assistance rendered by our senior judges. Eight of the twenty-one judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 155 trial and non-trial bench hours were logged by seven visiting judges who presided over seven trials. A number of settlements also resulted from their efforts.

### **The Judiciary Budget**

The Judicial Branch continues to experience a significant budget crunch. The results of this funding shortfall are felt throughout the judicial system, most particularly in the district courts, their Clerk's Offices and other court agencies. In NY-E, the Clerk's Office, both District and Bankruptcy, Pretrial Services and the Probation Service have been affected by the current budget crisis. A declining civil caseload which reduces work measurement credits further complicates and worsens the salary fund shortfall. The Clerk's Office started a second consecutive year, in FY 2004, with a substantial shortfall in the payroll account of approximately half a million dollars. As recently as July, 2003, the Clerk's Office employed 162 permanent staff positions. Presently, the Clerk's Office is down to 140 positions, not including the Clerk of Court. There is a continuing hiring freeze on all replacement staff needs. The position of Chief Deputy which became vacant in February, 2005 has been filled in an acting capacity only for the current fiscal year to conserve salary funds needed for all staff. The balance of the payroll shortfall will be covered by filling a vacant personnel officer position from current staff; and by funding transfers from our already significantly reduced automation and general accounts. Court staff have been reduced to the lowest possible level, creating coverage issues on a routine basis. Any further reduction in staff likely will diminish services to the bench, bar and public and possibly reduce public access hours.

### **Brooklyn Courthouse**

The Courthouse construction projects are scheduled to be completed by GSA before the end of 2005, if the latest GSA projection can be credited. At present, the U.S. Bankruptcy Court is scheduled to move to the renovated Brooklyn GPO in late July, 2005. The new Brooklyn Courthouse is scheduled to be completed by October, 2005, with an estimated relocation date for the District Court of December, 2005. The projected dates are four years behind schedule. The unhappy history of these two delayed construction projects is described below.

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA's failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February, 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September, 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it has delayed and made more expensive the long-planned renovation of the present courthouse, because it will have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriated the additional 39.5 million dollars needed to build out the remaining eight courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration

identified sufficient funds for re-programming from other available funds. GSA eventually received OMB approval for the administrative transfer of these funds.

The projects, District and Bankruptcy, were yet again delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor's surety company, Fireman's Fund, accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. Again, the new estimated completion dates (although not official) are July, 2005 for the Bankruptcy Court, and October, 2005 for the District Court.

GSA has spent all of the \$39.5 million appropriated for our eight additional courtrooms and chambers just to keep the project going. It received an additional \$74.7 million in reprogramming authority in May of 2003 to complete both projects. The source of that money was the \$65 million Congress appropriated for the Repair and Alteration project on the existing Courthouse, and \$9 million from other sources. GSA has now again asked Congress for Repair and Alteration money for the existing Courthouse in the amount of \$91 million in the 2006 budget. The extensive delays encountered in completing the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the renovation of the existing courthouse. The plan first designed ten years ago called for vacating the existing courthouse entirely to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-designed as to scope, feasibility and cost.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least \$100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is now—finally—some reason to believe that the current projected completion dates are realistic. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.

### **United States Bankruptcy Court for the Eastern District of New York**

Bankruptcy Court case filings in fiscal year 2004 increased by 4.2 percent. Total case filings were 26,802. Chapter 7 filings increased by 8.7 percent, to 21,586. In contrast, Chapter 11 filings decreased from 209 to 163, and Chapter 13 filings decreased from 5,667 to 5,053. In addition, 1,269 adversary proceedings were opened,

3,962 motions to lift stays were filed, and there were 20,423 discharges in Bankruptcy. A total of 32,746 cases were closed.

The Board of Judges honored the outstanding judicial service of Chief Bankruptcy Judge Conrad B. Duberstein with a dedication ceremony on February 10, 2005 naming the U.S. Bankruptcy Courtrooms and Chambers in the renovated General Post Office Building, scheduled for opening in July, 2005, for Judge Duberstein. The full text of the plaque which will be displayed in the U.S. Bankruptcy Courthouse appears below:

“Chief Judge Conrad B. Duberstein  
United States Bankruptcy Judge, Appointed April 1, 1981  
Chief Judge of the Bankruptcy Court, Appointed August 8, 1984

These courtrooms and chambers are dedicated to honor Conrad B. Duberstein for his extraordinary public service, with the sincere appreciation of his friends, colleagues and the Judges of the Eastern District of New York.

Admitted to the bar of the State of New York on March 9, 1942, after graduating from St. John’s University School of Law, Conrad B. Duberstein became one of the nation’s foremost experts in bankruptcy law, with the country’s only bankruptcy moot court competition named in his honor. He was appointed as a Bankruptcy Judge on April 1, 1981 and has served as Chief Judge for more than twenty-one years. He was awarded the Purple Heart, the Bronze Star Medal and the Combat Infantry Badge for his service in World War II. He has truly earned the respect of the legal community, the affection of his colleagues and a well-deserved reputation for intelligence, wit, humility and compassion.

The dedication of these courtrooms and chambers honors Chief Judge Duberstein’s unwavering commitment to the fair administration of bankruptcy jurisprudence and the preservation of the dignity of those in financial distress.”

## **The Magistrate Judges**

Our magistrate judges are assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,084 pending civil cases in fiscal year as of September 30, 2004 for pretrial preparation. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges on November 29, 2004 dedicated the Arraignment Courtroom in the new Brooklyn Courthouse, scheduled for opening in December, 2005, in honor of Judge A. Simon Chrein, United States Magistrate Judge, for his almost thirty years of service to the Eastern District as a magistrate judge. The text of the plaque which will be installed outside the new arraignment courtroom appears below:

**“THE A. SIMON CHREIN ARRAIGNMENT COURTROOM**  
United States Magistrate Judge, Appointed May 14, 1976  
Attorney-in-Charge, Federal Defender's Office 1968-1976

This courtroom is dedicated in honor of the extraordinary public service of the Honorable A. Simon Chrein, with the sincere appreciation of his friends and colleagues, the Judges of the Eastern District of New York.

After serving for nearly a decade as the Attorney in Charge of our Court's Federal Defender Office, A. Simon Chrein was appointed a Magistrate Judge on May 14, 1976, and served as Chief Magistrate Judge for fifteen years. He has earned the respect of the legal community, the affection of his colleagues, and a well-deserved reputation for intelligence, wit, fairness and compassion.

The dedication of this courtroom honors Judge Chrein's unwavering commitment to the fair administration of criminal justice and the vigilant protection of the rights of the accused.”

Judge Chrein died on March 15, 2005 after a long illness. He will be missed.

Two additional full-time U.S. Magistrate Judge positions were filled during 2004, bringing the total of magistrate judges to fifteen, the district's full complement. Both magistrate judge positions are new appointments. James Orenstein was sworn in as a U.S. Magistrate Judge on June 16, 2004 and sits at the Long Island Courthouse. Judge Orenstein most recently served as Associate Deputy Attorney General and prior to that as an "Attorney-Advisor" in the Office of Legal Counsel at the Department of Justice. Previously, he served for eleven years as an Assistant United States Attorney in the Eastern District of New York and was a member of the trial team in the 1995 bombing of the Oklahoma City federal courthouse, and in the trial of mobster John Gotti. Kiyoo A. Matsumoto was sworn in as a U.S. Magistrate Judge on July 12, 2004 and she sits in the Brooklyn Courthouse. Judge Matsumoto joined the U.S. Attorney's Office in 1983, and most recently served as Chief of the Civil Division, and as Senior Trial Counsel.

### **Probation Department**

The work of the Probation Department remained at essentially the same high levels as in 2003, with 3,693 cases supervised, and 870 collateral reports (reports from other federal districts). Investigations decreased to 1,437 from the prior year, for a variance of 23 percent.

### **Pretrial Services**

Pretrial Services conducted 1,809 bail investigations in FY 2004, a decrease of 19 percent. Separately, pretrial supervision cases totaled 704, a decrease of 21.7 percent. Collateral investigations totaled 146, and there were 32 diversion supervision cases.

### **ADR Program**

A total of 276 civil cases were assigned to the mandatory Arbitration program for cases valued at \$150,000 or less, and 245 Arbitration cases were closed. The Mediation program for complex civil actions had a total of 239 cases referred during Fiscal Year 2004. A total of 104 cases were settled and 64 cases were not settled, for a settlement of rate of 62 percent, in the reporting period.

Our ADR website (<http://www.nyed.uscourts.gov/adr/>) posts extensive information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee is chaired by Magistrate Judge Robert M. Levy.

## **The CJA Panel**

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's fourth annual CLE workshop for Panel members, on Immigration Law, in November, 2004. Judge John Gleeson chaired the panel discussion. The CJA Panel Committee also fully reconstituted Panel terms in 2004 to provide for an equal number of membership expirations at the end of each panel year in the future.

## **Naturalization Ceremonies**

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 8.6 percent in the number of final naturalization hearings scheduled by INS, now part of the U.S. Department of Homeland Security. NY-E naturalized 36,770 new citizens in fiscal year 2004 at the Brooklyn Courthouse. The Court continues to hold four naturalization hearings each week throughout the year.

## **Court Administration**

The District Court and the Clerk's Office took the last step toward complete electronic case filing when the Board of Judges issued an Administrative Order making electronic document filing by counsel in all civil and criminal cases mandatory, effective August 2, 2004. The Eastern District was one of four pilot federal district courts to start an electronic filing project in 1997. The Court, counsel, parties and the public now have federal court documents available on-line, saving time, effort and cost. The mandatory aspect of the Court's policy was required to comply fully with the E-Government Act of 2002; to achieve necessary personnel savings in an austere budget environment; and to provide ready access to Court documents. The increase in the number of electronically filed documents after August, 2004 was noticeable immediately. Almost 37,000 court documents were filed electronically from August 1 through September 30, 2004. Attorneys continue to receive free electronic filing training by the Clerk's Office. Our website now also provides attorneys with an electronic means to register as an e-filer and to apply for admission to the bar of the Eastern District. The convenience and efficiency promoted by mandatory electronic filing and the proactive use of websites by federal district courts can not be overstated. The current federal budget crunch, however, also has decreased significantly the funding available to maintain chambers and court agency computer equipment. This is short-sighted, and ultimately will diminish the ability of

federal courts to better serve the public and keep pace with our civil and criminal case workload. Automation equipment must be replaced cyclically, and constantly improved and upgraded. That important systems maintenance requires adequate funding by Congress.

