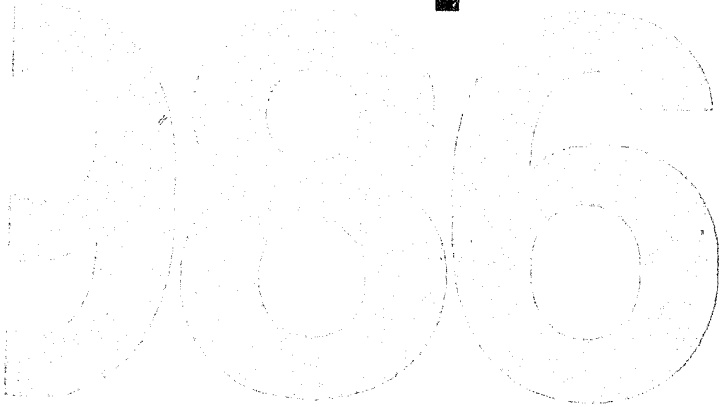


Federal Judicial Center Annual Report

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**1986 ANNUAL REPORT
FEDERAL JUDICIAL CENTER**

NCJRS

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ACQUISITIONS

FEDERAL JUDICIAL CENTER

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Honorable Warren E. Burger, Chairman
Chief Justice of the United States

Honorable Daniel M. Friedman
*Judge, United States Court of Appeals
for the Federal Circuit*

Honorable Arlin M. Adams
*Judge, United States Court of Appeals
for the Third Circuit*

Honorable Howard C. Bratton
*Chief Judge, United States District Court
for the District of New Mexico*

Honorable A. David Mazzone
*Judge, United States District Court
for the District of Massachusetts*

Honorable Jose A. Cabranes
*Judge, United States District Court
for the District of Connecticut*

Honorable Martin V. B. Bostetter, Jr.
*Bankruptcy Judge for the
Eastern District of Virginia*

Honorable L. Ralph Meham
*Director
Administrative Office of the United States Courts*

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Edwin L. Stoorza, Jr.

Innovations and Systems Development

Russell R. Wheeler

Special Educational Services

Past Directors of the Federal Judicial Center

Honorable Tom C. Clark

Associate Justice (Ret.), United States Supreme Court

March 27, 1968 to September 23, 1969

Honorable Alfred P. Murrah

Senior Judge, United States Court of Appeals

for the Tenth Circuit

May 1, 1970 to October 27, 1974

Honorable Walter E. Hoffman, Director Emeritus

Senior Judge, United States District Court for the

Eastern District of Virginia

October 27, 1974 to July 17, 1977

THE FEDERAL JUDICIAL CENTER

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WASHINGTON, D. C. 20005

A. LEO LEVIN
DIRECTOR

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August 19, 1986

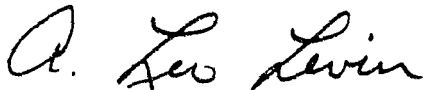
TO THE CHIEF JUSTICE AND MEMBERS OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES

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 1986. 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.

This year brought the announcement by Chief Justice Warren E. Burger that he is retiring from the Supreme Court. In consequence, he is also relinquishing his position as chairman of the Board of the Federal Judicial Center. The pages that follow make some attempt to assess the pervasive, beneficent influence of the Chief Justice, who has headed the Center's Board virtually throughout its existence. Judge Frank Coffin, a former member of the Board, captured the essence of the Chief Justice in describing him as "a unique institutional leader as well as a constant friend and supporter."

As the statutory deadline for submission of this report approaches, we look forward to working under the leadership of our new chairman, and to new achievements in the coming year. It is an appropriate time to pledge to continue our efforts and to do so with renewed dedication.

Sincerely,



A. Leo Levin

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INTRODUCTION

The Lengthened Shadow of One Man

The life of the Federal Judicial Center has been basically coterminous with the tenure of Warren E. Burger as Chief Justice of the United States and, by virtue of that office, as chairman of the Board of the Center. The statute creating the Center was enacted into law in December 1967, but the Center had been in actual operation for little more than a year when Warren Burger became Chief Justice on June 23, 1969.

