THE SHORT CIRCUIT

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Spring 2004

JURY AWARD

Photo by Karl Blaser

Assistant U.S. Attorney Helen Kazanjian of the District of Maine was among the first lawyers to receive medallions from U.S. District Judge D. Brock Hornby for her work in a jury trial.

Their courtroom battles concluded, lawyers receive medals from judge

By BARBARA RABINOVITZ

PORTLAND, Maine – For months, they may labor long into the night preparing their cases, and then for days, sometimes weeks, they endure the stress of a courtroom trial as they present their arguments before judge and jury, examine and cross-examine witnesses, joust with opposing counsel and, finally, agonize as the jurors deliberate. The verdict rendered, one side or the other has lost the case.

The lot of a trial lawyer is not an easy one, as U.S. District Judge D. Brock Hornby has discovered in his 14 years on the federal bench. In January 2003, he decided to recognize the arduous work of attorneys who appear before him in jury trials and to do so by presenting each with a medal.

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Jury liaison judge in Mass. allowing queries to jurors about race, ethnicity

BOSTON – In a variation on the voir dire questioning of jurors, U.S. District Judge Reginald C. Lindsay of Massachusetts has permitted a set of written questions to be posed to prospective jurors on the topic of race, and their answers have prompted the judge to press on with what he refers to as "a work in progress."

Under the Federal Rules of Procedure, judges can question potential jurors to determine their impartiality in deciding a case or they can allow the attorneys to question those under consideration for jury service.

"Most judges in this court do voir dire orally themselves," said Lindsay, who serves as jury liaison judge for his court, "but all of us, at one time or another, probably have used a questionnaire." Depending on the answers, the questionnaire is used as a basis for follow-up oral questioning of a potential juror by the judge and perhaps the lawyers.

In June 2002, Catherine K. Byrne, an assistant federal public defender in the District of Massachusetts, asked Lindsay if a limited questionnaire asking only about race and ethnicity could be circulated among would-be jurors in a case in which a defendant was a black Hispanic. Lindsay consented.

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U.S., state judges in 1st Circuit collaborate on common concerns

PROVIDENCE, R.I. – With little fanfare, a federal-state judicial council took root in the District of Rhode Island more than 10 years ago; a decade later, it endures as an example of the usefulness of collaborations between federal and state judges on issues of mutual concern.

1st U.S. Circuit Court of Appeals Judge Bruce M. Selya spearheaded the formation of the Federal-State Judicial Council in his home state of Rhode Island with the then-chief justice of the state's Supreme Court, Joseph R. Weisberger, and its members have been meeting semi-annually on a range of common concerns – from scheduling conflicts to courthouse security.

Selya's colleagues in Maine, Court of Appeals Senior Judge Frank M. Coffin and Judge Kermit V. Lipez, who represents the 1st Circuit on the Judicial Conference Committee on Federal-State Jurisdiction, also have taken leadership roles in forging a relationship between the federal and state courts in that district – theirs in the form of a Justice Action Group.

The impetus for federal-state councils nationwide came first from Chief Justice Warren Burger, who, as The Third Branch reported in its December issue, was a strong advocate of the councils. The current chief justice, William H. Rehnquist, followed up with the establishment of the Judicial Conference committee and charged it with serving as "a conduit for communication on matters of mutual concern between the federal judiciary and state courts, as well as to consider jurisdictional issues."

The R.I. federal-state council is fulfilling both those functions, according to Selya, who has served as its chairman since its inception. The current chief justice of the R.I. Supreme Court, Frank J. Williams, serves as vice chairman. The overall composition of the council – one COA judge, four U.S. District Court judges, one U.S. Bankruptcy Court judge, five justices of the Rhode Island Supreme Court and four judges representing the state's superior, family, district and workers' compensation courts – makes for a candid discussion of matters of commonality in the two court systems. Or as Selya told The Third Branch:

"The council is an opportunity for joint input and solutions to mutual problems. Also, in terms of collegiality, there are few forums where judges can talk openly together. For those reasons, I believe the council was – and is – a good idea."

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A mournful tribute

A bagpipe rendition of "The United States Marine Corps Hymn" was played by Patrick Boyle of the New Hampshire Police Association at the conclusion of a memorial service in Concord, N.H., for Court of Appeals Judge Hugh H. Bownes, a former Marine, who died last fall. Full coverage of the event and additional photos will appear in the next issue of The Short Circuit.

