

Federal Judicial Center Annual Report



1984 ANNUAL REPORT
FEDERAL JUDICIAL CENTER

FEDERAL JUDICIAL CENTER

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THE FEDERAL JUDICIAL CENTER

1520 H STREET, N.W.

WASHINGTON, D. C. 20005

August 17, 1984

TO THE CHIEF JUSTICE AND MEMBERS OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES

Pursuant to the provisions of 28 U.S.C. § 623(a)(3), I respectfully submit the Annual Report of the Federal Judicial Center for fiscal 1984. The report summarizes the Center's activities since the last annual report and describes the work projected through the end of the current fiscal year.

Developments in the area of computer-aided support for the federal judicial system have been particularly important during this fiscal year. The Judicial Conference of the United States has assumed a new policy role with regard to automation, one which we welcome warmly. These developments are chronicled in the present report, which also describes our efforts to discharge the other responsibilities assigned to us by the Congress.

Both the range of our activities and their quality owe much to the sustained interest and substantial contributions of the members of the Center's Board. Their dedicated service is reflected throughout the pages of this report. We are also indebted to the members of the Judicial Conference and its committees, and to the courts, including judges, magistrates, and supporting personnel. Their contributions to our programs, requests for our services, and suggestions on how our work might be improved have this year once again proved invaluable. Similarly, we have continued to benefit from the interest in our work shown by members of Congress and the Executive Branch, and their staffs.

It is a privilege to be of service to the federal judicial system. We can do no less than reaffirm our pledge to continue our efforts and to do so with renewed dedication.

Sincerely,

A handwritten signature in cursive script that reads "A. Leo Levin".

A. Leo Levin

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INTRODUCTION

Computer-Assisted Justice: Automated Data Processing for the Federal Courts

Only a few years ago, many in the federal judicial system were hesitant to turn to computer-assisted support of case and court management. There was reluctance to utilize electronic dockets as the official court records or to utilize computers to aid in legal research. In part, this reflected the climate of the times. Even those who glimpsed the future were hesitant to move too fast or to claim too much. Thus, the Congress, in creating the Center less than twenty years ago, was prescient in its awareness that the federal judicial system would need to turn to modern technology if it was to remain effective and efficient as it grew. Yet, when the Congress created the Center and specified that the Board should explore the potential of new technologies, its phrasing of the statute was tentative and cautious. The Board of the Center was directed to “study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States” and to report back what it found.

Much has changed. The demands for automated data processing to aid the administration of justice, whether for court management, case management, or the operation of the federal probation system, are widespread and insistent. A number of factors account for this change. The world we live in has changed; one can hardly fail to be aware of the potential of modern electronics to radically transform how we go about our business. Then, too, there is an ancient, relatively simple technique of communication that accounts in large measure for the current surge in demand—word of mouth. As one judge tells another how useful he or she has found INDEX, for example, or as one clerk tells another how CVB has transformed the processing of petty offenses, there is created not only an interest in the particular application but a heightened awareness of how computers can help overall.

However, there is yet another factor that should not be forgotten. If we look back only a quarter century to compare the business of the federal courts then with the business that occupies their attention today, we cannot fail to be impressed by the difference in the volume of court cases. The growth curve has been steep. It is not simply that the figures have become larger, the order of magnitude has changed. Filings in the United States courts of appeals have doubled, doubled once again, and doubled still one more time—all in something less than twenty-five years. When we turn to the district court level, we find that more than a quarter of a million cases are filed annually in these courts, not counting petty offenses that are typically disposed of by magistrates.

Computers are needed because they can help the judges and their supporting personnel do more, better, faster. Moreover, it is important to look to the future. There is every indication that the workload will continue to increase, and it is therefore prudent to be concerned about the capacity of the system to absorb these additional increases. We need not denigrate the techniques and the procedures that were utilized in the past to appreciate the importance of the new technologies of the present. The quill pen in its day was both appropriate and adequate, not only because there were no computers but also because the administrative demands on the judiciary were so much less pressing. Development of computer software applications adequate to satisfy the needs of creating and maintaining official court records in areas as sensitive as criminal prosecutions, allocation of probation resources, presentence reports, and civil litigation of great potential impact on the economy and the society cannot be “quick and dirty.” Not only are the needs of the courts exceedingly complex, but if they are to be well served, accuracy and reliability must be of the highest order. Moreover, considerations of efficiency and economy inevitably command a high priority. The surge in demand and the need for painstaking development, combined with limited financial resources, have created problems of priorities.

The need to establish priorities, not only with respect to development but also with respect to subsequent implementation—what systems are most urgently needed and which courts will receive them first—this year brought about important changes in the role of the Judicial Conference with respect to automation. Of course, the Federal Judicial Center Board continues to play its important policy role in shaping the Center’s systems development programs. Yet, Board action is inappropriate to deal with the very complex

problems that turn on priorities of implementation; the Center Board was never expected to deal with such issues. Some new procedure for providing adequate input of the views of federal judges into policy formulation in the area of computerization was needed. The Chief Justice appointed an ad hoc study committee that ultimately recommended to the Judicial Conference that a special oversight function with respect to automation be assigned to the Subcommittee on Judicial Improvements, which would include involvement, through the Conference's Budget Committee, in the budgetary process. The Judicial Conference approved that recommendation and it has since been implemented. We warmly welcome this substantial assistance in establishing priorities that best meet the needs of the federal judicial system.

The Center has long recognized the advantages to be gained by consultation with authorities of national and international reputation in developing our medium-range and long-range planning. Such consideration would be useful in any field; in the fast-moving world of computers it is virtually a necessity. A generation of computers is said to last from five to seven years. The impact of very recent technological developments, of precipitous and dramatic changes in the relative cost of hardware and of software development, has already been dramatic. To cope with these changes, to assure ourselves that we are taking advantage of the benefits and efficiencies that the latest technological developments can offer, we have this year revitalized the Center's Systems Advisory Council, which consults from time to time with senior Center staff concerning broad policy and strategy questions.

We are also in the debt of the Federal Bureau of Investigation and its director, William Webster, for assistance in developing a strategy to ensure an adequate level of security for sensitive systems that serve the needs of the federal judicial system. Even without a detailed review of the computer security problems experienced by many organizations, it can readily be recognized that sensitive information concerning presentence reports prepared by probation officers, indictments, and jury verdicts must be protected in the most stringent manner possible and practicable. Effective operation of the judicial process, indeed of law enforcement itself, can readily be aborted with anything less.

As the pages of this report will detail, we have moved to decentralize the computers serving the federal courts, a development strategy that takes advantage of lower costs of hardware and that places

within each court powerful equipment that can serve its data-processing needs. It would make no sense at all to have every court develop its own software for the identical function, reinventing the wheel many times over. Thus our development strategy calls for software to be developed nationally for those applications that are widely utilized in federal courts. We recognize, however, the utility of providing for flexibility in the individual courts to meet local needs and to reflect particular local conditions and interests, and we warmly applaud and encourage provision for such local initiatives.

The Center has met the challenge of moving forward as rapidly as possible, consistent with the level of high quality that solution of these problems demands. We continue to work closely with our sister agency, the Administrative Office of the United States Courts, which is charged with the installation and expansion of those systems that are ultimately declared both cost-effective and operational. We will, in the future, make every effort to serve the courts' computer-related needs in a manner consistent with and worthy of the confidence placed in us.

I. TRIAL COURTS

Whether viewed from the perspective of personnel or of workload, the trial courts are by far the largest component of the federal judicial system. There were 501 active and 184 senior district judges during most of fiscal 1984. Moreover, the number of judges will increase during the coming fiscal year. The Bankruptcy Amendments and Federal Judgeship Act of 1984, which created sixty-one new district court judgeships, became law on July 10, 1984. The act also eased somewhat the requirements for taking senior status. Of course, it is well-known that senior judges are "active" as well; they bear a significant share of the trial workload, participate actively in Judicial Conference committee work, and constitute an important segment of the Center's clientele.

These figures alone hardly provide an adequate appreciation of the order of magnitude of the federal trial court system. In a statistical report filed in 1984, the director of the Administrative Office reported over one-quarter of a million civil filings in the course of a single year, to which one must add the large number of criminal prosecutions. Magistrates play an important role in dealing with this workload. There were 457 full- and part-time magistrates authorized for fiscal 1984.

The act referred to above also provided that "the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district," and the most recent report shows an annual rate of almost one-half million estate filings.

Understandably, a vast support network is needed to deal with a workload of this magnitude: Probation officers, clerks of court, and deputies are all required. They need training on a continuing basis, and the system can hardly be expected to function efficiently without adequate computer support.

The Center has focused a great deal of its energy on servicing the trial courts; the pages that follow document that effort as it unfolded in 1984.

A. Continuing Education and Training Programs

The Center provides a wide range of educational services to district judges, bankruptcy judges, magistrates, and supporting personnel of the trial courts. National and regional seminars and workshops, in-court instruction, manuals and monographs, and a circulating collection of videotapes, films, and audiocassettes treat problems of national scope in some instances and meet specific local court needs in others. Trial court personnel also benefit from the Center's program of support for attendance at courses offered by other educational institutions, which supplement the programs that the Center develops itself. The education of judicial officers is the Center's first priority, with the expectation that every judge will have an opportunity to attend at least one seminar or workshop each fiscal year. This is not possible, however, with respect to all supporting personnel, given their much larger numbers and the limits on the Center's staff and resources. Of course, continuing education in some form, including audiovisual or printed materials, is regularly available to every full-time member of the federal judicial system.

Orientation Programs for Newly Appointed District Judges. District judges come to the bench with a variety of backgrounds. Some have had extensive criminal law experience; some have specialized in particular areas of civil litigation; some have had judicial experience—but most have not. Virtually all new judges feel the need for substantial orientation. Typically, the first phase of such orientation comes from experienced colleagues within the court, a process the Center tries to assist. The second phase involves a regional video orientation program. Finally, there is a week-long seminar conducted on a national basis in Washington, D.C. Each of these phases is described in greater detail below.

The best-known Center orientation program is the week-long Washington, D.C., seminar for newly appointed district judges, held when the number of such judges is large enough to constitute a class of approximately thirty. The seminar is normally held about once a year, unless special circumstances such as an omnibus judgeship act dictate otherwise. The week-long orientation seminar,

in which the Chief Justice participates, is traditionally held at the Center's Dolley Madison House headquarters in Washington, D.C.

The April 1984 seminar was attended by twenty-nine new district judges and one judge of the Court of International Trade. (Other judges are sometimes included on a space-available basis; this year's program included one judge from the Claims Court, four from the Tax Court, a justice of the High Court of New Zealand, and several members of the Judge Advocate General's Corps.) The seminar provided an intensive six-day treatment of topics valuable to the new federal trial judge. The curriculum included information on trial and pretrial management of civil and criminal cases, special problems of jury and nonjury trials, the federal rules of evidence, judicial ethics, and managing stress. The seminar also offered a framework for analyzing such subjects as antitrust litigation, fraud and civil liability under the securities laws, class actions, employment discrimination, and the law of search and seizure. A special panel on "the trial judge and the correctional system" brought together the director of the Bureau of Prisons, the chairman of the Parole Commission, and the chief of the Probation Division of the Administrative Office of the United States Courts, each of whom provided information concerning the operation of their respective organizations relevant to the sentencing process. The panel also highlighted the perspectives brought to the sentencing process by seasoned trial judges.

The Center held four regional video seminars for newly appointed judges in fiscal 1984. At these programs, groups of about four or five new judges, but sometimes as many as ten or more, meet under the tutelage of an experienced judge to view and to discuss a series of instructional videotapes. The atmosphere is relatively informal, questions are encouraged, and the size of the group makes it feasible to interrupt the tapes and to focus discussion on topics of particular interest to the participants. Ideally, the judges attend these seminars soon after appointment. The emphasis is on procedural and management areas with which new judges are likely to be least familiar; moreover, this emphasis has made it possible to enrich the curriculum of the week-long seminar in Washington.