Emerson wrote, "An institution is the lengthened shadow of one man." Whatever success the Center has had in serving the federal courts must be credited in large measure to Chief Justice Burger's leadership, insight, and commitment. Our research efforts have benefited from his creativity and his willingness to experiment. Our training programs reflect his firm belief in the value of judicial education. Our systems development efforts have profited from his desire to harness modern technology in aid of justice.

Chief Justice Burger's concern has never been narrowly confined. Courts and judges are simply instruments helpful in meeting a more fundamental need. At the 1976 Pound Conference, Chief Justice Burger put it simply in expressing the basic goal: "What we seek is the most satisfactory, the speediest, and the least expensive means of meeting the legitimate needs of the people in resolving disputes." The questions he asks, almost instinctively, have become an integral part of the Center's frame of reference: Are there better ways to administer justice? Are there preferable alternatives to lawsuits? To trials? What can the Center do to help answer these questions?

It bears mention that the Chief Justice's commitment to the importance of the people's needs in administering our courts predates by many years his elevation to the Supreme Court. In 1957, as a relatively new judge on the U.S. Court of Appeals for the District of Columbia Circuit, he spoke at New York University Law School on

"The Courts on Trial." He commented on the costs of our judicial system and the implications of those costs:

The cost of operating the federal courts in this country is about \$45,000,000 a year; the total cost of state courts is estimated at about \$500,000,000 a year. Together they handle litigation involving billions of dollars and vital rights of citizens. This is a very large enterprise and it is somewhat misleading to call it the business of the courts, as we have traditionally done—more accurately it is the business of the people.

The dollar figures Chief Justice Burger cited in 1957 are by now but artifacts of that earlier era. The federal courts' workload has brought their budget to more than twenty times what it was then, and the public costs of state and local courts have in all probability risen by about the same proportion. The principle, though, is enduring: The business of the courts is the business of the people.

A member of the Center's Board conveyed most aptly the Center's indebtedness to Chief Justice Burger in a recent issue of *The Third Branch*:

History will surely record that Chief Justice Burger's contributions in the field of judicial administration are unequalled. It has been a high privilege to serve on the Board of the Federal Judicial Center with him. Under his guidance the Center has developed from infancy to maturity and has become a valuable resource for the federal judiciary.

Warren E. Burger leaves the position of Chief Justice in order to make the bicentennial of the Constitution "a history and civics lesson for us all." There is no necessary paradox in frequent references to people and events that have shaped our national existence on the one hand and, on the other, an openness to changes and modifications in the structures and procedures inherited from earlier generations. More precisely, there is no contradiction if both interests are directed to common, fundamental principles.

Chief Justice Burger recently characterized the bicentennial as "an opportunity for a 'national seminar' on what the Constitution has meant in the life of our country and what it promises for the years ahead," and he invited the participation of all federal judges in this seminar "in a way that judges can do so well."

Celebrating what the Chief Justice has called "the principles and institutions which have protected our freedoms and how we secured them" requires a knowledge of the Constitution's principles and a recognition of the remarkable feat it was to fashion a struc-

ture of government that would serve those principles. It requires as well an appreciation for the same spirit of innovation and testing that serves us well today.

Federal judges can contribute uniquely to the bicentennial celebration. It is not only that they know the Constitution; more important, they see its impact on how we conduct our affairs. At Chief Justice Burger's request, and with the approval of the Center's Board, the Center will assist the Commission on the Bicentennial of the United States Constitution, in part by providing pertinent information and assistance to the judiciary. The first steps, taken in fiscal 1986, are reflected in the pages that follow. The Center stands ready to do what it can to help as judges, scholars, and others are called upon to contribute, within their communities and within the nation, to bicentennial celebrations.

As he leaves the Center's Board, Chief Justice Burger reminds us again that there is no standing still, and that only by studying the past can one prepare well for the future.

I. TRIAL COURTS

A. Continuing Education and Training Programs

The Federal Judicial Center designs its educational programs for trial judges, magistrates, and supporting personnel in light of the great diversity of the federal trial courts and the varying needs of their personnel. Some programs address problems that are national in scope while others meet specific local court or, in some instances, special individual needs. Although seminars and workshops are the most visible of its educational offerings, the Center complements these programs with in-court instruction, manuals and monographs, tuition support, and an extensive lending library of videotapes, films, audiocassettes, and instructional software.

