FEDERAL BAR ASSOCIATION - MARYLAND CHAPTER

NEWSLETTER

OCTOBER 2013

IN THIS ISSUE

President's Message

By Gloria Wilson Shelton

In preparation for writing this message, I have sought the guidance from some respected members of the bar and those who have served as past presidents of various bar associations. I am told that there is no definable format for these messages so I will just be myself.

I would like to start by saying what an honor and privilege it is to serve as your President for 2013-2014. It has been a long journey since first being introduced to the Board in 1998. I have served with a dynamic group of individuals under whose leadership I have grown and developed over the years and the opportunities afforded me to serve have well prepared me for this moment. Even so, I am sure I will learn that much more this coming year.

I am looking forward to another great year of activities for the Maryland Chapter. We have a full calendar of events and programs already planned for the year and invite you to mark your calendars now and plan to attend. With the new 2013-2014 term, we welcome some new members to the Board: Judge Benson Legg and Steven Kelly. Each of these new Board members brings with them stellar credentials and a new energy that will help to move the Chapter forward in the years to come. I encourage all of our members to become actively involved in the work of our Chapter. All Chapter Program and Event Committees are open to you to join. If you are interested in joining any of them, please let me know at gloria.shelton@va.gov. It's never too late to share a new idea for a CLE program. I remain open and receptive to your thoughts and interest throughout the year so let me hear from you at any time.

Please also take advantage of our Website and Newsletter publication. Both are an important part of your membership in the Maryland Chapter of the FBA, and this is how members find out about upcoming events, and obtain legal updates. If you have news or articles of interest, please let us know that too.

I would also like to thank my predecessor, Gerry Gaeng. During his term as President, Gerry demonstrated great leadership. Under his leadership we had an extraordinary year with our CLE programming and record attendance at our events. I enjoyed working with Gerry over the past year and I have appreciated his help, guidance and friendship during this transition.

Finally, I look forward to working closely with the Board and our members to build a stronger Maryland Chapter for the future and hope to meet you at our next upcoming event and or program.

What Is Admiralty Law?

By David W. Skeen, Esquire and Meighan G. Burton, Esquire*

** David Skeen is a partner in the firm of Wright, Constable & Skeen, LLP and has been practicing admiralty law in Maryland for 40 years. Meighan Burton, an associate with the firm, also practices in admiralty law.*

When people ask me, in whatever roundabout way, what I do for a living, I have my elevator speech prepared. "I am an admiralty lawyer" I say, "you know, anything to do with ships, boats, and the water." Generally, their curiosity satisfied, we move on to other topics. Occasionally, a further explanation is required. Here it is.

What follows is an overview of the history of admiralty law[1] and a discussion of some of the problem areas in federal maritime matters that may be of interest to other federal practitioners.

A BRIEF HISTORY OF ADMIRALTY LAW

For thousands of years, watercraft have carried people and goods in commerce on the rivers and seas of the world. Admiralty law may be loosely defined as the rules relating to the carriage of goods and people across water. The word "admiral" comes from Arabic, and its usage was adopted in the Mediterranean and eventually in England to mean the "lords of the sea."[2]

Early admiralty law took the form of written codes which were nothing more than catalogues of customs then existing between merchants and mariners.[3] The commercial law or "law merchant" went hand in hand with the establishment of laws governing ships and the carriage of goods and people. For example, one of the world's oldest legal codes, The Code of Hammurabi, promulgated around 1780 B.C., provides in part that "the master of the merchant man, which wrecked the ferryboat, must compensate the owner for the boat and all that he ruined."[4]

By the beginning of the Renaissance and the emergence of the Italian city-states such as Venice and Naples, commercial trade blossomed and expanded to the Atlantic ports of Western Europe and into the Baltic Sea. Civil sea codes were adopted in England circa 1266 B.C. through the Laws of Oleron.[5]

In England, jurisdiction over "things done upon the sea" became the concern of the "admiralty" courts.[6] The first admiralty courts operated in accordance with a civil code, and without a jury (contrary to the common law courts of England).[7] Divorce and ecclesiastical law matters were also confined to the same civil courts as admiralty law and all practitioners in those courts were known as "proctors."[8] The term "Proctor in Admiralty" is still in use today for certain lawyer members of the Maritime Law Association of the United States.[9]

With the settlement of North America, admiralty courts were established in most of the colonies, including Maryland, to facilitate the business of maritime commerce.[10] Following the American Revolution, the founding fathers, aware of the importance of uniformity of laws to healthy maritime commerce, made admiralty law a federal concern under Article III of the U.S. Constitution, and assigned admiralty law administration to the federal courts in the Judiciary Act of 1789.[11] From the start, the "principal justification" for the establishment of the District Court for the District of Maryland was to adjudicate admiralty matters.[12] The court's business was substantially limited to admiralty.[13] State courts also exercise jurisdiction over admiralty matters in some instances, however, matters such as an admiralty arrest and sale of a vessel, are exclusively the province of the federal courts.[14]

Over time, the Supreme Court of the United States expanded the jurisdiction of the federal admiralty courts and the reach of admiralty law beyond the more narrowly circumscribed "tidal waters" jurisdiction in England.[15] The American courts developed and adopted procedures and rules for arrest and attachment of vessels, pre-suit depositions to preserve testimony, interlocutory appeals, and the exercise of broad equitable powers of admiralty judges to assure a speedy and uniform resolution of commercial shipping disputes to promote maritime commerce.

WHO - IS SUBJECT TO ADMIRALTY LAW?

