



THE UNITED STATES
DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
HISTORICAL SOCIETY

Fall 2010
Volume XII, Issue 2

NUNC PRO TUNC

Inside this Issue:

U.S. Probation Office	1, 8
U.S. District Court Clerk's Office	3
U.S. Bankruptcy Court Clerk's Office	4
U.S. Pretrial Services Office	9
U.S. Marshal Service	10

On October 21, 2010, the Historical Society honored the United States District Court Clerk's Office, the United States Bankruptcy Court Clerk's Office, the United States Probation Office, the United States Pretrial Services Office and the United States Marshal's Service. The ceremony was held in the Martin Luther King, Jr. Federal Building and United States Courthouse. Following are articles that chronicle the history of each office and photographs from the event.

The United States Probation Office for the District of New Jersey

By: Gayle Thigpen-Allen, United States Probation Officer (Retired)

The United States Probation Office functions for the federal judiciary to investigate individuals who are convicted of federal crimes and to supervise offenders who are released to the community by the courts, the United States Parole Commission, and by military authorities. Under the aegis of the Administrative Office of the Courts (established in 1939) the mission of the U. S. Probation Office is 1) to assist the federal courts in fair administration of justice, 2) to protect the community, and 3) to foster long-term positive change in those who are under supervision.

Historically, minimal documents are available to positively pinpoint the formal implementation of the District of New Jersey's (D/NJ) Probation Office, but the first federal statute authorizing United States Probation Officers (USPO) was signed on March 4, 1925 by President Calvin Coolidge. Prior to that time, the federal courts had been without the statutory authority, but had used a suspended term sentence - a form of probation - to establish good behavior for nearly a hundred years. Information in a previous history indicates that there was opposition to the suspension of sentences by the federal judges because there was no federal probation system. The records point to a ruling handed down on December 4, 1916 in *Ex parte United States*, 242 U.S. 27. Therein, Chief Justice Edward D. White ruled that federal courts had no inherent power to suspend sentences indefinitely and no reason or right to continue a practice inconsistent with the Constitution; its exercise amounted to a refusal by the judiciary to perform a duty imposed on it, and to an interference with legislative and executive authority fixed by the Constitution. At the time, over 2,000 federal prisoners were free through suspended sentences. Because of this decision, these



offenders would have to be taken into custody because the Supreme Court had determined that the suspensions were invalid. To reduce that problem, two presidential proclamations granted amnesty and pardon to specific categories of offenders then under supervision.

Research indicates that many judges opined that salaried probation officers were unnecessary because the courts nationwide were utilizing several hundred unpaid volunteers that included deputy marshals, marshals, narcotic agents, court clerks, lawyers, assistant U.S. attorneys, marshals and sometimes family members. Based on the law authorizing probation officers, competitive examinations were announced in 1926 and a list that indicated those who were eligible for the USPO position was announced in January 1927. The law authorizing probation officers was amended to provide for officer appointments by the district court judges rather than by civil service exams. Further, probation officers would also be responsible for supervising federal prisoners who were released on parole.

The United States Probation Office for the District of New Jersey was established to serve all 21 counties of the State. Offices now are in the Newark, Camden, and Trenton federal courthouses, with Newark traditionally serving as headquarters. As the court's caseloads increased over the years, probation services expanded and are currently provided at satellite offices in Northfield, Newark, Paterson, and Tinton Falls. Federal facilities at Fort Monmouth and Fort Dix are also utilized.

The court was/is served in numerous ways by the Probation Office which is a true "extension" of the judiciary. Judges needed trained investigators who could skill-fully obtain accurate background information on individuals who were convicted in their court and subsequently had to be sentenced. These investigations were pre-sentence reports (PSR) that covered the offense, criminal background, social history (personal data including health, family, education, employment) and financial conditions of the offender. Assessments of the proper sentence for the defendant were made by the judge based on the PSR. The USPO was/is a resource for the court with respect to sentencing expertise. The USPO reviewed possible sentences with the court for imposing just and fair sentences and also kept the court cognizant of the resources available for rehabilitative community-based supervision that the office could provide. The USPO now offers the court options based on the sentencing guidelines advisories. The Probation Office's PSR also became a major tool for the Bureau of Prisons for classification decisions.

