

# THE THIRD BRANCH

Newsletter  
of the  
Federal  
Courts



Vol. 41  
Number 4  
April 2009



Judge Joan H. Lefkow (N.D. Ill.) looks on as U.S. Marshals Service Director John F. Clark and Acting Deputy Director Chris Dudley unveil a brass plaque dedicating part of the agency's Threat Management Center to the Lefkow family. PHOTO CREDIT: SHANE T. MCCOY/US MARSHALS SERVICE

## "Safer, More Secure" Judiciary at Heart of Center

The U.S. Marshals Service (USMS) last month dedicated a part of its Threat Management Center (TMC) to Judge Joan H. Lefkow (N.D. Ill.), in memory of her husband and mother, who were murdered by a disgruntled litigant in 2005. USMS Director John F. Clark credited Lefkow's "courage to speak out and her advocacy for reform in the protection of judges" as the impetus for the creation of the Center. The TMC is a repository for all classified and nonclassified information affecting the safety and security of the Judiciary, where staff collect, analyze, and disseminate

protection intelligence information to assist in mitigating a threat. "Thanks to Judge Lefkow," Clark said, "the TMC bridges technology and good old-fashioned police work, together making for a safer and more secure judicial system."

According to Clark, last year the USMS investigated more than 1400 threats and inappropriate communications directed against judicial officials. He noted that every case required some level of analytical or investigative work done by the TMC staff and by Deputy U.S. Marshals in the field. 

## INTERVIEW

### An Interview with Chief Justice Margaret H. Marshall, President of the Conference of Chief Justices

*Margaret H. Marshall is the Chief Justice of the Supreme Judicial Court of Massachusetts. Appointed to her position in 1999, she is the first woman to serve as Chief Justice and the second woman appointed to serve as an Associate Justice. She became President of the Conference of Chief Justices in July 2008.*

**Q:** In January 2009, the Conference of Chief Justices (CCJ) celebrated its 60th Anniversary. What is the primary role of the CCJ with respect to the state courts?

**A:** Over the past thirty or so years, largely as a result of nationwide court reform movements, local, county, and state courts have evolved into state judicial branches. In parallel with those developments, the CCJ has emerged as the most effective organization where the heads of the Third Branch of government in all fifty states, the District of Columbia, and five United States territories meet to share experiences, learn from each

## INSIDE

Innovative IT Programs Funded .....pg. 3  
FY 2009 and 2010 Budget Updates.....pg. 4  
New Jersey E-Filing Forum Big Draw.....pg. 5

See Interview on page 9

# Senate Subcommittee Leadership Now Set

Leadership on those Senate subcommittees whose jurisdiction includes the federal courts has been set.

Senator Richard J. Durbin (D-IL) remains chair of the Senate Appropriations Subcommittee on Financial Services and General Government, but with a new ranking minority member, Senator Susan Collins (R-ME), who succeeds Senator Sam Brownback (R-KS).

Senator Sheldon Whitehouse (D-RI) is the new chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, succeeding Senator Chuck Schumer (D-NY). Senator Jeff Sessions (R-AL) is the ranking minority member on the subcommittee, as he was in the 110th Congress. Senator Patrick Leahy (D-VT) and Senator Arlen Specter (R-PA) once again are chair and ranking minority member of the full Judiciary Committee. 



*Clockwise from top left: Senator Richard J. Durbin (D-IL), Senator Susan Collins (R-ME), Senator Jeff Sessions (R-AL), Senator Sheldon Whitehouse (D-RI)*



## Courts of Appeals Use E-Technology to Deliver Opinions

The First Circuit Court of Appeals recently added RSS feeds for both opinions and audio recordings of oral arguments to its public website. The circuit joins the Third, Seventh, Eighth, Ninth, and the Eleventh Circuits, which are already using Real Simple Syndication to deliver web content directly to interested parties, eliminating the usual e-mail notification. Updated information from the RSS feed is automatically downloaded to a user's computer and can be viewed in Internet Explorer and other browsers.

This is just the latest in the courts of appeals' use of the web, e-mail and digital data storage to disseminate opinions and court information.

The Seventh Circuit provides podcasts and MP3 audio files of oral arguments in addition to RSS feeds on its site. The podcasts also can be

accessed through iTunes.com. And if you'd prefer to have opinions delivered directly to your mobile device, that's possible too.

In addition to its RSS feed, the Eighth Circuit includes podcasts and oral arguments in the MP3 format. The court doesn't limit postings to cases. Recent audio posts allowed the public to listen in on a memorial service for Judge Donald Lay and a ceremony in which one of Justice Harry A. Blackmun's judicial robes was donated to the court.

The largest circuit, the Ninth, offers the most RSS feeds. Users wishing to subscribe to RSS feeds have a choice of feeds for opinions, memoranda-unpublished dispositions, cases of interest, and court announcements.

The Court of Appeals for the Federal Circuit makes files of oral

arguments available on-line in the MP3 format and is considering adding RSS feeds for both opinions and audio recordings of oral arguments to its webpage.