Plaintiffs in admiralty cases are divided into "seafarers" and "non-seafarers."[16] Seafarers are generally professional mariners who receive the highest level of protection from personal injury and death. Seafarers, because of their history of difficult and dangerous working conditions and abuse from being at the mercy of ship masters while away from their homes for long periods of time, are traditionally considered "wards of admiralty" and are entitled to special protection from the courts.[17] Seafarers enjoy unique historical

1 Today the terms "admiralty" and "maritime" as descriptions of this body of law are virtually interchangeable. Grant Gilmore and Charles L. Black, Jr., The Law of Admiralty 1 (2d ed. 1975).
2 *Id.* at 1.
3 *Id.* at 2.
4 Code of Hammurabi ¶240, *available at* http://www.admiraltylawguide.com/documents/hammurabi.html
5 Gilmore & Black, supra note 1 at 7.
6 *Id.* at 9.
7 Nicholas J. Healy and David J. Sharpe, Admiralty Cases and Materials 3 (2d ed. 1986).
8 *Id.* at 860.
9 *Id.*
10 David R. Owen and Michael C. Tolley, Courts of Admiralty in Colonial America: The Maryland Experience, 1634-1776 (Carolina Academic Press, 1995) (Maryland was the first colonial admiralty court).
11 H. H. Walker Lewis and James F. Schneider, A Bicentennial History of the United States District Court for the District of Maryland, 1790-1990, 12 (Md. Fed. Bar Assoc. 1990).
12 *Id.*
13 *Id.*
14 28 U.S.C. §1333 (1) (Savings to Suitors Clause, Judiciary Act of 1789).
15 See Owen & Tolley, *supra* note 10 at 211.
16 See, e.g., *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, fn. 2 (1996).
17 *Harden v. Gordon,* 11 F. Cas. 480, 482 (C.C.D. Me. 1823) (J. Joseph Story).

remedies such as "maintenance and cure," the provision of medical care and support of a seaman who is injured or falls ill while he is subject to the call of duty. Maintenance and cure, a precursor of workers' compensation, is paid regardless of fault and until the seafarer reaches maximum cure.[18] In addition, seafarers may recover for injuries and death under the Jones Act, the seagoing counterpart of the Federal Employees Liability Act remedy for railroad workers.[19] The Jones Act provides for a lower burden of proof as to causation, elimination of the defense of assumption of risk, application of comparative fault, and a jury trial.[20] Seafarers are also entitled to a warranty of seaworthiness from the vessel owner.[21] This warranty is a form of absolute liability for defective conditions of a vessel and notice of the defect may not be required.

Longshore and harbor workers have their own special workers' compensation statute, which provides scheduled benefits for certain injuries without requiring proof of the employer's fault.[22] A substantial amount of admiralty litigation involves whether these so-called "amphibious workers," who work on both land and sea, are subject to the Longshore Act, or as members of the crew of certain watercraft, qualify for coverage under the more generous Jones Act.

Surprisingly, paying passengers on vessels are only entitled to a duty of ordinary care from the ship operator.[23] The same is true of passengers on recreational boats. In either case, comparative fault applies; not the conflicting state law rules such as contributory negligence.[24]

18 *Calmar S. S. Corp. v. Taylor,* 303 U.S. 525, 527 (1938).
19 The Federal Employees Liability Act, 45 U.S.C. § 51 *et seq.*; The Jones Act, 46 U.S.C. § 30104.
20 46 U.S.C. §30104.
21 *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 549 (1960).
22 Longshore & Harbor Workers Compensation Act, 33 U.S.C. § 901, et seq.
23 *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 1959 AMC 597 (1959).
24 See, e.g, *Matthews v. Howell*, 359 Md. 152, 753 A.2d 69 (2000).
25 *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 2005 AMC 609 (2008); *Lozman v. City of Riviera Beach, Florida*, 568 U.S., 133 S. Ct. 735, 2013 AMC 1 (2013).
26 *Id.*
27 See *Rodrique v. Aetna Cas. & Surety Co.*, 395 U.S. 352, 1969 AMC 1082 (1969). Under *Lozman, supra*, some movable drilling rigs are no longer considered vessels if they are only moved only occasionally and at great expense. See *Mooney v. W. & T. Offshore, Inc.*, Civ. 12-969, 2013 AMC 1780 (E.D. La. March 6, 2013).
28 *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 1973 AMC 1 (1972).
29 *Orient Overseas Line v. Globemaster Baltimore, Inc.*, 33 Md. App. 372, 1976 AMC 2365, 2372 (1976); *Pine Street Trading Corp. v. Farrell Lines, Inc.*, 278 Md. 363, 364 A.2d 1103, 1977 AMC 426 (1977).
30 *THE DANIEL BALL*, 77 U.S. 557 (1870).
31 See *Matthews*, 359 Md. 152, 753 A.2d 69.
32 Tortious conduct, including defamation occurring during a speech on a cruise in the Atlantic Ocean, has been found to be subject to admiralty law. *Wells v. Liddy*, 186 F.3d 505, 524 (4th Cir. 1999).
33 *Chapman v. United States*, 575 F.2d 147 (7th Cir. 1978).
34 *Matthews*, 359 Md. at 152.
35 46 U.S.C. § 30101.
36 *Magallanes Investment, Inc. v. Circuit Systems, Inc.*, 994 F.2d 1214, 1993 AMC 2301 (7th Cir. 1993).
37 *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955).
38 *Norfolk Southern Ry Co. v. Kirby,* 543 U.S. 14, 2004 AMC 2705 (2004).

WHAT - IS A VESSEL?

One would think after centuries of admiralty jurisprudence, a settled legal definition of "vessel" would have emerged, but such is not the case. Until recently, anything that could float and was capable of transporting people or goods across the water was considered a "vessel."[25] However, recently the Supreme Court has narrowed the definition, holding that even if a structure floats and is theoretically movable across the water, for example, a houseboat, it is a vessel only if a reasonable person would view its use for transportation as "practical."[26] Thus, a movable drilling rig may be considered a vessel and subject to admiralty law, unless it is moved only occasionally and at great expense.[27]

Vessel status is important to the application of admiralty law. Many admiralty remedies, including limitation of shipowner's liability, *in rem* liability, the warranty of seaworthiness, and Jones Act status, depend on vessel status. Fixed structures, such as piers and fixed offshore drilling rigs secured to land or the sea floor, are considered extensions of the land. Injuries on fixed structures are subject to state law.