These regional seminars devote one day to a tour of a nearby federal correctional facility and instruction on federal sentencing practices and policies. Thus, new judges are able to visit a federal correctional institution early in their careers. This accords with the 1976 Judicial Conference resolution "that the judges of the district

courts, as soon as feasible after their appointment and periodically thereafter, shall make every effort to visit the various Federal correctional institutions that serve their respective courts." The sentencing portion of the program is typically under the guidance of a judge on the Committee on the Administration of the Probation System of the Judicial Conference of the United States. Representatives of the Bureau of Prisons and the Parole Commission and a local chief probation officer are sometimes present.

Experienced judges, sitting in the district to which the new judge is appointed, continue to provide significant help to the new judge; the Center has tried to assist this process in several ways. An in-court orientation program was developed in 1978 by district judge members of the Center's Board. These judges developed a checklist of items to be used by the new judge and the chief judge of the district in tailoring an informal orientation program for that new judge. Copies of the checklist and information concerning the purpose of the in-court orientation program are provided promptly after nomination both to the new judge and to the chief judge of the court.

In 1984, the Center published a study by its Research Division of in-court orientation programs in federal courts, including the use of the checklist. The report, *In-Court Orientation Programs in the Federal District Courts*, included a number of suggestions designed to enhance the program. It has commanded substantial interest, particularly among chief district judges.

In addition to these various orientation programs, the Center provides newly appointed district judges with a wide range of printed and audiovisual materials. The resources of the Center's media library supplement the Center's extensive list of publications and make it possible for the new judges to use an assortment of training aids that respond to their particular needs and interests.

Continuing Education Programs for United States District Judges. The Center's regional workshops for United States district judges are a central element in the discharge of its statutory responsibility to conduct "programs of continuing education and training for personnel of the judicial branch of the Government." Typically, these workshops are organized by circuit, although some are held jointly with judges of a contiguous circuit. Planning groups of district judges, appointed by the chief circuit judge, work

with the Center to develop the programs for the workshops. To ensure that the programs respond to the needs and interests of the participants, all district judges in the circuit are afforded the opportunity to indicate their preferences with respect to subject matter. The response rate is high and the interests reflected are central in the development of workshop curricula. On occasion, the Center has featured more than one course at the same time, giving the judges choices among electives.

Workshops also offer the opportunity to present information on subjects that the Judicial Conference has identified as deserving of special consideration by the federal judiciary. For example, the Committee on Court Administration reported to the Conference at its September 1983 meeting that the Subcommittee on Judicial Improvements had considered the problem of "frivolous or meritless litigation in the courts," concluding that "existing tools were sufficient [to deal with the problem] but not fully understood or utilized." Thus, the committee asked the Center to provide instruction on those "tools," and such a presentation was on the agenda of several circuit workshops in 1984. For similar reasons, juror utilization and the Judicial Conference's equal employment opportunity program have been included in earlier workshops.

In fiscal 1984 the Center, working with the Clerks Division of the Administrative Office, sponsored five civil case management workshops, attended by federal trial judges, magistrates, clerks of court, and chief deputy and deputy clerks. These workshops provide a forum for the discussion of case management perspectives and approaches and for the exchange of information about techniques that have proved successful. One of the workshops was designed to give special attention to improved juror utilization. These workshops have been undertaken in response to the directive of the Judicial Conference in March 1982 that federal courts be provided with the means of ensuring the expeditious processing of civil litigation.

Closely related to the joint workshops described above was an experimental effort to apply the general principles of case management to a particular type of case, specifically, asbestos litigation. In June 1984 the Center, working with the Clerks Division of the Administrative Office, invited judges, magistrates, and clerks from federal district courts with large numbers of asbestos-related cases to a conference in which ideas and information concerning techniques were exchanged. The conferees discussed such issues as use

of standardized procedures, coordination of counsel for multiple parties, pretrial discovery, settlement, pretrial orders and rulings, and trial. There was striking agreement that asbestos litigation is basically amenable to the same types of techniques that are successful in other types of litigation presenting multiple parties and technical issues. In preparation for the conference, the sponsors prepared, and the Center has available, a summary of standing orders used to manage this type of case.

Cost of Litigation; Frivolous Suits; the 1983 Amendments to the Federal Rules of Civil Procedure. The August 1983 amendments to the Federal Rules of Civil Procedure introduced substantial changes that were designed to emphasize lawyer responsibility in filing and defending claims, and in making and responding to discovery requests. They also included amendments intended to promote early judicial control of civil litigation in general and the discovery process in particular. The amendments mandated, in appropriate situations, greater use of sanctions. Taken as a whole, the amendments were designed to ensure that civil litigation in federal courts would be disposed of with greater dispatch, less cost to the litigants, and no sacrifice in the quality of justice.

The Center has taken several steps to ensure judicial familiarity with the amended rules, how they are intended to operate, and the potential inherent in the changes they effect. The Chief Justice, as chairman of the Center's Board, convened a small workshop of judges, practicing attorneys, and law professors at the Center in November 1983 to explore the causes of discovery abuse and to consider how the new rules may help to alleviate present problems. The Center is developing a two-part video program, based on the seminar's proceedings, which will be made available for judges' use in local educational programs, including bench/bar seminars and similar occasions. The Center also plans to complete this year another video program in which five experienced district judges offer brief explanations of particular techniques they find helpful in managing civil litigation, again with some emphasis on the 1983 rules amendments. Finally, the amendments to the rules are on the list of topics for presentation at circuit workshops.

Special Summer Programs. From time to time, the Center has developed its own special summer educational programs exclusively for federal district and circuit judges. In the summer of 1984, the Center held a one-week seminar for federal judges on the campus of the University of Wisconsin Law School, which focused on the

problems judges confront in dealing with litigation involving economic issues. There was heavy emphasis on statistical proof, a subject of increasing importance to federal trial and appellate judges, and one that appears with some frequency in a variety of contexts, such as antitrust litigation, security litigation, and employment discrimination cases. The seminar also placed substantial emphasis on problems of evidence that arise in such cases, including those related to expert testimony.

The seminar examined these questions through a series of case studies, which, along with related readings and judicial opinions, illuminated such areas as resale price maintenance, securities market manipulations, discrimination in hiring and promotion, and wage claims based on theories of "comparable worth." Each day a different topic was treated, first in small groups chaired by a district judge and a law professor with law and economics expertise and then in plenary sessions of lectures on the issues raised by the case studies. The seminar's planning committee, appointed by the Chief Justice, was chaired by Chief Judge Howard C. Bratton of the District of New Mexico and included Chief Judge Warren K. Urbom of the District of Nebraska and Judge Louis H. Pollak of the Eastern District of Pennsylvania.

State-Federal Programs. The Center, through its Inter-Judicial Affairs and Information Services Division, has supported the work of state-federal judicial councils since they were created in 1971 at the suggestion of Chief Justice Burger. In fiscal 1984, the Center, in response to a request from the Georgia State-Federal Judicial Council, arranged for a presentation to state and federal trial judges on habeas corpus cases, a source of considerable state-federal tension. The program not only treated the law of postconviction relief but also reviewed the missteps that can characterize legitimate postconviction challenges to state criminal proceedings. The enthusiasm with which the Georgia judges received the program led to requests for similar programs, which have been held or are planned in conjunction with council meetings in Mississippi, Florida, and Alabama. Considerable interest in this type of program has been generated in other circuits as well, and it is expected that the number of state-federal programs will increase in fiscal 1985.

Education and Training Publications. The Center provides a range of educational monographs and manuals on issues of interest to federal trial judges. One that enjoys especially wide use is the *Manual on Employment Discrimination and Civil Rights Actions in*

the Federal Courts, prepared by Judge Charles R. Richey of the District of the District of Columbia. The third edition of the manual was published in 1983, and another revision is planned for 1984.

Beginning in 1982, the Center commissioned a series of "annotated bibliographies/monographs" designed to provide judges with a quick overview of a particular topic along with a guide to more extensive literature. The series is designed to cover such subjects as fraud and civil liability under the securities acts, appeals in social security benefits cases, employment discrimination, and statistics and their use in litigation. The first of this series, "*Fraud*" and *Civil Liability under the Federal Securities Laws*, by Professor Louis Loss, was published in August 1983; *Major Issues in the Federal Law of Employment Discrimination*, by Professor George Rutherglen, appeared in September 1983.

These publications, with their bibliographical emphasis, build upon a series of monographs published by the Center on such topics as the "rule of reason" in antitrust cases, legal issues arising under the "Black Lung Act" of 1969 as amended, recurring problems in the trial of a criminal action, and an overview of class actions.

Bankruptcy Judges. From the time the Supreme Court held unconstitutional certain jurisdictional provisions of the 1978 Bankruptcy Reform Act (*Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)), the Center was obliged to assume a dual obligation with respect to continuing education in the field of bankruptcy. As was detailed in last year's annual report, it was important to keep district judges apprised of developments in bankruptcy law, including the 1983 model rule promulgated by the Judicial Conference to allow continued operation of the bankruptcy system. In addition, because the *Marathon* decision and the emergency rule that followed affected only a relatively small segment of the jurisdiction of bankruptcy judges, much remained for these judges to do, and their workload continued to be heavy. Accordingly, the Center has continued its various programs, including orientation and continuing education for bankruptcy judges and, as described below, for other bankruptcy personnel as well. With the passage of bankruptcy legislation by the Congress in the summer of 1984, the Center began intensive planning to make available to district court judges appropriate educational programs to assist them in meeting their bankruptcy responsibilities.

The primary means of providing orientation for new bankruptcy judges is the video orientation seminar, conducted under the guidance of an experienced bankruptcy judge or law professor. One such seminar was held in 1984 and treated such basic topics as elements of the Bankruptcy Code, debtors, creditors' fees and allowances, the administration of the bankruptcy court system, and effective case management. During fiscal 1984, the Center conducted a week-long national seminar for newly appointed bankruptcy judges in Washington, D.C. National seminars, intended to be held on a biennial cycle, are designed to supplement the video orientation programs.

In 1984, the Center also sponsored three regional seminars for bankruptcy judges. The curriculum included Chapters 11 and 13 of the Bankruptcy Code, consumer-related problems, attorneys' fees, case management, the Federal Rules of Evidence, and judicial ethics.

Magistrates. When Congress created the position of United States magistrate in 1968, it specifically directed the Center to provide both full-time and part-time magistrates with "periodic training programs and seminars," and further provided that an introductory training program be offered within one year of a magistrate's appointment (28 U.S.C. § 637). In accordance with that directive, the Center held three seminars in fiscal 1984 for full-time magistrates and for part-time magistrates with substantial workloads. The seminars, held on a regional basis, covered such diverse topics as case settlement techniques, the judicial role in lawyer discipline, the work-product doctrine, problems that arise in cases under 42 U.S.C. § 1983 filed by prisoners pro se, and social security disability cases.

In developing seminar curricula for magistrates, the Center utilizes a menu of topics similar to that used for surveying the needs of district judges. Additionally, the Center works closely with the Magistrates Division of the Administrative Office and the Judicial Conference Committee on the Administration of the Magistrates System. Where possible, the Center arranges for a member of the committee to serve as seminar chairman. This year, the Center conducted four video orientation seminars for newly appointed full-time and part-time magistrates. The orientation seminars include consideration of the magistrates' managerial and administrative duties, a review of federal criminal and civil procedural rules, and discussion of the Federal Rules of Evidence.

Clerks of Court and Supporting Personnel. Approximately half of the supporting personnel in federal trial court clerks' offices have some direct contact with one or more Center educational programs each year, sometimes in seminars or workshops and sometimes in local training, organized as an in-court program. This is in addition to brief but frequent in-court programs organized by local training coordinators. Effective training is necessary to allow personnel to keep abreast of changes dictated by legislation, new requirements created by directives of the Judicial Conference or by Administrative Office policies, and changing patterns of criminal prosecutions and civil litigation. The clerks of court have established an education and training committee to provide advice to the Center on clerks' training needs.