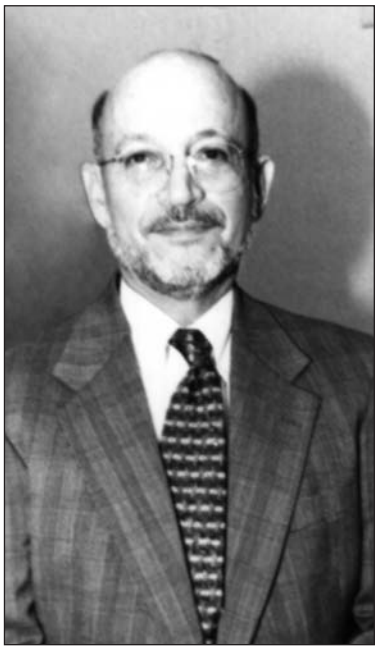
Photo by Karl Blaser

In Puerto Rico, new chief judge to lead 'a most observed court'

HATO REY, Puerto Rico – When U.S. District Judge Jose Antonio Fuste is handed the chief's gavel in mid-April, he will be taking on much more than merely the ceremonial trappings of the office.

As the 1st Circuit's second busiest after Massachusetts, but with far fewer judges, the U.S. District Court here is burdened with "an unusual blend of civil and criminal cases," Fuste told The Short Circuit. "We have been overworked for many years – there is no question about it."

Helping his colleagues cope with that caseload will be a top priority for Fuste who, as chief judge, plans to be as much an administrator as a leader. "You have to be able to deal with the management issues as they come along; at the same time, the chief judge, because of the district's atypical docket, must take a full load," he said in a recent interview.



JUDGE JOSE A. FUSTE
Case volume a major concern

A vigorous 60-year-old, often seen cruising this island on a motorcycle, Fuste will succeed Hector M. Laffitte as chief on the latter's 70th birthday on April 13. (By law, Laffitte, who became chief in 1999, is required to relinquish that post at age 70 even if he has not completed the seven-year term accorded chief judges.)

The heavy caseload Fuste and his fellow judges must contend with is not new to them, but the last two years were "very difficult," Fuste said, because the court juggled an exceedingly high number of multi-defendant cases.

By way of example, he offered statistics showing that a Puerto Rico federal trial judge currently carries an average of 284 civil cases and nearly 40 active criminal cases, with more than 100 defendants per judge.

The situation is aggravated by what Fuste refers to as the court's "diversity of language." English being the language spoken by judges, attorneys and court staff in a court of the United States, Spanish interpreters play a pivotal role in the proceedings unfolding in the courtrooms of the Clemente Ruiz Nazario U.S. Courthouse in this Hato Rey neighborhood of San Juan. "That slows a trial," Fuste said.

He acknowledged that courtroom technology is of some assistance, "but it takes a lot of effort by lawyers and judges to work together under these circumstances. Sometimes judges have to become the arbiters of the interpretation – another responsibility for us."

To lighten the load on his court, Fuste plans to continue the long-standing practice in Puerto Rico of recruiting judges from other districts to serve as visiting judges performing temporary judicial service. Ever since his early years as a lawyer in the late 1960s, Fuste recalled, "we always had visiting judges coming here because it would always be an undermanned or overworked court."

The recruitment of visiting judges is very much a job for the chief judge, who, Fuste said, "has to establish contacts with the Court of Appeals in recruiting judges from other districts" of the 1st Circuit. Still considered the nation's smallest region of federal courts, this circuit has nonetheless seen its complement of district judges increase dramatically in recent decades, "and Puerto Rico has been lucky" to be able to draw from those expanded ranks, Fuste said.

The implementation of the nationwide case management/electronic case filing (CM/ECF) system also has been a boon for Puerto

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Exhibit G(ignoux)

Attorney Robert C. Andrews of Portland, Maine, pauses in the lobby of the Edward T. Gignoux U.S. Courthouse in Portland to examine an exhibit about the life of the late federal district judge for whom the courthouse is named. USDC Clerk William S. Brownell organized the exhibit, which will be on display for the next year.

Photo by Karl Blaser

Maine chosen as test site in AO pilot putting civil-case transcripts online

PORTLAND, Maine – Since Oct. 1, the U.S. District Court here has required that all transcripts filed in civil and criminal cases that were commenced on or after Jan. 1, 2003, be filed electronically. The court is now venturing further into cyberspace as a participant in a nationwide pilot program that governs the redaction of certain personal data identifiers from civil transcripts before those transcripts are put on the Web.

Launched in January by the Administrative Office of the U.S. Courts, the pilot program includes Maine and six other federal trial courts selected by the AO because they had progressed to a point in the implementation of the case management/electronic case filing (CM/ECF) system that transcripts were being filed electronically.

As explained by William S. Brownell, USDC clerk for Maine, each time a transcript in a civil case is filed by a court reporter using ECF, the transcript is sent electronically to the attorneys of record, along with a notice advising them they have five days to request redactions – that is, the removal of certain identifying information, such as Social Security numbers, account numbers, names of minor children, home addresses and dates of birth. (Transcripts in criminal cases currently are not part of this pilot program.)

