

# THE THIRD BRANCH

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## Polls: What Do Americans Think of Their Courts?

Do you think elected officials should have more control over federal judges and the decisions they make in court cases? A majority of Americans say no. In an October poll conducted for CNN by Opinion Research Corporation, 67 percent of 1,013 Americans interviewed said elected officials should not have more control over federal judges and their decisions. Thirty percent said there should be more control, and 3 percent had no opinion.

The same poll asked about federal court judges' decisions. Forty-one percent of those polled thought federal court judges' decisions are just about right; 34 percent thought they were too liberal; and 20 percent said they were too conservative.

The CNN poll is the most recent of several polls that from time to time attempt to gauge Americans' views of their Judiciary. A September 2006 survey by the Annenberg Public

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## Judiciary Appeals for Resources as Congress Prepares Final Funding Bills

House and Senate appropriators have been urged to remember sufficient resources for the Judiciary, especially the hard-pressed southwest border courts, as they determine FY 2007 funding levels.

The FY 2007 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation bill was one of more than a dozen uncompleted appropriations bills when Congress recessed for the November elections. The Senate and House completed separate versions of the bill in which the Senate would fund the Judiciary at \$6.098 billion, while the House would fund the Judiciary at a lower level of \$6.063 billion. The Judiciary requested \$6.26 billion for FY 2007.

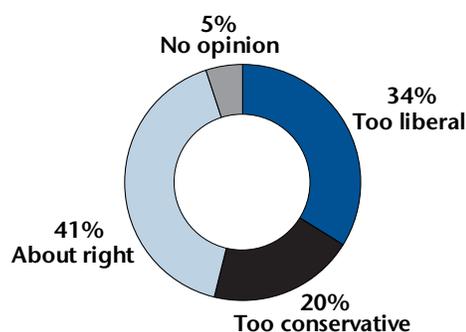
Now, Congress has returned for a lame duck session with limited time to complete legislation.

The second continuing resolution expires December 8, 2006. Congress hopes to complete action on the remaining appropriations bills before then, although it is possible some bills will not be finished by year-end

See *Appeal* on page 2

### What America Thinks

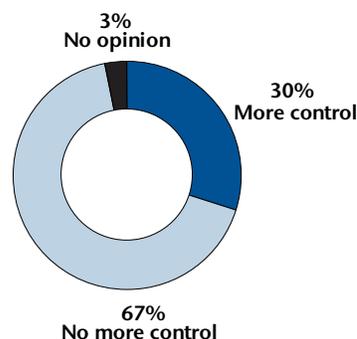
**Question:** In general, do you think federal court judges are too liberal, too conservative or just about right?



SAMPLE: Interviews with 1,013 adult Americans conducted by telephone by Opinion Research Corp. October 20-22, 2006

SAMPLING ERROR: +/- 3

**Question:** Do you think elected officials should have more control over federal judges and the decisions they make in court cases, or no more control?



SAMPLE: Interviews with 1,013 adult Americans conducted by telephone by Opinion Research Corp. October 20-22, 2006

SAMPLING ERROR: +/- 3

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## Judiciary Warns of Harm from Across-the-Board Cuts

The Judicial Conference remains concerned that Congress will adopt across-the-board cuts in the FY 2007 appropriations bills—cuts that have, in prior years, harmed the Judiciary. “The Judiciary’s work is labor intensive, and we must have the staff necessary to perform the courts’ constitutional duties,” Budget Committee Chair Judge Julia S. Gibbons and Administrative Office Director James C. Duff wrote appropriators on behalf of the Judicial Conference. “When we receive across-the-board reductions in funding, we have little recourse but to apply them primarily to court staffing.” In FY 2004 and FY 2005, the combination of across-the-board reductions and delayed appropriations resulted in the courts losing the services of 1,800 employees between October 2003 and March 2005. The FY 2006 cut was mitigated by compensation for General Services Administration rent overcharges. But current court staffing levels are still 1,538 below the number on-board in October 2003. “An across the board reduction in FY 2007,” they wrote, “could seriously erode Judiciary staffing further and severely jeopardize the judicial process.”

*Appeal continued from page 1*

and will roll-over to January 2007 for the 110th Congress to address.

The Judiciary’s greatest concerns are resources for its southwest border courts, sufficient funding for the courts’ Salaries and Expenses account where a decline in fee collections is anticipated, and increased funding to avert a shortfall in the Defender Services account. Judicial Conference Budget Committee Chair, Judge Julia S. Gibbons and Administrative Office Director James C. Duff wrote on behalf of the Judicial Conference to convey those concerns to House and Senate members as they met to conference the appropriations bills.

In the last several years, arrests of illegal immigrants have soared as thousands of border patrol agents have been funded, and now the southwest border courts are struggling to keep up with their workload. The five southwest border district courts account for nearly one-third of all criminal cases nationwide. There also has been a dramatic increase in immigration-related appeals in the courts of appeals.