### **Jury Administration**

The district's percent of underutilized jurors dropped by almost 3 percent in 2004 to 38.2 percent through the end of the calendar year, December 31, 2004. The national average also declined, by 2 percent, to 36.1 percent in FY 2004. NY-E processed seven high-profile anonymous questionnaire *voir dire*s in 2004. The district met and exceeded its goal expressed in the 2003 annual report to bring the total unused percent below 40 percent in 2004.

## **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK**



Chief Judge Frederick J. Scullin, Jr.

### **Judicial Resources**

In November we celebrated the 25th anniversary on the Bench for the Honorable Neal P. McCurn. Judge McCurn was appointed by President Jimmy Carter on November 2, 1979. Judge McCurn continues to handle an active caseload in the district including some of the oldest and most complex litigation involving Indian land

claim cases. Judge McCurn served as Chief Judge from 1988 to 1993 when he assumed senior status.

On January 29th, 2004 Magistrate Judge Gary L. Sharpe was sworn in as the 24th District Court judge for the Northern District of New York, or as we believe here in Northern New York, the 28th District Court judge by virtue of our lineage to the Mother Court as articulated in the Honorable Roger J. Miner's 1984 annual report on the history of the Northern District. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. On February 10th, 2004 Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2004 the Court received assistance from seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges closed 65 cases during 2004. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota; Honorable James K. Singleton - District of Alaska; and the Honorable G. Thomas Eisele, District of Arkansas Eastern. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

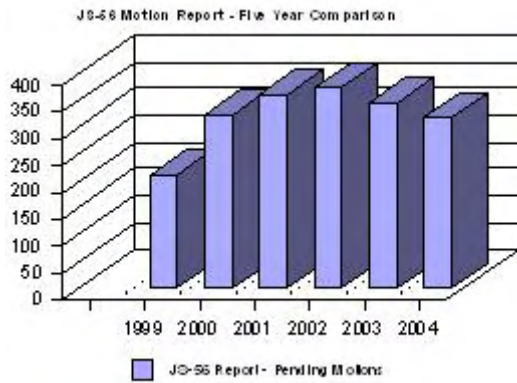
Senior Judge Howard G. Munson continues to take a variety of cases and provides valuable assistance to the Court. Senior Judge Thomas J. McAvoy completed his first full year as a Senior Judge - although Judge McAvoy has taken senior status, he continues to take a full caseload.

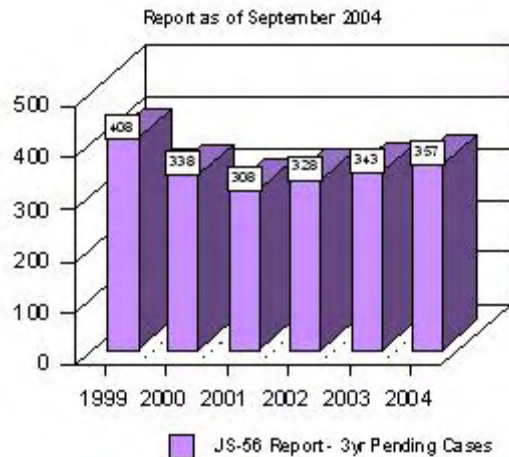
## **Statistical Data**

New civil filings fell slightly from the previous year, filings were down by **2.1%** in Statistical Year-2004. The number of criminal filings rose in SY-2004 by **18.7%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border where criminal filings increased **82%** over the previous year. The number of trials completed per-judge in SY-2004 was identical to the number completed in SY-2003, this seems to be consistent with the continued decrease in trials experienced by courts on a national level.

**Pending Motions and Three Year Pending Cases**

The disposition of motions is critical to the efficient operation of the Court. The Court filed **2950** civil motions during statistical year 2004. During the same time period the court disposed of **3156** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district’s pending motions (*as of September 30, 2004*) decreased **7%** from SY- 2003, and three year pending cases increased **4%** over 2003.





## **Space and Facilities**

**Albany:** Construction on a new grand jury room got underway in December of 2004, we anticipate that the construction will be completed by May of 2005. We had hoped to have this project completed in 2003, however funding issues have delayed the project.

**Syracuse:** The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The long range space plan was to include site selection and design which was scheduled for FY-2006, and funding in FY-2008. The schedule has been delayed due to the national budget crisis. Plans are

<http://www.ca2.uscourts.gov/>:U.S. Courts, Second Circuit Report 2004

underway in Syracuse to design space to accommodate the future needs of the court in the Hanley building until such time as a new courthouse is constructed.

**Plattsburgh:** On December 23, 2004 Congress designated Plattsburgh, New York as an official place of holding Court. Plattsburgh is the home base for our part-time Magistrate Judge Larry A. Kudrle. Judge Kudrle handles initial appearances for defendants that are arrested crossing the St. Lawrence River from Canada into the United States. The federal law enforcement presence at our northern border has more than tripled since September 11, 2001. Criminal filings at the border rose 82% from SY-2003. The United States Attorney, Glenn Suddaby, is working to establish an office at Plattsburgh to help coordinate the law enforcement function and prosecution efforts on the border. Once his office is established, the Court will seek permission to establish a more formal court presence in Plattsburgh. In anticipation of this need, the District established a new jury division in Plattsburgh. The new division will include jurors from the counties of Clinton, Essex and Franklin.

### **District Court Clerk's Office**

The Clerks Office went live on the judiciary's new electronic case filing system CM/ECF on January 1, 2004. All of the hard work and preparation that was done in 2003 has paid off. The Court is now receiving more than 60% of all filings electronically, and that number continues to grow each month. The Clerk's Office has worked very closely with our Federal Court Bar Association and the individual county bar associations to bring the training on CM/ECF to the lawyers and their support staff directly. The Clerk's Office offers training at each of our four staffed courthouses in the District, in addition to regular monthly training dates at each courthouse the Clerk took the CM/ECF program on the road to train members of the bar and their staff at the most northerly points in the district.

The Clerk's Office in conjunction with the FCBA has also developed a training program for the three law schools in our district. This public outreach effort will help to provide law school graduates in our district with the real world skills necessary to file electronically in any district in the United States. Since going live on January 1st, 2004 the Clerk's Office has trained over 5000.

Innovation is alive and well in Northern New York. Over the course of the last year one of our very talented consolidated automation staff members developed an automated inventory system that is linked to the Court's national accounting system (FAS4T). This project was made possible with the support of the Administrative Office. The program was designed to provide any Court unit with an easy to use, customizable, automated tool for maintaining accountable inventory items while incurring very little overhead costs. All the software needed to run this application can

be downloaded for free. Given the lean budgetary times that are upon us, we need to look at ways to improve productivity by eliminating needless data entry and tap into the tools and resources available to us, this new system does that while at the same time strengthening internal control processes.

In September of 2004 our Clerk of Court, Lawrence K. Baerman received the directors award for outstanding leadership. Larry was recognized for his contributions to the judiciary on a national level, and for his outstanding leadership and contributions to the bench and bar here in Northern New York. The Clerk and Chief Probation Officer continue to work closely on the consolidation of administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. Good fiscal planning and stewardship by the unit executives has allowed the Court to weather the most recent budget crisis without the need for major layoffs or furloughs. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

## **PROBATION / PRETRIAL OFFICE**

### **Halfway House**

After more than ten years of actively working to establish a halfway house in Syracuse, it was finally realized on November 1, 2004. It has 25 beds reserved for federal offenders. With halfway houses in operation in Albany and Binghamton, a total of 65 beds district-wide are available. The halfway house is run by a halfway house company with vast experience.

### **Automation**

In the area of automation, many advances have been realized. Court units can now share the “R” drive for viewing and exchanging documents. In April, PACTS<sup>ECM</sup> went live in the district. Chrono conversion followed in June. In conjunction with this, PDAs were issued to officers. Information can be downloaded to the PDA allowing them to take case information in the field and then uploaded upon their return to the office. Investigations into criminal history has been streamlined. This past year an officer has been working with a select group of “high tech data specialists” who are developing the ATLAS project which would allow for NCIC to be available on computer desktops rather than through a central terminal. This has widespread national implications.

### **Sex Offender**

Supervision techniques continue to improve with the use of contract treatment providers, periodic polygraph examinations and internet use monitoring.

### **United States Bankruptcy Court for the Northern District of New York**

As in previous years, the number of new bankruptcy cases filed in 2004 continued to increase over the number of filings of previous years. The Bankruptcy Court for the Northern District of New York was able to smoothly handle the increase in caseload without increases in staff because of the Court's continued focus on effectively using all resources available to it.

In calendar year 2004 the court trainers conducted ECF classroom training for over 444 attorneys and approximately 200 support staff. ECF logins and passwords were also provided to approximately 220 out of district attorneys. Attorneys and staff members of the U.S. Trustees offices were trained and are filing electronically.

On July 1, 2004 the court mandated electronic case filing and required most documents to be filed through the court's electronic filing system. Prior to July 1st approximately 53% of cases and 41% of all documents were filed electronically by attorneys and creditors. Within one month after mandatory electronic case filing was implemented, approximately 81% of cases and 88% of all documents were filed electronically. A project to permit the electronic submission of proposed orders was started in 2004 and is scheduled to be implemented by June 2005.

Improvements and renovations were made to existing space in the Albany office. The space housing the Operations Department was reconfigured to provide greater airflow, make better use of the space, and to take advantage of natural light. The space housing the Lunch Room was renovated by removing dark flooring and wall covering and replacing them with lighter, easy to clean surfaces. It is important to note that these renovations were paid for with the court's local funds and did not require any funding from the Administrative Office.

The Bankruptcy Court continually seeks to take full advantage of technologies available to it. Two technology driven projects were completed in 2004. The first project involved equipment upgrades for the courtrooms. The courtrooms in both Albany and Utica were upgraded with digital recording equipment for use by the ECROs. The judges and selected staff are now able to listen to court proceedings directly from their desktop computers. The second technology driven project involved the creation of electronic personnel folders housed on a secure server. Each personnel

folder contains an electronic index of items contained in it and can be quickly and easily accessed by authorized users. The need to transport paper personnel files between offices has been eliminated.

A third technology related project was started in 2004 and will be completed in 2005. The Automation Department and the Operations Department began an imaging project to enhance the ability to electronically search older bankruptcy case records. When the project is completed users will be able to electronically view dockets and party information from 1986 forward.

The past few fiscal years have been increasingly difficult for the courts and FY2004 was no exception. Many courts found it necessary to reduce staff even when faced with increased caseloads. Last year the Bankruptcy Court for the Northern District of New York was able to absorb an increased workload without adding or reducing staff. The Court was also able to complete several key projects with its existing funding. And finally, due to keeping a close eye on the court's bottom line, the Bankruptcy Court for the Northern District of New York was able to return \$ 120,000 to the AO to help reduce the budget shortfall faced by the entire Judiciary.