In 1984, the Center sponsored seven seminars or workshops for clerks of court, chief deputy clerks, and deputy clerks of the district and bankruptcy courts. These seminars covered a range of topics, such as personnel management, the role of automation and technology in judicial administration, case processing, and the use of statistics in management analysis. Also, as noted above, clerks of district courts and, in some cases, chief deputy clerks attended joint case management workshops with district judges and magistrates, to share civil case management techniques and perspectives.

The Center also meets more discrete training needs as they arise. A series of specialized seminars and workshops addressed specific needs of district court appeals clerks and procurement clerks. During this fiscal year, the Center also sponsored several meetings of those individuals in clerks' offices with primary responsibility for operating the computerized case management systems developed by the Center.

As a final example of meeting highly specialized training needs, the Center this year arranged seven brief on-site training programs for operators of electronic sound-recording equipment. The Center had conducted the 1982-83 experiment, mandated by statute, on which the Judicial Conference based its decision to include electronic sound recording as one method of official court reporting, subject to the approval of the district judge. In 1984, the Administrative Office began implementation of this new program, and the Center, by virtue of its prior experience in this area gained during the course of conducting the experiment, was in a position to assist the Administrative Office by providing the required training.

Federal Public and Community Defenders, Assistants, and Investigators. Federal public and community defenders, assistants, and investigators are supported by funds administered within the federal judicial budget, and thus fall within the scope of the Center's training responsibilities. (By contrast, assistant United States attorneys are provided intensive instruction in trial advocacy by the Department of Justice.)

In December 1983, the Center presented an orientation seminar for assistant federal defenders at the Federal Law Enforcement Training Center at Glynco, Georgia. The program, developed in cooperation with a planning group of federal and community defenders, was a rigorous and comprehensive five-day treatment of the theory and practice of federal criminal defense, including, but not limited to, preliminary hearings, discovery, motions to suppress, the Federal Rules of Evidence, jury trials, sentencing, and posttrial motions.

The Center also sponsored the attendance of twenty-eight newly designated assistant federal defenders at a special program organized by the National Association of Criminal Defense Lawyers on the campus of the University of San Diego Law School. Unlike the Glynco program, this intensive two-week training session concentrates almost exclusively on the development of advanced advocacy skills in all facets of a criminal defense. Taken together, the Glynco and the San Diego programs provided new assistant defenders a comprehensive introduction to criminal defense work. In addition, federal defenders have access to the Center's tuition support program.

The Center also plans a seminar for defender administrative assistants late in fiscal 1984.

B. Desk and Research Aids for United States District Courts

Bench Book for United States District Court Judges. The *Bench Book* is a manual designed for ready reference by federal district judges and magistrates on the bench or in chambers during the course of litigation. It includes, for example, model sentencing forms, a model charge to a grand jury, useful data on Bureau of Prisons institutions, forms of oaths, mortality tables, and a number of checklists covering such procedures as taking pleas of guilty or

nolo contendere, setting bail, and assigning counsel or allowing pro se representation. It is published in a loose-leaf format that readily accommodates both new material and revisions; dated pages and a dated table of contents indicate the current materials.

The second edition of the *Bench Book* includes fifty-four chapters. To make the material available to federal judges as rapidly as possible, these chapters have been distributed as they became available. During fiscal 1984, work on the *Bench Book* continued; with the publication of the final three chapters, the second edition will be completed. Early in fiscal 1985, the *Bench Book* committee will meet to consider the need for changes and to evaluate the need for a third edition.

The *Bench Book* committee consists of five trial judges who have served on the Board of the Center. The committee is chaired by Chief Judge William S. Sessions of the Western District of Texas and includes Chief Judge Frank McGarr of the Northern District of Illinois, Chief Judge Aubrey E. Robinson, Jr., of the District of Columbia, Judge Robert H. Schnacke of the Northern District of California, and Judge Donald S. Voorhees of the Western District of Washington. This project is a responsibility of the Center's Division of Inter-Judicial Affairs and Information Services.

Bench Comments. This service, which was first approved by the Board in 1981, consists of two- or three-page advisories that attempt to bring to the attention of busy trial judges and magistrates trends in appellate treatment of procedural problems encountered in trial. The purpose of these comments is to alert the trial judge to problems that, unattended, might result in reversal followed by the time and expense of another trial. Prior to publication, each *Bench Comment*, whether prepared by a judge or by Center staff, is reviewed by several judges regarded as especially knowledgeable about the particular topic covered. *Bench Comments* do not represent official policy, nor are they to be cited; they include reference to original sources and are provided to federal judges for information only.

Bench Comments distributed in fiscal 1984 dealt with such topics as the duty of the court to advise defendants who are pleading guilty or nolo contendere that they may be ordered to make restitution; the requirement that a unanimous jury verdict may not be waived

by the defendant; recent developments regarding standards and procedures for barring the public from the courtroom during a criminal trial; and the disclosure of presentence reports to third parties.

Chambers to Chambers. This series, inaugurated in 1983, is designed to make it possible for district court judges, bankruptcy judges, and magistrates to learn of case management and office management techniques that their colleagues have found helpful. It is, in a sense, the management analogue to *Bench Comments*. Every issue of *Chambers to Chambers* is reviewed prior to distribution by several federal judges who have relevant experience in the subject matter. Like *Bench Comments*, *Chambers to Chambers* does not represent official Center policy.

Subjects discussed in *Chambers to Chambers* during fiscal 1984 included alternative dispute resolution mechanisms developed pursuant to rule 16 (c) (7) of the Federal Rules of Civil Procedure; the use of narrative statements as direct testimony; and a suggested checklist for the inquiry of jointly represented codefendants as required by rule 44(c) of the Federal Rules of Criminal Procedure.

Manuals and Handbooks. The various manuals and handbooks the Center has developed since 1977 reflect the reality that continuing education can take many forms. Continuing demand for these publications, including the *Law Clerk Handbook* and the *Handbook for Federal Judges' Secretaries* (revised in 1983), attests to their utility. Other manuals, such as the *Desk Book for Chief Judges of United States District Courts* (discussed below), are either in production or scheduled for publication early in fiscal 1985.

Some Center manuals are specially commissioned; others are based on workshops designed, in part, with a view toward production of a manual based on the curriculum. *Guidelines for Docket Clerks*, which outlines practices and procedures shown to have been effective in processing civil and criminal cases, is an example of the latter. The Center plans to publish a juror utilization manual in 1984, and it is currently working with district and appellate clerks to develop a manual of suggested procedures for district court deputy clerks responsible for preparing cases for the courts of appeals. Finally, the Center worked with several bankruptcy clerks to develop a manual for bankruptcy court fiscal clerks.

C. Automated Case and Court Management Support for District Courts

With the publication in 1983 of the first draft of a "Five-Year Plan for Automation in the United States Courts," which became the basis for the Center's development program, the Center committed itself to the decentralization of computing resources in the courts. Center efforts during fiscal 1984 were directed to the implementation of decentralized computing. Of course, the development and testing of applications that can serve the needs of courts, and do so with a level of reliability and completeness that allows, for example, courts to rely on electronic dockets as a substitute for manual dockets, is a long and painstaking process that cannot be accomplished in the course of a single fiscal year. That process must begin with a careful examination of existing paper flow; it must take into account the desirability of uniformity among courts in the interests of efficiency and economy; and it must ask how much uniformity is too much. Moreover, all of these steps—and others—must precede such technical phases as systems design and programming.

In all of this, the Center works closely with the Administrative Office. The basic division of responsibility between the two agencies remains unchanged: The Center develops and tests new systems while the Administrative Office maintains, enhances, and expands the use of operational systems.

Civil Case Management System. In fiscal 1984 the Center, with the assistance of the Administrative Office, selected new decentralized hardware and operating software for the civil case management system. Operating software is sometimes viewed as providing the "tools" that make specific applications possible; it is to be distinguished from the software that must be developed for the specific applications themselves. Development of the latter, tailored to the needs of federal district courts, remains a major task yet to be accomplished. However, when completed, the courts will have available a totally electronic civil docketing system designed to operate on computers located within the individual courts. Three metropolitan courts have been selected as pilot courts for the new civil docketing system: the District of Arizona, the District of the District of Columbia, and the Northern District of Georgia.

The Center continues to be responsible for supporting the Courtran CIVIL system, now providing limited support to six metropolitan courts. These six courts represented approximately 12 percent of the civil case filings during the year ending June 30, 1983.

To guide the Center's development staff in its effort to produce an efficient civil case tracking, docketing, and reporting system, the Center relies not only on the pilot courts but on a larger group known as the district court users' group. Thus, a wide spectrum of the potential beneficiaries of automation to help civil case management will have had a role in shaping its development.

In the interest of efficiency, Center staff will base the core programs of the full-docketing civil system on programs and data base structures recently developed for the Center's appellate information management system (New AIMS), a system that is described below in the section on the courts of appeals. The Center is aware, of course, of the many differences that exist between appellate cases and civil cases at the trial level; there is much in the way of analysis and system design that must precede the writing of the computer code that will, finally, constitute the full-docketing system. Yet, following this course of action—utilizing what is commonly referred to as an “integrated case management system”—is expected to yield both economies of time and of development resources.

The Development of Administrative Applications. From time to time, the Center has received numerous requests from individual courts to provide general administrative support to the clerks' offices through automation of basic functions such as personnel records, physical property inventory, court reporter management information, and attorney roll and admissions requirements.

In response to these demands, the Center in fiscal 1984 developed a standard software offering for the courts, covering all the basic functions save one. It is expected that, ultimately, the complete set of administrative applications will be supplied as a standard package and operate on stand-alone computers that will be supplied to each court by the Administrative Office.

The attorney roll, property, and personnel systems are receiving their first tests in the courts of appeals for the Fourth, Ninth, and Tenth Circuits. Cost and benefit studies will be completed as soon

as possible. In addition, the total package of administrative applications will be thoroughly tested in district courts by Center staff working in conjunction with the district courts of Eastern Michigan, Nebraska, New Jersey, and Southern Texas.

Providing for Training in Automation. With the advent of decentralized computing in the courts, the Center has had to assume responsibility for providing adequate training to court personnel who will manage the new hardware and software systems.

Some aspects of technical training have a systemwide impact, for the same skills must be learned by those who will be responsible for court computers, regardless of the court or of the office in which the machinery will be installed. For example, the Center's system administration training and computer literacy training are provided to personnel responsible for any aspect of computer operation. Other training needs are specific to the particular task the application software is to perform and separate training materials must be developed for each. The Center will produce these materials for the various systems it is developing and will be responsible for this training in the pilot courts with which it will work, while the Administrative Office will accomplish this specific training for the courts in which it installs those systems that have been declared operational.

D. Automated Case and Court Management Support for Bankruptcy Courts

The work of the bankruptcy courts, high in volume and in some of its administrative aspects highly repetitive, appears particularly suited to receive computer support. In 1984, the Center accepted responsibility for developing a system—BANCAP—that would serve the administrative and case-processing needs of bankruptcy courts.

The Center's BANCAP project will support the litigative functions of these courts by making use of the basic software developed for the courts of appeals and the district courts. In addition, the BANCAP project will make available an enhanced facility for the production and mailing of notices to meet the needs of the court and the parties.

The Administrative Office has for some time been providing some of the largest bankruptcy courts with automation support, more limited than that which the Center has undertaken to develop. The number of bankruptcy courts being served by the Administrative Office is expected to reach sixteen during the course of fiscal 1985. This service will not be affected by the Center's project.

In fiscal 1984, the Center selected three pilot bankruptcy courts, the Western District of New York, the Western District of Texas, and the Western District of Washington.