Courts who have yet to add RSS feeds, offer alternatives. Although opinions are posted on their websites daily, several circuits offer a free subscription service that sends an e-mail notification when opinions are released. The option is available in the Fourth, Fifth, and Sixth Circuits. The Fifth Circuit also makes oral arguments available through its website, generally, the day of the argument. The DC, Second, Fourth, and Sixth Circuits provide audio files on a CD upon request. In the DC Circuit, all appeals, remands, or other additional proceedings must be concluded before the audio files are made available. 

# Innovative IT Programs Link Automation with Court Business Processes

Four innovative information technology (IT) projects for the federal courts will be funded by the Edwin L. Nelson Local Initiatives Program for fiscal year 2009. The projects provide capabilities not currently available through a national IT product and involve collaboration between two or more courts.

All projects funded in this and past years are available for use by any federal court on Ed's Place, a Judiciary intranet website designed to host locally developed applications, as well as to promote collaborations in support of new application development, and reduce duplication of those efforts. Named for the late Judge Edwin L. Nelson, Ed's Place supports court awareness and sharing of what is being done throughout the Judiciary to link automation with court unit business processes.

Grant requests from the courts are reviewed by the IT Advisory Council, whose recommendations are considered by the Judicial Conference Committee on Information Technology. Judge Francis Allegra (Ct. of Fed. Claims) chairs the IT Committee's Local Initiatives Subcommittee. "Our goal is to empower, to give the people developing IT solutions the tools they need, while streamlining the process so that projects can move more quickly from a local to a national application," said Allegra. "Funding is critical. We can't expect the individual courts to take on the entire job of product development. We provide the additional funding that hopefully can help make a product usable by a substantial number of courts."

FY 2009 grants particularly encourage IT solutions that will help chambers and support training

efforts, and this direction continues for FY 2010. Courts interested in funding for FY 2010 may submit grant proposals to the Office of Information Technology at the Administrative Office no later than May 15, 2009.

Funding for the following projects was approved for FY 2009:

## ECF Central

The U.S. Bankruptcy and District Courts for the Northern District of Florida and the Southern District of Alabama will jointly develop a web-based application to implement a toolbar to provide users of the Judiciary's Case Management/Electronic Case Files (CM/ECF) system with case alerts and reminders; important messages and announcements; customizable court calendar information; an order submission portal; help desk messaging; and a library of helpful contacts, documentation, filing guidelines, and instructional videos. The toolbar would be displayed on demand while the user is logged into the CM/ECF system. An early version of the application was created by the U.S. Bankruptcy Court for the Northern District of Florida and the final version will be the product of a multi-court collaboration.

CM/ECF shifted the burden for entering the information for a thorough, accurate, and timely record of court filings from experienced court employees to external users. ECF Central will improve the accuracy of this user-entered information by giving easy access to ECF documentation, tutorials, and instant messaging access to the ECF Help Desk. Court employees will spend less time editing case information and correcting errors.

## Violations Database

The U.S. Probation Offices of the Middle District of Florida, District of Puerto Rico, and the Southern

District of Florida are collaborating to create a database/data entry form to be used whenever a probation officer prepares a probation violation report. The database will work with and draw sentencing information from the Probation/Pretrial Services Automated Case Tracking System. The probation officer would begin the process by entering some basic information into a data entry form. The information then would be automatically transferred to the petition and to a memorandum to the court. Based on the information entered, the violations database will be able to insert the statutory provision and calculate the sentencing guideline provisions. A module also will capture statistical data on types of petitions filed, nature of violations filed, outcome of the violation filed, etc.

## Web Design/Content Management System

The U.S. Bankruptcy Courts for the District of New Jersey, the District of Delaware, and the Eastern and Western Districts of Pennsylvania, and the U.S. District Courts for the Middle and Western Districts of Pennsylvania are cooperating to develop an information-rich and flexible website design with a supporting content management system. The website will function as a template for other courts to use without the need to duplicate effort or expend resources. The content management system will be used to create a framework for a court's website content, including computer and audio files, image media, and electronic documents. It will allow selected non-technical staff to directly manage the entire site, adding announcements, loading forms, and updating information without the need for programming or specific IT support. This will reduce the amount of time and

*See IT on page 7*

# Update: Fiscal Year 2009 and 2010 Budgets

The Omnibus Appropriations Act of 2009, signed by the President in March, contained, among other things, a retroactive cost-of-living adjustment for judges, and funding to complete construction on the San Diego U.S. Courthouse annex and to provide for renovations at the Dirksen U.S. Courthouse in Chicago, Illinois, and the New Bern U.S. Post Office and Courthouse in New Bern, North Carolina. Provisions also extend temporary judgeships for one year in the Districts of Hawaii and Kansas and the Northern District of Ohio, and increase panel attorney pay rates.

The Table at right shows the Judiciary's appropriation for FY 2009, and its current request for an 8.7 percent overall increase for FY 2010. Because the FY 2010 budget was transmitted to Congress before the FY 2009 funding levels were known, the FY 2010 request will be revised and most probably reduced in light of the higher FY 2009 enacted level, as well as other updated information.