“Unfortunately, given the workload needs throughout the federal court system, the Judiciary is not able to provide significant relief to these courts within existing resource levels,” wrote Gibbons and Duff. “We are hopeful that when Congress considers immigration and border enforcement initiatives it will keep in mind the potential bottleneck that will be created if sufficient resources—including judgeships—

are not provided to the courts.”

The Judiciary’s largest account, the Salaries and Expenses account, funds court services, including such non-discretionary items as salaries, rent, and benefits. Current projections indicate a 40 percent decline in fee collections, primarily due to fewer bankruptcy filings. The current Senate-recommended funding level would help mitigate the impact of the decline in fee collections.

“While this will not provide resources for workload increases over the past several years, it will enable some courts to hire staff to address critical law enforcement-related workload requirements they face, especially along the southwest border,” the Gibbons/Duff letter said.

For the Defender Services account, the Judicial Conference has asked for funding sufficient to meet current services, a level of \$781 million. This is a level above both the House and Senate recommendations, but necessary if a shortfall in this account is to be avoided. The Judicial Conference has warned that a funding shortfall in this account will result in staff reductions in federal defender organizations and deferral of panel attorney payments into FY 2008, which may affect the timely disposition of cases and availability of counsel.

The Judiciary also urged retention of funding at the Senate level for new courthouse construction projects, included under the General Services Administration section of the appropriations bill, and \$154 million for repair and alterations projects. 

*Polls continued from page 1*

Policy Center showed, among other findings, that 64 percent of the public trusts the Supreme Court “a great deal” or “a fair amount;” and 75 percent “agree” or “strongly agree” that the Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

In the Annenberg survey, 75 percent also said a judge’s ruling is influenced by his or her personal political views to a great or moderate extent, 62 percent said the courts favor the wealthy, and 62 percent said the courts in their state are legislating from the bench rather than interpreting the law.

The CNN poll can be found at [www.cnn.com/2006/POLITICS/10/27/activist.judges/index.html](http://www.cnn.com/2006/POLITICS/10/27/activist.judges/index.html). The Annenberg Survey is online at [www.annenbergpublicpolicycenter.org/Releases/Release\\_Courts20060928/Courts\\_Summary\\_20060928.pdf](http://www.annenbergpublicpolicycenter.org/Releases/Release_Courts20060928/Courts_Summary_20060928.pdf). 

**CORRECTION:** An October *Third Branch* article on compensation incorrectly stated the salary that many court unit executives and their deputies may earn. The salaries of nearly 200 court unit executives and their deputies now exceed the salaries of bankruptcy and magistrate judges (currently \$151,984).

## Federal Courts Look To Contain Costs In Lean Times

Federal courts' workloads consistently outpace staffing, posing special challenges for the Judiciary's core responsibility of administering justice fairly and impartially. Steps aimed at containing costs have been key to meeting those challenges, according to a report delivered to Congress in late July.

"Innovation in Lean Times: How Federal Court Operations Are Changing to Meet Demands," a report prepared by the Administrative Office, says the federal Judiciary "has changed business processes, made use of emerging technologies, and analyzed its work, always looking for more effective, efficient ways of doing business" without adversely affecting the delivery of justice.

Much of the steadily increasing workload is beyond the Judiciary's control, a situation compounded in fiscal years 2003 and 2004 by the forced downsizing of probation and clerks' office staff due to budget shortages. Court staffing levels declined by 1,800 positions (8 percent) between October 2003 and March 2005.

"The Judiciary is challenged in keeping pace with its constitutional and expanded statutory responsibilities," AO Director James C. Duff said in commenting on the new report.

"While these cost-containment initiatives have helped, they are only a partial solution," Duff said. "The courts still require additional staff to handle growing civil and criminal caseloads."

The report discusses process improvements and innovation in both operational and administrative functions. In addition, it includes initiatives from the Judiciary's long-term cost-containment strategy that

may result in future changes and cost avoidance.

Among the operational initiatives discussed in the report is the Judiciary's Case Management/Electronic Case Files (CM/ECF) system, which fundamentally changed the manner in which cases are filed and managed in bankruptcy and district clerks' offices. An appellate version of CM/ECF is due to be implemented in fiscal year 2007.

Another significant innovation mentioned in the report is the Electronic Public Access program, which allows interested parties to access court information and has "alleviated demands on clerks' offices to provide case-related information to non-Judiciary users."

Also discussed is use of a centralized Bankruptcy Noticing Center, which sends notices to creditors "in a fraction of the time and cost that would be required if produced by local courts."

The report also mentions the Judiciary's Telephone Interpreting Program, which reduces travel and other costs for the courts by providing remote interpretation in situations where qualified on-site court interpreters are not available. Likewise, the report notes that the use of videoconferencing enables judges and court staff to conduct certain court proceedings and meetings remotely, saving travel expenses and time out of the office.