E. Management of the District Courts

Chief Judge Orientation. In 1984, the Center continued to assist in the orientation of newly elevated chief judges of all district courts. The directors of the Center and the Administrative Office invite every newly elevated chief district judge to visit their respective agencies. These visits have proved useful in acquainting these chief judges with the aspects of our work that are relevant to their newly assumed administrative obligations. This program was started in 1980 as a result of a suggestion developed at the Conference of Metropolitan District Chief Judges.

In 1984, the Center also published the *Desk Book for Chief Judges of United States District Courts*. Prepared in close consultation with current and former chief district judges, as well as with the members of the Conference of Metropolitan District Chief Judges, the *Desk Book* should be especially helpful to those newly elevated. It is designed for all chief judges, whether or not they serve in metropolitan courts. It provides chief judges with a perspective on their place within the scheme of federal judicial administration; describes the agencies of federal judicial administration; reviews the chief judges' relationships with other judges, officers, and employees of the court; and details the chief judges' role with respect to various aspects of federal district court administration, including case management, personnel management, procurement and construction, court security, and media and bar relations. The *Desk Book* references official policies and guidelines where they exist and provides suggestions and approaches to court management found useful by experienced chief judges.

Management Teams in District Courts. For some time, Center studies of the dynamics of district court case management have

emphasized the important role of the chief district judge in achieving effective case management. More recently, the Center analyzed alternative administrative structures in the district courts when proposals for district court executives were still pending, and has since described the impact of the pilot district court executive program.

On March 6 and 7, 1984, the Center invited the chief judges and district executives from the pilot district courts to meet with members of its Research Division. The purpose of the meeting was threefold: to learn what the experiences of the pilot districts had been, to provide the chief judges and executives an opportunity to share views, and to consider what the future might hold for the pilot districts and others. A Center staff paper, *The District Court Executive Pilot Program: A Report on the Preliminary Experience in Five Federal Courts*, discusses the patterns that emerged from that meeting.

The chief judge and clerk of court (or district court executive) constitute a management team, and the Center has developed several programs to respond to their needs. The Center, for example, worked with the Ninth Circuit to sponsor an April 1984 management seminar for its chief district judges and clerks of court, held in conjunction with a regular meeting of those two groups. The seminar provided an opportunity for these "management teams" to explore court management problems that are similar to those in other "professionally dominated organizations," such as medical and academic institutions.

Chief district judges and clerks of court of the pilot courts in the Center's District Court Automation Project met at the Center in June 1984 for an experimental program, designed in response to several chief judges' requests for an overview of the Center's court automation plans and for insights relevant to how a court can prepare itself—both organizationally and administratively—for automation.

Conference of Metropolitan District Chief Judges. The Conference of Metropolitan District Chief Judges, an integral part of the Center's judicial educational program, consists of the chief judges of district courts with six or more authorized judgeships. The conference meets semiannually to allow its members to hear reports on developments affecting large district courts, and to share informa-

tion concerning techniques that have proven successful to individual members. Among the subjects considered by the conference in fiscal 1984 were the nature of information technology and automation plans for the federal courts, the changing administrative burdens of chief district judges, the work of the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, the management of the individual calendar, and court reporter management plans. The chairman of the conference is the Center's director emeritus, Judge Walter E. Hoffman of the Eastern District of Virginia. The Center's deputy director serves as the conference's executive secretary.

Local Rules. Both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure make explicit provision for local rules designed to accommodate local preferences and practices within the national framework. Understandably, most, if not all, United States district courts have promulgated local rules. Moreover, as the 1983 amendments to the Federal Rules of Civil Procedure make explicit, national rules are sometimes drafted with a view to flexibility in their implementation in the light of local conditions, as reflected in local rules.

During fiscal 1984, the Center's Information Services Office assumed responsibility for the collection and maintenance of the Local Rules Index, a function initiated by the Clerks Division of the Administrative Office. Utilizing an automated data base, the Center is now prepared to respond to inquiries concerning the content of local rules governing a wide variety of subjects relevant to district court administration and litigation practices. The service is expected to be of particular utility to courts that are considering revisions in their own rules. This service has recently been expanded to include appellate court local rules as well.

During the past year the district courts have devoted increased attention to specific provisions of local rules, and the Center has attempted to be of service to them.

One of the subjects of particular interest is addressed in a 1984 Center staff paper, *District Court Implementation of Amended Federal Civil Rule 16: A Report on New Local Rules*. Rule 16, as amended in 1983, calls for increased use of scheduling orders to manage caseloads. The rule specifically looks to local initiative, as reflected in local rules, to control the reach of the national rule

and to fix the role of magistrates in its implementation. The Center study reported that over a six-month period approximately 50 percent of the district courts adopted new local rules that flesh out the provisions of the amended national rule. The report analyzes and comments on the approaches taken and presents a sample of the local rules to date.

Another area of special local rules activity involves court-annexed arbitration. Several courts are preparing to move on this front with local versions of the processes described in the Center's 1983 report, *Evaluation of Court-Annexed Arbitration in Three Federal District Courts*. Drawing on information gathered from those courts, the Center has reviewed draft local rules and offered suggestions to several courts that are considering adopting arbitration programs. It is expected that the number of participating courts will grow to ten during the next year.

A third area receiving increased attention is the use of partial filing fees in prisoner petition cases. Several courts have now adopted local rules that call for reducing filing fees rather than waiving them altogether, particularly in prisoner cases, where the full fee might be too burdensome but where a small fee can be paid and will act as a mild test of seriousness of purpose. A report describing the operation of such rules in several courts has been prepared for publication. In addition to describing experience with the rules, the report suggests additional research to assess the effectiveness of the rule in deterring frivolous cases without obstructing serious ones.

F. Research on the Trial Litigative Process

Alternatives to Litigation. Litigation processes in federal district courts have been the subjects of many of the Center's research projects. Much of this work has been cited by the Advisory Committee on the Rules of Civil Procedure in the official notes to recent amendments of the rules; some has been referred to elsewhere in this report. Work in this area continues, but the focus has shifted to place increased emphasis on what are sometimes referred to as alternatives to litigation. In some respects, the term is misleading. The alternatives studied by the Center and described below are more accurately described as alternatives to trial, as they are applicable to cases in which litigation has already been instituted and discovery is proceeding. The desire to avoid an unrec-

essary trial is shared by lawyers, litigants, and judges. The search for satisfactory alternatives has been widespread, and many techniques have been tried. Describing such techniques and sharing the information that exists serve a useful function, as does rigorous empirical analysis of the extent to which a particular procedure actually saves trial time or speeds disposition. The Center has been involved in both types of effort.

Following up on its 1983 study of the mediation program in the Eastern District of Michigan, the Center has prepared for publication early in 1985 a paper describing the current operation of that program and the impressions of judges and lawyers as to its effectiveness.

Available statistical data are too few to permit reliable quantitative evaluation of the program (288 cases in 1982), but the judges interviewed in connection with the earlier report and with the most recent study had favorable impressions of the program's effectiveness in diverting cases from trial, conserving judicial resources, and reducing the costs of litigation to the parties.

A survey of more than one hundred attorneys who had participated in the program found that almost all viewed the mediation program as a useful tool for encouraging their clients to consider settlement and believed that the time spent on the mediation process is recoverable as a result of faster settlements or reduction in trial preparation.

The Center's inquiry was also extended to the mediation program in the Western District of Washington; here, too, a report has been prepared that describes the program developed jointly by the court and a local chapter of the Federal Bar Association. Initially established as a temporary means to meet congestion problems resulting from increasing filings and vacant judgeships, the program was later made permanent. The program is of special interest because it provides for an escalating series of steps including negotiation, mediation, and arbitration. Interestingly, although the judges report very mixed reactions to the program's benefits and possibilities, the bar association remains enthusiastic and has recommended that the court refer *all* civil cases to mediation under the rule.

Alternatives to trial continue to absorb the attention of federal judges confronted with extremely high caseloads. Nowhere was this

more dramatically exhibited than in a Center-sponsored meeting, described earlier in this report, of judges, magistrates, and clerks from districts with a high number of asbestos cases. Obviously, settlement will be a major means of resolving most of these cases; the subject for discussion was how best to achieve that result. The conference heard the proponents of the tried-and-true techniques—reasonable trial dates firmly adhered to and greater participation of the judge in settlement negotiations. The participants also heard testimonials to innovative and promising techniques such as the summary jury trial, a subject covered in a prior Center report. And they heard calls for still more expansive court activity to encourage and facilitate settlement, for example, early advice to parties about the strength and worth of their cases, as well as intelligence systems that would draw on court records to inform parties of the probable discovery costs associated with proceeding to trial.

Federal Rule of Civil Procedure 68. Federal Rule of Civil Procedure 68 provides that a defendant may, at least ten days before trial, make an offer of judgment that, if not accepted by the plaintiff, will have the effect of shifting to plaintiff “the costs incurred after making the offer,” unless the judgment finally obtained is more favorable to plaintiff than was the offer. On its face the rule is both simple and equitable: If the defendant was reasonable in offering plaintiff everything to which he was entitled and plaintiff insisted on a trial that availed him nothing, the plaintiff should bear the costs. Moreover, from the point of view of the system as well as the litigants, needless trials are a waste of valuable resources; fair settlements, which work to everyone’s advantage, are to be encouraged. Similar rules are found in many state systems, and yet the evidence is that neither the federal rule nor its state counterparts are used very much in practice. To enhance the effectiveness of this device in encouraging fair settlements, the Judicial Conference Advisory Committee on Civil Rules published for public comment a preliminary proposed amendment to rule 68 that would permit recovery of reasonable attorneys’ fees and other expenses of litigation, as well as costs, and would permit offers under the rule by plaintiffs as well as defendants.

The problem of how to achieve the desired results without adverse side effects is, however, exceedingly complex, and further revisions in the proposed amendment may be expected before a new rule 68 reaches the Supreme Court and, thereafter, the Congress.

The Center's Research Division is currently in the final stages of a project undertaken in response to the advisory committee's proposal. This project calls into question a limited body of literature claiming, on the basis of theoretical economic analysis, that rules like the proposed rule 68 would have the counterintuitive effect of reducing, rather than increasing, the incidence of settlement in civil cases. The Center's study also employs theoretical economic analysis and offers comparisons of the economic incentives afforded by a variety of fee-shifting provisions and common attorney-client fee arrangements. This theoretical study includes analysis of a hypothetical rule similar to the proposed rule 68, as well as of the American rule, the English rule, statutory provisions allowing recovery of attorneys' fees by prevailing plaintiffs but not by defendants, and common contingent fee arrangements. The results of the study shed light on how fee-shifting arrangements influence the financial incentive to settle civil cases rather than accept the expenses and risks associated with further litigation.

Based on new insights about the influence of the hypothetical "two-way" rule 68 on litigants' financial incentives, and about how the prospects for settlement are influenced as litigation progresses and expenses are incurred, the study suggests, contrary to previous analyses, that the approach of the hypothetical rule is likely to increase the incidence of settlements and contribute to their fairness. The study also reveals new insights about the influence of contingent fee arrangements of various types. The results of this theoretical study are reported in *The Influence of Rules Respecting Recovery of Attorneys' Fees on Settlement of Civil Cases*, published in 1984.

Manual for Complex Litigation 2d. The Center continues to provide support to the Board of Editors of the *Manual for Complex Litigation 2d*. This publication is the successor to the *Manual for Complex Litigation*, which continues to be cited with great frequency. Moreover, transferee judges, appointed pursuant to the statute governing multidistrict litigation, continue to attest to its utility as a helpful tool in the management of complex litigation. Chief Judge Sam C. Pointer, Jr., of the Northern District of Alabama serves as chairman of the Board of Editors.

Role of United States Magistrates. As reported last year, the Center's Research Division undertook a two-part study of the activities and contributions of full-time magistrates in the federal system. The first report, published in 1983 under the title *The Roles of*

Magistrates in Federal District Courts, has proved useful to district courts seeking to make more extensive and more effective use of magistrates. In the second phase of the Center's two-part study, data collected in eight prototype districts are being analyzed for a report on the variations in magistrate assignments and the reasons for the differences across districts. The report is nearing completion, with publication scheduled in 1984.