## Where the Money Goes: FY 2009

Of the Judiciary's total FY 2009 funding, 5 percent funds the Supreme Court, the Court of Appeals for the Federal Circuit, the Court of International Trade, the Administrative Office, the Federal Judicial Center, the U.S. Sentencing Commission, and the Judiciary Trust Fund. The remaining 95 percent goes directly to the Courts of Appeals, District Courts, and Other Judicial Services in four accounts: Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors.

The Salaries and Expenses account, which receives 78.2 percent of the funding, covers rent, judges and court personnel salaries and benefits, operating expenses, and

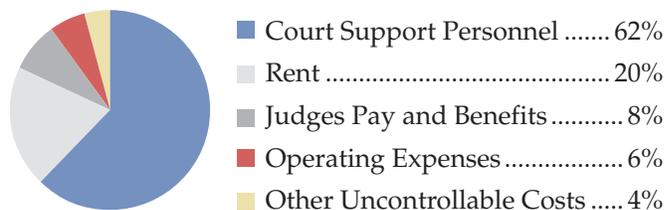
information technology, and other expenses. The pie chart shows a breakdown of this account.

Funding for federal public defender and community defender organizations, compensation for private attorneys representing indigent defendants, and fees of persons providing investigative, expert, and other services under the Criminal Justice Act is provided from the Defender Services account. This account receives 13.8 percent of the funding.

The Court Security account provides funds, which are subsequently transferred to the U.S. Marshals Service and the Federal Protective Service, for the procurement, installation, and maintenance of security equipment, and for protective services, including contract security officers for the courts. The account receives 7 percent of the funding.

The Fees for Jurors account, 1 percent of the court's total funding, pays for juror fees and expenses. 

## FY 2009 Salaries and Expenses Account by Category



## Judiciary Appropriations (\$000)

Appropriation Account	FY 2009 Appropriation	FY 2010 Request
U.S. Supreme Court		
Salaries & Expenses	\$69,777	\$74,740
Care of Building and Grounds	18,447	14,568
<b>Total</b>	<b>88,224</b>	<b>89,308</b>
U. S. Court of Appeals for the Federal Circuit	30,384	36,981
U.S. Court of International Trade	19,605	21,517
<i>Courts of Appeals, District Courts &amp; Other Judicial Services</i>		
Salaries & Expenses		
Direct	4,801,369	5,162,252
Vaccine Injury Trust Fund	4,253	5,428
<b>Total</b>	<b>4,805,622</b>	<b>5,167,680</b>
Defender Services	849,400	982,646
Fees of Jurors & Commissioners	62,206	63,401
Court Security	428,858	463,642
<b>Subtotal</b>	<b>6,146,086</b>	<b>6,677,369</b>
Administrative Office of the U.S. Courts	79,049	83,963
Federal Judicial Center	25,725	27,486
Judiciary Retirement Funds	76,140	82,374
U.S. Sentencing Commission	16,225	17,056
<b>Total</b>	<b>\$6,481,438</b>	<b>\$7,036,054</b>

# New Jersey E-Filing Forum Big Draw for Attorneys

It only took a day for 400 attorneys to fill every available spot for two forums hosted by the U.S. District Court for the District of New Jersey. What topic proved so appealing? The Judiciary's Case Management/Electronic Case Files (CM/ECF) system.

The New Jersey district court hosted Attorney Electronic Filing Forums in January and February, extending invitations to all registered CM/ECF system filers and their staff. The draw was the opportunity to talk with judges and clerk's office staff and get the latest on e-filing topics, including the court's new e-transcript policy and local rules.

"Five years ago, the District of New Jersey launched the CM/ECF system," Chief Judge Garrett E. Brown told forum participants. "This was a new program for us. It was also a time of some uneasiness and uncertainty as we contemplated how our staff and the bar would adjust to this system ... As we enter our 6<sup>th</sup> year, I am pleased to report that CM/ECF is a much improved application ... It continues to evolve in order to meet the court's needs and the needs of our users, with more new releases planned."

Currently the district has more than 14,500 registered users, with thousands of cases and documents available on-line.

"CM/ECF evolves and new lawyers begin practicing in the district, so the need for training is ongoing," said Chief Deputy Clerk James Murphy, Jr. The district clerk's office is highly proactive, going out to law firms or conducting e-filing training at the court for attorneys. For 2009, the court tried a forum format to reach the largest possible number of users.

"The forums were more updates than initial-user training," said Murphy. "We walked attendees through the e-filing of transcripts.

Our management information system and systems directors took them on a tour of user interfaces and utilities. Our quality control director did a PowerPoint presentation on the top 10 mistakes in using CM/ECF, and our financial manager talked about when and why charges occur and how errors are remedied."

And when the topic turned to electronic filings and transcripts, Murphy and other panel members spoke about the Federal Rules of Civil and Criminal Procedure, which require the redaction of personal identifiers. They particularly noted that the redaction of personal data identifiers rests solely with counsel and the parties.