Various technological developments are among the administrative initiatives discussed, including the Edwin L. Nelson Local Initiatives Program. It fosters local information technology (IT) development and information sharing through IT training; "Ed's Place," a website to facilitate court sharing of local development; and grants to facilitate local IT projects. 

## Electronically Stored Information Target of New Rules

On December 1, 2006, amendments to Federal Rules of Civil Procedure 16, 26, 33, 34, 45 and revisions to Form 35 will take effect unless Congress enacts legislation to reject, modify or defer them. These amendments and revisions are all aimed at one particular area of discovery—electronically stored information, meaning all information in computers.

Discovery is the pre-trial exchange of information by parties in a case. During the past two decades, personal computers have become commonplace, generating and containing enormous amounts of information. The average personal computer hard drive today can easily store 60 gigabytes of data—or 60 stacks of paper 85 feet tall—and large organizations' computer networks commonly store information in terabytes, each equivalent to 500 million typewritten pages. All this information can be subject to discovery. Members of the bar and public have complained that producing this information in discovery has become increasingly time-consuming, burdensome and expensive.

One study found that the cost of discovery represents approximately 50 percent of the litigation costs in all cases, and as much as 90 percent of the litigation costs in the cases where discovery is actively employed. A "cottage industry" of forensic specialists has emerged with the sole purpose of assisting law firms comply with their electronic discovery obligations.

Developing case law on discovery of electronically stored information has helped provide guidance,

*See New Rules on page 5*

## Courtroom Study To Collect Array of Information

Nationwide, the federal Judiciary occupies over 500 buildings that contain at least one courtroom. At Congress' request, the Judiciary will document how often those courtrooms are in use, and this month court staff begin training on how to record that data.

"The presumption has been that courtrooms are over-built," said Judge John R. Tunheim (D. Minn.), chair of the Judicial Conference Committee on Court Administration and Case Management (CACM). "But that presumption relies on anecdotal information from random checks

to see which courtrooms are dark. There's really no good, accurate data available."

The study won't collect information on all courtrooms, just a statistical sample large enough to allow generalizations on how courtrooms are commonly used, according to Donna Stienstra, senior research associate at the Federal Judicial Center (FJC). Stienstra, along with senior research associate Pat Lombard, is directing the project.

The FJC, asked by the CACM to do the study, will collect data in 27 districts. Each district will record information about events that actually occur or are scheduled to occur during a 3-month period. Half of the courts will record data during Wave 1—January 15 through April 15, 2007—and the other half will record data during Wave 2—April 16

through July 15, 2007.

"We asked the FJC to perform the study," said Tunheim, "because they have a deep understanding of the Judiciary and the work we do, the institutional expertise to design a study to get accurate data—and no preconceived ideas on what the data will show."

Twenty-four districts were selected through a computerized random draw; the sample includes a district from each circuit except the District of Columbia.

"Large, medium and small district courts, with different facilities and caseload demands are represented," said Lombard. Bankruptcy courts and courts of appeals are not part of the study.

Three additional districts, including Tunheim's, were selected

*See Study on page 6*

## Constitution Day 2006

On September 18, 2006, the U.S. District Court for the District of Puerto Rico celebrated "Constitution Day 2006: The Right to Vote." The court invited 8th grade students from several schools in Puerto Rico for a day of interactive activities focused on the right to vote. Chief Judge Jose A. Fuste, Judge Gustavo A. Gelpi Jr., Clerk of Court Frances Rios De Moran and Chief Deputy Clerk Angel Valencia participated. The program was organized by Staff Attorneys Ada Garcia and Edgardo Rodriguez Quilinchini and Court Interpreter Janis Palma as well as Systems Department Programmer Jose Aponte.



*Among the schools invited to celebrate Constitution Day were students from Wesleyan Academy, shown here, with Chief Judge Jose A. Fuste and Judge Gustavo A. Gelpi Jr.*

## Deputy Director Named at AO

Chief Justice John G. Roberts, Jr., has named Jill Sayenga deputy director of the Administrative Office. She joins the AO from the Court of Appeals for the District of Columbia, where she was circuit executive.

In announcing the selection, the Chief Justice noted, "Jill is familiar with the challenges facing the Administrative Office through her service as a circuit executive, and I am confident she will bring to her new position the same energy and hands-on management skills that made her such a success as a circuit executive in meeting the needs of judges."

As deputy director, Sayenga will be responsible for providing management and oversight of day-to-day operations at the AO and implementing short- and long-term goals, objectives, and policies.

"Jill is very experienced in the federal court system and its opera-

tions," said AO Director James C. Duff. "She has the demeanor, experience, and skills to assist the AO both internally and externally as we fulfill our mission to serve the courts. She will be a great asset to the AO."

Sayenga has served as circuit executive for the District of Columbia Circuit for eight years and before that as the deputy circuit executive for ten years. She was responsible for performing circuit-wide administrative and managerial duties, including planning and implementing policies dealing with court operations, security, emergency preparedness, personnel and human resources, space and facilities and budget management.