WHERE – DOES ADMIRALTY LAW APPLY?

The application of admiralty tort jurisdiction and law extends geographically to events that occur on the navigable waters of the United States, and which have a substantial connection to traditional maritime activity and commerce.[28] If those tests are met, admiralty law must be applied regardless of whether a matter is pending in state or federal court.[29] Navigable waters of the United States are defined broadly to include any waters that are used or are capable of being used in their ordinary condition or by uniting with other waters for interstate or international commerce.[30] Thus, torts occurring on the rivers and bays of Maryland, if there is a sufficient connection to traditional maritime activity, are generally governed by Admiralty law.[31] "Traditional maritime activity" is also broadly defined. For example, virtually all recreational boating accidents on the Chesapeake Bay and its tributaries are considered to have a sufficient connection to a traditional maritime activity.[32] In contrast, boating accidents occurring on landlocked lakes that do not cross state lines, such as Deep Creek Lake in western Maryland, are governed by state law.[33]

Admiralty law application takes on substantial importance in recreational boating cases in Maryland because where admiralty law applies, comparative fault is the rule and not the Maryland state law rule of contributory negligence.[34] Under the admiralty Extension Act,[35] Admiralty jurisdiction also extends to damages caused by vessels to piers and other shore structures or people on land.

Admiralty law will govern most maritime transactions, however, it does not govern the sale of a vessel (state law applies)[36] or certain aspects of marine insurance (state law applies except where there is an established admiralty rule).[37] Contractual extensions of maritime defenses and statutes such as the Carriage of Goods by Sea Act under multimodal bills of lading and other ocean shipping documents may result in maritime law governing liability of railroad carriers for cargo damage due to derailments in landlocked areas such as the U.S. mid-west.[38]

WHEN - MUST CLAIMS BE FILED?

Some federal admiralty claims are subject to statutes of limitations, such as the one year limitation on claims for cargo damage against ocean carriers under the Carriage of Goods by Sea Act,[39] and the three year limitation on personal injury and death claims.[40] The Public Vessels Act and Suits in Admiralty Act, which are applicable to claims against the government and its vessels, each have a two year limitation period and a complex notice and service requirement.[41] Limitation of liability actions available to vessel owners must be filed within six months of receipt of written notice of a claim.[42] Times for filing of most passenger personal injury suits are governed by cruise ship passenger contracts requiring notice of claim in six months and suit within one year, usually in a particular jurisdiction such as Miami or Seattle, where cruise ship operators have corporate offices.[43] Where statutes and contracts are not directly applicable, admiralty law recognizes the equitable doctrine of laches, which permits some leeway in consideration of late claims where the delay can be explained and prejudice to the defendant is not a factor.[44]

WHY? – ADMIRALTY ODDITIES EXPLAINED

When confronted with admiralty oddities such as the personification of a vessel, or a shipowner's limitation of liability, one might ask "why?"

Vessel Personification

If a vessel collides with a pier or bills incurred for the vessel's benefit are not paid, *in rem* liability of the vessel arises automatically, without filing of any notice of lien. Such "secret" liens are good against the world, even a bonafide purchaser of a vessel.[45] "Personification" of the vessel is the basis for such *in rem* liabilities. The "res," or thing itself is the offender and therefore subject to liens without regard to *in personam* liability of the vessel owner.

The lien can be executed by filing a complaint in the federal court requesting the arrest and detention of the vessel by the U.S. Marshal. Once a vessel is attached or arrested, in order to secure release of the vessel the vessel owner is required to post security in the way of a bond or cash to secure payment of any judgment to be rendered.[46] If not released, the vessel may be subject to pre-judgment judicial sale.[47] Such harsh remedies are necessitated and justified by the nature of international commercial shipping. Vessel owners often have only one asset, the vessel, which travels the world and may never to return to location where damage has been done or debts incurred.[48] Without this strong remedy suppliers may not be willing to extend credit to vessels and keep them on their way.

Treasure hunters also use *in rem* proceedings to protect their rights to historic shipwrecks and treasure, and to adjudicate the rights of other interested parties. A small artifact from a wreck site may be brought into court as the basis for *in rem* jurisdiction.[49]

Another Oddity – the Shipowner's Limitation of Liability Act

The promotion of the commercial shipping business in the United States gave rise to another oddity: The Shipowner's Limitation of Liability Act.[50] Enacted in 1851, the Act permits a vessel owner whose vessel is involved in a marine casualty such as a sinking or collision with another vessel, to limit his liability to others to the value of the vessel after the loss, without regard to whether the owner recovers full value from his own insurance coverage.[51] The procedure also requires all claimants against the vessel to file their claim in one proceeding. The marine liability insurer of the vessel is entitled to invoke the statute to avoid liability, and may succeed if it can prove that the casualty was the result of the isolated negligence of an otherwise competent crew member rather than some action within the privity and knowledge of the vessel owner.[52] The Act even applies to recreational vessels, where it can be shown that the owner exercised due diligence to provide a seaworthy vessel and was without privity or knowledge as to the cause of the loss. Since most recreational boating accidents occur with the negligent owner at the helm, limitation is generally not successful.[53]