The District of New Jersey delivered the message on redaction to attorneys during a legal education program, but courts also are stressing the rules' redaction requirements by posting notifications on CM/ECF log-in screens and in the clerk's office, and through court newsletters and list servers.

In her talk to forum participants, Magistrate Judge Tonia J. Bongiovanni covered protective orders and public access to records under CM/ECF, and addressed attorneys' concerns about e-filing preserving confidentiality.

"Not everyone has grown up with a computer and not every attorney is comfortable with a system like CM/ECF," Bongiovanni said. "Attorneys are concerned with whether their client's information is being sealed.



*Courtroom Deputy Jacquie Lambiase (standing center) and Criminal Docket Clerk Nativelis Rodriguez (seated) distributed materials to participants during the District of New Jersey's recent E-Filing Forums. To assist attorneys who might have questions in the future, the court supplied mouse pads with the court's toll-free help desk numbers.*

They worry whether a brief won't be filed in time because they didn't hit the right button. The clerk's office is sensitive to these issues and understands the need to educate the bar, and strives to make the system as user friendly as possible. I really applaud their efforts. The forums have given attorneys access to folks who will help them use the system most efficiently."

Underscoring the information-intensive nature of the forums, attorneys from not only New Jersey, but also Pennsylvania and New York can receive continuing legal education credit for their attendance.

"We put a lot of emphasis on continuing education and we talked about federal and local rules, which the attorneys appreciated," said Murphy. "But it was also an opportunity for them to ask questions and get to know our staff."

That the effort was appreciated was clear from the positive feedback from participants. "We played to a packed audience," said Bongiovanni, "and I was happy to hear people say how delighted, enlightened—and less afraid—they were. It's really all about customer service." 

# More Offenders Face Prison Sentences

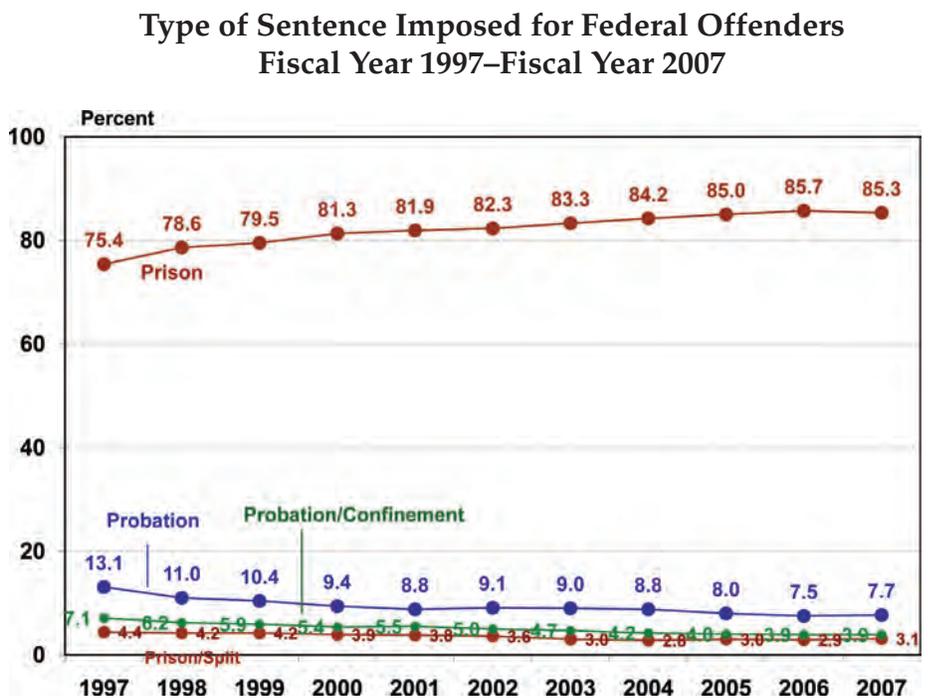
According to a new report issued by the U.S. Sentencing Commission (USSC), from fiscal year 1997 to fiscal year 2007, the proportion of federal offenders receiving alternatives to prison sentences has decreased while the proportion of federal offenders sentenced to prison has increased—from 75.4 percent in FY 1997 to 85.3 percent in FY 2007. Over the same time period, sentencing to alternatives such as probation declined from 13.1 percent to 7.7 percent, probation combined with confinement alternatives declined from 7.1 percent to 3.9 percent, and sentences combining a prison term with alternative confinement declined from 4.4 percent to 3.1 percent.

The report, *Alternative Sentencing in the Federal Criminal Justice System*, analyzed alternative sentences for federal offenders and, specifically, U.S. citizens.

Alternatives to incarceration can be probation alone or in combination with community confinement (residence in a community treatment center, halfway house, or similar facility), home detention, or intermittent confinement (custody for specified intervals of time). The Anti-Drug Abuse Amendment Act of 1988 authorized the use of home detention and electronic monitoring for offenders sentenced to probation and supervised release. Federal statutes and the sentencing guidelines limit offender eligibility for probation sentences.