Brownell said that if, after five days, no such request is made, the transcript will be put on the Web. Members of the public can gain access to the transcript by registering on the Public Access to Court Electronic Records (PACER) program and paying a per-page charge for printed copies of the records.

If a timely request for redaction of personal data information is received, the Clerk's Office will "hold" the transcript, Brownell said, and counsel must provide the court reporter within 21 days a statement indicating where the information appears in the transcript. The court reporter is then required to file the redacted transcript within two weeks.

"The institutional reason behind all this," said Chief USDC Judge George Z. Singal, "is the basic tension we have between making court documents available to the public and preserving the rights of privacy. This pilot is an example of the delicate balance between openness and privacy, and our experience will show us whether that balance can be maintained."

The pilot project, which began Jan. 5, is expected to continue through June. Singal, a member of the Judicial Conference Committee on Judicial Resources, said the committee is scheduled to meet in June and will evaluate statistical information received from all seven districts in the pilot before determining whether to recommend to the Judicial Conference that the transcript redaction procedures be adopted in other districts.

U.S., state judges in circuit find common ground on administrative issues

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As for the consideration of "matters of mutual concern" suggested by the chief justice, Selya reports that his council began tackling some of the obvious ones – "possible conflicts in the appointments of lawyers and conflicts in scheduling in the two systems" – soon after it was organized. "The low-hanging fruit was picked off rather early," he noted.

Still, there has been no lack of issues to consider in more recent years. For example, the problem of inadequate resources for the judiciary has been a persistent one, and the federal members on the judicial council have been able to provide some assistance. "After September 11th [2001]," Selya said, "we had more resources and expertise on security issues, and we were able to devote time to them [the state courts] in helping them with that."

There has also been frank discussion of jurisdictional issues, the judge said, "aimed at keeping the two court systems from unnecessary collisions."

In Maine, it was "a very close relationship" between the federal and state courts eight years ago, Senior COA Judge Coffin told The Short Circuit, that prompted him and then-Supreme Court Chief Justice Daniel Wathen to create the Justice Action Group. The current membership consists of one federal judge (Lipez), two Maine Supreme Court justices, state legislators, a representative of the governor's office, and board members from the various legal services providers in Maine and bar associations.

Lipez, who serves as its chairman, said in a telephone interview from his chambers in Portland, that the group was intended as "a response by federal and state judicial officials to the crisis precipitated by the decline in federal funding for the Legal Services Corporation." A federally funded agency, LSC makes grants to local organizations that provide legal services to the indigent in civil cases.

Wathen and Coffin convened a forum of lawyers, judges and others to consider the state's response to a sharp reduction in financial support from the LSC and new restrictions on cases that local providers could undertake with that reduced funding. From that meeting, Lipez said, "the Justice Action Group emerged," with the dual function of enhancing resources available to and coordinating the work of legal services providers.

While that LSC funding is targeted for legal services predominantly in state courts, some of the assignments evolve into actions that find their way into federal court. In that sense, the Justice Action Group, with its judge members representing the federal and state courts, can serve as a forum for addressing matters such as the availability of legal services for the poor. As Lipez put it, the group "has come to be regarded as an access-to-justice entity for Maine."

Elaborating on that role, Lipez said: "Federal and state courts have different jurisdictions, but the reality is we're all part of a single justice system. And clearly we have many problems in common, and we need to help each other with them as much as we can."

District judge in Mass. permitting questions to jurors on race, ethnicity

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Recalling the candor with which people responded to the initial questionnaire, Lindsay told The Short Circuit in a recent interview that he is now more comfortable with having the questions put to jurors in writing rather than having them asked orally "because, with a written questionnaire, the potential juror doesn't know who's asking" the questions.

And he also prefers that the questionnaire be distributed to jurors in the Jury Assembly Room, after they had been assigned to his session but before they had been escorted into his courtroom and seen him on the bench. As a judge who is black, he said, "I don't know if a juror wants to look me in the eye as a black man and tell me he has a problem with his feelings about black people." In fact, until the race/ethnicity questionnaire was permitted, lawyers who wanted to question jurors about those issues orally were permitted to do so by Lindsay at the sidebar.

The original version of the questionnaire consisted of three questions:

- Do you have any feelings or opinions about black or Hispanic people that would cause you to question your ability to be impartial in evaluating the evidence in this case?
- Do you believe that black or Hispanic men are more likely than members of other races to commit crimes?
- Do you believe that Hispanic people in the United States should be required to learn to speak English?

"Not many people answer 'yes' to Question No. 1, but more say 'yes' to Question No. 2," Lindsay said. The third question, about the English requirement, "will not, by itself, elicit especially illuminating answers," in his opinion.

"The only answer [to that first question about feelings about race and their impact on the ability to be impartial] I have 98 percent confidence in is the answer by the person who says 'yes'," Lindsay said, "because he or she has frankly acknowledged a bias. The other 2 percent may be saying 'yes' because they don't want to serve on a jury."