Those offenders who are placed on probation as a sentence rather than incarcerated were/are supervised by the USPO in the community. Supervising individuals who had served a term of imprisonment was a part of the USPO's caseload duties after their release and as the offender population increased, so did the number of USPOs hired. The following list details the Chief Probation Officers that have been appointed to lead the very select US Probation staff:

Edgar Dobbins	09/13/1934 to 12/31/1953
C. Alexander Rheimer	01/04/1954 to 06/30/1971
Brayton Christ	07/01/1971 to 01/31/1978
Emil Mozolak	02/01/1978 to 08/31/1979
John L. Costley	09/04/1979 to 03/31/1985
David A. Mason	04/01/1985 to 03/31/1995
William Carroll	04/03/1995 to 01/02/2000
Joseph Napurano	01/03/2000 to 03/31/2004
Christopher Maloney	04/01/2004 to present

The position of USPO is considered hazardous duty because of the dangers that dealing with

individuals involved in criminal activity bring. Urban, rural, and suburban areas constitute different types of danger, as does the career criminal, psychotic offender, or desperate felon. Criminal types require a variety of methods to supervise them in a community-based setting and/or to obtain the requisite information for the PSR and/or individual supervision plan. Basically, the USPO maintains a schizophrenic posture of sorts - part social worker and part law enforcer. This was always a delicate balance that the trained seasoned probation staff handled excellently. It was/is the “power of the pen” in the variety of tactics the USPO has that serves the community the best though. As neighborhood conditions began changing for the worse in the late 1980s. The carrying of weapons had been a long-time continuous request to the judiciary in the D/NJ. Permission for probation officers to carry weapons for personal protection when doing field work was not granted until 1994. Qualifying to carry is a serious training process and requisite testing to maintain the right to do so is held on a six-month basis. The initial firearm that USPOs used were 38 caliber revolvers. Presently, a 40 caliber Glock semi-automatic is the weapon that authorized staff utilizes.

With respect to diversity, the US Probation Office hired the first female officer, Jane Mozolak in the early 1970s. She was a former nun who married Chief Emil Mozolak and then resigned from duty. Rosanne DeFranza Giaquinto was the second female on board in 1974. Theodore Edwards was the first African American male USPO on staff and in 1977, Gayle Thigpen-Allen the first woman of color, Edwards was appointed a supervisor and in 1979, John L. Costley became the first African American Chief Probation Officer. Jose Montanez took on the position of Probation Officer Assistant (POA) in 1977 and was the initial person of Hispanic heritage on staff. Norma D’Armes was the first Hispanic female USPO, and Susan Smalley the first Asian American. As these “pioneers” paved the way, opportunity found Wilfredo Torres become the first Hispanic staff member to attain the Deputy Chief level. The Probation Staff currently has 14 Hispanic Officers and 10 African Americans. With the changing demographics of our state, it will be essential to have an even more diverse staff to maintain the outstanding insightful services that the United States Probation Office has always delivered to the court. The history continues . . .

The United States District Court Clerk’s Office

From the time the Office of Clerk was created under the Judiciary Act of 1789 (the “Act”), the Clerk has played an indispensable role in the smooth operation of the United States District Court for the District of New Jersey. The Act identifies the Clerk’s responsibilities as maintaining the records of the Court and issuing the writs summoning jurors, but as a practical matter, their functions have always been much broader than that. In the early days, the Clerks performed many of the tasks that present day attorneys perform - including drafting various legal instruments and issuing subpoenas to witnesses. They also empanelled grand and petit jurors, collected fees, recorded the orders and judgments of the Court, took notes of proceedings and recorded those notes in longhand in minute books. The dedicated efforts of the Clerk contributed to the Court’s success in the early years of the Republic, when the Court’s relationships with the state courts, as well as with the executive and legislative branches of the federal government, were still in their formative stages.