The USSC report noted, “Despite the availability of alternative sentencing options for nearly one-fourth of all federal offenders, federal courts most often impose prison for offenders ....”

Confinement options under the sentencing guidelines are determined by a sentencing table divided into four zones. In the lowest zone, sentencing ranges are from zero to



Source: U.S. Sentencing Commission

six months of confinement but may consist of probation only, or probation combined with some type of alternative confinement. Nearly half of the offenders in this zone are sentenced to prison, not probation. Sentences in the highest zone require a term of imprisonment ranging from one year to life. Most federal offenders—94.6 percent—are sentenced in this zone and are sentenced to prison.

For U.S. citizens, prison sentences accounted for 81.1 percent of sentences imposed in FY 2007. The remaining sentences were probation (8.4 percent), probation with confinement (5.8 percent), and prison split with community confinement (4.7 percent.)

Home confinement is the most commonly imposed alternative sentence. Nearly three-quarters of offenders sentenced to a prison/community split are sentenced to home confinement. Ninety percent of offenders sentenced to probation

with confinement received home confinement.

The report concluded that the question of why courts impose alternative sentences for some eligible offenders but not others “cannot be definitively answered.” Analysis, however, suggested some factors.

“Guideline offense level and Criminal History Category, alone or in combination, are the principal factors determining whether an offender receives an alternative sentence,” the report observed. For example, offenders sentenced in the lower sentencing zones received alternative sentences more often than those in the higher zones. Offenders with a less serious criminal history, with higher levels of education, and older than 50 years, are most likely to be sentenced to alternatives. U.S. citizens are substantially more likely to receive alternative sentences than non-citizens.

Immigration and firearms offenders are least likely to receive

# Judiciary's Projects Part of Stimulus Package

Courthouse construction projects will receive 80 percent of the \$300 million provided for the construction of federal buildings in the recent stimulus legislation package. In addition, several hundred million dollars are provided in the legislation for full and partial modernization projects in almost 100 court facilities.

The General Services Administration selected the best projects based on two over-arching criteria: the ability of the project to put people back to work quickly—usually within 120 days—and to transform federal buildings into high-performance green buildings, with a concentration on energy conservation and renewable energy generation.

"This is certainly very good news for the Judiciary's courthouse programs," said James C. Duff, Director of the AO. "The projects will add jobs to local economies, as well as enable the Judiciary to address unmet security, space, and environmental needs in courthouses throughout the country."

Duff expressed his appreciation to Congress for the funding, and also to the many individuals who worked together to secure the funding, including judges, court clerks, project managers, and AO staff.

Among the new construction projects to receive funding are courthouses in Jackson, Mississippi; Austin and El Paso, Texas; Little Rock, Arkansas; Billings, Montana; and Bakersfield, California. A list



U.S. Courthouse, El Paso, Texas.

of all the construction and modernization projects funded from the American Recovery and Reinvestment Act of 2009 can be found at [www.gsa.gov/graphics/pbs/American\\_Recovery\\_and\\_Reinvestment\\_Act\\_2009.pdf](http://www.gsa.gov/graphics/pbs/American_Recovery_and_Reinvestment_Act_2009.pdf). 

alternative sentences compared to other offenders, while offenders sentenced for financial crimes of larceny, fraud, and other white collar offenses are most often sentenced to alternatives. Financial offenses may be more suited to alternative sentences because of restitution; a substantial proportion of these offenders were ordered to pay restitution as part of their sentences.

"For the appropriate offenders," the report concludes, "alternatives to incarceration can provide a substitute for costly incarceration. Ideally, alternatives also provide those offenders opportunities by diverting them from prison (or reducing time spent in prison) and into programs providing the life skills and treatment necessary to become law-abiding and productive members of society."

The full report is available at: [www.ussc.gov/general/20090206\\_Alternatives.pdf](http://www.ussc.gov/general/20090206_Alternatives.pdf). 

## Outside Earned Income Ceiling for FY 2009

With the 2009 increase in the basic pay for Executive Schedule employees, the ceiling on outside earned income for federal judges also increased, from \$25,830 in 2008 to \$26,550 in 2009. The ceiling applies only to outside earnings and not to investment income, royalties, pensions, and similar income sources that are specifically excluded by regulation.

The Ethics Reform Act prohibits high-ranking government officials from having outside earned income exceeding "15 percent of the annual rate of basic pay for Level II of the Executive Schedule." Effective January 1, 2009, the basic pay for Executive Level II increased to \$177,000.

*IT continued from page 3*

resources it takes to manage a site day to day.

### CVB Case Management System

The U.S. District Courts for the District of Maryland and the Western District of Louisiana are working together on a project that will enhance and automate how district courts process Central Violation Bureau cases, a process that is largely manual, paper-intensive, and error-prone. Nationally, 100,724 cases were processed in FY 2008 by the district courts, comprising approximately 600,000 citations.

The District of Maryland currently uses an automated system to assist in processing cases, and a new enhanced system will be based on it. The CVB Case Management System will interface with the CVB database and provide an integrated, secure, web-based, database-driven solution for managing CVB cases by district courts. 