The judge said he has considered recommending the rewording of the second question so that it asks about the particular defendant and about the juror's ability to be fair in weighing that person's guilt or innocence. "The question really is whether you have a prejudice and whether that prejudice would affect your ability to be fair and impartial to the individual defendant," he said.

Acknowledging that he does not know "enough about psychology to know why" the answers come back as they do, Lindsay said, "I have questions about the questions." More specifically, "I think the questions need refinement," he added, "particularly if race is an explicit issue in a case. In such a case, I would allow a more extensive questionnaire, and I would be looking for more subtlety in the wording of the questions."

His tentativeness at this point, he said, explains why this form of voir dire is, for him, "a work in progress," but nonetheless a tool he intends to use in prodding jurors to freely – and comfortably – express their opinions on race.

Lawyers completing trials recognized with special kind of award from judge

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"Lawyers are officers of the court, and they're an incredibly important part of seeing to it that justice is done," Hornby said in an interview in his chambers here. "So I thought it important to recognize them for that role and to give them something to remind them that they performed honorably in the furtherance of justice. ...

"Jury trials are huge events for lawyers, and in Maine, at least, they usually do a very good job. But there's always a loser who walks away with nothing to remember the good job he or she may have done."

With his wife, Helaine Hornby, and judicial assistant Deann Harvie serving as design consultants, the judge created a template for a small brushed-bronze medallion embossed on one side with the seal of the United States and edged with the words "United States District Court." On the other side is a rendering of the scales of justice with the outlines of the state of Maine in the background. Quality Challenge Coins Inc. of Hummelstown, Pa., produces the medallions, the cost of which the judge pays out-of-pocket.

The first medallion was presented to Maine Gov. John Baldacci, not for his litigation skills at a jury trial but for his inspiring message to new citizens at a January 2003 naturalization ceremony at which Hornby presided. The governor and several judges in Thailand whom Hornby taught during a visit there last fall were the sole exceptions to the lawyers-only-as-recipients rule.

During calendar year 2003, 49 lawyers received medallions for their trial work, and the post-trial attorney honors have continued into this year.

The reaction of the attorneys receiving the medallions has been one of surprise and gratification, Hornby reports. "No one's turned it down," he noted with a smile.

Sitting in Puerto Rico as a visiting judge last summer, Hornby duly accorded medallions to counsel in the cases he heard in U.S. District Court there. "It made enough of an impact," he recalled, "that some [Puerto Rico] lawyers who had been before me in the fall of 2002 wrote me and asked if they could have one."

For Hornby, the recognition seems especially well deserved by appointed counsel for the indigent in criminal cases. "They have a very difficult job," he said. "Statistically, the odds are they are going to lose before the jury. Then they have to deal with all the sentencing issues. And typically the amount they are paid is not a lot."

In the end, his goal in rewarding the lawyering by the winning and losing attorneys, Hornby said, is "to humanize the judge ... to let the lawyers know, whatever their role might have been in the trial, that they can consider the judge as someone who appreciates the vigor and professionalism with which they have sought to advance their respective client's cause."

Barbara Rabinovitz is editor of The Short Circuit.

IN CHAMBERS

A special court for uncertain times

By JUDGE NATHANIEL M. GORTON

There is a common misconception that the Foreign Intelligence Surveillance Court (FISA Court), of which I am a member, is a "secret" court and that disclosures about it are forbidden. Although the applications we consider are classified, the court itself is not secret. It was created by the Foreign Intelligence Surveillance Act (FISA) in 1978 to consider applications made by the FBI and other federal agencies to conduct electronic surveillance in the United States for foreign intelligence (as opposed to ordinary law enforcement) purposes. The statute was later amended to permit physical searches as well.

The FISA Court was established to provide judicial oversight to the gathering of foreign intelligence for national security purposes. It operated in relative obscurity for many years, but Sept. 11, 2001, and the PATRIOT Act enacted shortly thereafter have thrust the court into new, though reluctant, prominence. The 11 U.S. district judges of the court (from 11 different circuits) sit individually at regular intervals to consider FISA applications. It must be proven to the court's satisfaction that a "significant purpose" of the search or surveillance is to acquire foreign intelligence information. There are other statutory provisions that control how the intelligence may be gathered, to whom and when it may be made accessible, and how access to and use of such information must be minimized.

I was privileged to be appointed to the court by Chief Justice William H. Rehnquist in May 2001 for a seven-year term. Each of the FISA judges sits independently and hears cases at the highly secure FISA Court facility in Washington, D.C.; the judges meet together each November to discuss court procedures and rules and in May at an annual convocation of the court.