### **Annual Report of the Northern District of New York on Gender, Racial and Ethnic Fairness in the Court**

The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

## **UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**



Chief Judge Michael B. Mukasey

The Clerk's Office for the Southern District of New York operates with a staff of 206 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk's Office provides record keeping, case management, automation, financial and other services for the District Court. The operating budget for fiscal year 2004 was \$ 13,447,473 for personnel, automation and administrative expenses.

During calendar year 2004, the Clerk's Office completed the transition to the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the old ICMS program to the new system. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges joined the system in two waves in March and June of 2004.

The financial and systems staff of the Clerk's Office completed the preparations for the implementation of FAS4T, a new automated financial system, which went live in March 2004. Conversion included training, workflow process mapping and development of new security controls.

For the period October 1, 2003 to September 30, 2004, there were 12,422 cased filed.

During the past year, the Board of Judges amended Local Civil Rule 1.3(a), Admission to the Bar and Local Civil Rule 1.5(d)(1), Discipline of Attorneys.

Individual departments of the Clerk's Office report the following activities in the year 2004:

### **White Plains**

The year 2004 saw 1152 new civil cases filed at the White Plains courthouse, an increase of 18 cases. Court users and the public expressed satisfaction with the first full year of Electronic Case Filing. Ground was broken in Middletown, NY, for a facility to house a courtroom for a part time Magistrate Judge as well as offices for US Probation and the US Marshal. The facility is expected to be opened in the spring of 2005.

### **Jury Department**

During the year 2004, the Jury Department was diligent in performing its tasks under strenuous circumstances. Since 2003 we have lost two positions to retirement and we cannot fill those positions because of the Court's budget constraints. 2004 was a very busy year, in which we provided very large jury panels to a few high profile cases including criminal prosecutions of Martha Stewart, Lynn Stewart, Worldcom, Adelphia Communications and the Quinones death penalty case. The Jury Department, though understaffed, not only performed the tasks under challenging conditions, but flawlessly continued to process all the other functions of the department.

In 2004 we also witnessed a trend that was quite different than prior years. During the summertime in 2004, the Jury Department summoned large numbers of jurors and provided large quantities of jury panels to requesting Judges. Usually we spend the summer processing and qualifying over 30,000 perspective jurors to maintain a large number of jurors in our qualified jury wheel. Even under larger than usual jury returns for the requesting Judges, we were able to still qualify over 30,000 jurors for the qualified wheel. This required members of the department to put in extra hours due to the unfilled positions. This trend also carried over during the holidays as we returned and processed 668 jurors to the various Judges for selections in December 2004 alone.

The Jury Management System (JMS) has been upgraded with newer features that help us perform some of its functions more efficiently. With the installation of Fas4T, JMS now has a compatible system that allows us to pay our jurors without the extra steps that plagued the prior financial system.

## **Finance**

The calendar year of 2004 proved to be both challenging and rewarding for the Financial Department. On March 1, 2004, the Southern District of New York, and the Second Circuit Court of Appeals saw the introduction of the Financial Accounting System for Tomorrow (FAST). The FAST System is used to track and disburse funds which are allocated to the Court by the Administrative Office of the U.S. Courts. The Financial Department spent many months in preparation and training, with the Administrative Office, to successfully implement the FAST system. For the year of 2004, the Financial Department filed 10,322 complaints, issued 34,283 checks, received \$606,619,931.19, disbursed \$620,694,645.62 and maintained 328 interest bearing accounts with an aggregate value of \$749,071,947.12.

## **Docket Services**

During calendar year 2004 the Clerk's Office docketing section has been presented with many challenging situations. Despite the implementation of CM/ECF, a large number of documents continue to be filed manually. Reducing the number of manually filed documents has proven to be a slow process. This has been in part been a result of the large number of cases filed and accepted as related to previously filed non-ECF actions. Additionally, a number of very active Multi-District Litigation cases as well as a number of mega cases (also non-ECF) have contributed to the on-going deluge of manually filed documents. Only with the prioritization of documents to be processed and the assistance of employees from other sections have we been able to keep the work moving in an orderly manner.

## **Courtroom Support**

In 2004 the Courtroom Deputies and Relief Courtroom Deputies assisted other departments in the Clerk's Office to a much greater degree than in the past. The Relief Deputies assisted the jury, finance and docketing departments on a daily basis. They were also available, as needed, to provide assistance to the Interpreter's Office and Supply. Relief Deputies assisted at the Naturalization Ceremony nearly every Friday. Courtroom Deputies assigned to judges also made themselves available throughout the year and provided assistance to the Jury and Docketing departments. In addition, they offered their time to cover courtroom assignments when needed.

## **Personnel**

During the calendar year 2004, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; and disseminated benefit information and the processing of forms. New procedures were put in place whereby staff, during Open Seasons for FEHB and TSP, could directly make on-line changes through a private vendor. The need for background checks on all new employees, interns and contracted staff has become routine. A continuance of a hiring freeze throughout the year has prevented the court from filling vacancies and has required that we develop and initiate new strategies to meet operating needs in the coming year. There are 14 vacant positions which have not been filled since the hiring freeze was imposed.

## **Training**

During the last calendar year, the Training Department continued CM/ECF training for attorneys and incoming law clerks, and cross training classes for employees who were reassigned to docket units in view of the current fiscal crisis. The Training Department also developed a quarterly newsletter which will advise employees about training opportunities available for Clerk's office employees. In addition, a new program, entitled "Lunch and Learn ", was implemented whereupon employees can visit the training room during their lunch break to attend a videotape seminar on a variety of subjects to help improve their work and personal performance. Finally, the Training Department also implemented a new program entitled "Learning Day". All Clerk's Office employees may attend "Learning Day" to review training resources provided by the FJC and any in-house commercial materials available to them. Training specialists are on hand to answer any questions and to assist employees in completing applications or signing up for training activities.

## **Magistrate Judges Unit**

The Southern District Magistrate Judges unit has seen several changes in the past year. We have developed a system to back up our Sealed Vital Records. They are currently being backed up onto 3.5" disc. A second copy is also prepared and forwarded to the White Plains courthouse. We have also merged our docketing system from ICMS to ECF. We now also prepare requisition forms for the public to bring to the Finance Office to purchase Certificate of Dispositions.

### **Mediation Department**

The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court's mediation program.

### **Interpreters Office**

In FY 2004 interpreters of 36 languages provided foreign language interpretation during 6,667 separate proceedings, an 8% increase in activity over last year. Of these, 4,133 were in-court proceedings, only slightly fewer than FY 2003. Out-of-court matters (pretrial, probation, attorney-client interviews, document translations, phone conferences) totaled 1,613 for all languages, nearly the same number as last year.

Spanish continues to be the most frequently requested foreign language. In FY 2004, 75% of the interpreter unit caseload was in Spanish. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Total expenditure for interpreter services, paid from a central Administrative Office account, was \$445,196, a 20% decrease over last year despite a nearly similar caseload. A total of 24 criminal trials required foreign language interpretation, 18 in Spanish, 2 in Russian, 1 in Arabic, 1 in Turkish, 1 in Punjabi and 1 in Haitian Creole. This was a 50% decrease in the number of trials as compared to FY 2003.

Recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue on an as-needed basis. Interpreters in lesser-used languages require in-depth orientation because of differing skill levels in the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year. A growing challenge is to identify reliable interpreters of African languages.

The Interpreters Unit website, [www.sdneyinterpreters.org](http://www.sdneyinterpreters.org), is linked to the court intranet and provides instant scheduling information for interpreted proceedings. Its public face provides useful information for the legal community and for interpreters in search of resources.

## **Milestones**

During the past year, one judicial vacancy was filled. Kenneth M. Karas was inducted on September 7, 2004. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Whitman Knapp on June 14, 2004 and the Honorable Milton Pollack on August 13, 2004. They made important contributions to the Court, and their presence will be missed.

## **PRETRIAL SERVICES**

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non-appearance and danger to the community for every defendant appearing before the court following arrest. While working under the guidance of the court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.

The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2004. Ninety-six percent of the interviews were conducted prior to the initial court hearing. While bail investigations decreased from the previous year, the court released more defendants with supervision conditions as compared to last year.

Our district continues to have a low detention rate, especially when compared to other large metropolitan districts. Our release rate at the initial bail hearing was 15% higher than the national average and among the highest when compared to other large metropolitan districts.

At the end of the fiscal year, 9/30/04, there were 1,025 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety six percent of those released appeared in court as required and 97 % of defendants were not arrested during their bail period.

The year was challenging, as our staff and operations were affected by budget reductions. While operating with reduced funding and loss of staff, we had to impose spending limits on services particularly inpatient residential services. In attempting to

maintain services to defendants we initiated a pre-screening of defendants to identify Medicaid eligibility at an early stage and assisted defendants with the application for Medicaid. This initiative reduced our drug treatment costs to enable us to provide services to a greater volume of defendants. The Chief presented our Medicaid initiative at the Chiefs' conference in Atlanta and it was selected as one of the three most helpful cost containment initiatives for use by other districts.

There were several innovations developed during the year. We developed and implemented a random drug testing program, requiring defendants to call a toll free telephone number to be informed by a voice mail message whether to report for testing the next day. Results have shown the program to be effective in assuring compliance with court ordered drug testing conditions, and establishing more efficacy than a testing program where a defendant can "time" his drug use to evade detection.

Pretrial Services has entered into a partnership with the New York State Division of Criminal Justice Services to implement a new criminal record system that provides several improvements and advancements to complement the existing criminal record retrieval system. This system, known as eJustice, will eventually replace the existing NYSPIN criminal record system. The most ambitious project involves establishing a live scan electronic fingerprint system to provide the court with identification of a defendant based on fingerprints rather than a name check. We could electronically transmit fingerprints and receive a criminal record within an hour of transmission, enabling our office to provide positive fingerprint identification of the defendant appearing before the court at the initial hearing. In addition, the fingerprints could be registered with New York State for notification, should the defendant be arrested while released on bail. This would provide for timely notification of the violation to our US Attorney and court and reduce the need for manual record checks conducted by officers.

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last, and so prevent the front door of the system from becoming a revolving door.

## **U.S. PROBATION**

Fiscal year 2004 represented the most difficult time faced by the Southern District of New York's Probation Office in its history. The task of continuing to provide high quality work in the face of severe funding shortfalls challenged both staff and administrators. Probation faced a 10% cut in funding for salaries and was

forced to downsize staff by way of buy outs, early outs and position abolishment. At total on 16 staff members left our agency via one of the three methods. At the end of the fiscal year, our total staff was down to 157 after having been 173 the previous year. Each of the three divisions that make up our agency - Supervision, Investigations and Administrative Services- were forced to restructure and rethink our methods of operation.