G. Jury Projects

Pattern Jury Instructions. The Center's Research Division this year continued its work in the area of pattern jury instructions through the Subcommittee on Pattern Jury Instructions of the Judicial Conference Committee on the Operation of the Jury System. This subcommittee, chaired by Judge Thomas Flannery of the District of the District of Columbia, places heavy emphasis on making jury instructions intelligible to the lay juror.

An earlier Center project resulted in the publication in 1982 of a collection of fifty-one criminal jury instructions, but did not include instructions concerning the elements of particular crimes. The present project has under development approximately sixty instructions devoted to "elements." A major feature of the subcommittee's work, planned for publication in 1985, is an effort to simplify and clarify the portions of instructions dealing with mens rea.

Juror Utilization. In response to its own analyses as well as to a report of the General Accounting Office, the Judicial Conference at its fall 1981 meeting asked each circuit council to undertake to improve the juror utilization performance of the district courts within its jurisdiction. The goal is to ensure that sufficient jurors are available when needed, while keeping to a minimum the number of citizens summoned for jury duty whose services are not required. The Conference, while encouraging circuit councils to experiment with different methods designed to achieve this end, specifically suggested education in juror utilization as one means of achieving improved performance. To assist in this effort, the Center offered a series of juror utilization workshops for clerical personnel and has included the subject in orientation seminars for judges, in regional workshops and seminars, and in its ongoing series of civil case management workshops, described earlier. The Center is presently preparing a juror utilization manual, based in part on information

shared in the course of some of these workshops. Publication is expected in 1984.

H. Improvement of Advocacy in Federal District Courts

Since its inception in the fall of 1979, the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, chaired by Judge James Lawrence King of the Southern District of Florida, has been charged with overseeing the implementation, on an experimental basis, of the major recommendations of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, otherwise known as the Devitt Committee. These recommendations include entrance examinations to test knowledge needed for practice in the federal courts; a trial experience requirement; a system of peer review of lawyers, with assistance for those in need of help; rules providing for law students to practice in the federal courts; and the development and support of continuing legal education in federal practice subjects. The implementation committee works with thirteen district courts, each of which is experimenting with one or more of the proposals.

The Center continued its support for the implementation committee in fiscal 1984. The Center has maintained contact with the pilot courts on a continuing basis, functioned as a clearinghouse for information and a depository for local rules and other relevant documents, and undertaken to provide a record of the committee's progress. A Center staff member has been designated to represent the implementation committee on the Coordinating Council on Lawyer Competence of the Conference of [State] Chief Justices. Center staff have made various presentations concerning the work of the committee, including one on the status of the implementation committee program to the Young Lawyers Division at the American Bar Association annual meeting in August 1984.

The committee, with Center support, also continues to obtain and to disseminate information about court-sponsored continuing education programs for the bar on federal practice and trial advocacy. The Devitt Committee had recommended such judicial involvement and several of the pilot courts are sponsoring such programs, as are many other trial and appellate courts.

In a related effort to improve trial advocacy, the Center this year worked closely with the Judicial Conference Ad Hoc Committee on Inns of Court, chaired by Senior Judge A. Sherman Christensen of the District of Utah. The Inns bring together federal and state judges and trial lawyers, law professors, and law students in a program devoted to trial practice, training in advocacy, and professional responsibility. The Center is developing a video program, illustrating the various activities of the several Inns, designed to inform judges and law professors who may wish to establish a local program.

II. FEDERAL SENTENCING AND PROBATION

A. Continuing Education and Training

Sentencing Institutes. The Congress, in 1958, authorized the Judicial Conference of the United States to convene sentencing institutes at the request of either the attorney general or, as has been the practice, a circuit chief judge (28 U.S.C. § 334). Since 1974, at the request of the Judicial Conference Committee on the Administration of the Probation System, the Center has been involved in the planning, administration, and evaluation of these institutes. Center support is an interdivisional effort involving both the Research Division and the Continuing Education and Training Division.

One sentencing institute was held in 1984 for the judges of the First, Third, and District of Columbia Circuits, utilizing the facilities at the federal correctional facility at Otisville, New York. The institute included a tour of the facility, workshops with inmates, panel discussions, and presentations on such topics as the impact of the Victim and Witness Protection Act of 1982 and sentencing alternatives to incarceration.

In the past, sentencing institute offerings were planned in part to accommodate the special needs of newly appointed district judges. The Center is experimenting with other, more effective means of meeting the needs of the newly appointed judge and at the same time relieving the sentencing institutes of the burdens associated with an orientation program. As described more fully in the section on the orientation of newly appointed district judges, the Center has extended its three-day regional video orientation seminar for an extra day, specifically to include both a visit to a nearby federal correctional facility and a related program focused exclusively on sentencing. This change is more faithful to the Judicial Conference policy that calls for federal judges to visit a federal correctional facility early in their judicial careers.

Orientation and Continuing Education for United States Probation Officers. Many different types of programs are required to meet the orientation and continuing education needs of United States probation officers. One of the difficulties in developing a training program for these officers is that their needs are so varied. Similar variation will no doubt characterize the needs of pretrial services officers in those districts that elect to establish separate offices for such services.

On the one hand, probation and pretrial services officers operate within a framework of national laws and policies established by the Judicial Conference. It is essential that newly appointed officers understand and appreciate the importance of these national policies and that their orientation impress upon them their responsibilities to the national system. Each year, probation and pretrial services officers complete thousands of investigations on convicted defendants and numerous bail investigations in cases in which the judge receiving the report sits in another part of the country. Those judges need confidence that the reports reflect national standards and operating procedures, just as they need confidence in a probation or parole supervision file coming to them after a long period of supervision in another district.

On the other hand, conditions vary considerably throughout the United States in terms of defendants' and probationers' particular problems and needs, and training must be responsive to those local needs and conditions. In light of these dual needs, the Center has placed great emphasis on a national framework for probation training and at the same time encouraged local and regional training designed by the officers themselves, drawing on Center staff and media resources and utilizing the network of training coordinators.

Because of its increasing emphasis on local training rather than costly national seminars, the Center has been able in the course of the last several years to increase both the number of programs for probation officers and the total number of officers receiving training. It has been able, at the same time, to provide training that is more timely and more responsive to local needs and conditions. As probation officer training has increased, however, total Center funds used for probation training have been reduced to an amount that is more in accord with the size of the probation service relative to the Center's total training obligations.

Perhaps most important, the Center provides new officers with orientation to the federal judicial system and to the national probation system. Two one-week orientation seminars were held in Washington, D.C., in the fall of 1983. In 1984, the Center shifted its approach to the regional video orientation model, which has proved so successful in the orientation of judges and magistrates. The first two probation video orientation programs were held in July 1984, one for new officers in the Baltimore-Washington-Eastern Virginia area, and another for officers in the north central states. A separate video orientation has been designed for pretrial services officers.

Some of the video programs used at the orientations are taken from prior seminars, but most have been produced specifically for video orientation purposes. An experienced officer serves as faculty to guide the discussion and answer questions. As a matter of policy, developed after consultation with the chairman of the Judicial Conference Committee on the Administration of the Probation System and the chief of the Probation Division of the Administrative Office, the faculty leader at any particular seminar is drawn from a district other than those represented by the members of the class to help ensure that the regional programs foster a national perspective. The regional orientation approach is expected to be especially valuable in accommodating the large influx of probation and pretrial services officers anticipated in the next several years.

The Center continues to hold regional seminars for probation officers. Typically, these regional seminars are organized among clusters of districts in a specified geographic region, and they are planned largely by the participating personnel. Although the curriculum is responsive to local needs, it typically includes presentations by representatives of the Probation Division of the Administrative Office, the Bureau of Prisons, and the Parole Commission. Sentencing issues, case management, probationary supervision, counseling techniques, the psychology of drug addiction, and related topics are often part of the curricula.

Still another approach to probation officer training is topical seminars on items of pressing interest to officers in particular districts with specific needs. In fiscal 1984, for example, the Center sponsored two drug-aftercare-contracting workshops. Designed for officers in districts with high concentrations of drug-dependent probationers, they provided guidance on contracting with social service agencies that can provide necessary counseling. The Center also

worked with the Probation Division to arrange technical training seminars for clerical personnel in the forty-two probation offices that will use computers to record data for use in the Federal Probation Sentencing and Supervision Information System.

Where appropriate, the Center also provides on-site technical training for probation officers. In fiscal 1984, the Center planned four on-site instructional programs on techniques for identifying drug use and drug dependency on the part of probationers. These programs built on the Center's experience in 1982 and 1983, when it organized teams, consisting of an officer from a pilot pretrial services district and a Probation Division staff member, to help non-pilot districts prepare for the implementation of pretrial services pursuant to the passage of the Pretrial Services Act of 1982.

Finally, as noted briefly above, the probation officers frequently use local training resources under the umbrella of the Center's training coordinator program. Local programs in fiscal 1984 included courses on techniques of financial investigation, improved writing skills, personal safety, and counseling alcoholic clients. Such local programs, it should be noted, are not necessarily restricted to probation officers—they may be open to other court personnel as well.

For use in local training, the Center has developed short video programs in specific skill areas. In fiscal 1984, the Center produced or was developing video programs on the Probation Division's two basic operational monographs (Monograph 105 on the Presentence Report, Monograph 106 on Client Supervision); on the new Parole Commission guidelines on officers' search and seizure authority; and on other legal issues of special interest to probation officers.

Probation officers also receive Center support to attend training programs sponsored by others. Of special interest is the program whereby Fordham University offers qualifying probation and pretrial services officers the opportunity to enroll in a three-year program leading to a master's degree in sociology with a specialization in probation and parole practice. The Center has for some years defrayed a portion of the cost of this program for federal probation officers. The officers do most of the work for a semester's courses in their home cities, but also attend a one-week residential seminar at Fordham each semester. Forty-two of the program's graduates have been United States probation officers. The first probation officers

were graduated in 1979, and one was graduated in 1984. During fiscal 1984, three federal probation officers participated in the degree program.

B. Probation and Sentencing Research

Drug Aftercare Program Evaluation. This evaluation is a multi-phase effort to study and document the effects of the drug aftercare program as administered by the Probation Division of the Administrative Office to selected drug-dependent probationers and parolees.

The first phase of the study was aimed at documenting the program's operation in a sample of ten probation districts. The next phase of the study was devoted to the development of a program impact evaluation design. Both of these phases have been completed. The Center is now in the process of conducting the final phase of its evaluation of the aftercare program.

The current study is a retrospective, twelve-month follow-up of a sample of approximately one thousand offenders in eleven probation districts: the District of Columbia, Central District of California, Northern District of California, Northern District of Illinois, Eastern District of Michigan, Eastern District of Pennsylvania, Eastern District of New York, Southern District of New York, Northern District of Texas, Southern District of Texas, and Western District of Texas.

The current phase of the study has three major objectives. First, it seeks to identify significant factors or variables that help to explain or predict aftercare program outcomes by utilizing various multiple regression analysis techniques. Second, it is designed to produce descriptive statistics on the sample of offenders in the study. Finally, the study will compare offenders in the drug aftercare program with other offenders involved in the Treatment Outcome Prospective Study (TOPS), a longitudinal investigation of drug-dependent individuals who have received treatment in selected federally funded drug treatment programs. It is anticipated that the results of the final phase of the evaluation will be completed in the spring of 1985.

Sentencing Reform Bill. In cooperation with the Administrative Office, Center staff continue to follow the progress of sentencing legislation and to assist the Committee on the Administration of the Probation System in responding to it. Acting on a recommendation of the probation committee, the Judicial Conference in March 1983 approved an alternative to the sentencing reform legislation that had been introduced in the Senate. This bill has since been introduced in both houses. During fiscal 1984, the Center has remained alert to congressional interest in proposals designed to affect the sentencing discretion of judges.