Each application we consider is certified by an intelligence agency official, supported by the sworn affidavit of the investigating agent and approved by the Attorney General or the Acting Attorney General. Only then is an ex parte hearing convened before the FISA judge during which the agent, under oath, and a Justice Department attorney answer questions of the court. The applicant must prove to the court that there is probable cause to believe that the target of the surveillance (or physical search) is a foreign power or an agent of a foreign power and that the facilities targeted are being (or are about to be) used by that foreign power or agent. Applications are thoroughly considered and, although regularly approved, many are either withdrawn, revised or resubmitted with additional information before approval. The judges are not "rubber stamps," and the process works only because the executive and judicial branches both perform their functions conscientiously.

In the post-Sept. 11 world, the security of our nation requires the increasing number of surveillances and searches that are being approved by the FISA Court. That the applications are being dealt with carefully and pursuant to strict statutory requirements is appropriate and should afford consolation to all citizens in these perilous times.

Nathaniel M. Gorton is a judge on the U.S. District Court for Massachusetts.

IN BRIEF

With new committee, bankruptcy bar has a say on local rules, procedures

By JAMES LYNCH

The U.S. Bankruptcy Court for Massachusetts has established an Attorney Advisory Committee to assist it in the process of amending and promulgating local rules and to advise it on issues relating to bankruptcy practice in the district.

By way of background, in the spring of 2002, the court established a CM/ECF Attorney Advisory Committee to assist in formulating local rules to govern practice and procedure under the new case management/electronic case filing (CM/ECF) system. Working from the model electronic filing rules adopted by the Judicial Conference, the committee developed a comprehensive set of rules to guide the bar through the brave new world of electronic case filing. The success of this committee prompted the court to create a more permanent committee that could give the court and the clerk's office assistance and feedback in a number of areas.

In August 2003, the court solicited from throughout the district nominations of persons who would be interested in serving a term on the new Attorney Advisory Committee. The invitations were sent to various bar associations and bankruptcy groups. The response from the bar was impressive. To keep the committee at a manageable size, the court then formed the committee from the very many talented applicants. Committee members will serve staggered terms, and new appointments will occur as these terms expire.

The current attorney members of the committee are Joseph Baldiga, John Fitzgerald, Jonathan Goldsmith, Christine Lynch, Colleen Murphy, David Nickless, Christopher Panos, Thomas Raftery, Robert Seder, Bruce Smith, Doreen Solomon, Tara Twomey, Gary Weiner and Steven Weiss. The court representatives are Chief Judge Joan N. Feeney, Judge Henry J. Boroff, myself as clerk of the court, Judith P. Crossen, chief deputy clerk, information technology director Wendell Skidgel and Stephen Reynolds, courtroom deputy to Judge Boroff.

The group held its initial formative meeting in October. Three subcommittees were formed: a consumer subcommittee, a business subcommittee and an electronic case filing subcommittee. The subcommittees began their work immediately, and, at a meeting of the full committee in January, a number of new local rules and revisions to existing rules were presented and discussed.

In addition to formal meetings, the committee and subcommittees communicate frequently by e-mail using special e-mail addresses the court created for each group. Through the e-mail addresses posted on the court's Web site, as well as by traditional means, practitioners and the public are invited to contact the committees with their ideas for improving practice.

The Attorney Advisory Committee has proven to be an effective means of engaging the bar in discussion and has provided a constructive avenue for the bar to propose changes that it believes will benefit all participants appearing in the bankruptcy court.

James Lynch is clerk of the U.S. Bankruptcy Court for Massachusetts.

IN RETROSPECT

1st Circuit case about one day of the week sparked years of debate

Q. *What was the outcome of a lawsuit challenging a Sunday-closing law in Massachusetts on federal constitutional grounds?*

A. In his challenge of the Sunday-closing law, Harold Chernock, corporate president of Crown Kosher Supermarket in Springfield, Mass., sought a declaration in the U.S. District Court in Boston that the law was unconstitutional and an injunction prohibiting Springfield police from continuing to enforce the law against him for opening his business on Sundays.

Then-Chief Judge Calvert Magruder of the Court of Appeals was, as historian George Dargo explains in "A History of the United States Court of Appeals for the First Circuit," required to name a three-judge panel to consider the question of the validity of a state statute raised by the Crown Kosher plaintiffs in their attempt to enjoin its enforcement under the federal constitution.

In May 1959, the panel, by a 2-1 majority, struck down the state's Sunday-closing law as it applied to Chernock's business. In his opinion for the court, Magruder "declared the law to be one which supported an establishment of religion for some while denying its free exercise to others," Dargo writes.

Although the state courts were not bound by the federal court's rulings, the commonwealth was determined to have the decision overturned; in September 1959, Massachusetts Attorney General Edward J. McCormack filed a notice of appeal in the U.S. Supreme Court. The high court heard oral arguments in four cases (from Pennsylvania, Maryland and Massachusetts) and, in the spring of 1961, upheld the constitutionality of Sunday-closing laws.