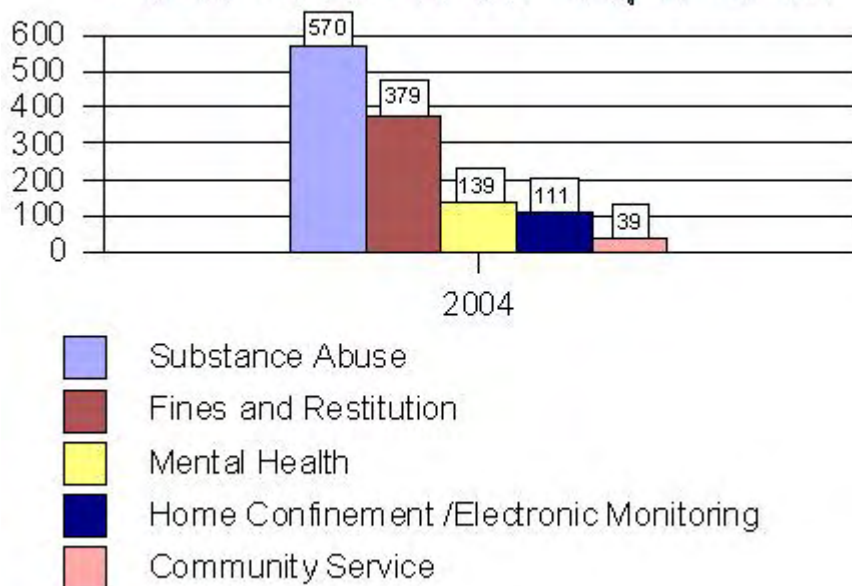
Even in the face of these changes, the probation office was able to continue and even improve upon, our service to the Court and to the community.

### **Supervision:**

The number of supervision cases has been stable during the past three years, while the number of probation officers and support staff has been reduced. The resulting higher caseloads and workloads has been difficult. Yet, the supervision division has continued to provide protection to the community and services to offenders. Supervision officers continued to concentrate on spending the majority of their time in the field, meeting offenders where they live and work. This renewed focus on field work has been effective in helping offenders comply with the conditions of supervision and helping them to lead productive lifestyles. Officers in supervision continue to specialize in the areas of substance abuse, mental health, sex offenders, electronic monitoring/home confinement, special offenders/ organized crime, community service, financial crimes and general crimes.

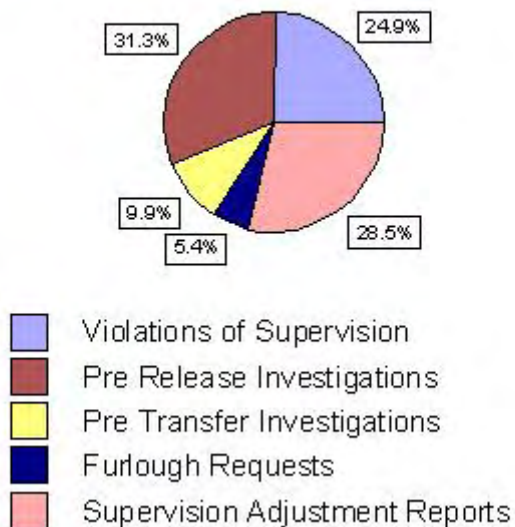
The total number of *new* case received for supervision in FY 2004 was 1399. They are represented as follows:

## Cases Received for Supervision



The division also improved upon our protection of the community by way of innovative field operations. The numbers of searches and surveillance were up, resulting in an increase in violations of supervision. During FY04, several of our search and surveillance operations have resulted in new criminal charges on both the local and federal levels. The division also continued to conduct *high intensity field operations* (HIFOs) each month, where the concentration is on at risk offenders. These operations, conducted during the late evening hours and weekends, have been highly effective in bringing offenders facing violations to the point of renewed compliance. Notwithstanding our successful special operations, the supervision division initiated 472 violation of supervision in FY 2004. Additionally, supervision officers completed 595 prerelease investigations, 188 pre transfer investigations and 102 furlough requests.

## Supervision Investigations

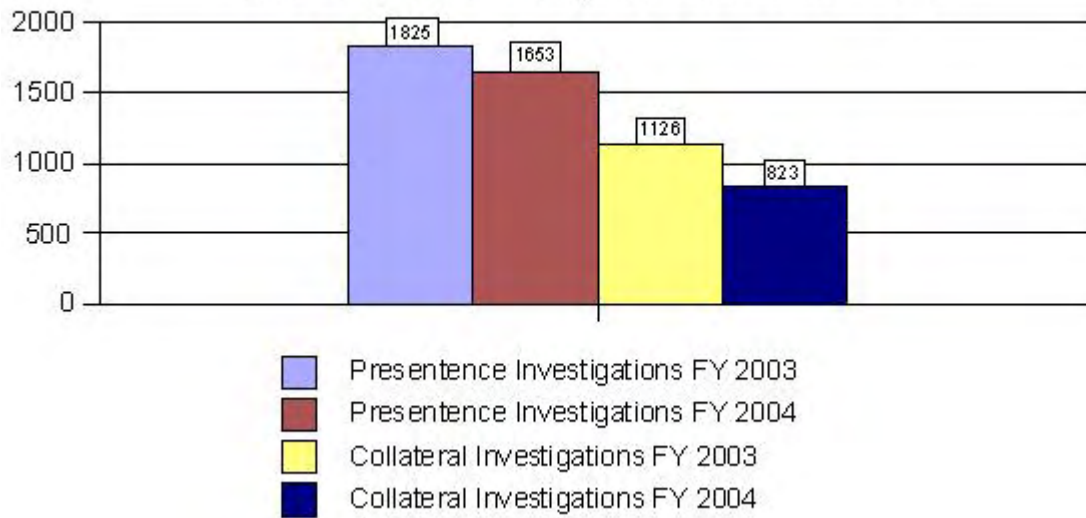


### Investigations:

Probation officers working in the presentence investigations division continue to complete a significant number of investigations and reports in FY 2004. These report often involve sophisticated crimes and high profile offenders. Also faced with decreased probation officer and support staff, the presentence division developed an innovation of its own. Our district receives countless requests for collateral assistance from other district throughout the country. Answering each request while operating under decreases funding became very difficult for us. Our office, therefore, developed a collateral assistance web site. This web site provides information that allows our colleagues the information they need to request assistance directly from New York City agencies. This process effectively cuts out the middle man (i.e. our office) and allows districts to receive request information in a more timely fashion. This process did not take us out of collateral assistance entirely. On the contrary, we are still assisting our colleagues who are having difficulty obtaining information. It has, however, decreased the amount of time spent on collaterals and has allowed us to utilize staff in other areas.

In FY 2004, the presentence division completed 1653 presentence investigations and 823 collateral investigations.

## Investigation Comparison FY '03 -'04



### **Administrative Services:**

The administrative services branch includes automation, data quality analysis, personnel, budget, purchasing and overall support to probation officers. The office's administrative assistants suffered significantly when downsizing became a reality. Those administrative assistants that remain with us are charged with accomplishing much more. These professionals rose to the task during FY 2004, filling in and taking on added responsibilities. It was not unusual to see administrative staff staying late and coming in on weekends to meet their obligations. The staff members that make up our administrative support are dedicated to engaging in quality behind-the-scenes work that support the overall operation of our office.

### **Annual Report 2004 United States Bankruptcy Court for the Southern District of New York**

During Fiscal Year 2004, this court experienced a 21% overall increase in filings. Most notable is the 220% increase in chapter 11 filings. This court's weighted case filings per judge are 6,321 as compared to the national median of 1,571. Therefore, the judges in this district are carrying a caseload more than four times the national median. In response to the fact that the judges in this district continuously administer caseloads at least twice above the national median, the Judicial Conference of the United States has endorsed the Second Circuit's request for two additional judgeships.

There are more than 8,000 attorneys registered to use the court’s Electronic Case File System (ECF) and during fiscal year 2004, approximately 1,400 new attorneys were added and 1,963 orders to appear *pro hac vice* were signed. The court continues to conduct training classes for new users of the system on an average of twice a week.

FILINGS DURING FY YEAR 2004

<u>Chapter</u>	<u>Number of Filings</u>	<u>Percent Change</u>
7	15,661	10%
11	2,955	220%
12	1	-0-%
13	2,177	5.6%
304	76	52%
Adversary Proceedings	7,935	15.2%

A total of 2,387 chapter 11 “mega” cases were filed with the court during FY 2004. The majority, 2,361, were affiliated with the Footstar case commenced in White Plains. In addition, orders were entered confirming the Enron and WorldCom “mega” cases during FY04, and these and other “mega” cases commenced in previous years continue to be administered.

During FY04, efforts to improve the court’s service to the public has been enhanced. The old analog courtroom recording systems have been upgraded and more sophisticated digital recording devices have been installed in the court’s divisional locations in White Plains and Poughkeepsie.

Long term planning for the clerk’s office is becoming a reality. The “Records Room” in the New York City location is all but closed as old files are shipped to the archives; the three divisions have been sharing the workload more evenly; and the court’s inventory has been transferred to an electronic tracking system, which enables us to more accurately account for the court’s property and its location at all times.

The court has adopted a program based on the C.A.R.E. program started in the Western District of New York and has modified it to fit the needs of the local community. We have done the groundwork to introduce the program to public and private schools in the New York metropolitan area.

Judge Cornelius Blackshear, who retired March 31, 2005, conducted two 10-week classes educating a total of 40 court employees in bankruptcy. These classes were very successful and the end result has been a benefit to the court. An educated

staff is better equipped to understand the importance of their role in the administration of cases through the court.

As the caseload continues to rise, so does the involvement in the bankruptcy system by people and entities unfamiliar with bankruptcy. Having a highly educated staff to assist the public with procedural information has enhanced the court's reputation and has eased the complexity of navigating the system for many of these constituents. The court is committed to providing current, correct information and continues to explore better ways to do so.

## **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT**



Chief Judge William K. Sessions III

### **Clerk's Office**

During calendar year 2004, the Clerk's Office continued to evolve in response to major policy initiatives promulgated by both the Executive Committee of the Judicial Conference and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts. The Clerk's Office took advantage of the buyout and early-out retirement initiatives offered during the year and underwent a reorganization of its management structure. A mid-level supervisory position was

eliminated at the Rutland divisional office along with a corresponding courtroom deputy position supervised from this divisional office. This management change “de-layered” the Clerk’s Office organizational hierarchy and reduced its management structure from three separate levels to two. The end result is a “flatter” organization with a “stream-lined” management structure which will be more responsive to the operational needs of the court. Two employees affected by this change qualified for early retirement and buyout initiatives offered by court management. Additionally, one new employee who possessed a skill set more in line with the future automation needs of the Clerk’s Office was subsequently hired to fill the Brattleboro divisional office vacancy. This restructuring change was made effective on October 1, 2004 and was implemented uneventfully.