C. Probation Information Management System

The Center's Divisions of Research and of Innovations and Systems Development in fiscal 1984 continued their joint efforts with the Administrative Office and the Judicial Conference Committee on the Administration of the Probation System to design and develop a Probation Information Management System (PIMS). As originally recommended by the Judicial Conference probation committee, PIMS would have a broad reach indeed. It is to be an automated information management system that, when completed, will not only contain detailed nationwide information on sentences imposed for various offenses and offenders but will also provide essential planning information for probation officers to use in tracking and analyzing their caseloads; statistics for probation office administrators' budget and personnel needs; information for management planning; and data for research.

As a result of decisions made last year, PIMS has been divided into two segments. The first is the development of a fully automated management system in one pilot district with several divisions, the Northern District of Ohio. (The term PIMS is often used to refer solely to this phase of the total project.) To date, computers have been installed in Cleveland, Akron, and Toledo and terminal connection has been made between the Youngstown office and the computer in Cleveland. The probation officers and clerical staff who will be most involved with using PIMS in Northern Ohio have already come to Washington, D.C., to receive the systems administration training that is a prerequisite to successful operation of PIMS. They have also received some software training.

This segment of the Probation Information Management System was undertaken after a preliminary cost-benefit analysis indicated

that the project should proceed. However, the Research Division is conducting an evaluation of this pilot project, which is to be completed before any wider implementation is approved.

The second segment of PIMS recommended by the probation committee is to tie the system into the Federal Probation Sentencing and Supervision Information System (FPSSIS), the nationwide data collection program designed to meet the need for a more detailed national sentencing information system. This represents a longer range goal. FPSSIS was implemented in fiscal 1984 by the Administrative Office. The Center assisted the Administrative Office in specifying and defining the data elements that the system includes and in training probation personnel in system implementation.

III. APPELLATE COURTS

A. Continuing Education and Training

Judges' Programs. In October 1983, the Center held two seminars for judges of the United States courts of appeals—one in New Orleans, primarily for judges in the circuits east of the Mississippi, and another in San Diego, for judges in the remaining circuits. These programs were planned by a committee appointed by the Chief Justice and chaired by Judge John D. Butzner of the Fourth Circuit, who was then a member of the Center's Board. Other committee members were Judge Roger Robb of the District of Columbia Circuit and Judge Paul H. Roney of the Eleventh Circuit.

The seminars treated such topics as the "New Federal Habeas Corpus," developments in antitrust and securities law, recent Supreme Court decisions, award of attorneys' fees under the Equal Access to Justice Act, constitutional torts, and employment discrimination litigation. Subjects of particular relevance to appellate judges, who typically sit in panels, were also treated. Thus, at each seminar a chief circuit judge from outside the region discussed the interpersonal relationships on the court of appeals, treating such topics as collegiality on an appellate court; when dissent is appropriate and how it can be tactful; and problems and issues in opinion writing. Both seminars provided judges with electives, enabling them for certain parts of the sessions to select the topics of greatest interest to them. Since 1977, the Center has sponsored such seminars for appellate judges on a three- to four-year cycle. In addition, the judges of the courts of appeals are invited to the circuit workshops discussed above as part of the Center's programs for district judges. Those workshops, although open to and often attended by appellate judges, are typically oriented more to the needs of the district judges of the circuit, given their greater numbers in the circuits.

The Center also provides orientation opportunities for newly appointed appellate judges that are designed to meet particular

needs. For example, judges who come to the appellate bench with no experience as trial court judges are offered the opportunity to attend one of the Center's video orientation programs for newly appointed district judges, as a means of acquainting them with the work of federal district judges, whose actions they review.

The Center has also held orientation programs for newly appointed appellate judges, the most recent of which took place in Washington, D.C., in December 1982. Except when an omnibus judgeship bill creates a number of vacancies at one time, the rate of appointment of new judges to the federal appellate bench makes it difficult to organize a seminar devoted to orientation. However, as a result of the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, the Center is presently planning an appellate orientation program to be held early next year.

In June 1984 the Center convened a one-day seminar for the judges of the Court of Appeals for the Federal Circuit, dealing with review of judgments following jury verdicts. Chief Judge Howard Markey requested the seminar because the jurisdictional change effected by the statute creating the court prompted a need for its judges to know more of the laws governing the right to jury trial and control of jury verdicts, especially in patent cases. The faculty for the seminar included a judge of one of the regional circuits, a district judge, and a law professor.

Appellate Clerks' Programs. In November 1983 the Center again sponsored a seminar for the clerks of the courts of appeals. The seminar provided a forum for reports on Center research and development, including systems for automated appellate case management, the proposed changes in the Federal Rules of Appellate Procedure, and reports from divisions of the Center and the Administrative Office. As it has in past years, the seminar supplied an opportunity for each of the clerks in attendance to present status reports and an opportunity for the clerks, meeting as a committee of the whole, to present to senior personnel of the Center and the Administrative Office their perceptions of likely developments in appellate case management and the needs of the clerks of court.

The seminar illuminated the need on the part of circuit clerks and circuit personnel clerks for information on the Judicial Salary Plan, equal employment opportunity programs, handling of per-

formance appraisals and adverse personnel actions, and other technical matters of personnel administration. For that reason, the Center convened a February 1984 workshop for circuit clerks, their personnel officers, and circuit executives' staffs who handle personnel inquiries. The Center also convened a two-day seminar in June 1984 to acquaint appellate statistical clerks with new statistical reporting formats adopted by the Administrative Office.

Circuit Executives' Programs. To provide circuit executives with continuing education with a rather broad focus, appropriate to the original conception of the office, the Center in 1984 sponsored a two-day seminar. The seminar was restricted to two topics, but both were examined from a variety of perspectives. The first day the circuit executives examined alternative management approaches in the federal courts. The discussion focused on lessons for court administration that may be derived from the book *In Search of Excellence*. The second day featured a broad look at the circuit executives' role in circuit judicial conferences, including attention to recent changes in conference objectives, composition, and format, as well as different approaches to planning and operating the conferences.

B. Research and Development on Appellate Court and Case Management

The pace of growth in appellate court filings—for example, the increase of 56.6 percent in the most recent five-year period for which data are available—has been noted so often as to require no elaboration here. It is this continuing pattern of growth, however, and the challenge that it poses to federal appellate judges, that sustain a continuing, lively interest in whatever assistance, both research and technological, the Center might provide to the courts of appeals. Demands for new services also appear to be generated by the courts' experience with earlier Center efforts including assessment of preappeal conferences, computer programs to facilitate calendaring and paneling, and evaluation of word-processing and electronic-mail applications. The Center has also provided documentation of appeals expediting systems, which was followed by refinement and expansion of these programs.

Appeals Expediting System. In response to a request for assistance by the Ninth Circuit judicial council in 1981, the Center proposed a number of innovative procedures that the court might consider to

improve its processing speed and to decrease its backlog. Many of these suggestions were incorporated by the circuit into its program for achieving a current calendar. The Center has, again at the request of the council, conducted interviews, studied files, and examined other data to assess the effects of the court's program. Preliminary findings have been communicated to the circuit for use in formulating a continuing program. A final report intended to be useful to other courts will be completed in fiscal 1984.

Monograph on Appellate Court Research. Over the years, the Center has published a substantial number of research reports and staff papers relating to appellate courts and the appellate process. Collecting this material within a single volume would make it more accessible and more useful to judges as well as to others within and outside the federal judicial system. The sheer volume of the Center's published reports, however, precludes a mere reprinting or an unedited anthology. Accordingly, the Research Division is presently preparing a one-volume work that will combine specially prepared text with edited reprints. Publication is expected early next year.

Judicial Councils. To facilitate the work of the circuit councils in responding to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, the Center held a conference of circuit chief judges to discuss their experiences with and needs arising from programs established pursuant to the act. Primary attention was devoted to procedures for processing complaints of alleged judicial misconduct. Following the conference, the chairman of the Conference of Circuit Chief Judges appointed a committee to consider the need for uniformity or the desirability of local variations with respect to subjects covered by local rules governing disciplinary procedures. The committee was later directed to prepare some model rules with commentary on the uniformity/flexibility issues. To ensure that the drafting will address the actual experience of the circuits, the committee requested that the Center conduct a background study. That study is now under way. When it is completed, the Center staff will assist in the drafting, at the direction of the committee. This work will continue into fiscal 1985.

Reversals in Criminal Cases. At the suggestion of a member of the Center's Board, a study was undertaken to explore the bases for reversals by the courts of appeals in criminal cases. Since the goal was to determine whether there might be opportunities for reducing the incidence of reversal, the initial inquiry was kept to modest

dimensions by examining reversals for a single year and classifying them according to a typology that had been used in studying state court reversals. This initial effort indicated that only one basis for reversal occurred frequently enough to provide a target for remedial effort—error in issues of suppression of evidence. The question then arose whether the problem stemmed from differences of perception among the trial judges or differences in pronouncement among the appellate judges. The Research Division is currently studying that question with the aid of a noted criminal law scholar. The answer, of course, will be a primary determinant of the next appropriate step for the Center to take.

C. Automated Appellate Information Management Systems

Development of the New Appellate Information Management System (New AIMS) proceeded apace in 1984 with installation of hardware and prototype software in the Fourth, Ninth, and Tenth Circuits. New AIMS is a full support system, designed to provide electronic docketing capability that will be sufficient to replace all the existing manual docketing procedures.

New AIMS will also be capable of automated production of statistical reports to track court performance at intervals determined by the court itself, the generation of forms and notices, calendaring assistance, the creation of a roll of the circuit's attorneys (which will be on-line for integration into other portions of the system), a party index created automatically as a by-product of the docketing entries, and, of particular utility, flexible case management reporting. All of these features were declared to be of the first priority by the members of the New AIMS Users' Group, which consists of representatives from each of the thirteen courts of appeals.

Categorized as second priority by the users' group were a word-processing capability integrated into the case management system, an electronic-mail facility to communicate with judicial chambers, a program to facilitate selection of hearing panel members according to the court's predetermined rules, support for a circuitwide issue indexing system, and a series of administrative applications including property inventory, personnel management, and budget and fiscal management. As discussed in connection with the district courts, the Center has already developed property inventory

and personnel management systems and is testing them now in three courts of appeals.

New AIMS has been the "flagship" application of the Center's approach to automation through the use of the newest generation of super microcomputers, the UNIX operating system, and a powerful, state-of-the-art data base management system. At the heart of the system will be the software developed nationally for use in all courts. However, the system is also designed to permit local flexibility that will facilitate, for example, detailed case management in a manner that reflects local needs and preferences.

The Center projects the completion of basic New AIMS software by April 1985, although the Center will continue thereafter to complete additional developments in the system.

IV. CENTER ACTIVITIES WITH SYSTEMWIDE IMPACT

A. Continuing Education and Training

Regional and national workshops, once the mainstay of the Center's orientation and continuing education programs, are now but one element in a much broader array of local training, audiovisual programs, and special-topic seminars. Several factors account for this development.

First, as preceding pages in this report indicate, seminars and workshops cannot satisfy all of the education and training needs that arise within a broad institutional structure as heterogeneous as the federal judicial system. Often, for example, the need for particular training exists for only a few individuals in a few districts; developing a full-fledged seminar would clearly be uneconomical. Then, too, the Center has responded to the desire of the Congress that the Center develop alternatives to travel-based training. The Center's annual appropriations for travel have not risen commensurately with the increase in the size of the federal judicial system or with the spiraling cost of travel. Thus, even with judicious site selection for regional seminars and careful attention to the availability of reduced fares, the search for alternative forms of training has been accorded high priority.

Finally, some of the alternatives developed by the Center, such as regional video orientation seminars, have proved to be educationally superior, offering the advantages of timeliness and small-group instruction.