In a plurality opinion, Chief Justice Earl Warren stated that the Sunday laws were "reasonably explainable on their face" and, therefore, did not violate the Equal Protection Clause of the Fourteenth Amendment.

Public reaction to the opinion was sharply divided, but on March 24, 1964, Dargo recalls, "the problem was finally resolved when the Massachusetts General Court enacted a special exemption for Sabbatarians with small businesses."

Forty years later, Sunday, as Dargo notes in concluding his account of the case, has become "a day much like any other day of the week."

RIDING CIRCUIT

... in Maine

• Chief U.S. District Judge **George Z. Singal** has been appointed to the Judicial Committee on Judicial Resources.

USDC Judge **D. Brock Hornby** in March participated in a judicial panel discussion on "Defending and Managing Class Actions and Other Complex Litigation." The panel, held in San Francisco, was sponsored by the American Conference Institute.

William S. Brownell, USDC clerk and a part-time magistrate judge for that court since 1979, has been reappointed to the latter post.

The third Morton A. Brody Distinguished Judicial Service Award, named for the late USDC judge who served on the court from 1991 until his death in March 2000, was presented to Senior Judge **Richard S. Arnold** of the 8th U.S. Circuit Court of Appeals. The presentation was held March 30 at Colby College.

• Judge **James B. Haines Jr**., chief of the U.S. Bankruptcy Court, has been reappointed to a second 14-year term, effective Aug. 29.

USBC Judge **Louis H. Kornreich** has been appointed a visiting judge by the Delaware bankruptcy court and is spending a week a month assisting that court with its Chapter 11 caseload.

Celia Strickler, USBC clerk, reports that, as of the end of January, 89 percent of new bankruptcy cases were being filed electronically.

Strickler also said that 2003 year-end case filings showed a 5 percent increase in Chapter 7 cases and a nearly 8 percent increase in Chapter 13 filings; Chapter 11 reorganization cases were down 35 percent from 2002.

"The real increase, however, was in filings of adversary proceedings, which increased over 85 percent from the prior year," she said. "In spite of those increases, case closings climbed nearly 38 percent, enabling the court to continue to end the year with a slight decrease in the pending caseload."

• The Office of U.S. Probation and Pretrial Services was one of six districts chosen to participate in the testing of the new electronic case management mode of the Probation Automated Case-Tracking System, or PACTS. This system electronically collects case-related information to produce workload reports.

Claire E. Cooper, chief U.S. probation officer, said the new system is aimed at promoting "more efficient and effective client supervision and tracking of investigations for the district."

According to Cooper, the newest version of the implementation includes the so-called Community Corrections and Technology Project, which provides the officers with "the automated functionality they need to perform the duties required of them in the community." The officers were supplied with Personal Digital Assistants, enabling them to gain access to case information, including photos and residence addresses of clients, and enter chronological data on their clients from remote locations.

"The District of Maine was proud to assist as a test district," Cooper said.

... in Massachusetts

• At its annual conference in Boston in January, the Massachusetts Bar Association reported on the results of a survey of federal and state trial court judges on the subject of voir dire.

U.S. District Judge **Richard G. Stearns**, on behalf of the MBA, contacted his colleagues on the court and asked for their participation in the survey. Twelve of 17 federal judges, or 71 percent, responded to the survey questionnaire, and all 12 said they had used voir dire (beyond the usual statutory questions on bias and ability to serve) in a civil trial.

Asked about the type of voir dire used, 10 judges told the MBA they had conducted individual voir dire; 12 had used case-specific questions submitted by the parties; five said they allowed lawyers to conduct voir dire, albeit rarely; and seven had used a written (case-specific) juror questionnaire.

Several staffers in the Clerk's Office of the U.S. District Court have received Employee Recognition Awards for their service:

Special awards went to: **Samantha Stoltenberg** for her work as assistant to procurement administrator **Douglas Holmes**; **Len Rideout**, assistant systems administrator for implementing the new case management/electronic case filing (CM/ECF) system; **Edis Feldhouse**, Unix systems administrator, for redesigning the court's Web page; **Michelle Ronne**, docket clerk to U.S. District Judge **Douglas P. Woodcock**, for developing employee training materials for CM/ECF; and jury clerk **Don Stanhope** for dedication during a time of understaffing.

Also recognized with special awards were: financial assistant **James Kitsock** for training new employees in the accounting department; network administrator **Ben Bauer** for his work in moving the court to a new network operating system; jury assistant **Sherry Jones** for sharing coverage of courtroom duties during a time of understaffing; and **Bethany Healy**, courtroom deputy to U.S. Magistrate Judge **Kenneth P. Neiman**, for training and preparing materials on CM/ECF for magistrate judges.

Superior Performance Awards were bestowed on **Edis Feldhouse**, **Ben Bauer** and **Len Rideout** for their behind-the-scenes efforts in the court's conversion to a live CM/ECF system.