**Appointed: U.S. District Judge John D. Bates**, U.S. District Court for the District of Columbia, as Presiding Judge of the Foreign Intelligence Surveillance Court, succeeding U.S. District Judge Colleen Kollar-Kotelly, May 19.

**Appointed: Diane Davis**, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of New York, March 6.

**Appointed: J. Richard Creatura**, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, March 17.

**Elevated: U.S. Court of Federal Claims Judge Emily C. Hewitt**, to Chief Judge, U.S. Court of Federal Claims, succeeding U.S. Court of Federal Claims Judge Edward J. Damich, March 11.

**Elevated: U.S. District Judge C. Ashley Royal**, to Chief Judge, U.S. District Court for the Middle District of Georgia, succeeding U.S. District Judge Hugh Lawson, December 31.

**Retired: U.S. Bankruptcy Judge Stephen D. Gerling**, U.S. District Court for the Northern District of New York, February 28.

**Retired: U.S. Bankruptcy Judge Kenneth Meyers**, U.S. Bankruptcy Court for the Southern District of Illinois, February 28.

**Retired: U.S. Magistrate Judge Joyce London Alexander**, U.S. District Court for the District of Massachusetts, January 31.

**Retired: U.S. Magistrate Judge Russell Allen Eliason**, U.S. District Court for the Middle District of North Carolina, February 1.

**Retired: U.S. Magistrate Judge J. Kelley Arnold**, U.S. District Court for the Western District of Washington, March 3.

**Retired: U.S. Magistrate Judge Steven D. Pepe**, U.S. District Court for the Eastern District of Michigan, March 2.

**Resigned: U.S. Magistrate Judge Theresa A. Goldner**, U.S. District Court for the Eastern District of California, April 6.

**Resigned: U.S. Magistrate Judge John J. Hughes**, U.S. District Court for the District of New Jersey, February 28.

**Deceased: U.S. District Judge Reginald C. Lindsay**, U.S. District Court for the District of Massachusetts, March 12.

Published monthly by the  
Administrative Office of the U.S. Courts  
Office of Public Affairs  
One Columbus Circle, N.E.  
Washington, D.C. 20544  
(202) 502-2600  
Visit our Internet site at  
[www.uscourts.gov](http://www.uscourts.gov)

DIRECTOR  
James C. Duff

EDITOR-IN-CHIEF  
David A. Sellers

MANAGING EDITOR  
Karen E. Redmond

PRODUCTION  
OmniStudio, Inc.

Please direct all inquiries and address changes to *The Third Branch* at the above address or to [Karen\\_Redmond@ao.uscourts.gov](mailto:Karen_Redmond@ao.uscourts.gov).

## JUDICIAL BOXSCORE

*As of April 1, 2009*

### Courts of Appeals

Vacancies	15
Nominees	1

### District Courts

Vacancies	55
Nominees	0

Courts with "Judicial Emergencies"	23
---------------------------------------	----

Up-to-date information on judicial vacancies is available at <http://www.uscourts.gov/judicialvac.html>

## Courts Sign Up to Offer Juror-Friendly Webpage

Seventy-five district courts have signed on to offer potential jurors a webpage where they can complete questionnaires and access information on when to report for jury duty. The courts will install software supporting the Jury Management System (JMS) webpage in monthly waves beginning in June 2009 and extending through February 2010.

“We’re very impressed with the initial response,” said attorney David Williams in the Administrative Office’s District Court Administration Division. “The program was designed with a lot of functionality, and we think the courts recognize its capabilities.”

Williams and Dan Elsroad, the eJuror program administrator, have worked with staff at the Systems

Deployment and Support Division, the Office of Court Administration Technology Division, and a team of jury and systems administrators from 10 district courts for nearly two years to bring the project to this point.

Over the past year, those 10 district courts helped develop a JMS webpage and test one of its major components—the eJuror system. It is this component of the JMS that gives potential jurors the option of submitting juror qualification questionnaires and summons information forms on-line. When initial testing was completed and the webpage software offered to district courts nationwide, 65 additional courts asked that the JMS webpage be added to their court’s home page.

The JMS webpage is expected to save time and money for the federal courts and the public. In her testimony in March before the House Appropriations Subcommittee on Financial Services and General

Government, Judge Julia Gibbons, chair of the Judicial Conference Budget Committee, told appropriators that, with eJuror, “Users can update personal information, submit a medical or other excuse, or request a deferral online. For those completing their jury service, they may use eJuror to print certificates of attendance, which may be required by employers, and to complete surveys about their experience. The courts will have fewer forms to process manually and less data to re-enter into the system, which will increase data reliability and save time.”

Each court decides when it will go live after installing the software, a decision that will depend on how each court configures the software and customizes its webpage. Many courts also use supplemental questionnaires, which will need to be set up separately. 

### INTERVIEW *continued from page 1*

other, and work together to improve the administration of justice.