Before the invention of the typewriter in the late nineteenth century, all originals and all necessary copies of pleadings and other documents were handwritten. The Clerk’s Office relieved that burden by generating standardized printed forms for pleadings, motions and other papers so that the attorneys were required only to fill in names, dates, and other basic information.

As quill pens have given way to PACER, the Clerk’s duties have evolved tremendously. Today, the Clerk’s Office handles a great breadth of duties. Among these are the assignment of cases among the judges, not only to prevent “forum shopping” by litigants and their attorneys, but also to ensure an even distribution of

case load. The Clerk is also responsible for preparing the Court's calendar, monitoring the status of all cases and providing reports to the Administrative Office of the United States Courts in Washington. Further, the Clerk's Office safeguards funds deposited with the Court, administers the selection of jury panels, and keeps track of attorneys admitted to practice. Last but not least, the Clerk's Office has implemented and overseen the revolutionary change from paper to electronic filing.

Only 20 Clerks have served the Court in its 221 year history. The present Clerk of Court, William T. Walsh, is thus far the second-longest serving Clerk in the Court's history. Mr. Walsh has for 25 years ably guided the Clerk's Office, assisted by his knowledgeable and hard-working staff. Only one other Clerk has served longer: George T. Cranmer, who was Clerk for 45 years, from 1893 to 1938.

Whereas as late as 1905 there was still only a single District Court Judge for the District of New Jersey sitting for a few stated sessions each year, today the Clerk's Office serves 37 Senior Judges, District Judges and Magistrate Judges in three vicinages. The Clerk's Office continues skillfully to manage the business of the Court, keeping up with tremendous increases in the numbers of filings and a striking increase in the scope and sophistication of the Clerk's duties. The Office continues today to be a vital liaison between the public and the judiciary.

The United States Bankruptcy Court Clerk's Office

In 1898, a federal Bankruptcy Act (the Nelson Act) was passed for the first time in the history of the United States. With various amendments and revisions, that Act has remained in force without appeal to the present time. Under the original 1898 Act, bankruptcy cases were referred by the court clerk to a referee in bankruptcy who, more and more as experience suggested and as various amendments authorized, took on a greater share of the judicial function and less of the administrative duties, much of which is now handled by or under supervision of the office of the United States Trustee. That Office is not part of the Bankruptcy Court, but is an arm of the Department of Justice under the Attorney General.

The present bankruptcy laws now in effect amount to the revised 1898 Act, as restructured by the Bankruptcy Reform Act of 1978 (which enacted the Bankruptcy Code generally effective October 1, 1979), as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, and the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

The Bankruptcy Court in New Jersey began to take its present form after passage of the 1978 Act. Administrative functions were consolidated into a single Bankruptcy Court Clerk's Office with staff located in each of the three Court locations: Camden, Newark, and Trenton. Clifford P. Kirsch served as the first Clerk of Court. He was succeeded by our current Clerk, James J. Waldron, in 1984. The Honorable Vincent J. Commisa, sitting in Newark, was appointed the first Chief Judge of the Bankruptcy Court in 1984 and served in this capacity until his death in 1990. Chief Judge Commisa was succeeded by the Honorable William H. Gindin, sitting in Trenton, who served as Chief Judge from 1990 until 1998. In 1998, the Honorable Rosemary Gambardella, sitting in Newark, was appointed Chief Judge. In 2005, the Honorable Judith Wizmur, sitting in Camden, became Chief Judge.

Under the leadership of James Waldron as Clerk, the Bankruptcy Court Clerk's Office efficiently handles one of the largest caseloads of any Bankruptcy Court in the United States. In the last full year for which statistics are available (2009), there were a total of 35,938 bankruptcy case filings in New Jersey, broken down as follows: 14,740 case filings in the Newark Vicinage, 12,479 case filings in the Trenton Vicinage, and 8,719 case filings in the Camden Vicinage. Electronic filing is mandatory in the Bankruptcy Court through the

Court's CM/ECF system, which is managed by the Bankruptcy Court Clerk's Office.