The Center's educational efforts can be divided into two general categories—orientation programs and continuing education, or in-service, programs. Orientation programs are designed to help meet the immediate operational needs of new judges and magistrates and, where feasible, supporting personnel. The Center makes every effort to meet those needs close to the time the individuals undertake their new duties so that the programs can have optimal impact. Continuing education, which takes many forms, exposes participants to changes in the law imposed by statute or by appellate courts, to new techniques of court and case management, to refinements in general management and leadership practices, and to technological and administrative innovations. Trial court personnel also benefit from the Center's program of limited support for attendance at courses offered by other educational institutions, which supplement the programs developed by the Center.

The Center's first educational priority is to serve the federal judiciary. The Center offers all judges an opportunity to attend at least one regional seminar or workshop each fiscal year. Unfortunately, this is not feasible with respect to all supporting personnel because of the sheer number of individuals involved and the limits on the Center's resources. However, some form of continuing education is regularly available to every member of the federal judicial system.

Orientation Programs for Newly Appointed District Judges. Federal judges in the United States, unlike those in some other countries, have not pursued a course of professional study that culminates in their appointment to a trial or appellate court. New district judges bring many different backgrounds to the bench—extensive criminal law experience in some instances, specialized civil practice in others, and, occasionally, state or federal judicial experience. All new judges, however, share the need for an orientation to the unique office of federal district judge. This orientation comprises three phases, in each of which the Center plays a role: an in-court orientation program, a four-day regional seminar that includes video programs and a visit to a federal prison, and a week-long session in Washington, D.C.

The in-court orientation programs, which vary from court to court in length, detail, and formality, make it possible for new judges to be helped, and helped promptly, by their more experienced colleagues, particularly with respect to processes and procedures with which they are relatively unfamiliar. It is well to recognize that no newly appointed judge can be expected to be familiar with the wide variety of problems with which he or she will be required to deal. Accordingly, the Center has developed a “checklist” of topics that are appropriate for consideration in judges’ orientation sessions; a copy is provided not only to the newly appointed judge but to the chief judge of the court that he or she will be joining. In addition, the Center supplements this orientation process by making available a variety of publications and other orientation materials to new judges.

In-court orientation is followed by participation in a small regional seminar that features one day at a federal prison devoted to sentencing and the correctional system and three additional days of videotape presentations that address procedural matters—the “how to do it” aspects of being a federal judge.

The Center conducted eight regional video seminars for newly appointed judges in fiscal 1986. During the course of these four-day programs, small groups of new judges received an introduction to federal sentencing and corrections, the basics of case and court management, and the Federal Rules of Evidence. The Center encourages judges to attend such a seminar just prior to taking the oath of office or shortly after going on the bench. The seminars employ instructional videotapes viewed under the tutelage of an experienced district judge. Until this year, video seminars relied primarily on videotapes of live presentations made at earlier Wash-

ington seminars. The last five seminars in this year's series used video lectures that the Center prepared in its studio in Washington specifically for the regional seminars. These video lectures are illustrated with statutory and rule citations, pictures, diagrams, and other graphics to enhance understanding.

Questions are encouraged at the regional video seminars, and the relatively informal atmosphere and the small size of the group make it feasible to focus discussion on matters of particular interest to the participants. These seminars, coming early in the career of new judges, also give the participants the chance to become acquainted with their colleagues in other districts and circuits. Emphasizing procedures and management, areas with which new judges are likely to be least familiar as they begin their duties, has made it possible for new topics to be added to the curriculum of the week-long seminar in Washington.