The overwhelming amount of judicial business in the United States takes place in state courts. For 2007, which is the most recent year for which I have comparative data, the total number of cases filed in all federal district and appellate courts, including the United States Supreme Court, not including bankruptcy cases, was 384,330. In state courts, the comparable number was 47.3 million cases, not including traffic offenses. In other words, tens of millions of Americans experience justice—or the lack thereof—in state courts.

In his *2008 Year End Report on the Federal Judiciary*, Chief Justice John Roberts, Jr. wrote that it is particularly when the nation faces pressing economic problems that people turn to the courts. All state Chief Justices would concur. The judicial branch

plays an essential role in our democracy at all times, none more so than during times of economic crisis. During the current crisis, we have seen a dramatic rise in a number of cases filed in state courts: mortgage foreclosures, domestic violence cases, cases of elder abuse, criminal cases, evictions, child support payment modifications—a wide array.

How does the CCJ respond? The CCJ provides the best and most efficient way for all state Chief Justices to learn from each other about how to meet the challenges of rising caseloads, budgets that are in free fall, staff positions that must be eliminated, and judicial vacancies left unfilled. Our states are very different. Our challenges are remarkably similar. Because of CCJ, each Chief Justice does not have to keep reinventing the same wheel. What one Chief Justice does successfully can be replicated by another.

One example: in the State of Ohio, Chief Justice Thomas Moyer recently established a separate court session for handling the great increase in mortgage foreclosure cases. That model was quickly followed by other Chief Justices. Another example: CCJ recently established a task force on elder abuse to provide guidance to Chief Justices on how to respond to the increase in those cases.

Many Chief Justices, I believe, think of our “day” work as managers, the chief executive officer as it were, of a branch of a state government. Our “night” work is adjudicative, with almost all of us carrying close to a full load of cases. CCJ is particularly helpful to Chief Justices in our “day” work: all of us want to be effective managers of our state judicial systems. Resources are scarce; we want to use them wisely. New challenges arise each day; we

*See Interview on page 10*



Chief Justice Margaret H. Marshall,  
Supreme Judicial Court of Massachusetts

look to our counterparts for advice and guidance. Together we can, and do, develop policies of common interests, exchange information ... and learn some of the skills not taught in law schools.

Immediately behind the CCJ, of course, stands the National Center for State Courts (NCSC). NCSC is a vibrant, living monument to Chief Justice Warren Burger and Chief Justice William Rehnquist, both of whom were remarkable in their commitment to ensuring the health of the state judiciaries. As your readers surely know, the Chief Justice is the Chief Justice of the United States, not the Chief Justice of the United States Supreme Court.

**Q.** Some CCJ members are members of the Judicial Conference Committee on Federal-State Jurisdiction and some serve on the Advisory Rules Committees. How does the interaction benefit state courts?

**A.** The interaction among federal and state judges has been extraordinarily helpful. Let me give you some examples.

With the advent of electronic discovery, problems with existing discovery rules quickly surfaced. While the Federal Rules Committee

was formulating an appropriate rule for electronic discovery in the federal courts, the CCJ established its own working group on electronic discovery. Justice Nathan L. Hecht of the Texas Supreme Court served at the time on the federal committee. He was immensely helpful to CCJ as we formulated our guidelines, helping to ensure that (as far as possible) the federal and state protocols were compatible. Given the wide range of litigation in the states courts, CCJ needed to fashion electronic discovery guidelines in an appropriately careful way. I chaired the committee that proposed the guidelines and I recall several telephone conferences in which Justice Hecht participated, most helpfully apprising us of the federal perspective. That kind of federal-state exchange occurs repeatedly.

Another example: three members of the United States Judicial Conference have regularly attended and addressed our CCJ meetings. At present Judge Janet Hall, from the District of Connecticut, Judge Lawrence Piersol from the District of South Dakota, and Judge Ronald Lee Gilman from the Sixth Circuit Court of Appeals participate as the Conference's representatives. The formal, as well as informal, conversations with the federal representatives that take place at our meetings has sparked lively debate and always insightful exchanges.

**Q.** When did this interaction between the CCJ and the federal courts begin?

**A.** To my knowledge—and when I learned this, I found it most interesting—formal interaction began only recently, in 1990. That year the Judicial Conference and the CCJ met for the first time to address problems common to

the two court systems. That initial meeting led to the establishment of the National Judicial Council on State and Federal Courts, which met regularly until 1997. The National Council was abandoned that year, but not because it was ineffective. To the contrary, state judicial councils of federal and state judges had been established at the local level, and were working well. In Massachusetts, we do not have a formal state-federal judicial council, but we do have regular exchanges among state and federal trial judges and between the Supreme Judicial Court and the First Circuit. We confer regularly.

There are many areas where our interests converge. Guidelines for electronic filings are one such area: we want to make sure our filing requirements are compatible with the requirements of the federal courts. Another is courthouse construction standards. The work of GSA has been most helpful in that regard, with NCSC developing guidelines for state courthouse construction.

Security in courthouses is another example. Trial judges in state courts are particularly vulnerable because they often deal with cases that raise deeply emotional issues for the parties, for example, child custody disputes, evictions, or domestic violence cases. Advice from our federal counterparts has been beneficial in determining adequate levels of courthouse security.