Based upon the new district court staffing formula adopted by the Judiciary and fielded by the Court Administration Division, the authorized staffing level for the Clerk’s Office for 2004 increased from 21.5 to 21.7 authorized positions. This minimal staffing increase equated to the very small increase in civil and criminal case filings which occurred from the prior statistical year. Although 21.7 work units were authorized for fiscal year 2004, the Clerk’s Office continued to effectively manage all of its workload with an on-board staffing total of 18.2 positions. The District’s *pro se* law clerk staffing allocation remained stable during calendar year 2004 and remained authorized at one-full time, permanent position. Based upon its on-board staffing level coupled with a relatively stable operating environment, the Clerk’s Office once again managed to return – for a second year in a row – a portion of its operating budget in order to assist the Judiciary with its national financial plan.

### **Information Technology and Automation Activity**

During calendar year 2004, the district spent the majority of its automation-related efforts preparing for CM/ECF implementation as a Wave 17 court. During December 2003, individuals from both the Clerk’s Office and judges’ chambers’ staff attended CM/ECF applications training at the Systems Development and Support Division (SDSD) training center in San Antonio, Texas. At the start of the new calendar year, the District’s chief deputy clerk for operations and its director of technology attended dictionary training in San Antonio, Texas. The District’s operational managers and the clerk of court then made a one-day site visit to the Northern District of New York to determine how to best implement the CM/ECF system.

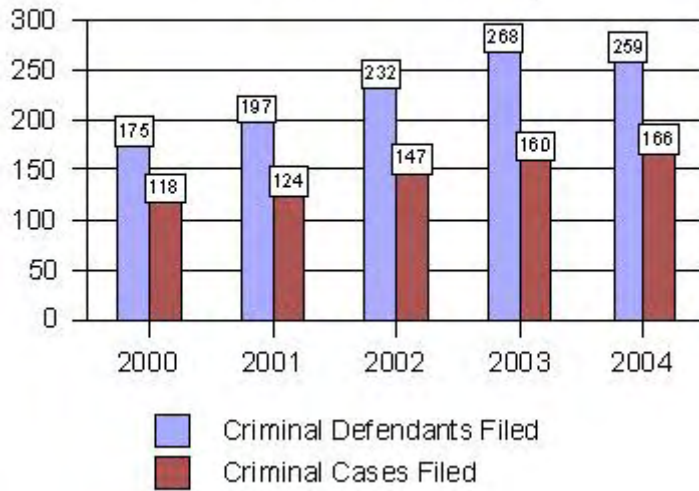
In conjunction with the district court’s Court Advisory Group – a successor to the District’s Civil Justice Reform Act Committee – a consensus decision was reached to implement electronic filing using a two-phased approach. It was decided that the “CM” or case management component of electronic filing would be implemented

first, allowing system users to become familiar and confident with the operational aspects of the system. After an indefinite trial period consisting of some six to nine months, the district would then implement the second phase or “ECF” portion of electronic filing which permits file transfers over the internet. In preparation for conversion to CM/ECF, the district’s Solaris-based servers were converted to the new Linux operating system and the most current version of the CM/ECF application software (Version 2.3) was installed. One management employee and another deputy clerk also received formal data quality assurance (DQA) training in San Antonio, Texas. During late October, the remainder of the Clerk’s Office staff were trained locally on CM/ECF operation procedures. Data and image migration then took place with multiple validation efforts also occurring. Rather than implement the new CM system during the last quarter of the calendar year, a strategic decision was made at this time to convert and “go-live” on the first business day of the new calendar year. Conversion to the new system at this time would allow for a “clean break” from the legacy system and would establish a definite milestone date for the District’s conversion to electronic filing.

In addition to CM/ECF preparation, the Court’s Lotus Notes server was converted to Microsoft Windows Version 2003 from its existing Windows 2000 operating system. The electronic evidence presentation system for Chief Judge William K. Sessions’ courtroom was also upgraded with touch screen technology. This effort was funded fully from the court’s operating budget without the need for supplemental or other project-based funding. Lastly, both of the district court’s intranet and internet websites were redesigned using Macromedia Dreamweaver software to give each website a more professional and uniform look. Each individual judicial chambers also continues to post electronic versions of selected court opinions to the Court’s external website using the CourtWeb judicial opinion posting system.

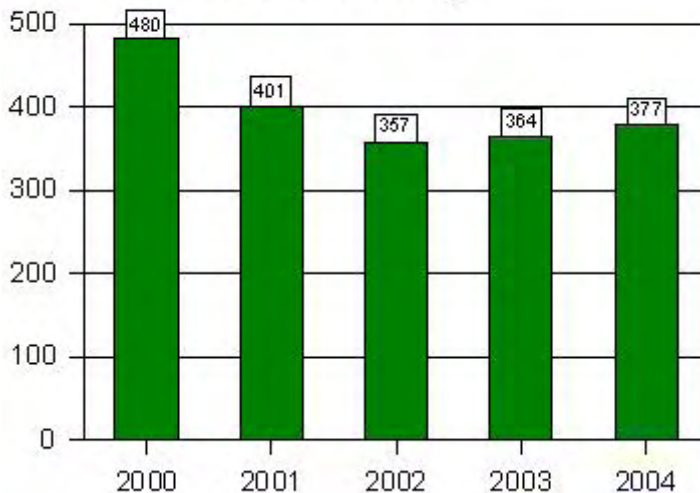
### **Caseload Statistics**

## Criminal Filings



As indicated by the graphs below, civil case filings for calendar year 2004 once again increased slightly from the prior calendar year and interestingly enough, again by the exact same figure – 7 cases. Based upon long-term statistical data, the District expects that the trend of increased civil filings to continue until the District once again reaches its long-standing filing base of approximately 400-420 civil filings on a per annum basis.

## Civil Filings



Regarding the district court's criminal caseload, as indicated by the graph below, while the total number of criminal case filings showed a slight increase over the prior year, for the first time during the last five calendar years, actual defendant

filings showed a slight decrease. This leveling trend in criminal defendant filings is attributed to the increased number of criminal jury trials expected to occur during the upcoming calendar year and the degree of prosecutorial resources required to try cases.

The District continued to manage its single, long-term, capital offense case – *United States v. Fell*. This case was initiated by the filing of a criminal complaint on December 1, 2000 with the government subsequently filing an indictment some nine weeks later on February 1, 2001. The government proceeded to file its notice of intent to seek the death penalty on January 30, 2002. From October 2002 through November 2004, the case was on interlocutory appeal at circuit on the issue whether the death penalty was constitutional. On October 28, 2004, the Second Circuit Court of Appeals issued its mandate and remanded the case back to the district court consistent with the opinion of the appellate court. The District plans for an extended, two-phase criminal trial to begin sometime during May 2005.

### **Jury Operations**

Calendar year 2004 was a General Election year. During late November, the District commenced refilling its master jury wheels by contacting all 251 Vermont city and town clerk offices for the purpose of securing current voter registration lists. Pursuant to the District's *Jury Selection Plan*, all jury wheels must be completely refilled and fully operational no later than July 1st of the calendar following a presidential election.

During the early part of the year, 1,000 jurors from the District's existing Northern Jury Division were pre-qualified and segregated as potential jurors for the District's death penalty case using the automated Jury Management System (JMS).

### **Early Neutral Evaluation (ENE) Program**

The Court's Early Neutral Evaluation (ENE) program celebrated its tenth year of operation during calendar year 2004. The Court continues to rely upon this particular form of alternative dispute resolution program for reducing both the cost of litigation and case delay to the parties. During 2004, the Court's ENE program was slightly expanded in scope in order to allow bankruptcy cases to qualify for the program.

Since the program's inception on July 1, 1994, a total of 2,145 cases have passed through the program and more than 50 attorneys have participated in evaluator training. During calendar 2004, a total of 85 ENE sessions were conducted, a figure which is up slightly from a total of 74 cases conducted during 2003. Vermont's long-

term, full-settlement rate continues to hold steady and for calendar year 2004, once again calculated out to be 34 percent for all cases participating in the program. The only significant, long-term change to the District's program appears to be an on-going trend for the parties to utilize independent evaluators rather than evaluators comprising the Court's Early Neutral Evaluation panel. During 2004, this trend continued in that 55 non-panel evaluators were utilized, up from a total of 47 independent evaluators used during the prior calendar year. This trend for the parties to use "off-panel" evaluators will continue to be monitored in order to determine the basis for this trend and the potential need for the Court to modify its program.

### **Criminal Justice Act (CJA) Panel Operations**

Vermont made a total of 276 appointments pursuant to the Criminal Justice Act during calendar year 2004. This total is exactly one less than the total number of appointments made during 2003 and appears to mirror the "leveling" trend experienced with the District's criminal case filings. The District's all-time high for CJA appointments took place during calendar year 2002 when a total of 291 appointments were made.

Vermont has shared a public defender with the Northern District of New York since September 1977. On August 19, 2002, the District of Vermont amended its *Criminal Justice Act Plan* to allow for the creation of a separate public defender office based upon the number of CJA appointments being made on an annualized basis. Vermont's request to establish an independent FPD office was approved by the Second Circuit Judicial Council on June 5, 2003, subject to ratification by the Judicial Conference of the United States. On December 15, 2004, Vermont was formally notified that the Defender Services Division (DSD) had certified the district as eligible for a separate federal public defender office. Late in the year, the Court of Appeals for the Second Circuit informed the district court that a national search for a qualified federal defender would commence sometime during early 2005.

### **Local Rules Revision**

During calendar year 2004, the district court's Local Rules of Procedure were amended after substantial input from the civil law subcommittee of the District's Court Advisory Group. Substantive changes include the adoption of a new local rule which conforms to the policy requirements of the E-Government Act of 2002 regarding how confidential and sensitive information is to be filed; adoption of new rules dealing with pretrial conferences, exhibits and costs. Two existing criminal rules involving pretrial, presentence and probation records also underwent slight

modification regarding how confidential information is to be maintained by the U.S. Probation Office.

### **Space and Facilities**

No major tenant-alteration projects took place during the year other than the formal approval of the Clerk's Office Computer Room Expansion Project slated for the Headquarters Office in Burlington. This project was fully funded from the court's operating budget and work commenced late in the calendar year. The project is scheduled for completion during early spring 2005 and will allow for additional expansion space for the district's DCN network, Lotus Notes, FAS<sub>4</sub>T, JMS and CM/ECF servers.