One day of the regional seminar is spent at a federal correctional institution, with primary emphasis on federal sentencing practices and policies. This visit, however, also affords judges an opportunity to tour the facility and to meet with inmates. The correctional institutions at Lompoc, California; Phoenix, Arizona; Petersburg, Virginia; and Butner, North Carolina, were visited during the 1986 seminars. This part of the program enables new judges to visit a correctional institution early in their judicial tenure and, given the regional basis of the video programs, possibly to visit an institution to which defendants they sentence will be assigned. This arrangement accords with the 1976 resolution of the Judicial Conference of the United States "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." These visits do not preclude visits to other institutions closer to the judges' designated courts and, in fact, may prompt such visits. The sentencing portion of the program is typically under the guidance of a judge on the Judicial Conference Committee on the Administration of the Probation System. In addition to the warden and other senior staff of the institution, local Bureau of Prisons representatives and regional staff from the U.S. Parole Commission may be present. Experienced probation officers also assist with the instruction.

The third phase of orientation for newly appointed district judges consists of a week-long seminar held in Washington, D.C. Here the stress is on substantive judicial education delivered in a more traditional lecture format. This experience is usually offered to new

judges in their first year of service. The Chief Justice regularly participates and other members of the Supreme Court typically find occasion to visit with the new judges.

This week-long seminar, probably the best known of any of the Center's educational programs, is held when the number of newly appointed judges is large enough to constitute a class of approximately thirty-five. Thus, the seminar has typically been scheduled once a year, except when legislation such as the Bankruptcy Amendments and Federal Judgeship Act of 1984 creates a substantial number of new judgeships.

In fiscal 1986, three seminars were scheduled. The October 1985 seminar was attended by thirty-seven district judges, one judge of the Court of International Trade, and one judge of the Claims Court. Twenty-eight district judges, one judge from the Air Force Trial Judiciary, and three judges from the Tax Court attended the second seminar, which was conducted in February 1986. A third seminar, at which approximately thirty-five newly appointed judges are expected, is scheduled for September 1986.

The October and February seminars provided an intensive six-day treatment of topics crucial to the new federal trial judge, including trial and pretrial management of civil and criminal cases, special problems of jury and nonjury trials, the Federal Rules of Evidence, and judicial ethics. The seminars also offered a framework for analyzing such subjects as antitrust litigation, class actions, federal habeas corpus, employment discrimination, and the law of search and seizure. The new judges received an overview of the October 1984 Comprehensive Crime Control and Criminal Fine Enforcement Acts, with emphasis on the bail amendments that constitute title I of the Crime Control Act. As in other recent programs, a special panel on "the trial judge and the correctional system" also touched on the new crime legislation and, more important, highlighted the perspectives brought to the current sentencing process by seasoned trial judges. The panel included the director of the Bureau of Prisons, the chairman of the U.S. Parole Commission, and the chief of the Probation Division of the Administrative Office of the United States Courts—all experts who provided information concerning the operation of their respective organizations in the correctional process.

The curriculum for the week-long orientation program has been under careful review in fiscal 1986 by a committee appointed in 1985 by the Chief Justice. Judge Warren K. Urbom of the District

of Nebraska, a member of the Center's Board from 1982 to 1986, chairs the committee. The September 1986 seminar will incorporate some general content changes and refinements resulting from the committee's work. In addition, the committee guided the substantive development of the revised video orientation curriculum described earlier.

In addition to the 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, available to all judges and support staff, supplement the Center's extensive list of publications and make it possible for the new judge to use an assortment of training aids that respond to his or her particular needs and interests.

Continuing Education Programs for United States District Judges. In establishing the Center, the Congress provided that it should develop and conduct "programs of continuing education and training for personnel of the judicial branch of the Government." To fulfill that mandate, the Center offers regional workshops, organized by circuit, for U.S. district judges. In most circuits these are held on an annual basis, and in many they are attended by judges of the courts of appeals. Whether to have a workshop in any particular year is the option of each circuit; the Center works closely with the chief judge of the circuit regarding this initial determination. Planning groups of district judges, appointed by the chief judge of the circuit, work with the Center to develop the programs for the workshops, some of which are held jointly with judges of a contiguous circuit. To ensure that each program responds to the needs and interests of the participants, the judges typically are sent a list of available presentations and asked to indicate their preferences. The response rate is high and the needs indicated are reflected in the development of workshop curricula. When the preferences are sufficiently varied and the number of judges warrants it, a workshop may schedule two courses concurrently, thus affording the judges a choice.