Sayenga was a special assistant to the chairman of the Council of the District of Columbia from 1983-1988. From 1981-1982, she was co-director of the Criminal Code Project of the Committee on the Judiciary for the Council of the District of Columbia. She served as staff attorney for the project from 1979-1981.

Sayenga graduated summa cum laude from Fordham University,



*Jill Sayenga, Deputy Director  
Administrative Office*

Bronx, New York, where she was Phi Beta Kappa, in 1976. She received a J.D. from Georgetown University Law Center in Washington, D.C. in 1979. 

### *New Rules continued from page 3*

but it is inconsistent and incomplete. Disparate local rules have filled the gap between the existing discovery rules and practice, treating litigants differently depending on the jurisdiction. National rules are necessary to provide uniformity and prevent a patchwork of local rules and requirements that would otherwise grow.

The proposed amendments to the federal rules address these issues and more. In its report to the Judicial Conference, the Advisory Committee on Civil Rules said that the proposed amendments address five related areas: (1) requiring parties to give early attention to issues relating to electronic discovery, including the form of production, preservation of information and problems reviewing

electronic information for privilege; (2) relieving parties from searching for inaccessible electronic information, *e.g.*, information on backup tapes; (3) retaining privilege protection for documents inadvertently disclosed; (4) requiring parties to agree on the form of production of electronic information or present the issue promptly to a judge for determination; and (5) limiting sanctions for loss of electronic information as a result of routine operation of computer systems, *e.g.*, automatic purging of e-mails.

The rule changes have had their critics, but the Committee observed, "in general, there is a high level of support for rules changes to recognize and accommodate electronic discovery." The American Bar Asso-

ciation Section on Litigation, the Federal Bar Council and the New York State Bar Association Commercial and Federal Litigation Section, all submitted comments generally supporting the proposed electronic discovery amendments. The Department of Justice also favors the proposals. The Committee notes in its report that "to achieve a larger consensus, specific aspects of the published proposal that had been criticized during the public comment period were revised."

For more on the specific changes in the rules aimed at discovery of electronically stored information, visit <http://www.uscourts.gov/rules/Reports/ST09-2006.pdf>. 

*Study continued from page 4*

as case study districts because of unusual circumstances in the district that bear on the question of courtroom use. Two courts have arrangements for the sharing of courtrooms because of courthouse renovation work, and the other shares courtrooms by long-standing tradition.

The question of courtroom use was raised by Congressman Bill Shuster (R-PA), chair of the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, during a hearing last year on the Judiciary's ability to pay for current and future space needs. A space utilization policy had been suggested as a way to reduce courts' space requirements, but to date, neither the Judiciary nor Congress has had comprehensive data available for policy and planning purposes.

"The study has been designed to collect accurate, detailed information about all activity that occurs in courtrooms," said Stienstra.

Three types of time-based data about courtrooms will be collected: data on the actual use of courtrooms, which is an objective measure of the time a courtroom is actually occupied by anyone, for any reason, including use of the courtroom for ceremonies, educational outreach and proceedings held by state court judges; data about proceedings or ceremonies that might be held in a courtroom, but are held elsewhere, such as pretrial conferences in a judge's chambers or naturalization ceremonies in a jury assembly room; and data on the scheduling of events, whether they occur or not, such as a trial that is cancelled because of a settlement or plea agreement. Though a settlement or plea may leave a courtroom empty and thus technically not in use, the vacated time slot may have occurred too late for the courtroom to be available for other proceedings. Time spent in courtrooms will be collected

## DISTRICTS SELECTED FOR THE COURTROOM USE STUDY

### Districts Recording Data from January 15 – April 15, 2007

Arizona  
California Northern  
Colorado  
Connecticut  
Georgia Northern  
Illinois Northern  
Iowa Southern  
Minnesota (case study)  
Mississippi Northern  
New York Western  
Oklahoma Western  
Utah  
Wisconsin Eastern

### Districts Recording Data from April 16 – July 15, 2007

Alabama Middle  
California Central  
California Southern  
Florida Southern  
Louisiana Eastern  
New York Southern (case study)  
Oregon  
Pennsylvania Western  
Rhode Island  
South Dakota (case study)  
Tennessee Eastern  
Texas Western  
Virginia Eastern  
Wisconsin Western

for active district judges, senior district judges, magistrate judges and visiting judges, and for official use by people such as attorneys and court staff.

Software based on the Lotus Notes application has been developed by the FJC to record the data. Starting in November 2006, the FJC is conducting on-site training of court staff on how to collect and enter the information using the software.

Procedures will be in place to ensure data quality. "We'll monitor data on a daily basis," said Lombard, "to verify and to look for inconsistencies. We'll compare study data against routinely collected court data. We're also hiring independent, unidentified data collectors to record courtroom use in the study districts

at random times and locations."