The General Service Administration's Burlington-based, prospectus-level HVAC project was completed slightly ahead of schedule during November 2004. As such, the heating, cooling and ventilation systems for the Burlington Federal Building & Courthouse have now been totally replaced and modernized. A roof replacement project is scheduled for the Burlington Federal Building & Courthouse during calendar year 2005.

### **Naturalization Proceedings**

The district court conducted fourteen separate naturalization hearings during calendar year 2004. A total of 437 naturalization candidates became citizens. The months of June and November each had one additional naturalization hearing scheduled in order to assist the Immigration and Naturalization Service with processing a long-standing citizenship backlog.

## **PROBATION & PRETRIAL SERVICES**

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 23.6 units and funded at 23.1, a small increase over last year. Reductions in the Judiciary's budget necessitated our performing a record high workload with limited staff. One employee transferred to the District Court Clerk's Office and a second accepted a buy-out effective December 31, 2004. Thus we finished the fiscal year with 20.6 employees and the prospect of less next year.

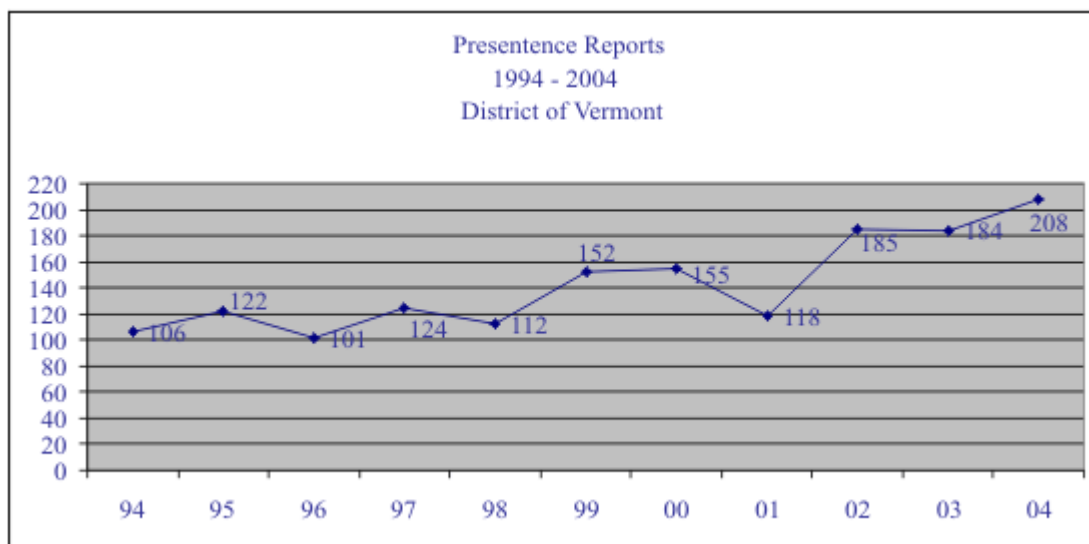
The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well

as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers. There is also an unstaffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. We await GSA's action on renovations to our Burlington Office to make it more functional.

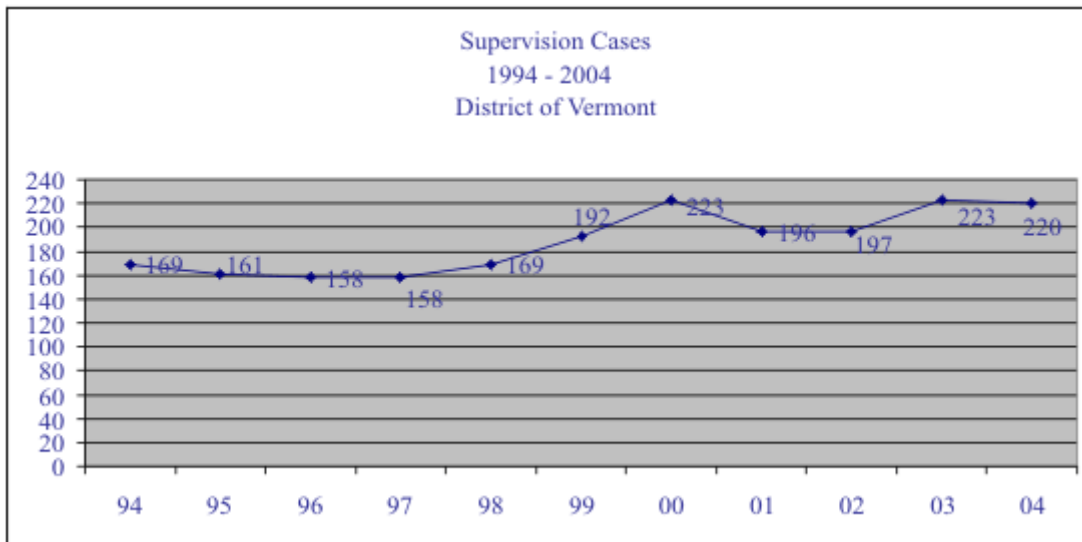
The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including Officer Safety, Sexual Harassment, and a National Guidelines Seminar.

We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager served as a mentor in the continuing implementation of FAS4T. The Chief serves as the Northeast Region's representative to the Chief's Advisory Group as well as a member of the STATS Working Group.

Despite reducing staff and limited funding, the District of Vermont's Presentence Investigation workload increased 13% this year. We completed a record high number of presentence investigation reports this year.



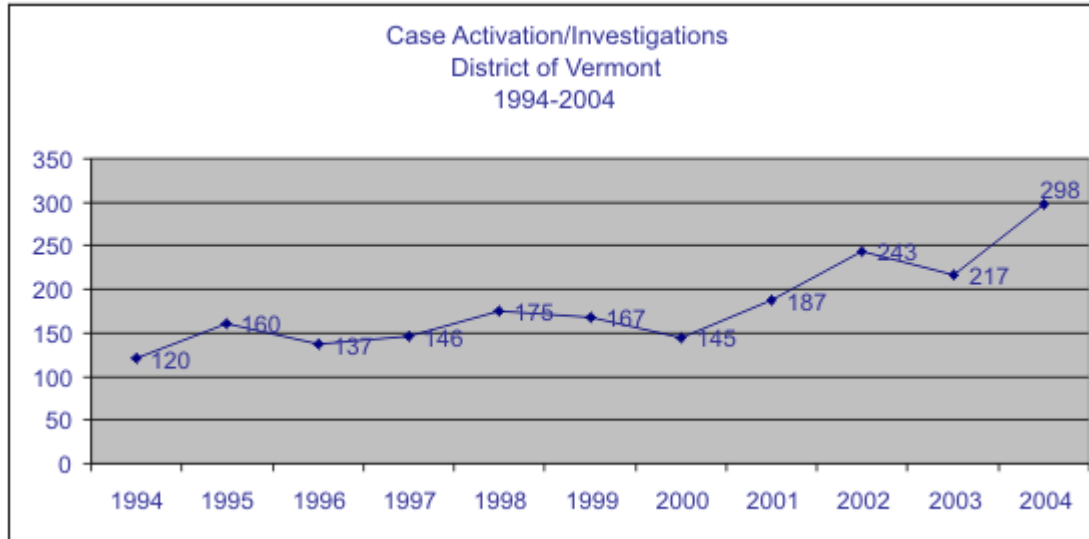
Our Post-Conviction Supervision cases remained steady at 220.



During FY 2004, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District's DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a decrease in collateral investigations conducted locally and had no change in the number of violations brought to the Court.

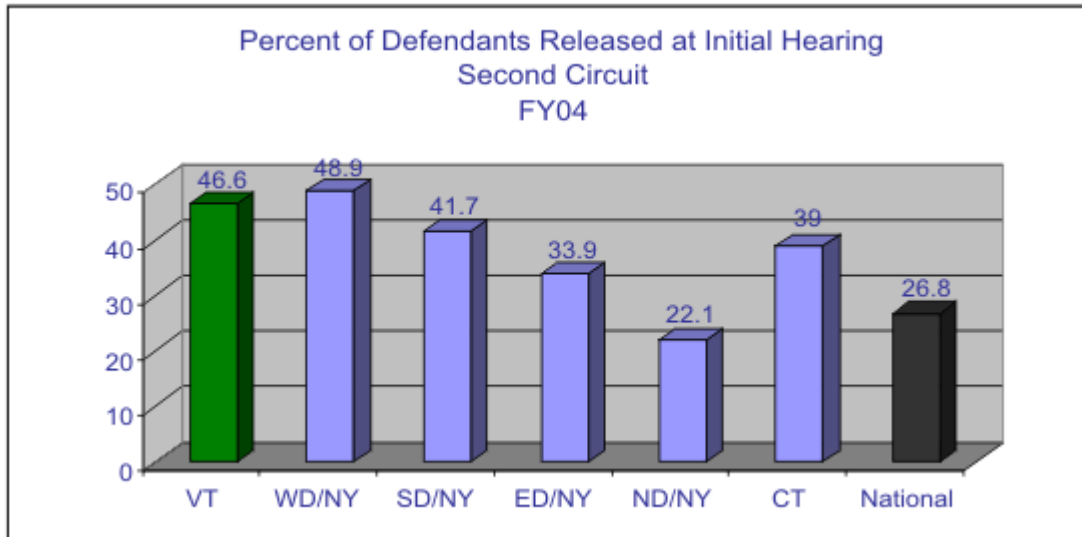
We continued to use electronic monitoring as a sanction and in lieu of half-way house placements. As Vermont has no half-way house facilities, Bureau of Prisons inmates are re-integrated into the community through the electronic monitoring program.

During FY 2004, we experienced a 37.3% increase in Pretrial Services cases activated, with a total of 298 cases for the year. As with the presentence investigations, this is an all time high for the District of Vermont and somewhat remarkable given the funding and resource limitations.



At the end of FY 2004, we had 115 defendants under supervision, a 22% increase over last year. Within the Second Circuit, Vermont remains one of the highest in releasing defendants at initial hearing and one of the lowest, 32.3%, of defendants detained and never released. The majority of offenses charged in the District of Vermont were drug related offenses, totaling 58.3%, up from 53.2% last year. 7.4% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 58.6% of drug law violators and 16.8% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 122 investigative reports to other districts relating to Canadian offenders. In addition, the Canadian Liaison officer has participated in a number of conferences related to anti-terrorist and border issues, both as a participant and presenter.