The Center sponsored seven circuit workshops in fiscal 1986, two of which were joint programs for two circuits. In addition, some District of Columbia judges attended the Fourth Circuit workshop. Workshop sessions covered procedural and substantive topics reflecting both current local needs and national concerns. Judges at the Fifth Circuit's workshop, for example, heard a panel discuss requests for a stay of execution in death penalty cases. The joint workshop for the Eighth and Tenth Circuits featured presentations

on the "due process explosion" and alternative methods of dispute resolution, while judges at the Sixth Circuit's workshop were given the option of attending a session on understanding computers. The circuit judges attending the joint workshop for the Second and Third Circuits devoted time to a comparison of appellate operating procedures, and relations between appellate and district courts was the subject of a session for all the appellate and district judges attending that workshop. Contempt, new developments in copyright and intellectual property law, and jurisdictional problems of removal and remand were among the subjects covered at the Ninth Circuit's annual workshop.

With the assistance of the Clerks Division of the Administrative Office, the Center also sponsored five juror utilization and management workshops in fiscal 1986, continuing a series initiated in 1985. Chief district judges or their judge-designees, along with their clerks of court and jury administrators, attend these roundtable programs, which provide a forum for exchange of information concerning techniques and practices that have proved successful in jury management. This series of workshops, in which all but a few district courts have now participated, respond to the directives of the Judicial Conference to the circuit councils to improve jury utilization. The Conference addressed this problem in general terms in March 1981, and in March 1984 it set a goal for all district courts of no more than 30 percent as the total of jurors not selected, serving, or challenged.

Special Summer Programs for District and Appellate Judges. For some years the Center has afforded district and appellate judges the opportunity to attend special programs on college campuses. Sometimes this has been done by sponsoring the attendance of a limited number of judges at educational programs organized by law schools; at other times the Center has developed special programs designed to meet perceived needs. Thus, in 1984 and 1985 the Center presented programs dealing with statistics and expert testimony in district courts, using the facilities of the University of Wisconsin Law School.

In June 1986 the Center presented a program on constitutional adjudication and the judicial process in the federal courts. The concept was approved by the Center's Board, and the curriculum was designed by a planning committee appointed by the Chief Justice and chaired by Chief Judge Howard C. Bratton of the District of New Mexico and including Judge Daniel M. Friedman of the Federal Circuit Court of Appeals, Judge Antonin Scalia of the District

of Columbia Circuit Court of Appeals, and Judge Louis H. Pollak of the Eastern District of Pennsylvania.

This program brought fifty-six district and eighteen appellate judges to the campus of the School of Law of the University of California at Berkeley (Boalt Hall). Twice as many had asked to attend, but the attendance was limited in accordance with policy established by the Center's Board. The program, using plenary lectures, small-group discussions, and specially prepared instructions, presented a broad, panoramic sweep of frequently litigated constitutional provisions (other than criminal procedure) and also considered some issues of constitutional history with an eye toward the forthcoming celebration of the bicentennial of the Constitution.

Audiocassettes of the plenary lectures, together with the reading materials, are available to all federal judges.

State-Federal Programs. The Center has supported the work of state-federal judicial councils since they were created in 1971 in response to Chief Justice Burger's suggestion. In fiscal 1986, the Center continued to provide discrete educational components for meetings of state and federal judges held under council auspices. Habeas corpus and postconviction relief—sources of considerable state-federal tension—have generally been the topics treated. Council-sponsored meetings were held in fiscal 1986 in Georgia, South Carolina, and Arizona. Because of the response to these programs, the Center also prepared a series of videotaped lectures on habeas corpus featuring Professor Ira Robbins, who as a law professor at American University, and this year as a Judicial Fellow at the Center, has lectured at each such seminar.

The Center, through its Inter-Judicial Affairs Division, also assists states interested in organizing state-federal judicial councils by providing relevant information, including suggested agenda items.

Education and Training Publications. A wide range of educational monographs and manuals on issues of interest to federal trial judges are provided by the Center. Two that continue to enjoy widespread use are the *Manual on Recurring Problems in Criminal Trials*, by Judge Donald S. Voorhees of the Western District of Washington, and the *Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts*, by Judge Charles R. Richey of the District of the District of Columbia.