In addition to information on the use and scheduling of courtroom space, every district and magistrate judge in all 94 district courts will receive a questionnaire asking about the role courtrooms play in managing their caseloads. The questionnaire also will seek judges' views on how changes to current courtroom use policy might affect caseload management.

Project directors Stienstra and Lombard expect to present an interim report on the study's findings to CACM by the fall of 2007, followed by a final report in the spring of 2008. 

# Litigation Landslide Tests Organization, Creativity

"The terrorist attacks of September 11, 2001, inflicted a gaping wound on the structure and spirit of New York," Judge Alvin K. Hellerstein (S.D. NY) wrote in *In Re World Trade Center Disaster Site Litigation*.

Now cases involving claims arising out of, resulting from, or relating to the terrorist-related aircraft crashes of September 11, 2001, are being filed in federal court. The plaintiffs—alleging wrongful death, personal or respiratory injury, or property damage—may have lived near or worked on the site, and include city governments, the Port Authority of New York and New Jersey, private contractors and thousands of firemen, policemen, paramedics and construction workers. It is anticipated that 6,000 cases—all related to September 11, 2001—will be filed in the Southern District of New York, for an estimated 60 percent jump in the district's civil caseload. As the influx of cases begins, the creativity and organizational abilities of the entire court, beginning with the clerk's office, are being tested.

Out of the boxes and boxes of cases—all initiating documents in civil cases are filed in both hard copy and electronic form (PDF)—court staff must still manually check the civil cover sheets for accuracy and for the proper signatures, and collect the filing fee.

"Fortunately," said Clerk of Court J. Michael McMahon, "to save some work steps, our court's systems staff developed an automated system that can assign case numbers in batches of 200. This has saved a significant amount of work for the court's docketing staff."

To reduce the amount of time that would be spent entering data from

those thousands of cases into the Case Management/Electronic Case Files system, Information Technology staff at the court and the Administrative Office automated another part of the process. First, cases are grouped according to common defendants. For each of these groups, court staff prepare a spreadsheet with the required data fields. Computer script developed by the AO automatically finds and strips out the data from the spreadsheets, and opens each case in CM/ECF. The script also uploads and marries the original PDF case file with the data generated from the spreadsheet. The script can only be used for the grouped cases.

"We're not sure of the final number of cases that will be filed," added McMahon. "More are still coming in. But once each case becomes an electronic file, all cases will be accessible on PACER."

All of these cases are ultimately the responsibility of Judge Hellerstein, a native New Yorker and eight-year veteran of the federal bench. He and his two law clerks "use a lot of self-organization," he said, to deal with the mass of litigation. All Hellerstein's orders, announcements of conferences, and directions to counsel on the filing of correspondence are posted to the court's website, at [www.nysd.uscourts.gov/Sept11Litigation.htm](http://www.nysd.uscourts.gov/Sept11Litigation.htm). He has assigned most of the litigation to tracks and subtracks, separating the cases into, for example, a property damage track, with a subtrack that includes Building 7 claims, and another subtrack with claims among insurance companies. He also holds frequent status conferences on the cases consolidated into wrongful death airline cases, respiratory injury cases, insurance coverage cases and property damage cases, "with the goal of keeping on track and moving the cases along." Meanwhile, discovery goes forward on a group of wrongful death cases.

But even Hellerstein feels that special handling may not be enough.

Many of the wrongful death cases are being mediated with the help of a mediator specially appointed by Hellerstein upon the joint recommendation of plaintiffs and defendants. The more than 3,000 cases—with the potential of growing to 7,500—that allege respiratory injury, "are likely to become unmanageable," he wrote, and he will be recommending to the parties the appointment of a special master. "The number and complexity of these cases, and the public interest in their speedy resolution, requires a greater urgency in progression, and a closer supervision of proceedings, than heretofore has been possible. The involvement of a Special Master has become necessary."

Hellerstein's idea is to have the Special Master work with the parties to develop a matrix of key facts that will enable the parties to place values on categories of cases that can, in turn, lead to groups of settlements.

He is especially concerned that the cases alleging wrongful deaths and personal injuries move forward. "They deserve to go first," Hellerstein said, "because they involve the immediate victims who died in the airplanes that the terrorists hijacked, or in the infernos this produced." Many of those cases are currently in mediation, an option Hellerstein encourages.

Considering the number of plaintiffs and claims, it's overly optimistic, to look for a speedy resolution of all 6,000 cases—but the 73-year old Hellerstein is an optimistic man. "Article III judges," he said, "have to be optimistic. I have the cases and I'm trying to handle them. But I want to see an end of this in a few years—in my lifetime and not my children's." 

**Appointed: Bobby E. Shepherd**, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eighth Circuit, October 11. Judge Shepherd served as a U.S. Magistrate Judge prior to his elevation.