Kathleen Boyce, docket clerk to U.S. District Judge **Mark L. Wolf**, was named Employee of the Year for "her work, attitude and knowledge of the court."

Elsewhere in the U.S. District Court, **Kimberly Abaid** was named docket clerk to Judge **Joseph L. Tauro**; she replaces **Sherry Spencer**, who resigned Feb. 13.

• U.S. Bankruptcy Judges **William C. Hillman** and **Carol J. Kenner** are conducting training sessions, in March and June, for lawyers willing to handle bankruptcy cases on a pro bono basis.

The training is being offered by a consortium consisting of bar associations representing Asian, black and Hispanic attorneys and the Boston Bar Association. "We are seeking to reach out to the minority community," Kenner said.

James Lynch, USBC clerk, reports that the court has trained more than 500 attorneys and members of their support staff in the use of the new electronic case filing system since training began last May and has issued 300 attorney logins and passwords.

"The result is that the number of documents filed electronically has increased each month, and the number actually doubled from November to December," Lynch said.

... in New Hampshire

• The U.S. District Court on March 24 sponsored an "Office Management Best Practices" seminar to introduce members of the New Hampshire bar to the procedures and systems that they and their law firms need to know for managing electronic files under the federal judiciary's new CM/ECF plan. The lawyer-led seminar was held at the Warren B. Rudman U.S. Courthouse in Concord.

• **George A. Vannah**, clerk of the U.S. Bankruptcy Court, reports that the court's information technology staff has implemented a video-conferencing system that enables USBC Judges **Mark W. Vaughn** and **J. Michael Deasy** to conduct cases they are handling as visiting judges for the bankruptcy court in Puerto Rico from their court in Manchester, N.H.

"This cost-effective process is the culmination of an idea to develop the videoconferencing process that goes back at least to 1996," Vannah said. "High-speed Internet availability has finally caught up with our vision."

... in Puerto Rico

• A selection committee of the U.S. District Court, consisting of Chief Judge **Hector M. Laffitte** as chairman, Judge **Juan M. Perez Gimenez** and U.S. Magistrate Judge **Jesus A. Castellanos**, has appointed 24 new mediators under a recently adopted rule on court-annexed mediation.

Two of the new mediators are members of the U.S. District Court in Massachusetts: Senior Judge **A. David Mazzone** and Chief U.S. Magistrate Judge **Marianne B. Bowler**. "This district is honored to have Judge Mazzone and Magistrate Bowler leading the way in this effort in Puerto Rico," said USDC Clerk **Frances Rios de Moran.**

• Judges **Gerardo A. Carlo Altieri**, **Sara E. De Jesus** and **Enrique S. Lamoutte** of the U.S. Bankruptcy Court all participated as panelists at a Feb. 27 annual seminar sponsored by members of the local bankruptcy bar.

USBC staffers **Nydia Rivera**, **Nanette Trias** and **Felix Martinez** conducted a program on the court's new electronic-filing system for the approximately 200 bankruptcy practitioners in attendance.

... in Rhode Island

• Forty-two fifth-grade students from the Moses Brown School, a private school in Providence, gathered at the federal courthouse in that city on Feb. 2 to tour the building and learn about the workings of the U.S. District Court.

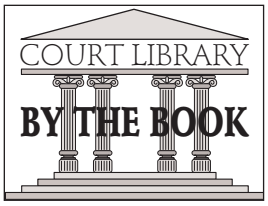
Senior USDC Judge **Ronald R. Lagueux** addressed the students, who took in a naturalization ceremony at which the judge presided. Technical support specialist **James Webb** provided a demonstration of the use of courtroom technology in the recently renovated courthouse, and a U.S. marshal escorted the students on a tour of the cell block and discussed the role of his office in judicial proceedings.

DATELINE: HATO REY, Puerto Rico

From modest beginnings, library has shown impressive growth

This is another in a Short Circuit series about the libraries for the federal courts of the 1st Circuit.

By ANA MILAGROS RODRIGUEZ



HATO REY, Puerto Rico – In June 1980, Karen Moss, 1st Circuit librarian, hired me as librarian in the Old San Juan courthouse, now known as the Jose V. Toledo U.S. Courthouse. Five years before I joined the court, the Judicial Conference had directed the Federal Judicial Center to conduct a study and recommend improvements in the federal court library system. In October 1977, the FJC reported that professional library talent was scarce within the system, and the federal judiciary responded, drafting a uniform job classification to meet the library-staff needs of each circuit and launching a satellite-library system intended to deliver information services to all court personnel.

All circuit and district court libraries, except for chambers libraries, became satellite libraries to a circuit central library in each respective circuit. In Puerto Rico, with seven district judges, two bankruptcy judges, three magistrate judges, 14 law clerks and three staff attorneys at the time, the need for such a library was great.