The most recent edition of Judge Richey's manual was published in 1984; replacement pages for that edition, reflecting changes through August 1985, were distributed this fiscal year. Another set of replacement pages will be prepared by Judge Richey for distribution early in the next fiscal year. The 1984 edition and subsequent replacement pages have also been published by several private law-book companies.

For some years the Center has published a series of monographs to provide judges with overviews of particular topics, accompanied by extensive bibliographies that serve as a guide to the literature. These monographs have treated subjects as diverse as fraud and civil liability under the securities acts, the law of class actions, legal issues arising under the "Black Lung Act" of 1969 as amended, and the 1983 amendments to the Federal Rules of Civil Procedure. In January 1986, the Center made available *Disability Appeals in Social Security Programs*, and a monograph on immigration law is scheduled for publication in late fiscal 1986 or early fiscal 1987. In fiscal 1986 the Center also began work on a second edition of its 1985 publication *The Crime Control and Criminal Fine Enforcement Acts of 1984: A Synopsis*. Many judges still use this synopsis, with their own annotations, as a desk reference. The new edition, which will be available in fiscal 1987, will summarize the vast case law that the legislation has generated in two years.

Other publications serve other needs. Two briefer 1986 publications were a description of the Judicial Conference and its Court Administration Committee by the committee's chairman, Judge Elmo B. Hunter, and a talk by Senior Judge Edward J. Devitt, *Your Honor*, based on Judge Devitt's remarks at Center seminars for newly appointed district judges. Also, in light of the role many judges will play in the celebration of the Constitution's bicentennial, the Center prepared and distributed *The Writing and Ratification of the U.S. Constitution: A Bibliography*, an extensive listing of leading works that describe and analyze the events before, during, and after the Philadelphia Convention of 1787. An abbreviated version of that work was also made available.

At the request of the Judicial Conference Committee on the Judicial Branch, the Center undertook the preparation of literature for federal courthouse visitors, including students, who are not lawyers. The project is intended to produce one or more easy-to-read pamphlets describing the organization, procedures, and personnel of the federal judicial system.

Bankruptcy Judges. The Center provides systematic orientation and in-service training for all federal bankruptcy judges. Following the pattern established for federal trial judges, curricula for bankruptcy judges' seminars include procedural as well as substantive instruction. A substantial portion of the Center's fiscal 1986 bankruptcy programs treated recent changes in bankruptcy law and in the organization and jurisdiction of the federal bankruptcy system. These changes stemmed from the fact that the Supreme Court, in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 451 U.S. 50 (1982), held the Bankruptcy Reform Act of 1978 unconstitutional in part, which led the Congress to pass the Bankruptcy Amendments and Federal Judgeship Act of 1984. In response to changes resulting from the 1984 act, the Center undertook in fiscal 1985, and has continued in fiscal 1986, a multifaceted program to educate the courts about the changes.

It should be noted parenthetically that district and appellate judges are also concerned with these changes in the law. For this reason, several workshops for Article III judges included presentations on the changes to title 28 effected by the new bankruptcy legislation. The Center's programs for bankruptcy judges in 1986 covered these matters briefly, but focused primarily on the substantive changes to the bankruptcy law, dealing with, among other subjects, executory contracts and leases, labor contracts, trustees' avoiding powers, chapter 11 amendments and repurchaser agreements, and the new legislation's consumer amendments. Commensurate with the increasing interest of all judges in efficient trial management, several seminars also included a component on judicial techniques to expedite trials.

Small regional video orientation seminars, led by experienced bankruptcy judges, are the primary means of introducing new bankruptcy judges to their duties. The videotapes, which constitute the heart of the instruction, were updated in September 1985. The three video orientation seminars held in 1986 treated such basic topics as the bankruptcy code, debtors, creditors' fees and allowances, the administration of the bankruptcy court system, effective case management, opinion writing, and the Federal Rules of Evidence. The Center supplements these video orientation seminars with national seminars for recently appointed bankruptcy judges held in Washington. These afford the judges the opportunity to meet together after a year or two of experience on the bench and to benefit from a more advanced program.