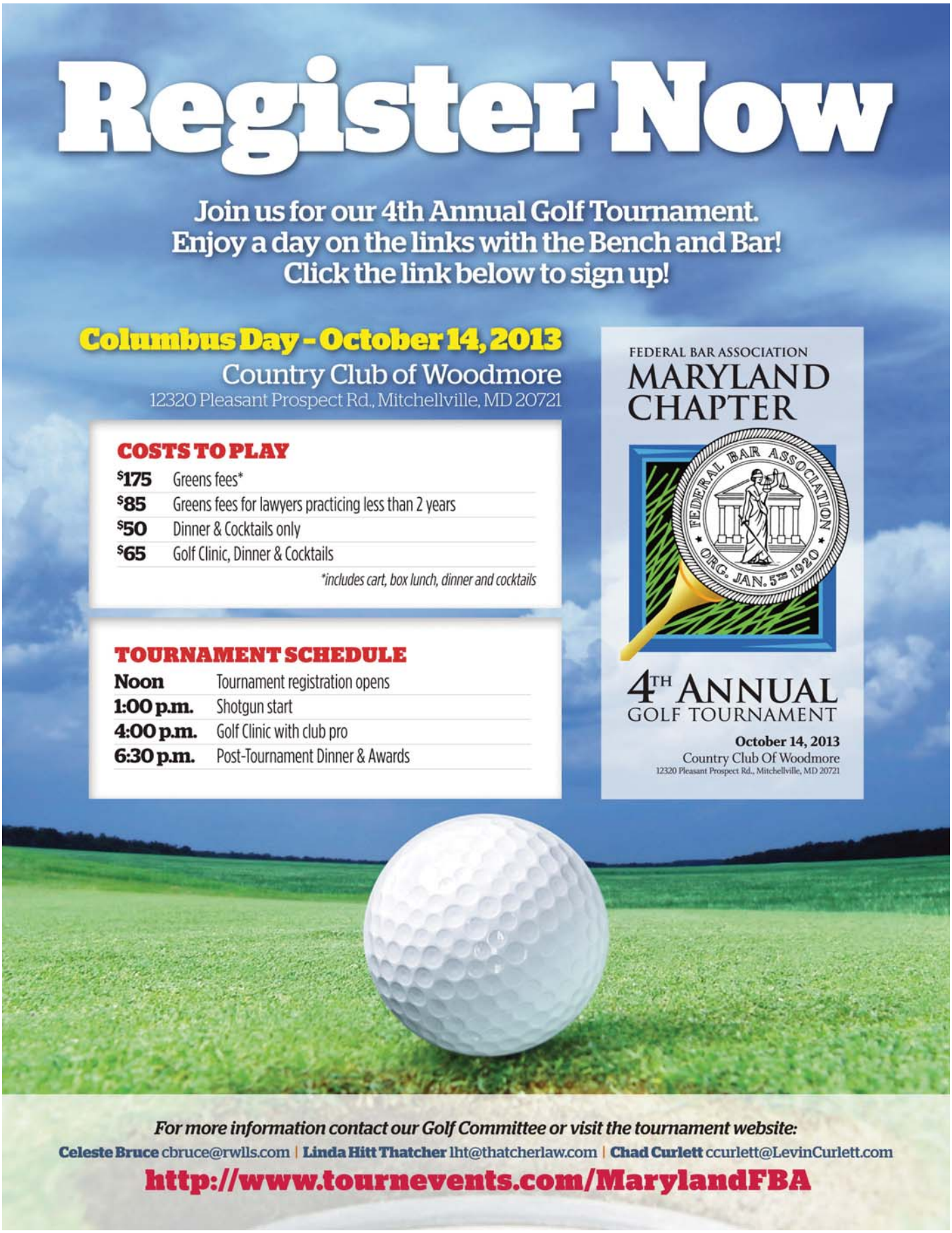
Related Federal Concerns

Admiralty practitioners also interface with other areas of federal practice, which often direct the outcomes of admiralty cases. U.S. bankruptcy laws, for example, often affect the outcome of maritime claims against vessel owners. Bankruptcy of the vessel owner may preempt the role of the admiralty judge in arrest and attachment proceedings once a bankruptcy is filed and the automatic stay in place.[54] Federal laws relating to oil pollution, particularly the Oil Pollution Act of 1990 (OPA 90) and CERCLA, apply to marine disasters such as the BP oil spill in 2010, which involved a "vessel," the mobile offshore drilling unit, DEEPWATER HORIZON.[55] Immigration, customs, and border protection laws may also affect vessel operations and crews.

Conclusion

While today admiralty practice is a small part of the federal docket, its practitioners fancy that the federal judges on our bench find their encounters with admiralty cases a refreshing change even if baffling on occasion. Those who wish to know more about the practice, history, and significant cases in our district are directed to the third floor of the courthouse where the admiralty exhibit sponsored by The Historical Society of the United States District Court for the District of Maryland is on display.

39 46 U.S.C. App. § 1303(6).
40 46 U.S.C. § 30106.
41 46 U.S.C. § 31103.
42 46 U.S.C. § 30511.
43 *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 1991 AMC 1697 (1991).
44 Thomas J. Schoenbaum, Admiralty & Maritime Law § 5-23 at p. 359 (5th ed. 2012).
45 Schoenbaum, *supra* note 44, § 9-1 at 683.
46 Supplemental Rules for Admiralty or Maritime Claims, Rule E.
47 *Id.*
48 Schoenbaum, *supra* note 44, § 9-I at 684.
49 See, e.g., *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 2006 AMC 305 (4th Cir. 2006).
50 46 U.S.C. § 30501, et seq.
51 Schoenbaum, *supra* note 44, § 15-1 at 169-170.
52 *Id.* § 15-6 at 190-191.
53 *In re Via Sales & Leasing, Inc.*, 499 F. Supp. 2d 887, 2008 AMC 438 (E. D. Mich. 2007).
54 *Evridiki Navigation, Inc. v. Sanko S.S. Co.*, 880 F. Supp. 2d 666, 2012 AMC 1817 (D. Md. 2012).
55 *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, April 20, 2010*, 844 F. Supp. 2d 746, 2013 AMC 531 (E. D. La. 2013).