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### **United States Bankruptcy Court District of Vermont**

#### **CM/ECF**

We trained an additional 36 attorneys and approximately 10 non-attorneys in 2004; most of them at the court's training room. As of December 31, 2004, we had trained a cumulative total of 222 attorneys and approximately 100 non-attorneys. Additionally, we registered 40 additional attorneys in 2004, bringing our cumulative total to 224. We also began registering Limited Participant CM/ECF users, thus enabling non-attorneys to file electronically proofs of claim, notices of transfers of claims, notices of appearance and requests for notice, and claim withdrawals. As of December 31, 2004, we had registered 152 individual limited participant users.

Attorneys filed documents online on behalf of their clients 10,517 times in 2004, with trustees adding an additional 2,170 filings, and our newest category of filers, Limited Participants, kicking in an additional 91 transfers of claims and 821 claims. For the

year, this accounts for approximately 75% of all filings and 21% of all claims, up from 49% and 0% in 2003, respectively. Attorneys opened 1,120 bankruptcy cases and 52 adversary proceedings electronically, which constituted approximately 66% (up 15% from 2003) and 62% (up 40% from 2003) of those categories, respectively. By December 31, 2004, over 86% (up 22% from 2003) of all attorney transactions were being completed online.

## **Community Outreach**

Court staff continued to offer our interactive educational mini-course entitled **\$tart \$mart**, which we developed in 2003. We offered the course five times in 2004, at both high schools and colleges. The course continues to be well-received by participants.

Court staff also worked with local attorneys and the Vermont Bar Association to develop **Vermont Bankruptcy Information Clinics**. Court staff provided the content and coordination, and volunteer attorneys presented four free clinics (two in Rutland and two in Williston) for persons having financial difficulties and who may be considering filing for bankruptcy without the aid of an attorney, for persons who have already filed for bankruptcy and for anyone else who wanted to learn more about the bankruptcy process.

## **Inter-Court Cooperation**

To expedite the determination of a hotly contested motion to dismiss in a Chapter 11 case in which the parties anticipated over two weeks worth of testimony, the bankruptcy court in Connecticut asked Judge Brown if she would preside over the trial on this motion. Judge Brown agreed and, upon agreement of the parties, venue of the motion was transferred to Vermont. Throughout February 2004, the court heard eight days of testimony and admitted over 80 exhibits, and thereafter issued a memorandum of decision granting the creditor's motion to dismiss. The debtor has appealed the decision and the parties are currently at the briefing stage before the U.S. District Court for the District of Vermont.

## **Space and Facilities**

In October 2004, Judge Brown's chambers moved from the U.S. Post Office and Courthouse back to the Opera House.

Also in 2004 . . .

- We sponsored our second annual CM/ECF Users' Forum, where attorneys and court staff had an open dialog about the status of, pros and cons of, and desired modifications to CM/ECF.
- The court created a Teleworking Policy. Currently, more than 50% of our staff – and all but one of our eligible Clerk's Office employees who have DSL access – use the VPN to telework on a regular, recurring basis. The Clerk of Court and Judge Brown both participated in a live FJTN broadcast entitled *Implementing Telework in the Judiciary: Successful Strategic Techniques and Tools*.
- Judge Brown served as a judge in a Mock Advocacy Trial at the Vermont Law School.
- All staff completed 1.5 days of sexual harassment awareness training.
- All staff participated in a workshop on *Serving the CM/ECF Customer*.
- All staff participated in an advanced Myers-Briggs workshop, for the purpose of enhancing communications within the court.
- We began the process of updating our Local Rules.
- We began the process of switching over to electronic court reporting.
- We continued to hold the same number of regular monthly hearing calendars in Burlington as in Rutland.
- We handled a mega-case that was filed in April 2004.
- Judge Brown was appointed to the AO's Bankruptcy Judges' Advisory Group.
- Judge Brown continued to use the services of an outside attorney "liaison" to solicit the opinions and assessments of attorneys and other court users about the performance of the judge, customer service of the Clerk's Office, and overall quality of the court's service. The liaison then conveyed the information to Judge Brown in an anonymous and constructive fashion.
- Automation Manager Gary Gfeller's term on the CM/ECF Working Group and MR Subcommittee was extended for an additional year.
- Our Systems Technology Administrator, Kevin Plew, was called to active duty in the Vermont National Guard and began serving a tour of duty in Southwest Asia.

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
NEW YORK**



Chief Judge Richard J. Arcara

**Summary of Highlights and Activities**

Statistical Year 2004 was once again another year during which case filings, both civil and criminal, continued to increase in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the workload continues to be substantial. The District Court ranks first in the Circuit and 15<sup>th</sup> in the nation with regard to terminations per judgeship. Although the latter statistic represents an 5 point shift over the preceding year's ranking, it nevertheless reflects a significant rate of case disposition by this Court. The Western District ranks first in the Circuit and 20th nationally in civil filings. The District ranks 13th nationally and first in the Circuit with respect to criminal filings. In terms of pending cases per judgeship, the WDNY ranks 6<sup>th</sup> nationally with 819 cases per judgeship. The Court ranks first in the Circuit with respect to the latter statistic. Overall, civil filings were up 2.6% over the preceding reporting period while criminal filings also increased by 16% for the same

period. These total filing statistics place the Western District 8<sup>th</sup> in the national rankings for this category.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress began to create additional judgeships. Fortunately for the Western District, one additional permanent judgeship was included in the bill pending Congressional action in 2004. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court first in the Circuit and 13th nationally. This district is well above the national average at 603 weighted filings per judgeship versus 588 nationally.

Plans proceed apace with one major construction project in the district. This project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration (GSA), the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration has reached agreements with three property owners for the purchase of their parcels of land on which the new courthouse will be constructed. GSA has initiated condemnation proceedings against the remaining four properties which should be finalized in 2005. Demolition of existing structures and site preparation efforts should be getting underway in September, 2005. Construction funding, originally scheduled for appropriation in Fiscal Year 2006, has been delayed until Fiscal Year 2007. The GSA expects to begin construction in January, 2007. Occupancy is planned for November, 2009.

The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the

home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Because of the Judiciary-imposed moratorium on new construction, funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2008 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2004, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continued to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II continued to serve on the Second Circuit Judicial Council Committee on Bankruptcy. Chief Judge Ninfo continued his efforts to expand the Credit Abuse Resistance Education (CARE) program throughout the Second Circuit and nationally. CARE has received continued support from the Second Circuit. Additionally, Larry Friedman, Director of the Office of the United States Trustee, has highlighted CARE in the U.S. Trustee's national Financial Education Program. The Federal Judicial Center also highlighted CARE by filming a half-hour feature for the FJC's "Court to Court" program, scheduled to be shown in early 2005. Chief Judge Ninfo is pleased to report that CARE is now being presented to students or being developed in twenty-three states.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS<sub>4</sub>T, continued to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court assisted the Administrative Office in the presentation and development of an implementation strategy for the Eleventh Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation.

The District Court continued to gain experience with the new Case Management and Electronic Case Files system (CM/ECF). The district ranks ninth among CM/ECF courts nationwide in attorney utilization of electronic filing, with 66% of potential

achieved. 2014 attorneys have registered for e-filing through the CM/ECF system. The district's ability to keep up with its increased workload is due in large part to chambers' and operations staff utilization of the capabilities inherent in CM/ECF. The district's Chief Deputy Clerk, who is the CM/ECF Project Manager, was appointed to the CM/ECF Working Group and is actively involved in that group's discussions and decisions on enhancements to CM/ECF. The district sent three CM/ECF Implementation Team members to the Administrative Office's August 2004 CM/ECF Operational Practices Workshop.

### **Magistrate Judges**

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the district.

### **Statistics**

#### **District Court**

Civil filings for the year ending 9/30/2004 were 1741, which is a 2.6% increase over the prior year's civil filings. Total criminal case filings for the year ending 9/30/2004 were 497, a 16% increase over the prior year. The district is first in the Circuit and 8<sup>th</sup> nationally in percentage change in total filings (civil plus criminal).

In August 2004, a new District Court Case Weighting formula was implemented, which changed this district's ranking from 19<sup>th</sup> to 13<sup>th</sup> in the nation in weighted filings per judgeship for 2004 filings. This change directly influenced the Judicial

Conference's recent decision to change their long-standing recommendation for an additional temporary judgeship for Buffalo to an additional permanent judgeship.

As of September 30, 2004, the district is first in the Circuit and 6<sup>th</sup> in the nation in the number of pending cases per judgeship. Despite this caseload, the district is still first in the Circuit and 15<sup>th</sup> in the country in the number of terminations per judgeship.

Prisoner case filings accounted for 28.3% of the total civil case filings for the reporting period. Prisoner cases account for 34.5% of the district's pending civil caseload.

### **United States Bankruptcy Court Western District of New York**

Paul R. Warren, Clerk of Court, reports that during statistical year 2004 a total of 15,248 bankruptcy cases were filed in the Western District of New York, which represents a district-wide increase of 4.59%. The increase in bankruptcy filings in the Western District continued to exceed the national average, which declined by 2.6%. Chapter 7 cases continue to comprise the majority of cases in the district, representing approximately 75% of the total cases filed. A total of 610 Adversary Proceedings were filed during the reporting period, representing an increase of 15.75% from the previous statistical

According to Bankruptcy Program Indicators for the 2004 statistical year, the Court ranked nationally in the median range with respect to the number of case filings, in the average range for disposition time and in the 75<sup>th</sup> percentile range for pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability cases and second in the Circuit with respect to the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the continued increase in caseload and a continued decline in staffing levels.

### **Probation and Pretrial Services**

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2004, the U.S. Probation and Pretrial Services office continued in the development of its biennial strategic plan which focuses on striving for continuous improvement in every aspect of the functions involved in core areas such as pretrial services, presentence investigation and post sentence supervision. Staff members representing every job type are assigned to work toward the goals that support the outcome areas.

During this reporting period, staff participated in national initiatives. Mr. Giacobbe appeared on an FJTN program designed for chief probation officers addressing officer fitness for duty issues. A senior officer who sits on the Sentencing Commission Advisory Board participated as a panel member on sentencing issues at the National Sentencing Institute.

At the close of statistical year 2004, 861 cases were activated on pretrial release, representing a bail release rate of 67%. The percentage of pretrial defendants who successfully completed supervision was 85%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 589, which includes pretrial diversion defendants. Of this number, 407 defendants were referred for substance abuse treatment. A total of 81 pretrial services defendants were referred for mental health treatment.

A total of 103 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid \$11,872 toward co-payment orders. The successful EMS completion rate is 85%. Use of pretrial EMS resulted in a potential savings to the government of \$90,993.

The presentence investigation unit completed 703 investigations. District-wide, 70% of sentenced defendants were remanded, 30% were placed on probation, 23% were ordered to pay a fine and 18% were directed to make restitution.