In June 1986 the Chief Justice appointed Bankruptcy Judge Martin V. B. Bostetter, Jr., of the Eastern District of Virginia, a member of the Center's Board, to chair a committee to review current Center educational programs for bankruptcy judges and, where appropriate, to provide recommendations for improving and refining them.

Magistrates. When Congress created the position of U.S. 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). This year the Center conducted three video orientation seminars for newly appointed full- and part-time magistrates. The orientation seminars treat magistrates' managerial and administrative duties, federal criminal and civil procedural rules, and the Federal Rules of Evidence. In fiscal 1986, the Center also held four seminars, organized on a regional basis, for full-time magistrates and those part-time magistrates with substantial workloads. The subjects covered included the 1984 amendments to the bail statutes, trials of civil cases, habeas corpus litigation, problems that arise in cases under 42 U.S.C. § 1983 filed pro se by prisoners, recent developments in employment discrimination law, alternative methods of dispute resolution, federal court awards of attorneys' fees, and Social Security disability cases.

In developing these programs, the Center seeks to learn the perceived needs of the magistrates themselves, affording those who are to attend the opportunity to express their preferences with respect to subject matter. In addition, 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 chair the seminar.

Clerks of Court and Supporting Personnel. From one-third to one-half of the supporting personnel in federal trial court clerks' offices have some direct contact each year with one or more Center seminars, workshops, or in-court programs. (In some cases the primary instruction is by way of Center-produced audiovisual materials.) These programs make it possible for the participants to keep abreast of changes dictated by new legislation, requirements imposed by directives of the Judicial Conference, Administrative Office policies, changing patterns of district court civil litigation

and criminal prosecutions, and new developments in court and case management and administration.

In fiscal 1986, the Center sponsored five juror utilization and management workshops, which bring together teams of district clerks, jury administrators, and their chief district judges. In addition to providing a forum for the active exchange of ideas, experiences, and practices, these workshops afford an opportunity to review the principles of effective petit and grand juror management and administration.

A national seminar for all federal trial court clerks is scheduled for September 1986. It will take its theme from the impact of the Gramm-Rudman-Hollings legislation: doing more with less through improved management and leadership. In addition, it is to include small-group workshops on automation. In fiscal 1986, the Center designed and conducted its first national seminar for chief deputy clerks in bankruptcy offices. The program featured sessions on management, bankruptcy case administration, and the current status and future of bankruptcy court automation.

Among other programs for supporting personnel was a pilot workshop for personnel officers in the larger federal trial courts. Participation in this workshop was limited to full-time personnel officers of the metropolitan district courts. The workshop featured sessions on personnel counseling, legislative updates, utilization of personnel, retirement counseling, and Judiciary Salary Plan (JSP) revisions. In addition, it included a presentation on procedural requirements relevant to personnel officers. This pilot program will serve as a model for similar seminars for personnel clerks in medium and small courts.

The Center sponsored a workshop for federal court interpreters in 1986 to familiarize them with the organization and jurisdiction of the federal judicial system, criminal and civil case procedures, technical terminology, and standards of performance required of court interpreters.

In February 1986 the Center released a six-part video series designed to introduce deputy clerks to the major elements of title 28 of the U.S. Code and to relevant provisions of the Federal Rules of Civil Procedure. This program has been particularly well received; within a few months of its release there were more than one hundred requests for the series.

Personnel in clerks' offices this year continued to participate actively in Center-supported local educational activities. Additionally, a large proportion of the Center's tuition support funding (see chapter 4) in fiscal 1986 was expended to enable clerk's office staff to attend relevant courses offered by the Office of Personnel Management, the National Archives, and others.

Federal Public and Community Defenders, Assistants, and Investigators. The Center is responsible for the training of federal public defenders and federal community defenders, their assistants, and support personnel such as investigators, using funds administered within the federal judicial budget. By contrast, assistant U.S. attorneys are provided continuing legal education, including intensive instruction in trial advocacy, by the Department of Justice.

In November 1985 the Center held an orientation seminar for assistant federal defenders at the Federal Bureau of Prisons Management and Specialty Training Center in Aurora, Colorado. Developed in cooperation with the Administrative Office and a planning group of federal public and community defenders, the program was a rigorous and comprehensive five-day treatment of the theory and procedure of federal criminal defense, including, but not limited to, preliminary hearings, discovery, motions to suppress, jury trials, the Federal Rules of Evidence, sentencing, and posttrial motions. Various provisions of the October 1984 crime legislation were also analyzed and explained.