Register Now
Join us for our 4th Annual Golf Tournament.
Enjoy a day on the links with the Bench and Bar!
Click the link below to sign up!
Columbus Day - October 14, 2013
Country Club of Woodmore
12320 Pleasant Prospect Rd., Mitchellville, MD 20721
COSTS TO PLAY
$175 Greens fees*
$85 Greens fees for lawyers practicing less than 2 years
$50 Dinner & Cocktails only
$65 Golf Clinic, Dinner & Cocktails
*includes cart, box lunch, dinner and cocktails
TOURNAMENT SCHEDULE
Noon Tournament registration opens
1:00 p.m. Shotgun start
4:00 p.m. Golf Clinic with club pro
6:30 p.m. Post-Tournament Dinner & Awards
FEDERAL BAR ASSOCIATION
MARYLAND CHAPTER
FEDERAL BAR ASSOCIATION
ORG. JAN. 5TH 1920
4TH ANNUAL
GOLF TOURNAMENT
October 14, 2013
Country Club Of Woodmore
12320 Pleasant Prospect Rd., Mitchellville, MD 20721
For more information contact our Golf Committee or visit the tournament website:
Celeste Bruce cbruce@rwlls.com | Linda Hitt Thatcher lht@thatcherlaw.com | Chad Curlett ccurlett@LevinCurlett.com
http://www.tournevents.com/MarylandFBA

No Smooth Sailing: A Novel Approach to an Ancient *Qui Tam* Statute

By Mayer Kovacs

I. INTRODUCTION

In June 2011 fourteen flotillas bound for the Gaza strip were about to embark on their journey when they were hindered by an unlikely source: an American citizen filing a rarely-utilized lawsuit to seize private property.[1] This archaic *qui tam* statute, codified in 18 U.S.C. § 962, imposes a fine and/or imprisonment for anyone in the U.S. who arms or attempts to arm a vessel with the intent that it be used by people who are hostile to a nation with whom the U.S. is at peace.[2] Additionally, if a private citizen, known as an informer, provides the government with this information, he or she is entitled to half of the interest in the vessel.[3] The plaintiff claimed informer status,[4] arguing that the flotillas were organized by anti-Israel groups, intent on challenging Israel's maritime blockade of the Gaza strip and materially supporting Hamas, which is designated as a terrorist organization by the U.S. State Department.[5]

II. LEGAL HISTORY

18 U.S.C. § 962 traces its roots to the Act of June 5, 1794, which prohibited Americans from arming vessels to be used by foreigners against a nation that the U.S. was at peace with.[6] In particular, the law was aimed at retaining American neutrality between warring France and Great Britain.[7] Congress created the statute so that the U.S. would not be compromised in its relations with friendly powers by having its soil used to launch hostilities against its allies, and thus created a provision authorizing forfeiture of any instrument used for hostile purposes.[8]

Many of the *qui tam* forfeiture cases were litigated during the 19th century and involved forfeiture claims against private citizens arming vessels that supported insurrections against colonial powers in South America who were at peace with the U.S. For instance, just prior to the Spanish-American War, American mariners who provided munitions for a military expedition against Spanish-controlled Cuba were charged and convicted of violating the *qui tam* neutrality act.[9] Similar claims were filed against Americans accused of arming insurgent vessels with intent to undermine France's dominion in Haiti[10] and Spanish control of the Dominican Republic.[11]

Courts recognized the need to preserve America's interest in protecting its friends, but limited the scope of the statute to vessels that were being used for belligerent activities as opposed to merely engaging in commerce with the enemies of America's allies.[12] However, drawing this distinction between unlawful armament and permissible commerce oftentimes proved difficult. Some courts agreed with informers' claim that the confiscated material violated the neutrality statute,[13] while others held that there needed to be a clearly belligerent buildup in order to fall within the scope of the statute's illicit conduct.[14]

III. PRESENT CASE

In 2007, responding to Hamas' seizure of the Gaza Strip from the moderate Palestinian Fatah party, Egypt and Israel imposed a military blockade on the region in order to prevent Hamas from smuggling in arms.[15] However, since 2008, groups like the Free Gaza Movement ("FGM") and the IHH have attempted to break the blockade. In May 2010, FGM and IHH, a Turkish group with ties to Hamas,[16] sent a group of flotillas from Turkey to challenge Israel's blockade of the Gaza Strip. The Israeli Navy intercepted the flotillas on the high seas, and all but one of the flotillas - The Mavi Marmara - surrendered.[17]

1 Press Release, Israel Law Center, *Cutting Edge Lawsuit Filed to Seize Gaza Flotilla Ships* (June 15, 2011), *available at* http://www.israellawcenter.org/page.asp?id=341&show=photo&pn=1155&ref=report.

2 The statute provides:

> Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed—Shall be fined under this title or imprisoned not more than three years, or both. Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States. 18 U.S.C. § 962.

3 *Id.* An "informer" is the equivalent of a "relator" under the more popular False Claims Act *qui tam* statute under 18 U.S.C. § 3730.

4 *Bauer v. Mavi Marmara*, 1:11-cv-01267 (D.D.C. July 11, 2011), Pl.'s Compl., at ¶ 3.

5 U.S. Department of State, Foreign Terrorist Organizations (Jan. 27, 2012), *available at* http://www.state.gov/j/ct/rls/other/des/123085.htm.

6 See Act of June 5, 1794, ch. 50, 1 Stat. 381, *repealed by* Act of April 20, 1818, ch. 88, 3 Stat. 450; see also Gelston v. Hoyt, 16 U.S. 246, 323 (1818).

7 United States v. Guinet, 2 U.S. (2 Dall.) 321 (C.C.D. Pa. 1795) (finding two individuals guilty of fitting out and arming a vessel for a French assault against British forces); see *also* Stewart *Jay, Origins of Federal Common Law: Part One*, 133 U. Pa. L. Rev. 1003, 1042-52 (1985).