**Appointed: Frances Marie Tydingco-Gatewood**, as District Court Chief Judge, District Court of Guam, October 30.

**Appointed: John C. Rayburn, Jr.**, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, October 13.

**Appointed: Russell G. Vineyard**, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, October 23.

**Elevated: U.S. Circuit Judge Frank H. Easterbrook**, to Chief Judge, U.S. Court of Appeals for the Seventh Circuit, succeeding U.S. Court of Appeals Judge Joel M. Flaum, November 26.

**Elevated: U.S. District Judge Sharon Lovelace Blackburn**, to Chief Judge, U.S. District Court for the Northern District of Alabama, succeeding U.S. District Judge U.W. Clemon, October 17.

**Elevated: U.S. District Judge Tena Campbell**, to Chief Judge, U.S. District Court for the District of Utah, succeeding U.S. District Judge Dee V. Benson, November 1.

**Elevated: U.S. Bankruptcy Judge Dwight H. Williams, Jr.**, to Chief Judge, U.S. Bankruptcy Court for the Middle District of Alabama, succeeding U.S. Bankruptcy Judge William R. Sawyer, October 17.

**Elevated: U.S. Bankruptcy Judge Dana L. Rasure**, to Chief Judge, U.S. Bankruptcy Court for the Northern District of Oklahoma, succeeding U.S. Bankruptcy Judge Terrence L. Michael, November 1.

**Senior Status: U.S. District Judge Ronald E. Longstaff**, U.S. District Court for the Southern District of Iowa, November 5.

**Senior Status: U.S. District Judge Clarence A. Brimmer**, U.S. District Court for the District of Wyoming, September 27.

**Senior Status: U.S. District Judge Frederick P. Stamp, Jr.**, U.S. District Court for the Northern District of West Virginia, November 1.

**Retired: U.S. Bankruptcy Judge Gerald H. Schiff**, U.S. Bankruptcy Court for the Western District of Louisiana, September 30.

**Retired: U.S. Magistrate Judge Joel Martin Feldman**, U.S. District Court for the Northern District of Georgia, October 22.

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## JUDICIAL BOXSCORE

*As of November 1, 2006*

### Courts of Appeals

Vacancies	16
Nominees	5

### District Courts

Vacancies	33
Nominees	22

### Courts with "Judicial Emergencies"

23

For more information on vacancies in the federal Judiciary, visit our website at [www.uscourts.gov](http://www.uscourts.gov) under Newsroom.

# Payment of Court Fees Via the Internet Grows in Popularity

Lawyers who practice in a growing number of federal trial courts are enjoying the option of paying various court fees by credit card on-line.

"I think they see this as a big time saver to their staffs. Those who have participated are very reluctant to pay any other way now," said Clyde Anderson, financial administrator and project manager for the U.S. District Court for the District of Idaho, where credit card payments began last January.

Twenty-one district courts accept credit card payments for a variety of fees—for opening a case, filing a notice of appeal, motion filings, and attorney admission—in civil cases. From April through June of this year, those 21 courts collected \$514,152 in fees paid online.

That's an increase from the previous three months, when 13 district courts collected \$403,293 in such payments.

"More and more attorneys are using it because they find paying online a lot easier than having to run to the courthouse every time they need to make a transaction that

requires a fee," said Chief Deputy Clerk Paige Wymore-Wynn in the U.S. District Court for the Western District of Missouri, where credit card payments began in July 2005.

Another 21 courts have completed the logistical work needed to offer the remote fee-paying option, and 18 more are either in that process, or plan to start it.

Implementation is divided into two phases. The first includes creating the necessary accounts with Bank of America and Pay.gov, a project within the U.S. Treasury Department. The second phase requires integrating Pay.gov with the Case Management/Electronic Case Files (CM/ECF) system and a court's fee-collection process.

"We had a smooth transition because we are a consolidated court, and we already were using credit card payments in the bankruptcy court," explained Financial Administrator Sharon Dover of the U.S. District Court for the Western District of Missouri.

Bankruptcy courts are ahead of the district courts in implementing fee payments by credit card. In the

first three months of 2006, 77 bankruptcy courts collected \$33.8 million in credit card payments from 148,940 transactions.

For courts, credit card payments reduce the number of checks returned for insufficient funds. CM/ECF will prevent electronic filing if a credit card is declined.

Credit card payments offer lawyers the same benefits as electronic filing: Time is saved by not having to use runners to deliver cash or checks to the courthouse, and by the ability to file and pay court-specified fees 24 hours a day, seven days a week.

Lorraine Schoenstadt, project manager in the U.S. District Court for the District of New Jersey, said no additional staffing was needed when the remote-payment initiative began last spring. "It was a fairly easy and painless process," she said. "Attorneys were using it the first day we opened it up for 'live' use."

Wymore-Wynn said her court did not spend time or money in training lawyers about the new option. "Most of them know how to shop on the Internet, so this is not new to them," she explained. 

## Program Builds Mutual Understanding

The U.S. District Court for the Eastern District of Pennsylvania hosted a delegation of judges from Russia in September as part of the Open World Program. The program lets emerging leaders from Russia and other Eurasian countries experience American democracy and society in action. During their visit the Russian judges participated in roundtable discussions on the administration of justice, probation and pretrial functions and technology, and talked with local federal judges.