In-Court Training and Education Programs. To coordinate local training services and maintain close contact with the courts, the Center has encouraged each court to designate at least one staff member as a training coordinator. Several training coordinators may serve in larger courts—one in the clerk's office, for example,

and one in the probation office. Training coordinators help structure and promote training programs in addition to their regularly assigned duties. Five workshops for training coordinators were held in 1984. They emphasized training techniques and provided information on resources available from the Center. The Center is also developing video orientation programs for newly appointed training coordinators. The Center uses a newsletter, *What's Happening?*, to alert training coordinators to the availability of new materials and programs, and is preparing a training coordinator's manual to provide basic information on training techniques and available resources.

In fiscal 1984, the Center conducted or was associated through its training coordinator network with more than eighty in-court workshops on such topics as office management, supervisor-employee relationships, group dynamics, psychological testing, staff development, and word processing. A wide range of training resources can be made available: An experienced official from another court may be brought in to conduct the training; there may be an expert in the subject area in the local academic or professional community; Center or Administrative Office staff may be made available; or a program from the Center's media library may be featured. (Training coordinators arrange other programs that use no Center assistance other than the reservoir of suggestions and techniques made available through newsletters and training coordinator programs.)

When invited by the court, Center staff also conduct on-site educational needs assessments, often in conjunction with an in-court seminar. For example, a clerk of court, sensing that personnel procedures in the court need examination, will invite a member of the Center staff to review the court's procedures for recruitment, orientation, performance appraisal, documentation, and adverse personnel actions. The Center staff member will then suggest particular local training that might be appropriate, as well as changes in procedures that might be considered. The results of these in-court assessments, nine of which were completed in fiscal 1984, are shared in appropriate cases with Center staff and with the Management Review Division of the Administrative Office.

Media Services. The Center's library of audiocassettes, videocassettes, and films covers a wide range of specialized topics and is used throughout the federal judicial system. Personnel can hear, and often view, presentations of specific interest to them in their own courts, and sometimes in their own homes, at their conven-

ience. Most of the library's holdings are recordings made at Center seminars and workshops. Some judges and others within the system use the tapes to substitute for attendance at a seminar or workshop. The tapes also permit seminar and workshop attendees to review, in a more leisurely setting, programs they have already attended in person; the complexity of many of the subjects treated has made for increased use of tapes for this purpose.

The Center has also been producing its own video programs to meet specific training needs. The special programs for regional orientation seminars, case management for judges, and new probation and parole policies have been described previously. In fiscal 1984, Center staff also worked with personnel of the Third Circuit Court of Appeals to produce a series of instructional videotapes on the operation of the word-processing equipment installed in all Third Circuit judges' chambers. Because the same equipment is being installed for word-processing and data-entry use in large probation offices, these videotapes, with slight alterations, have been used to train probation personnel in word processing and prepare them for data-entry training.

For a final example, two chief district judges this year asked the Center to produce brief videotapes of their general welcoming remarks to citizens called to the court for jury duty. The tapes, which can be shown in all divisions of the respective districts, relieve the chief judge or another judge of this task and may improve the instruction, because the information on the videotape lecture is consistent and protects against an occasional error of omission in a live presentation.

The Center's *Educational Media Catalog* is now in its third edition and is designed for continual updating through the use of replacement sections. More recent acquisitions are also listed from time to time in supplemental bulletins attached to issues of *What's Happening?*, the division's training coordinator newsletter. Programs of special interest are announced in *The Third Branch*.

Supplementary Training. Tuition support to attend courses in job-related subjects at local educational institutions is also available to qualifying personnel. Where circumstances require it, the Center occasionally permits attendance at a national institution as well. The program is limited to courses whose subject matter is not available through the regular Center seminars. These may include

offerings of one or more days' duration in specific office management skills, specialized topics in corrections and law enforcement, substantive legal issues, or advocacy skills. They also include evening courses that run for a full semester. For the entire 1984 fiscal year, the Center anticipates providing tuition support to slightly more than two thousand individuals, to attend about the same number of courses, at an average expenditure per course of slightly less than \$200. The funds are used by various categories of personnel as shown in the table that follows.

Tuition Support Program—Fiscal 1984

	<i>Approximate Percentage of Funds Expended</i>
Offices of clerks of court	33
Bankruptcy judges and staff	26
United States probation officers and staff	18
Federal public defenders and staff	10
Secretaries	5
Circuit and district judges	1
United States magistrates	1
Staff attorneys	1
Librarians and others	5

(Not included in this list are the funds for assistant federal defenders' attendance at the National Association of Criminal Defense Lawyers seminar described in chapter 1 of this report, and probation officers' attendance at the Fordham program, described in chapter 2.)

The Center's tuition support program has grown rapidly since its inception early in the Center's history, when both the demand and funding were very modest by today's standards. In light of this growth, the Center has undertaken a thorough review of the program's operation so that its Board may determine if new or revised policies may be in order.

B. Assessing the System's Future Needs for Judgeships

The creation of judgeships is solely within the province of Congress. The Congress, however, regularly seeks the recommendation of the Judicial Conference concerning the need for additional judgeships. The Subcommittee on Judicial Statistics of the Judicial Conference Committee on Court Administration undertakes a biennial survey of the workload of the district and appellate courts to

identify those courts where increased workload justifies increases in judgeships. The Center has long supported the work of the subcommittee, particularly with its district court time studies, the most recent of which was published in 1980, based on time records kept by ninety-nine federal judges in 1979.

There has been concern for some time among judges and courts that the process of judgeship creation does not give sufficient consideration to the question of how many cases a judge should be able to handle, and these concerns have been communicated to the Center. More specifically, some are apprehensive that too much emphasis is being placed on the current caseloads of judges rather than on what judges' caseloads ought to be. This issue is, of course, a normative one that is not susceptible to resolution exclusively by empirical analysis. Analysis, however, can provide a useful beginning, and the Subcommittee on Judicial Statistics has requested the Center's assistance in developing methods of analysis that might eventually be helpful in addressing the larger question.

The Center's work in development of case weights from its time studies has led to insights that show promise of achieving two much-to-be-desired goals: the development of improved methods for analysis of caseloads, including methods for developing case weights of improved accuracy with less inconvenience to participating judges; and methods for assessing the "capacity" of a court to handle an increased caseload. Developmental work on these potential methods has shown initial promise.

Application of statistical methods developed in the biological sciences and in actuarial analysis has been used to produce estimates of judgeship needs that compare well with estimates based on weighted caseloads; moreover, these do not need time studies or case weights. Methods for computing case weights developed in *The 1981 Bankruptcy Court Time Study* have permitted statistical analysis of the accuracy of case weights and weighted caseloads, which, in turn, can enable more refined planning and execution of future time studies. Experimental analysis is now under way employing another methodology that has some promise as a means of evaluating and updating case weights without the need for a time study; this work should be completed early in fiscal 1985.

If these methods prove adequate to the task, the Center may be able to develop case weights that not only accurately reflect the av-

erage time judges devote to various types of cases but also take into account the "capacity" of the courts, so that the weights more closely approximate how much time *needs* to be devoted to cases of various types, rather than how much time *is* devoted to them under adverse circumstances that sometimes reflect the undesirable pressures created by overwhelming caseloads.

Some practical applications have emerged partly as by-products of the tentative and still exploratory studies just mentioned. One such application is simply an improved ability to interpret the caseload statistics routinely reported by the Administrative Office, which are carefully analyzed by the Subcommittee on Judicial Statistics in its biennial surveys of judgeship needs. Another, still in the development stage, is a new method for assessing the judgeship needs of the courts of appeals. Based in large measure on the suggestions of Judge Alvin B. Rubin of the Fifth Circuit, this method seeks to place increased emphasis on the number of cases circuit judges must decide on the merits, as distinguished from present practice that accords dominant emphasis to the number of case filings. The entire subject of appellate workload is now under consideration by the subcommittee.

C. Information and Liaison Activities

Pursuant to its statutory mandate, the Center maintains contact with other organizations that have interests or objectives relevant to improved judicial administration. For example, the Center's director is a statutory member of the Advisory Board of the United States Department of Justice's National Institute of Corrections. He also serves on the American Law Institute-American Bar Association Committee on Continuing Professional Education and has been a member of the American Bar Association's Action Commission to Reduce Court Costs and Delay. The Center maintains regular contact with such organizations as the National Center for State Courts, the Institute for Court Management, and the Institute of Judicial Administration, as well as the National Judicial College and the National Association of State Judicial Educators.

Much of the Center's interorganizational and liaison work is the responsibility of its Division of Inter-Judicial Affairs and Information Services. The director of that division, for example, has served as the secretary-treasurer of the National Center for State Courts; is an Institute of Judicial Administration fellow and a council

member of the American Bar Association's Judicial Administration Division; and is a liaison member to the Administrative Conference of the United States.

The Third Branch. The monthly bulletin of the federal courts, *The Third Branch*, is published jointly by the Center and the Administrative Office, with the Center assuming major responsibility for the editorial function and for production. Thirteen thousand copies are printed each month and distributed to all federal judges, supporting personnel, members of the Senate and House of Representatives, interested government agencies, all state chief justices, deans of law schools, senior officials of the American Bar Association, and others active in the field of judicial administration. This monthly publication serves primarily as a medium for the dissemination of information to the federal judicial community, including announcement of new publications, legislative developments affecting the courts, and Judicial Conference activities. In-depth interviews on subjects relevant to federal judicial administration are a regular feature of *The Third Branch*. For example, on the first anniversary of his new court, Chief Judge Howard T. Markey reflected on the operations of the Court of Appeals for the Federal Circuit. Chief Judge Charles Clark of the Fifth Circuit, who also serves as chairman of the Judicial Conference Committee on the Budget, commented on the first year of the newly aligned Fifth Circuit and also discussed how the budget for the federal courts is prepared. Judge Cornelia G. Kennedy of the Sixth Circuit, a member of the Center Board, provided insights from the viewpoint of a federal judge who has served on both trial and appellate courts and who, in addition, served as chief judge of a busy metropolitan district court. Chief Judge Wilfred Feinberg of the Second Circuit explained how his court processes large caseloads with little or no delay. Finally, Judge Collins J. Seitz, who recently completed thirteen years as the chief judge of the Third Circuit, reflected on his thirty-eight years of service on the state and federal bench.

The interviews also included people from other branches of government. Congressman Neal Smith, chairman of the House Appropriations Committee's Subcommittee on Commerce, Justice, State and Judiciary, explained the legislative role in the judicial budget-making process. Department of Justice officials described their duties and responsibilities and their impact on the federal courts. Former deputy attorney general Edward C. Schmults described his role in Department of Justice activities; Assistant Attorney General J. Paul McGrath shared his views and those of the administra-

tion on enforcement of the antitrust laws. Parole Commission Chairman Benjamin F. Baer explained how the commission works in conjunction with sentencing in the federal courts; and United States Marshals Service Director Stanley E. Morris discussed federal court security.

A complete index to *The Third Branch* is printed and distributed each year to permit ready access to all articles.

Information Services. In fiscal 1984, the Center's Information Services Office (ISO) expanded its use of a number of automated systems that provide access to large data bases in law, current affairs, and the social sciences. It utilized these systems to respond to inquiries received from federal judges and their supporting personnel, government agencies, the private sector, and the academic community. The ISO also maintains a specialized library of more than 2,600 volumes and an extensive vertical file containing resource material, much of it not readily available elsewhere, of interest to federal judicial system personnel.

The Information Services Index System (ISIS), developed by the Center, permits quick retrieval of "fugitive material" retained in the library's vertical file, including unpublished addresses, research reports, and incidental papers. The material indexed on ISIS is available, subject to the limitations of the library's resources, to members of Congress and their staffs, judicial administration organizations, and the academic and legal communities.

The ISO has primary responsibility within the Center for distribution of the Center's published reports. This past year it distributed more than eleven thousand publications in response to requests by judges, government agencies, students, and others interested in federal judicial administration.