In the fall of 1980, shortly after I joined the court as librarian, Chief USDC Judge Jose V. Toledo died of cancer. Judge Juan M. Perez Gimenez took over his office, which contained a large law-book collection. While space on the third floor of the courthouse was being renovated for use as a library, Judge Perez Gimenez kindly provided a temporary library in his chambers' conference room, complete with a typewriter and a telephone.

The rest of the USDC law-book collection was stored on wooden and metal shelving in a number of rooms scattered across several floors of the courthouse. The collection contained not only federal case law, legislation, treatises and digests but also a variety of other books dating back to the Spanish regime, all stamped with the district court's property or accession numbers.

Such a unique collection revealed to me how the judges in the past and in the present dealt with a wide range of issues and legal areas peculiar to this judicial district. A composite of common law and civil law (of Spain, France and other jurisdictions), Puerto Rico law and other reference materials gave me a clue that I would have to manage an eclectic library collection and focus on collection development, currency, legal research and reference, treatment and preservation of materials, cataloging and classification decisions.

From 1980-1983, I worked with the USDC clerk, judges, magistrate judges and law clerks in setting up the library while I was completing a master's degree in library science at the University of Puerto Rico. Karen Moss and I spent long hours doing inventories, weeding, moving, discarding, and cleaning all the annex library rooms on various floors of the building. I traveled to Boston to get acquainted with the circuit library procedures and to take training in Lexis, which complemented our new computer-assisted legal research program.

In 1991, the satellite library was moved from the Old San Juan courthouse to renovated space on the first floor of the Federico Degetau Federal Building, adjacent to the Clemente Ruiz Nazario U.S. Courthouse in the Hato Rey section of San Juan.

In the spring of 1994, the library took on the name of Harvey B. Nachman, a lawyer who had settled in Puerto Rico in 1957 and became very well regarded among members of the federal bench and bar. Also in 1994, Jose Luis Garcia, who holds a law degree from the Inter-American University School of Law, joined the staff as library technician, a position later reclassified as serials specialist.

For the past 10 years, Jose and I have been providing library services, in both English and Spanish, to members of the bench in the Hato Rey and Old San Juan courthouses, the USDC clerk's office, the offices of the federal public defender, probation and pretrial services, the Circuit Library in Boston and to other federal courts when they are dealing with the Puerto Rico legal system.

Ana Milagros Rodríguez is satellite librarian for the District of Puerto Rico.

New chief to administer high-profile court with high-volume caseload

Continued from Page 2

Rico in expediting the processing of cases in the district court, its soon-to-be chief reports. As technology liaison judge for his court, Fuste admitted to being "very proud" of its progress in going "live" with the full implementation that started on Feb. 24. More than 700 lawyers had signed on with the new system by the first week of February, according to Fuste, who noted that "we had more than 50 training programs for lawyers and court personnel."

With such innovations, the court that Fuste will lead is vastly more modern than the one he began practicing in some 35 years ago after his graduation from the University of Puerto Rico's law school in 1968. That year, he joined the Hato Rey law firm of Jimenez & Fuste where he would go on to specialize in admiralty/maritime law and commercial law until his judicial appointment in 1985.

As he readies for his new assignment, Fuste is very much aware that the prominence and high visibility of his court in Puerto Rico complicate his role as a trial and, soon, chief judge. For validation of that point, he referred The Short Circuit to another USDC chief judge in the 1st Circuit, George Z. Singal in Maine.

In a Feb. 27 interview, as he was preparing to leave for Puerto Rico to preside over a two-week trial in Hato Rey, Singal, frequently a visiting judge in this district, remarked on what "I have observed to be a most observed court."

"Unlike many district courts, in Puerto Rico there is constant and intense media coverage of the proceedings and the judges," Singal said. He went on to cite several factors for that "most visible presence": several high-profile political corruption, civil rights and discrimination cases, "many of them involving prominent members of local government"; the volume of high-level drug cases; and the perception of the court, as a representative of the U.S. government, "in the eyes of some Puerto Ricans, as a representative of an outside entity."

"All of this places judges under an unusual degree of stress and scrutiny – more than any other district court in our circuit."

> "We have been overworked for many years – there is no question about it."
>
> *Judge Jose A. Fuste*
> *Incoming chief of U.S. District Court for Puerto Rico*

CLOSING STATEMENT

"[A]s of April 1, 2004, previously admitted attorneys who have not re-registered for attorney admission to our bar will be considered inactive and will not be allowed to practice in this Court."

From a Feb. 3 notice by Tony Anastas, U.S. District Court clerk in Massachusetts, to members of the bar in that district who had not re-registered in preparation for the court's implementation of electronic case filing

THE SHORT CIRCUIT

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Ideas for and contributions of news/feature stories are welcome, as are letters to the editor. They should be submitted to:
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