The Bankruptcy Court Clerk's Office has a staff of approximately 120 highly trained individuals. Along with handling the steady stream of case filings allocated to its three offices in Newark, Trenton, and Camden, the Clerk's Office provides direct assistance to the nine full-time Bankruptcy Judges who make up the present court. Judges Rosemary Gambardella, Novalyn L. Winfield, Donald H. Steckroth and Morris Stern sit in Newark; Chief Judge Judith H. Wizmur and Judges Gloria M. Burns sit in Camden, and Judges Kathryn C. Ferguson, Raymond T. Lyons, Jr. and Michael Kaplan sit in Trenton. All of these Bankruptcy Judges rely on the expertise and professionalism of the staff of the Clerk's Office.







The United States Probation Office

As a part of the judiciary, the United States Probation Office is charged with the investigation of persons convicted of federal crimes, as well as supervision of offenders conditionally released by the courts, United States Parole Commission and/or military authorities. The USPO currently has a broad footprint of seven offices that are easily accessible from all corners of New Jersey.

Although New Jersey's federal court was established in 1789, it was not until the first half of the 1800's that de facto probation appeared in the courts through judicially suspended sentences and piecemeal supervision of offenders by volunteers. The propriety of this informal system was called into question in the early twentieth century by detractors, including the administration of President Wilson, and was litigated - eventually reaching the Supreme Court. In *Ex parte United States*, 242 U.S. 27 (1916), the Supreme Court held that the federal courts had no inherent authority under the Constitution to suspend the sentences of offenders, stopping the informal probation system in its tracks. In the wake of the Supreme Court's decision, it took Congress over a decade to pass legislation creating the position of the federal probation officer. Although the legislation was enacted in 1925, it was not until 1927 that the first federal probation officer was appointed because the law required that competitive examinations be given for these positions.

Around 1928, federal probation began in New Jersey, with the hiring of Edgar Y. Dobbins as a deputy clerk of the Court in Camden. On an ad hoc basis, Dobbins counseled convicted defendants in Camden and convinced state probation officers in Trenton and Newark to take on federal probation cases. In 1931, after having laid a foundation for the office, Dobbins was formally appointed as the District's first probation officer - approximately the eighth officer appointed nationwide. Dobbins proved to be an able shop-steward, developing a system similar to that used by the USPO today, including the investigation and drafting of pre-sentence reports, and supervising probationers. In 1934, Dobbins was appointed as the first chief of the district's probation office and hired three additional probation officers by 1939.

The development and growth of the USPO continued under the supervision of C. Alexander Rheiner who was appointed chief of the district following Dobbins retirement in 1953. Rheiner oversaw large growth in the USPO until his retirement in 1971, and in line with his predecessors, endeavored to integrate the staff, including the appointment of Theodore Edwards, the district's first minority officer in the Trenton office. With the subsequent appointment of chief Brayton Crist also came the appointment of the district's first deputy chief probation officer, John Rimelis, and its first female officer, Jane Vitengel. The development of the USPO and its place as an extension of the judiciary continued under the leadership of chiefs Emil Mozolak, and John L. Costley through 1985. Under the leadership of David A. Mason, William Carroll, and Joseph Napurano, the USPO grew to its current form, providing coverage to all 21 counties of the State, and allowing the judiciary to discharge its obligations to the community.

Christopher Maloney, the USPO's current chief, has followed in the footsteps of his trailblazing predecessors by initiating cutting-edge programs like the Federal Prisoner Reentry Project. This program, the first of its kind in the nation, is designed to provide pro bono legal services addressing the gamut of civil legal hurdles inmates often face upon release, including, immigration, tax, and child support issues. Trained law students at Rutgers School of Law in Camden, under the direct supervision of experienced attorneys, are providing legal services to offenders referred to them by the USPO. It is expected that this forward-looking program will reduce the recidivism rate among released prisoners and lead to successful transitions from prison to home.