The delegation was sponsored by the Open World Program, the Administrative Office, the Academy of Educational Development, the Russian Business Council and the U.S. District Court for the Eastern District of Pennsylvania. Judge Juan R. Sanchez and Clerk of Court Michael E. Kunz coordinated the visit.



Left to right: Judge Taimuraz Aslanbekovich Gutnov, Judge Vladimir Alekseyevich Verkhovskiy, Judge Andrey Valeryevich Prisekin, Judge Juan R. Sánchez (E. D. Pa.), Chief Judge Harvey Bartle III (E.D. Pa.), Lyudmila Pilavskaya, Deputy Chairperson of Court, and Judge Aleksandr Yvanovych Pahkov.

## Robust IT Program Benefits Courts and Public: An Interview with Judge Thomas Vanaskie

*Judge Thomas Vanaskie was appointed to the U.S. District Court for the Middle District of Pennsylvania in 1994. In 2005, he began his tenure as chair of the Judicial Conference Committee on Information Technology.*

**Q:** What is the mission of the Committee on Information Technology?

**A:** The mission of the Committee on Information Technology is well expressed in its jurisdictional statement, which is to recommend to the Judicial Conference broad information technology goals, objectives and priorities; to develop and propose information resource management policies that promote the effective and efficient use of automation in the courts; to coordinate the development, and approve the submission to the Judicial Conference, of the *Long Range Plan for Information Technology in the Federal Judiciary*; to conduct ongoing evaluations of existing systems and make recommendations for changes, as necessary; and to propose adequate funding and resources to support the information technology programs, including relevant education and training, electronic public access and voice telecommunications programs, taking into account the overall fiscal situation of the Judiciary. The Committee also makes recommendations on IT staffing issues to the Judicial

Conference Committee on Judicial Resources.

**Q:** One of your goals as chair will be to foster collaboration with other conference committees. Why is this important?

**A:** It's necessary because IT resources pervade all aspects of the administration of justice. We need to talk with the other committees to assure that the initiatives we have coincide with their missions and initiatives.

We are trying to stay in touch through standing liaisons with the Committee on Court Administration and Case Management (CACM), the Criminal Law Committee, the Bankruptcy Committee, the Magistrate Judges Committee and the Judicial Resources Committee. We'd love to have a member of the Budget Committee attend one of our budget subcommittee meetings so they better understand what IT and the programs under the jurisdiction of the AO's Office of Information Technology mean to the Judiciary as a whole. We are trying to foster more open discussion.

**Q:** How do federal judges learn about software applications that can help them in their work? What are your thoughts on the current education and training programs?

**A:** We train judges on applications at our San Antonio facility, but that training is not necessarily geared to the daily work of chambers. We're trying to gear the advanced training more to what judges are doing in their chambers.

Our training subcommittee will be working with the San Antonio staff on revamping the advanced training program. We're exploring whether it would be more appropriate to send



*Judge Thomas Vanaskie (M.D. Pa.)*

trainers out to courthouses.

We're working very closely with the Federal Judicial Center (FJC) and the Administrative Office right now on judge-to-judge training. We've had judges at the national district judge and the magistrate judge workshops providing technology tips and training. Also, we are working with the FJC on a Judges' Roundtable conference for February 2007, proposed by Judge Marjorie O. Rendell (3<sup>rd</sup> Cir.). The idea is to get a group of 25 judges together, including court of appeals, district, bankruptcy and magistrate judges, to talk about how they utilize technology tools in their work and what kind of training can be provided to enhance use of these tools. Chief Judge Lynn Windmill (D. Idaho) is chair of our training subcommittee and he and Judge Francis M. Allegra (Ct. of Fed. Claims) and Judge Rosemary Barkett (11<sup>th</sup> Cir.) will be actively involved with representatives from the CACM, Criminal Law, Bankruptcy and Magistrate Judges Committees in planning this conference.

**Q:** The Local Initiative Program, a national clearinghouse showcasing locally developed applications and innovative uses of technology in the courts, has been up

and running for several years. How is it working and do you have any improvements in mind?

**A.** I think it's fairly successful. We're always looking at ways to get judges and others to use its webpage more often. It's an awareness tool—awareness of what other courts are doing so you're not working in isolation—and it's also a propagation tool, to spread ideas that may be of benefit to other courts.

Our grants subcommittee has come up with recommendations to encourage more local initiative grants in areas we think could be useful on a national basis. We're looking at providing closer oversight so that when a grant is awarded we can make sure the project moves forward, and that funds are extended in a timely manner. We're looking at how we transition a local initiative into a national application, and whether there should be things like transition grants. For example, there have been several calendaring programs. Is there a single calendaring program that should move forward? Those are the types of things we want to focus on.