8 See The Laurada, 85 F. 760, 761 (D. Del. 1898); *see also* United States v. The Mary N. Hogan, 18 F. 529, 538 (S.D.N.Y. 1883).

9 Wiborg v. United States, 163 U.S. 632, 633 (1896).

10 *United States v. The Mary N. Hogan*, 18 F. 529, 535-38 (S.D.N.Y. 1883).

11 The Laurada, 85 F. 760, 774 (D. Del. 1898).

12 United States v. Quincy, 31 U.S. 445, 458 (1832). The Supreme Court ultimately dismissed this suit, holding that the government failed to show that the defendant engaged in impermissible conduct.

13 *See, e.g.*, Wiborg v. United States, 163 U.S. 632, 633 (1896). (American captain and his crew found guilty of arming vessel to support anti-Spanish insurrection in Cuba).

14 *See, e.g.*, The Carondelet, 37 F. 799, 802 (S.D.N.Y. 1889). ("A vessel, by merely engaging in bona fide contraband trade, does not violate the statute, or our neutral obligations, even if the trade be in armed vessels.").

15 David Port, *History of Israeli Blockade on Gaza*, AL JAZEERA, Nov. 2, 2011, *available at* http://www.aljazeera.com/indepth/features/2011/10/2011103017235699038O.html.

16 Benjamin Weinthal, *German court affirms Turkish IHH ban because of Hamas ties*, JERUSALEM POST, Apr. 22, 2012, *available at* http://www.jpost.com/International/Article.aspx?id=267018.

17 After refusing to surrender, Israeli naval commandos took control of the flotilla and clashed with several armed passengers, resulting in the death of nine Turkish citizens. See United Nations Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, at 3, *available at* http://info.publicintelligence.net/UN-GazaFlotilla.pdf.

A year later, determined to continue its challenge to Israel's maritime control of the Gaza Strip, FGM announced its plan to send 14 flotillas to the Gaza Strip. In response, and assistance from the non-governmental organization Israel Law Center, Alan Bauer- an American-Israeli victim of a Palestinian terrorist attack in Jerusalem- notified the Justice Department of FGM's intentions, and filed a *qui tam* action under 18 U.S.C. § 962.18 Bauer argued that although the statute has not been used in nearly a century, it is still applicable today.[19] The *qui tam* action was created to protect America's allies abroad, and consequently should be applied to the present case, no different than when it was first used during the anti-colonial insurrections in Southern Hemisphere during the 19th Century.[20]

The Justice Department did not accept the Plaintiff's view, instead asserting that he should not be granted informer status.

IV. ANALYSIS

Case law clearly supports the notion that an informer may recover the proceeds from a forfeited vessel under the rarely-used § 962 *qui tam* lawsuit. The U.S. Supreme Court in *Quincy* and The *Three Friends* confirmed the validity of the § 962 action.[21] More recently, the Court has reiterated that the statute "remains on the books."[22]

Additionally, political factors support the continued use of the *qui tam* statute. In response to the 2011, President Obama provided American support for anti-government rebel forces in Libya. The U.S. has also led Western nations in recognizing rebel forces' efforts to oust President Bashir Assad in Syria. Suppose, for instance, that a person loyal to Assad would arm a vessel to be used to attack a rebel stronghold. The § 962 statute could be implemented by the U.S. to confiscate and recover the vessel. In light of the increasing volatility in the Middle East, our government must have the necessary means at its disposal as a safeguard. A viable *qui tam* lawsuit is an essential tool to protect America's allies and interests abroad.

Reviving the use of the statute is further justified due to the very prohibitive potential value of forfeited vessels. Confiscating ships that are armed against a friendly nation could yield the government millions of dollars in much-needed revenue. Additionally, allowing an informer to collect half of the vessel's value will encourage individuals with information to come forward and divulge the necessary details to bring about the case. This will likely increase the amount of property forfeited, something already common place under the False Claims Act whistleblower statutes.[23]

Nonetheless, there are some impediments to using the § 962 statue. There can be a murky distinction between what constitutes a permissible and illicit vessel. A ship that is supplied for commercial purposes is permitted, while one that is fitted to be armed for military purposes violates the statute. The court highlighted this challenge in *The City of Mexico*, before ultimately ruling that a ship marked for the high seas was used for a legitimate commercial purpose and therefore was not subject to the *qui tam* action.[24] Suppose for instance that a group of anti-government activists were to equip a vessel with food, water, and medication to Islamist rebels in Mali. Certainly, the activists are not launching a military expedition or supplying the rebels with ammunition. Nonetheless, their aid would be enabling the rebels to continue their assault on government and foreign forces, in this case France, who are allied with the U.S. This nuanced distinction highlights the confusion surrounding the issue, and in fact may deter the use of the *qui tam* neutrality statute.

Additionally, an individual plaintiff cannot litigate the case on his own, rather he must first "inform" the Department of Justice of the alleged violation, and then the Department must determine whether or not there is sufficient credence to commence litigation against the defendant. This can be a tremendous financial burden, and it may prove too costly for the government to investigate the case and maintain the legal costs pertaining to the lawsuit. The fact that they must distribute half of any recovery to the informer (who keep in mind has not incurred the litigation expenses) may discourage the federal government from pursuing such cases.

V. CONCLUSION

Despite some minor obstacles, § 962 *qui tam* action has strong potential to yield positive results and should therefore be examined in greater detail. A detailed study of the statute could spark greater interest in the subject and may compel Congress to update legislation to reflect the changes that have occurred over the last century. Revising *qui tam* statutes is not a novel concept; lawmakers amended the now-popular False Claims Act *qui tam* statutes[25] and more recently with the Frank-Dodd/SEC whistleblower legislation.[26] Legislators can address some of the deficiencies of the ancient *qui tam* statute by articulating who can/cannot file a *qui tam* lawsuit, defining the minimum amount of the vessel's value required to trigger a filing, requiring Department of Justice pre-approval, and finally imposing political exceptions and safe harbors.