Bibliographical Reading Lists. The Chief Justice this year appointed a committee to explore the utility of developing a bibliography of reading materials that could be helpful to judges assigned cases in highly specialized or newly developed areas of the law. The committee consists of Judge Gerhard A. Gesell of the District of the District of Columbia, as chairman; Judge George N. Leighton of the Northern District of Illinois; and Judge Abraham D. Sofaer of the Southern District of New York. Staff support is being provided by the Inter-Judicial Affairs Division.

Library of Congress Liaison. This year the Center continued the cooperative arrangement it has developed with the American-British Law Division of the Law Library of the Library of Congress. Under this arrangement, federal judges with the need for specialized research, on such subjects as legislative history, can submit research questions and obtain materials not available at their local libraries or at the Center. The Library of Congress continues to welcome such requests, which may be made directly to the Library of Congress or through the Center.

Oral History in Aid of Judicial Administration. During fiscal 1984, the Center continued its project designed to record the recollections and experiences of federal judges in the federal court system who have valuable insights to offer, based on years of service. The primary focus is on judicial administration, broadly conceived, with special areas on such subjects as case management. Four histories have been taped and transcribed to date. The Center's Board has approved continuation of this effort.

Foreign Visitor Service. Judges, law professors, and other representatives of the legal communities of foreign countries are received and briefed on subjects of interest to them by the Division of Inter-Judicial Affairs and Information Services, with staff from other divisions and the director participating for special presentations.

Referrals come mainly from the State Department, the United Nations, the United States Information Agency, the African-American Institute, the Institute of International Education, the Asia Foundation, the Department of Agriculture Graduate School, and embassies. Representatives from the following countries met with the Inter-Judicial Affairs Division staff during the past year: Australia, Brazil, Cameroon, Canada, Chile, Congo, Egypt, the Federal Republic of Germany, Fiji, India, Indonesia, Italy, Jamaica, Lebanon, Lesotho, Liberia, Morocco, New Zealand, Paraguay, the People's Republic of China, the Philippines, Rwanda, Saipan, Senegal, South Africa, South Korea, Spain, Sri Lanka, Taiwan, Thailand, Uganda, Yugoslavia, and Zaire.

V. THE ORGANIZATION OF THE CENTER AND ITS FOUR DIVISIONS

A. The Board of the Center

The Federal Judicial Center was established by the Congress in 1967 “to further the development and adoption of improved judicial administration in the courts of the United States.” 28 U.S.C. § 620(a). The same statute provides that the Center shall be “within the judicial branch of the Government” and that its activities shall be supervised by a Board, chaired by the Chief Justice. The Board also includes the director of the Administrative Office as a permanent member and six judges—two from the courts of appeals, three from the district courts, and one from the bankruptcy courts—elected for nonrenewable four-year terms by the Judicial Conference of the United States. By statute, the Board selects the director of the Center.

Two new Board members were elected since the Center’s last annual report. Judge A. David Mazzone of the District of Massachusetts assumed the seat formerly held by Chief Judge William S. Sessions of the Western District of Texas. Bankruptcy Judge John J. Galgay of the Southern District of New York was elected to serve on the Board to replace Bankruptcy Judge Lloyd D. George of the District of Nevada. The Board and Center staff were deeply saddened by the death of Judge Galgay in May of this year.

The budget for the Federal Judicial Center in fiscal 1984 was \$8,565,000, and the Center had ninety-two authorized personnel positions. For most of its history, the Center has carried out its work through four divisions; summary information on each division is provided in the sections that follow.

B. Division of Continuing Education and Training

The Division of Continuing Education and Training is responsible for a wide variety of educational services to meet the needs of the fifteen thousand individuals who constitute the federal judicial system. The Center's seminars and workshops, usually organized on a national or circuitwide basis, are the best-known educational programs. Judge William J. Campbell continues to serve as senior chairman of the Center's seminar programs. Less publicized are the Center's regional, local, and in-court programs. These programs make feasible a diversity of approaches previously not possible.

The table that follows presents fiscal 1984 data concerning seminars and workshops, as well as in-court training programs, classified by the category of personnel served. The table does not include specialized training of various types offered by other educational institutions, attended by federal judicial system personnel with Center funding.

The Division of Continuing Education and Training uses a simple multiphase planning cycle to develop, implement, and assess its programs. Needs are identified through the work of planning committees or groups composed of representatives of the personnel categories to be served and of the Administrative Office; through suggestions from the field; and through staff review of data that the courts provide regularly to the Center and the Administrative Office. The division then, in consultation with the planning groups and others, prepares programs to meet those needs. The division uses a variety of evaluation devices to measure the success of its various programs. Questionnaires administered during or immediately after a program are standard. In addition, however, for certain personnel categories, follow-up questionnaires are distributed some months after the program in an effort to measure change in performance over time. Supervisors are also contacted to learn whether there have been any observable changes in the employees' performance.

C. Division of Innovations and Systems Development

The Division of Innovations and Systems Development has as its primary, but not its exclusive, responsibility the development of automated systems designed to assist in the management of the federal courts and their caseloads. The Congress in creating the

Seminars and Workshops
(Estimated through September 1984)

<i>No.</i>	<i>Category</i>	<i>Participants</i>	<i>Faculty</i>	<i>Total</i>
16	Circuit/district judges	648	134	782
5	Bankruptcy judges	176	37	213
7	Magistrates	247	60	307
9	Clerks of court & clerk's office personnel (circuit, district, and bankruptcy)	437	83	520
14	Probation officers	506	82	588
2	Federal public defenders, community defenders	81	18	99
5	Training coordinators	73	12	85
1	Circuit executives	11	3	14
11	Automation seminars & workshops	92	34	126
7	Programs for personnel in several categories	194	27	221
77	TOTALS	2,465	490	2,955

In-Court Training Programs

96	Personnel of clerk's and probation offices	1,884	122	2,006
173	GRAND TOTALS	4,349	612	4,961

Center placed heavy emphasis on automation, specifically mandating that the Center "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States." 28 U.S.C. § 623(a)(5). The Center's early efforts in this area, consistent with the state of the art at that time, took the form of developing centralized hardware facilities and software applications, all subsumed under the umbrella term Courtran.

As a result of recent technological advances and increased demand by the courts for automated data support, the Innovations and Systems Development Division is currently focusing its efforts on developing applications that harness technological advances in the processing power of stand-alone microcomputers for the benefit of the federal judicial system. These microcomputers will permit the decentralization of automated court support systems, as described

earlier in this report and in the "Five-Year Plan for Automation in the United States Courts."

The plan envisions a system with some central computer power in Washington, D.C., and decentralized hardware in the field. Development of most software applications will remain the responsibility of the Center; the Administrative Office will continue to be responsible for the conversion, installation, and maintenance of applications that have become fully operational and, for historical reasons, development of certain specialized applications such as financial management. In cooperation with the Continuing Education and Training Division, the Systems Division will continue to train court personnel in the use of Center-developed computer applications.

D. Research Division

The statute creating the Center includes a list of mandated functions, the first of which is to conduct "research and study of the operation of the courts of the United States." 28 U.S.C. § 620(b)(1). In fulfilling this function, the Research Division has published a wide variety of reports and staff papers, some of which have been described in these annual reports. In addition, members of the Research Division staff work regularly with Judicial Conference committees, responding to requests for information and assisting in the evaluation of policy alternatives. Members of the division staff also respond to numerous short-term inquiries from individual courts, as well as from personnel in the Administrative Office.

The work of the Research Division often involves matters that are subjects of legislative consideration—for example, proposals to restructure judges' sentencing discretion, expansion of the number of district court executives, the Speedy Trial Act, and court-annexed arbitration. In those instances the division works with the committees of the Judicial Conference and the Administrative Office and, upon specific request, provides information to members of Congress and legislative staff.

E. Division of Inter-Judicial Affairs and Information Services

The Inter-Judicial Affairs Division is primarily responsible for liaison and coordination with other court-related organizations and

persons interested in the federal courts, particularly officials of foreign countries. The Center's Information Services Office is located within the division and, in addition to supporting the work of Center staff, responds to special requests from federal judges and supporting personnel. Subject to limits on resources, materials not available elsewhere are made available to the academic community, other researchers, and the general public. The division is also responsible for a number of major, continuing projects, including the Center's *Bench Comments*, the *Bench Book for United States District Court Judges*, *Chambers to Chambers*, and *The Third Branch*.

VI. CENTER PUBLICATIONS

Center publications fall into four basic categories. Reports contain the results of major research projects. Staff papers include descriptions of short-term research efforts in response to specific inquiries, as well as works of Center staff that appear, for example, in professional publications and are reproduced as staff papers because of wider interest in the subject matter. Publications in the Education and Training Series make available the presentations of selected lecturers or other materials developed in connection with Center seminars and conferences. Manuals and handbooks are produced as reference materials for federal court personnel; when appropriate, they are provided to a wider audience, usually on a loan basis.

A cumulative *Catalog of Publications* is revised annually for distribution with the printed version of the annual report. Most of the publications published in 1984 are listed below; other publications listed in the *Catalog of Publications* can be obtained by either writing to the Center's Information Services Office or calling that office at (202) 633-6365 (also FTS). Although the Center seeks the widest appropriate dissemination of its publications, some are produced in limited quantities for specific audiences or are available only on a loan basis. Others, such as the *Bench Book*, are, as a matter of Board policy, available for distribution only to certain groups within the federal judicial system.

The various publications produced by the Center in fiscal 1984 are listed below. A few other publications mentioned in this report will not be available for distribution until early in fiscal 1985.

Research and Staff Papers

Appeals Without Briefs: Evaluation of an Appeals Expediting Program in the Ninth Circuit, by John E. Shapard

The August 1983 Amendments to the Federal Rules of Civil Procedure: Promoting Effective Case Management and Lawyer Responsibility, by Arthur R. Miller

"A Database Management System for the Federal Courts," by Jack R. Buchanan, Richard D. Fennell, and Hanan Samet (in *ACM Transactions on Database Systems*, Vol. 9, No. 1, March 1984)

The District Court Executive Pilot Program: A Report on the Preliminary Experience in Five Federal Courts, by William B. Eldridge

District Court Implementation of Amended Federal Civil Rule 16: A Report on New Local Rules, by Nancy Weeks

The Influence of Rules Respecting Recovery of Attorneys' Fees on Settlement of Civil Cases, by John E. Shapard

"Issue Preclusion Against the United States Government," by A. Leo Levin and Susan M. Leeson (in *70 Iowa Law Review* 113 (1984))

The Joint Trial Calendars in the Western District of Missouri, by Donna Stienstra

Judicial Regulation of Attorneys' Fees: Beginning the Process at Pretrial, by Thomas E. Willging

Mediation in the Western District of Washington, by Karl Tegland

Partial Payment of Filing Fees in Prisoner In Forma Pauperis Cases in Federal Courts: A Preliminary Report, by Thomas E. Willging

A Process-Descriptive Study of the Drug Aftercare Program for Drug-Dependent Federal Offenders, by James B. Eaglin

Publication, Distribution, and Citation Rules and Practices in the Federal Courts of Appeals, by Donna Stienstra

Recommendations Regarding Use of Court-Owned Videotape Equipment in Federal District Court Litigation, by John E. Shapard

The Wayne County Mediation Program in the Eastern District of Michigan, by Kathy L. Shuart

Education and Training Series

Desk Book for Chief Judges of United States District Courts, by
Russell R. Wheeler

Handbook for Federal Judges' Secretaries (December 1983 revision)

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Public Law 90-219
90th Congress, H. R. 6111
December 20, 1967

An Act

To provide for the establishment of a Federal Judicial Center, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FEDERAL JUDICIAL CENTER

SEC. 101. Title 28, United States Code, is amended by inserting, immediately following chapter 41, a new chapter as follows:

“Chapter 42.—FEDERAL JUDICIAL CENTER

“§ 620. Federal Judicial Center

“(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

“(b) The Center shall have the following functions:

“(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

“(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

“(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of court, probation officers, and United States commissioners; and

“(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees.



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