**Q.** What is the current status of courtroom technology—antiquated or cutting edge?

**A.** I would say we're say we're close to the cutting edge. Courts continue to upgrade their existing courtroom technology.

**Q.** Who is pushing for courtroom technology? Bar or bench?

**A.** Both. Judges want to try all their cases in the high-tech courtrooms. They overwhelmingly support use of technology for presentation of evidence. And lawyers have realized that use of the multimedia tools common to courtroom technology enhance the persuasiveness of their presen-

tations. They also realize that by having courts outfitted for high-tech presentations, they can avoid the substantial expense of bringing in equipment and hiring consultants, things of that nature. Federal courts' adoption of courtroom technology has leveled the playing field so that the defendant represented by the CJA attorney or public defender has the ability to make the same presentation as the government.

**Q.** How does the public benefit from a robust court IT program?

**A.** We are steadily moving to a paperless environment, one in which information is created and transmitted electronically, with the flexibility to be converted into a hard copy document at any stage in the process. Lawyers now account for a substantial percentage of docketing in district and bankruptcy courts. Service costs have been eliminated for lawyers filing documents electronically. The information is readily accessible to counsel and the public. There is a lot more transparency to the adjudication process. In short, a robust court IT program makes the federal Judiciary more accessible and efficient.

The IT tools we have save money because they let us handle a lot more volume. For example, courts were able to handle the flood of bankruptcy filings that occurred before the effective date of the new bankruptcy legislation last year, primarily because of the electronic case filings system.

There's also no doubt that a trial moves more quickly when evidence is presented through evidence presentation technology. The jurors benefit by not having to be there for as many days. The public benefits because a judge now is available sooner to take on the next trial. Obviously litigants benefit because there is less time spent in trial.

On my court, we had a complicated perjury case involving a state legislator that was projected to last about three weeks, but only took a week and a half to try. They had 60 witnesses, all of whom viewed their grand jury testimony on the computer using evidence management software. When a witness was cross-examined there was nobody running up with the transcript, no fumbling for it. They used bar code technology that enabled the lawyer, witness, jury and judge to be on the same transcript page instantaneously. That's how evidence presentation technology accelerates the trial process.

**Q.** Faced with tighter budgets, the Judiciary has initiated a far-reaching cost-containment effort. What can be done in IT to contain costs without affecting operations and services?

**A.** The IT Committee was asked by the Executive Committee of the Judicial Conference to look at how we deploy servers for national applications. By national applications I mean our accounting, probation case management, electronic case filing and e-mail and jury management systems. Our model had been to put a server in each court headquarters for all those national applications. From a technical standpoint, such a server deployment model wasn't necessary and would not be consistent with how private business would deploy servers. We undertook a comprehensive study, and we put together a great working group of unit executives, IT professionals and a judge. Now we're in the process of implementing some of their recommendations.

For example, in the probation/pretrial services area, we are in the process of consolidating approximately 95 servers into two locations, which is projected to save \$2-3 million over four years. In jury management, the working group

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*Interview continued from page 11*

recommended eliminating separate servers for each court, and that's projected to save about \$4 million over five years.

Another way we have saved money is to get enterprise-wide licenses. A great example of that is the Adobe Acrobat Professional license, which will save the courts significant dollars.

**Q:** You've suggested an "exchange program" between the courts and the AO. How would that work?

**A:** The concept is to have an IT Fellows program, similar to the Supreme Court Judicial Fellows program. We would look for applicants to work at the AO on a specific project for a dedicated period of time. It has to be sufficiently long that the people who come here understand the IT issues from a national perspective. They would support the work of our committee as well, so we would benefit from

their insight and court perspective.

We'd make it a reciprocal program. Someone from the AO's IT Office would go to the courts so they gain a greater appreciation of the court's day-to-day work.

**Q:** Looking back, what technological change do you think has had the most impact on the federal courts? Looking into the future, what can you see for IT in the federal courts?

**A:** It's hard to isolate a technological change that has had the most impact on the federal courts, but two come to mind. One is the expansion of high-speed Internet connectivity. It not only allows us to have a very efficient, very effective wide-area network in the courts, but has made us a lot more flexible in terms of remote access. We see a number of people who are able to telecommute. We see judges who are more connected now as VPN usage has expanded significantly. We see courts pushing for remote access for

probation officers and other court staff. Instantaneous access, I think, makes the federal Judiciary more efficient and responsive.

The other item is our electronic case filing system, which has altered dramatically the work inside the court and the way lawyers interact with the court.

Looking into the future, we'd like to be able to better integrate existing technologies with the electronic case record. There is technology out there, for example, that would allow you to display and scan a document at the same time, electronically making it part of the official court record.

One of today's current technologies that has had only limited implementation in the courts thus far is voice-over-internet. It has the potential for substantial cost savings, and thus needs to be explored. And if we're ever going to move forward with something like that, we have to look at how best to manage the networks while protecting the privacy and security of all the users.



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