Reviving the neutrality statute presents the federal government with an opportunity to generate vital revenue to add to the treasury. Given how close this nation was to averting the fiscal cliff, millions of dollars in potential capital cannot be taken lightly. Encouraging others to inform on violations allows the statute to be an effective catalyst to facilitate this process. By land, sea, and air, America has to assure that its security and that of its friends are not threatened. Using a *qui tam* statute may prove to be a productive way of accomplishing this objective.

---

18 *Bauer v. Mavi Marmara*, Docket No. 1:11-cv-01267, Pl.'s Compl., at ¶ 3 (D.D.C. July 11, 2011).

19 *Id.*

20 *Id.*

21 *Id.* at ¶ 15.

22 *Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 n. 1, (2000).

23 *See* 31 U.S.C. §§ 3729–3733; see also Daniel Engelberg, *False Claims*, 41 Am. Crim. L. Rev. 527, 532 (2004).

24 *The City of Mexico*, 24 F. 33, 42 (S.D.N.Y. 1885) ("The port of Savanilla was in the undisputed, peaceful possession of the insurgents. There was no blockade, or attempted blockade, of it by the lawful government. The sole object of the owners of the ship, who remained all the time in possession of her, was to deliver these military supplies at Savanilla. There was no intent to commit hostilities, or even a breach of the peace; or to disturb any rights, in person or in property, of any subject of the lawful government of Colombia.").

25 The Act was amended on October 27, 1986. *See* Pub.L. No. 99–562, § 2, 100 Stat. 3153 (1986).

26 *See* Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. No. 111–203, 124 Stat 1376 (2010).

Judge Alexander Williams Jr.: *A Retrospective*

By Amanda P. Webster, Saul Ewing LLP

On May 8th, The Honorable Alexander Williams Jr. of the U.S. District Court for the District of Maryland took senior status. He recently sat down to discuss his career with the Maryland Chapter of the Federal Bar Association.

Judge Williams was born in Washington DC in 1948. As a young boy, he spent his summers at his grandparents' house in Merrifield, Va. His grandfather was an elevator operator in a courthouse in the District. He had the opportunity to meet many lawyers and judges in the courthouse elevator, and would often slip into courtrooms during his downtime to observe trials. Williams' grandfather would come home and relay stories to his young grandson of the cases he saw and the lawyers he met. These stories laid the foundation for a future career in law.

Growing up in Washington D.C. during the civil rights era, Judge Williams had the opportunity to experience the power of the law through the social atmosphere around him. He also attributes teachers he had while growing up for kindling the flames of an interest in justice.

After graduating from high school, Judge Williams went to college at Howard University. He received both his undergraduate and juris doctorate degrees at Howard, and was able to learn from some of the "architects of civil rights." He remembers attending lectures given by James Nabrit (a prominent civil rights attorney who argued *Bolling v. Sharpe*, the companion case to *Brown v. Board of Education*), William Bryant (the first black federal chief judge), and Thurgood Marshall. These experiences helped him to shape his concept of justice.

After graduating from law school in 1973, Williams clerked for the Honorable James H. Taylor, the first black Circuit Court judge for Prince George's County, Md. Judge Williams described Judge Taylor as having a quiet demeanor and polite temperament, and admits that he had adopted much of Judge Taylor's persona on the bench.

Judge Williams' experience clerking was an invaluable one, and an experience he highly recommends to young lawyers. Since taking the bench, Judge Williams has had 36 law clerks, and a photograph of each of them lines the walls of his chambers. Judge Williams talks of his former clerks as adoptive children, and is eager to hear of their successes. He was proud to report that 30 of his 36 former clerks came to the portrait hanging celebrating his recent senior status.

Judge Williams began his legal career in private practice as a solo practitioner, which he describes as a "rich experience" that allowed him to develop his skills. He soon returned to Howard University as an adjunct professor as well, teaching criminal law, civil procedure and ethics. Similar to his former law clerks, Judge Williams' many former students are source of pride for him.

Civil service has always been of vital importance to Judge Williams. In 1977 he co-founded the J. Franklyn Bourne Bar Association, which helps to advance the status of African American lawyers in Prince George's and Montgomery Counties. He also acted as the organization's first president. Since its start, the J. Franklyn Bourne Bar Association has grown to a membership of over 300 attorneys and is the largest and strongest affiliate of the National Bar Association.

In 1987, Judge Williams was elected State's Attorney for Prince George's County, earning the distinction of being the first African American to do so. He considers himself very fortunate to have been elected to the role twice, and to have had the opportunity to be the State's Attorney in such an "exciting place" as Prince George's County.

Judge Williams went back to school and earned his masters degree in divinity from Howard in 1991. He also received a masters in ethics from Temple University in 1995. He believes this training has helped to shape his vision of justice and to "get to the bottom line" - that is, fairness and justice for all.

In 1993, President Clinton nominated Judge Williams to the federal bench, and he was confirmed in August of 1994. Working in the Federal District Court for the District of Maryland has given Judge Willimas the opportunity to learn and be inspired by his colleagues on the bench, whom he considers the "best and brightest." Their knowledge and professionalism have encouraged Judge Williams to work even harder. He believes it to be a vital responsibility of his job to be well-prepared, polite, consistent, and fair. He has never gone into a hearing without being thoroughly prepared, and believes that the lawyers he serves appreciate this quality.

He also encourages attorneys to work hard and be well-prepared. He reminds us that judges are there to listen, and it is our job to educate, particularly in difficult cases. Judge Williams admits that there are times when he must rely on the skill of a litigant, and has been impressed by the caliber of legal practice he has experienced on the federal bench.