During the reporting period, 1,329 post-sentence offenders were under supervision. Of this number, 1,223 offenders, or 95%, completed their term of supervision successfully. A total of 547 offenders received drug treatment, while 156 offenders received mental health treatment. A total of 335 offenders were placed under electronic monitoring conditions which produced a successful completion rate of 95%. Offenders paid \$11,829 towards co-payment orders. The use of post sentence EMS in the district resulted in an approximate savings to the government of \$71,961. A total of 4,500 hours of community service were completed by offenders. Restitution collections totaled \$1,099,836. Fine collections totaled \$112,868 during the same time period.

## **Automation**

### **District Court**

Integrated technology support for the Court continues to evolve as the emphasis on automated systems becomes more pronounced. Additionally, the increased budget

pressures require the court to do more with less resources being made available. The IT staff are striving to meet these challenges.

During the past several years, the Court has embarked on an effort to reduce telecommunications costs across the district. In 2004, the District Court and Bankruptcy Court in the Rochester divisional office consolidated telephone systems and dropped GSA provided dial tone services in favor of a less costly local area provider. The savings achieved from eliminating GSA as the local telephone provider in both Buffalo (eliminated in 2003) and Rochester is conservatively estimated to \$3,700 per month. In addition to these savings, the District Court and Bankruptcy Court IT staff jointly maintain and support the telephone systems which eliminates the need to incur thousands of dollars annually in third party maintenance costs. The Court has also begun to explore the use of Voice Over Internet Protocol (VOIP) technology within each divisional office in an effort to reduce cabling costs and maintenance while at the same time improving telecommunication flexibility.

The Court has also embraced the Telephone Interpreting Program (TIP) to reduce overall interpreter costs. Wireless headsets have been installed in the magistrate judge courtrooms providing access to the TIP provider sites.

Long term courtroom technology projects in Judge Larimer's and Judge Skretny's courtrooms have been completed and the systems are now fully functional and greatly utilized.

The Second Circuit's Committee on Automation has approved the district's remote access plan for access to the Virtual Private Network (VPN). The IT staff have begun to deploy the necessary software to enable all judges and senior administrators to connect to the Judiciary's Data Communications Network (DCN) from remote locations. Given the pressure from Congress to reduce costs through telecommuting, the VPN shows great promise for achieving further reductions in operational costs. Expansion of the VPN to users other than judicial officers and senior managers will improve support efforts and give greater flexibility to the rest of the court staff.

CM/ECF has been operational for one full year. Although the IT department continues to be faced with compatibility issues with browsers and printing, on the whole, the project seems to be a great success. While the ability to obtain a variety statistical reports disappeared when the conversion from ICMS to CM/ECF was made, the IT staff have been working diligently to replace the quality control and statistical reporting capability through the use of Crystal Reports and PERL software packages.

Throughout the development of the 50% construction documents for the new Buffalo courthouse, the IT staff have played an integral role in planning for the

technology needs of the new facility. The staff have been working directly with the architects, the AO's technology professionals, and their contractors to insure that all available technology enhancements are considered and provided for in the designs. These efforts will continue throughout 2005 as the architects develop the drawings to the 100% construction ready state.

## **Bankruptcy Court**

The Bankruptcy Court continued to focus its IT efforts and resources on CM/ECF. Mandatory electronic filing for attorneys became effective October 1, 2004. During Statistical Year 2004, CM/ECF attorney-filer training was provided by the court to 483 attorneys, as compared to 130 attorneys trained during the previous year. In addition, the Court issued e-filing registration accounts to 661 attorneys, as compared to 90 attorneys issued registration accounts during the previous year. In addition, during 2004, the Court adopted a standing order to permit related e-filings by institutional creditors. As a result, 261 creditor/limited participant filers were registered and began to file claims and claim related documents electronically.. The Court installed computers and scanners in the public intake areas to assist registered users in complying with the court's electronic filing requirement. Electronic filing appears to be successful, as is evidenced by the more than 350,000 documents, consisting of over 1,300,000 pages, electronically filed during the reporting period. The Court implemented two release cycles of CM/ECF and is currently using version 2.6. The Bankruptcy Court, in partnership with the District of Delaware Bankruptcy Court, is proud to have developed a significant enhancement to the CM/ECF program which the courts named "Reduced Paper Module" (RPM). RPM was developed to eliminate redundant paper notices in response to negative feedback voiced by practicing attorneys in many districts nationwide since the release of CM/ECF. By eliminating the redundant and often unwanted paper notices, RPM has the added potential to generate significant postage and noticing cost savings for the Judiciary. Bankruptcy courts have been encouraged by the Bankruptcy Noticing Working Group to implement RPM.

## **Financial Operations**

### **District Court**

The financial department experienced many challenges and achieved numerous accomplishments in the past year. The greatest challenges involved personnel-related issues. The continuing vacancies of one part-time CJA Clerk and one part-time Financial Assistant were intensified by two extended absences (4 months and 6 months respectively) and one termination resulting in the transfer of one full-time

position from the operations staff. This reduced staffing was extremely demanding and many extra hours were devoted to maintaining relatively current workloads.

Despite this, workload measures indicate the volume of financial transactions continued to peak during fiscal year 2004. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over \$6.3 million representing a 112% increase over the prior year, with the actual number of receipts issued (10,654) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which arose by 13%, as well as an increase in joint and several restitution payments which increased by 11%. Additionally, registry deposits grew by 256% with \$4.5 million now being collateralized through the Federal Reserve.

Nothing on the horizon signals a slow down of the surging trends in criminal monetary debt statistics experienced in the past few years, which remains a key initiative within the department. The volume of criminal debt activity overseen by the financial staff significantly increased again this year particularly due to joint and several restitution cases. The current caseload involves the monitoring, tracking and collections on debt totaling almost \$30 million for these types of cases alone which represents an 11% increase in active cases over last year. Furthermore, continuing efforts with the U.S. Attorney and Probation Offices to resolve issues immediately after sentencing have resulted in the ability to increase total restitution disbursements by 83%. Overall, the financial department is responsible for monitoring, tracking and paying over 12,600 victims on a regular basis.

During the year, the Court's financial staff processed over 6,100 payment vouchers and issued 11,329 checks representing a decrease of 13% primarily due to limited spending within the Judiciary's current budget environment. Combined Registry and Treasury disbursements, however, exceeded \$10 million which is actually an increase of 57%. This increase results directly from the receipt and transfer of \$3.5 million to our local depository, Greater Buffalo Savings Bank, for interpleader funds in two pending civil matters.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 414 vouchers were certified for payment during the year, with over \$1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 7% and 1% respectively primarily due to the authorization of interim payments to multiple panel attorneys assigned in the death penalty case, USA vs. Diaz, et al.

Last year also brought many FAS<sub>4</sub>T-related activities (Financial Accounting System for Tomorrow). This district assisted the Administrative Office in the presentation and development of an implementation strategy for the 11<sup>th</sup> Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation. During March, staff successfully completed the conversion to FAS<sub>4</sub>T Release 3.7.3.2, as well as two subsequent versions 2.2 and 2.3 a few months later. At the request of the Administrative Office, staff also completed the testing of a new accounting field for FJC travel, and provided recommendations for modifications prior to national release in June. That same month, the setup, testing, and implementation of a new document type for Bankruptcy Court's case-related payments was completed.

Technological advancements were also realized in the area of Treasury deposits. Early in the year, financial staff successfully implemented one of the Department of Treasury's newest cash management tools, CASH-LINK II, which provides detailed information related to transactions processed by financial institutions for deposits. This has allowed staff to investigate deposit differences between the Court and Treasury's accounting records. A procedure manual was subsequently developed for accessing the system, researching the database, and generating the necessary reports now used on a daily basis.

Additionally, staff was asked to formally review and offer suggestions to the Administrative Office on two exposure drafts for revisions to the *Guide to Judiciary Policies and Procedures*. The first draft pertained to the Criminal Justice Act reflected in Volume I, Chapter VII, and the other draft applied to financial management issues, specifically on the subject matters regarding receipting, disbursing, and reporting, also under Chapter VII.

The financial staff also received numerous hours of training that addressed the newest release of CASH-LINK II; FAS<sub>4</sub>T migration training; human resources planning in austere budget times; and implementing telework in the Judiciary through successful strategic techniques and tools, offered through the FJTN. Additionally, the Financial Operations Supervisor was invited to attend the Department of Justice Criminal Collection Issues Regional Training program offered to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Circuits. Many fresh ideas were gained that have already proven useful to this district.

It goes without saying that throughout the busyness experienced this year, the financial staff was never willing, under any circumstance, to compromise the quality of services and support provided to the judges, the bar, and the public.

## **Bankruptcy Court**

The Bankruptcy Court continued to adopt initiatives intended to cultivate a productive stewardship environment, with regular financial, budget and procurement briefings between the court and senior administrative staff. The Court's inventory control system was the subject of a Court to Court program taped by the FJC in October, 2004 (to be aired in 2005). Several courts have reported very positive property management audit experiences when using the Court's inventory control system. It is noted that the software used for this program is free-ware, an important consideration in the present fiscal climate. Four clerk's office staff members participated in the first phase of the Contracting Officer Certification Program, by attending a week-long program sponsored by the Second Circuit. The Court's goal is to obtain contracting officer certification by the January, 2006 deadline established by the AO. During the reporting period, there was a significant increase in the use of credit cards by attorneys for payment of filing fees, as those attorneys took advantage of the ability to e-file documents. Approximately 40% of all fees collected were paid by attorneys using credit cards, nearly double the amount collected in the previous year. The decline in payments by check and cash to pay filing fees has allowed the Court to discontinue the use of an armored car service for transportation of negotiable instruments.

## **JUDICIAL ADMINISTRATION**

### **JUDICIAL COUNCIL OF THE SECOND CIRCUIT**



**Top row, left to right:**

Circuit Judge Chester J. Straub  
Chief Judge Robert N. Chatigny, District of Connecticut  
Circuit Judge Guido Calabresi  
Circuit Judge Dennis Jacobs  
Circuit Judge Rosemary S. Pooler  
Chief Judge William Sessions III, District of Vermont  
Circuit Judge Robert D. Sack

**Bottom row, left to right:**

Chief Judge Michael B. Mukasey, Southern District of New York  
Circuit Judge José A. Cabranes  
Chief Circuit Judge John M. Walker, Jr.  
Chief Judge Edward R. Korman, Eastern District of New York  
Chief Judge Richard J. Arcara, Western District of New York

**Absent:**

Chief Judge Frederick J. Scullin, Jr., Northern District of New York