The United States Pretrial Services Office

Concern about setting appropriate bail for pretrial defendants in this country goes back to the Bill of Rights: The Eighth Amendment to the U.S. Constitution provides that “[e]xcessive bail shall not be required.” For many years, federal courts had little guidance or assistance in this endeavor, and concern rose during the early to mid-twentieth century about whether courts were setting fair and appropriate bail, especially for indigent defendants. As a result, the Bail Reform Act of 1966 was enacted, creating a presumption of release, providing judges with guidelines, mandating consideration of the accused’s background and community ties, and requiring courts to impose the least restrictive conditions of release that would provide reasonable assurances that the defendant would return for court appearances.

Unfortunately, judges still had little assistance in assessing which defendants posed a serious risk of flight. In the absence of sufficient information about the likely risks if particular defendants were released, judges remained wary of releasing defendants, resulting in unnecessary incarceration and unnecessary costs.

The bill that, as enacted, became the Speedy Trial Act of 1974 was called “An Act to Assist in Reducing Crime and the Danger of Recidivism by Requiring Speedy Trials and by Strengthening the Supervision Over Persons Released Pending Trial.” P.L. 93-619. Both requiring speedy trials and improving supervision of pretrial releasees were aimed at reducing crime. As part of the Act, Congress established demonstration “pretrial services agencies” in ten federal districts. The agencies’ primary missions were (1) to provide objective assessments and recommendations to judges to help them make informed decisions about bail for pretrial defendants; and (2) to supervise pretrial defendants, including monitoring their compliance with conditions of release. The demonstration was considered successful, and the Pretrial Services Act of 1982 accordingly directed the Director of the Administrative Office of the United States Courts to provide for the establishment of pretrial services in the remaining judicial districts. 18 U.S.C. § 3152.

Concern about crimes committed by defendants on pretrial release continued. The United States Senate concluded that there was “a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or other persons. It is with respect to this limited group of offenders that the courts must be given the power to deny release pending trial.” Accordingly, the Bail Reform Act of 1984 permitted courts to consider danger to the community in setting bail conditions, and permitted courts to deny bail altogether where a defendant posed a grave danger to others. In *United States v. Salerno*, 481 U.S. 755 (1987), the United States Supreme Court held the Bail Reform Act constitutional, while observing that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

Initially, pretrial services were provided in the District of New Jersey under the supervision of Probation. Pretrial Services became a separate entity in the District of New Jersey in 1987, when then Chief Judge Clarkson S. Fisher appointed the district’s first Pretrial Services Chief, John B. Martorana. Previously a Deputy Chief of U.S. Probation and a Drug and Alcohol Treatment Specialist, Chief Martorana began a legacy of compassionate service to defendants that continues to this day. He was ably assisted by the district’s first Supervising Pretrial Services Officer, Thomas Henry, who had previously served in both Probation and Pretrial Services in New York. By 1988, a staff of five officers served the Court, then consisting of seven magistrate judges and fourteen active district court judges. One of the original five officers, Albert Zotti, is with the agency to this day, now serving as its Deputy Chief.

When Chief Martorana retired in 1994, Thomas Henry became New Jersey’s second Pretrial Services Chief. Chief Henry was known for his technological savvy and for his mentoring of young officers. He was

so successful at the latter that among his protégés are the current Chief of Pretrial Services in the Southern District of New York, Art Penny; the Chief U.S. Probation Officer in the Southern District of New York, Michael Fitzpatrick; the Deputy Chief of Pretrial Services in the Eastern District of New York, Robert Cordeiro; and, last but not least, the third and current Chief of Pretrial Services in the District of New Jersey, Christine Dozier, who has served in that capacity since Chief Henry's retirement in 2004.

Today, in 2010, Pretrial Services in the District of New Jersey has grown to a staff of 44, serving 12 magistrate judges and 21 district judges. Chief Dozier proudly boasts that the district has a release rate of over 60% compared with the national average of 34%. Of course, a high release rate would be unimpressive were it not for the District's concomitant low failure-to-appear and rearrest rates, which Chief Dozier attributes to advances in supervision programs, such as substance abuse and mental health treatment; electronic and cyber monitoring; and workforce development.