To legal students, Judge Williams advises that there are no short cuts, the path to success is through hard work, time, and effort. He also encourages students to keep an open mind about the direction their career may take, and to talk to lawyers in many fields to learn about the options the career holds.

He finds that for many young students, the ultimate goal is to become a judge, and he stresses that this is only one career path, not the ultimate one. He acknowledges that, particularly if one comes to the bench early in life, the judiciary can be limiting in ones ability to gain experience. He encourages students to gain a broad perspective of the opportunities the law may give you.

In Judge Williams' limited spare time, he enjoys spending time with his wife, three sons, and six grandchildren. He is also a self-proclaimed "sports fanatic," and can be found at Redskins, Nationals, Wizards, Maryland Terrapins, and Howard University games!

Despite taking senior status, Judge Williams' docket is as full as ever. He predicts that once confirmation of a new judge is complete he will begin to step back from the bench, and is considering going back to teaching at Howard.

Looking back over his career, Judge Williams remarks that he is fortunate to have had "so many wonderful jobs" in Prince George's County. His roles as a solo practitioner, professor, states attorney, and judge were all "the best jobs," and have contributed to a "rich," "blessed," and "wonderful" career.

Maryland Chapter Honors Claudia Gibson with Peter A. DiRito Award

On June 6, 2013, before a full house in the United States District Court Ceremonial Courtroom, the Federal Bar Association, Maryland Chapter awarded the 2013 Peter A. DiRito Award to Clerk's Office Case Administration Manager Claudia Gibson. Court staff, judges, and lawyers alike hailed the selection of Ms. Gibson, a long-serving member of our outstanding Clerk's Office.

Gerry Gaeng, Maryland Chapter president, recognized that "sequestration and other budget difficulties have presented the Court with severe challenges. Notwithstanding these difficulties, the staff of the Clerk's Office, under the leadership of Clerk of Court Felicia Cannon, has managed to do more with less. It has stepped forward and continued to provide the outstanding service for which it long has been known." Ms. Gibson epitomizes this selfless dedication to the Court.

Ms. Gibson supervises a staff of sixteen case administrators and deputy clerks. Her position is responsible for the proper handling of all case files and all papers filed, both electronically and in hard copy. She has been instrumental in overseeing the Court's transition to an almost entirely electronic court, as well as adapting previous paper procedures to the electronic environment.

Judge J. Frederick Motz praised as unsurpassed Ms. Gibson's knowledge and professionalism. Ms. Gibson is nationally recognized as an expert on clerk's office procedures. Judge Motz emphasized that she has earned the respect of the judges of the Court, her colleagues, members of our local bar, and the community.

Clerk of Court Felicia Cannon described how Ms. Gibson consistently goes above and beyond the call of duty. She is known by the bench and Clerk's Office for being available any time, day or night, to get the job done.
Ms. Gibson regularly handles all manner of emergency requests, from midnight pleas for temporary restraining orders, to weekend admiralty law requests to arrest a ship before it leaves the harbor, to emergency responses to child abduction threats. This included a trip to the courthouse this past Christmas Eve, when the Court was closed, to handle the filing of papers for United States District Judge Ellen Hollander for an emergency temporary restraining order. Ms. Gibson even came to the courthouse to handle an emergency matter on the day her son was to be married. She arrived wearing, in what must be a first for the Court, her Mother of the Groom dress.

With typical modesty, Ms. Gibson firmly believed that the award would be given to a sitting judge, and she commented on how well deserved that would be. When her name was called as the award recipient, the Ceremonial Courtroom broke into spontaneous applause. At that point, Ms. Gibson's family, including her son Greg, daughter Melissa, and three grandchildren Adam, Christian, and Evan, joined the assembled crowd in congratulating her. Ms. Gibson took several moments to compose herself before making the long trip from the gallery to the podium. Upon receiving the award, Ms. Gibson thanked the Federal Bar Association, graciously deflecting all praise to her Clerk's Office colleagues.

Ms. Gibson's work, energy and attitude exemplify the qualities that the Peter DiRito Award is intended to recognize. The Maryland Chapter is proud to have awarded the 2013 award to Ms. Gibson.

The text of the award reads:

> In recognition of your outstanding service to the United States District Court for the District of Maryland since 1992. Your dedication, along with that of your colleagues in the Clerk's Office, has been instrumental to the Court, the judiciary, and all attorneys who practice in this Court. Your service exemplifies the highest standards in the administration of justice, enhances the federal legal profession, and promotes the betterment of society.

Introduction to Federal Practice Event Sees Great Attendance, Substantive Discussions

The Maryland Chapter sponsored an "Introduction to Federal Practice" program on April 12, 2013 at the federal courthouse in Baltimore. About 90 lawyers attended CLE sessions on jurisdiction, venue and removal, discovery; mediation, and summary judgment motions. The Clerk of the Court, Felicia Cannon, also spoke about issues of interest to the court, particularly the likely impact of funding cuts. Judge Catherine Blake and Magistrate Judges Bill Connolly, Susan Gauvey and Stephanie Gallagher participated in various parts of the program. The program ended with a swearing-in ceremony for the attendees who had not yet been sworn in to the U.S. District Court and a reception.

CALENDAR OF PROGRAMS AND EVENTS 2013-2014

October 14, 2013	**4th Annual Golf Tournament**
October 18, 2014	**8th Biennial Bench Bar Conference**
November 22, 2013	**Open Doors Program**
January 2014	**Employment Law CLE (Tentative)**
February 2014	**Black History Month Program-Thurgood Marshall Play**
March 21, 2014	**Judge's Luncheon**
April 2014	**Supreme Court Swearing In Program/Introduction to Federal Practice (Southern Division)**
May 2014	**Law Clerk Admissions Ceremony**
	DiRito Award (Tentative)
June 2014	**Annual Dinner**
July 2014	**Recent Supreme Court Decisions**
September 2014	**War of 1812/Defender's Day Program**