**Q.** In recent years, the state courts, like the federal Judiciary, have expressed views on particular legislative proposals that have potential to affect the administration of justice. How does the CCJ decide when to comment on legislative proposals, and do you believe that the resolutions of the

**state chief justices make a difference in the legislative process?**

**A.** When it sets policy, the CCJ does so in broad terms. Some of the factors we consider in setting Conference policy include: does an issue affect directly or indirectly the volume or the complexity of the workload of state courts? These are issues on which we work closely with COSCA, the Conference of State Court Administrators. A joint CCJ/COSCA Government Affairs Committee tracks national policies that will affect state courts as they are being developed in Congress. Federal legislation may from time to time have a significant impact on the work of state courts. An example is the issue of congressionally mandated reporting requirements by state courts. Congress may implement a reporting requirement, not recognizing that not all state courts have the technological capability to comply, or to comply easily. We work with staff on Capitol Hill, and sometimes with the Federal Judicial Center, to coordinate and inform Congress of the views of state courts. Bringing a national, CCJ perspective to Congressional policymakers is more efficient than having each state do so. Another example: NCSC and CCJ supported legislation to permit the IRS to deduct payments owed on child support from tax rebates. The enforcement of child support orders in our highly mobile society is extraordinarily challenging for the state courts. Federal legislation to facilitate that enforcement benefits everyone. CCJ, COSCA, and NCSC worked together to advance that interest.

**Q.** We constantly hear that most citizens know little if anything about their courts. One study showed that only one third of Americans could correctly name

**the three branches of government. How would you describe the judges' role in addressing the public's understanding and perception of the courts?**

**A.** You have touched on a passion of mine, civic education, especially education concerning the role of the Third Branch in our democracy. Here again, the CCJ has been a wonderful resource. Many Chief Justices are leading the way with innovative and exciting civic education programs in their states. We all exchange ideas, "stealing" the best from each other.

In Massachusetts, the John Adams Courthouse, home of our appellate courts, has become a center for all kinds of civic education. Every Monday morning, one of the first items that I see in my e-mail is a listing of all of the events that have been scheduled for the coming week. We have theater groups performing reenactments of great trials, bar associations holding monthly meetings, docent tours of our beautifully restored building, moot courts, lectures, exhibitions—people come to the John Adams Courthouse all day, every day, to learn about government and the role of our courts in the democratic process. John Adams would approve, I am confident.

The CCJ and NCSC have been helpful in other ways, assisting many state supreme courts to develop web pages, facilitating more effective communication with the bar and the public. Many state courts of last resort now make their oral arguments available on the web. Massachusetts was one of the first to do so, a decision widely applauded by practitioners, the public, scholars, and the media. In many states, including Massachusetts, our appellate courts are going "on the road," so to speak, holding sessions in law

schools or local trial courts. All of these programs help foster the public's understanding of the judicial system. CCJ is the place to examine how these programs may have worked, or not, in another state.

**Q.** How has your life experience influenced your advocacy of judicial independence?

**A.** I was born, raised, and educated in South Africa under the system of apartheid, a system of racial supremacy, where the rule of law had no meaning. Many unjust laws were enacted by parliament, laws which judges had to uphold. I saw and experienced firsthand what it felt like to be in a country where one could be arrested or detained, could "disappear," without access to a lawyer. I saw people forced off their land or out of their homes upon order of the government with no recourse to the courts. Under apartheid, the vast majority of South Africans, black South Africans, could not travel in their own country, could not visit a friend or relative in a different state. Apartheid was a draconian system. Having grown up under that system, I bring to my work an appreciation of, and wonder at, the American constitutional system. I sometimes remind my native born friends that justice is like oxygen: while you are breathing it, you barely notice it. Cut off the supply, and you will notice the loss more quickly than you realize. Strengthening state courts, especially during a time of economic crises, will ensure that the oxygen keeps flowing smoothly. 



## Justice O'Connor Officiates at Opening Ceremony

*Justice Sandra Day O'Connor joined court officials in the Thomas F. Eagleton Courthouse in St. Louis, Missouri, last month at the grand opening of the court's Judicial Learning Center. The center's exhibits and interactive displays, developed by local educators, lawyers, museum experts and judges, educate visitors on the rule of law and the need for a fair and impartial Judiciary, the difference between state and federal courts, how a federal case proceeds, and about the federal court system, among other topics. Up to 70 groups a year visit the center.*

*O'Connor, an advocate of judicial independence, is on the steering committee of the Sandra Day O'Connor Project on the State of the Judiciary, which seeks ways to support and enhance the functioning of the Judiciary at federal and state levels.*

## THE THIRD BRANCH

Administrative Office of the U.S. Courts  
Office of Public Affairs  
One Columbus Circle, N.E.  
Washington, D.C. 20544

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300

FIRST CLASS MAIL  
POSTAGE & FEES  
**PAID**  
U.S. COURTS  
PERMIT NO. G-18

**FIRST CLASS**