Pretrial Services is dedicated to appropriately balancing community safety and risk of nonappearance with protection of individual liberties. It facilitates the fair administration of justice by serving the Court and working closely with both the prosecution and the defense bar; it helps ensure the safety of the community and the appearance of defendants; and it makes a real and positive difference in the lives of pretrial defendants.

The United States Marshal Service

The United States Marshal Service for the District of New Jersey finds its roots in an Irish immigrant. Thomas Lowry, the first District of New Jersey United States Marshal, served for thirteen years, from 1789 to 1802. Lowry, a successful shopkeeper and landowner, was considered a wealthy and prominent citizen in pre-revolutionary New Jersey. Committed to succession from the Crown, he represented New Jersey at the First Continental Congress in 1775 and served in the New Jersey militia's Third Regiment at the outset of the Revolutionary War. Lowry served as a commissary officer and reached the rank of colonel by the war's end, using his business acumen to supply the troops throughout the Revolution. During the war, Lowry entertained his friend, General George Washington, at his house on several occasions. This friendship with George Washington would eventually lead to Lowry's appointment as the first United States Marshal for the District of New Jersey.

The United States Marshal office was created by the Judiciary Act of 1789. When President George Washington signed the Judiciary Act, he was determined to select the "fittest characters to expound the laws, and dispense justice . . ." As a personal and trusted friend of President Washington, Thomas Lowry was a natural choice to serve as the first Marshal of New Jersey. Lowry had proved his loyalty to the new nation during the Revolution, yet his strong local ties ensured that he would respect the rights of the State in his new position as the enforcer of federal law.

In those early days, the primary function of the Marshal and his staff was to support the federal courts and implement the law of the federal government in their jurisdiction. Marshals served court documents, carried out warrants, made all arrests and handled all prisoners. But that was not all. In the absence of any other federal representative, the early Marshals carried out more mundane tasks such as taking the national census (until 1870), distributing presidential proclamations, and collecting various statistical data on manufacturing and commerce for the federal government. The Marshal was also given more unusual tasks such as registering enemy aliens, sealing the border in times of war, and exchanging spies with the Soviet Union.

Today, the shining jewel of the United States Marshal Service is the New York/New Jersey Regional

Fugitive Task Force. The United States Marshal and his deputies for the District of New Jersey make up a crucial part of this organization. This task force, the first of its kind, was created by the Presidential Threat Protection Act of 2000. While its primary function is to catch fugitives in the greater New York City metropolitan area, the task force is credited with cleaning up numerous New Jersey cities. In 2004, Camden was considered the “most dangerous city in America.” However, within five months of task force operations, the crime rate dropped by 30%. In 2006, the task force was credited with similar success in Atlantic City, targeting organized gangs such as the Crips, the Bloods, and the Aryan Brotherhood. Since then, the task force has been involved with catching fugitives and cleaning up several New Jersey cities such as Jersey City and Trenton. The success of the task force and the United States Marshal Service for the District of New Jersey has made the program the model for all other Regional Task Forces in the country.

The acting United States Marshal for the District of New Jersey is Donald I. Rackley. He, like the Marshals before him, upholds the mission of the Marshal Service to support the federal court, implement federal law, and protect the people of New Jersey from dangerous fugitives.





Editor:

Frances C. Bajada, Esq.

Visit our website at
www.history.njd.uscourts.gov

Chairman of the Board:

Donald A. Robinson, Esq.

President:

Leda Dunn Wettre, Esq.

Vice Presidents:

Frances C. Bajada, Esq.

Robert Bartkus, Esq.

Marion Percell, Esq.

Treasurer:

Michael S. Weinstein, Esq.

Secretary:

Theresa C. Trivino

Executive Director:

Susan A. Travis

Counsel:

McCarter & English, LLP