The Center this year sponsored the attendance of thirty newly designated assistant federal defenders at a special program organized by the National Criminal Defense College at Mercer University Law School. Unlike the five-day orientation program, this intensive two-week training session concentrates almost exclusively on the development of sophisticated advocacy skills relevant to criminal defense. Taken together, the two programs provide new assistant defenders with a comprehensive introduction to the theory and practice of criminal defense work. The Center's tuition assistance program is also available to federal defenders.

B. Desk and Research Aids for United States District Courts

Bench Book for United States District Court Judges. The third edition of the *Bench Book* was completed and published in 1986.

Each of the sections in parts 1 through 3 is designed to serve as a readily available procedural checklist for use in connection with the hearing or phase of trial to which it is relevant, while parts 4 and 5 contain supplementary material. This publication, which first appeared in 1969, was originally designed for the use of district judges. However, magistrates and bankruptcy judges have also found it useful, and although the title remains unchanged, the third edition is intended to serve them as well. The *Bench Book* is not meant to serve as authority and is, therefore, not to be cited directly. Where appropriate, however, primary sources are indicated.

The *Bench Book* is published in two volumes with a loose-leaf format to readily accommodate revisions as well as new material. Among the topics included are assignment of counsel, taking guilty pleas, and charging the jury in a civil case. Chief Judge William S. Sessions of the Western District of Texas, a former member of the Center's Board, chairs the Bench Book Committee.

Bench Comments. Periodically, the Center publishes two- or three-page advisories on recent appellate decisions that may be of particular interest to federal judges. These typically describe emerging trends in appellate law or treat developments under recent statutes of general interest. Thus, in 1986 some of the *Bench Comments* focused on the Bail Reform Act of 1984, describing, for example, judicial treatment of rebuttable presumptions created by the act and varying approaches to the statutory requirements concerning the timing of pretrial detention motions and hearings.

Each *Bench Comment* is reviewed by a selected group of judges with expertise in the topic addressed. *Bench Comments* do not represent official policy, nor are they to be cited as authority. They do, however, provide citations to original sources.

Chambers to Chambers. From time to time, the Center publishes brief descriptions of case management techniques or chambers management techniques found helpful by federal judges. Like *Bench Comments*, each issue of *Chambers to Chambers* is reviewed by several federal judges prior to publication. There is no effort to present or to formulate official policy; rather, this series is intended to provide a forum for exchange of information.

The use of alternate jurors in civil cases and the appointment of special masters to conduct settlement negotiations were two of the subjects treated during fiscal 1986.

Manuals and Handbooks for Supporting Personnel. The various manuals and guides the Center has developed for supporting personnel since 1977 reflect the reality that continuing education can take many forms. Continuing demand for these publications attests to their utility. In fiscal 1986, a third revision of the *Handbook for Federal Judges' Secretaries* was published, and Judge Alvin B. Rubin of the Fifth Circuit Court of Appeals commenced work on a revision of his *Law Clerk Handbook*.

C. Automated Case and Court Management Support for District Courts

Guided by the Judicial Conference and working with the Subcommittee on Judicial Improvements of the Judicial Conference Committee on Court Administration, the Center and the Administrative Office have jointly developed an automation plan for the federal courts; it has a five-year time horizon and is updated annually.

The most recent revision of the *Five-Year Plan for Automation in the United States Courts* reflects comments received from the courts in response to the initial draft of the plan, and it more clearly specifies the division of responsibilities for automation development and support between the Center and the Administrative Office. It describes the Center's plans for completion of major systems under development and transfer of those systems to the Administrative Office. In addition, the plan summarizes the status of the various automated projects that come under the purview of the Administrative Office. The material that follows details fiscal 1986 activities relevant to district courts.

Civil Case Management System. The civil case management system is an automated system for district courts that will permit the replacement of paper dockets with electronic dockets. In addition, the system is designed to provide for the production by computer of many of the schedules, forms, and reports that are associated with the civil side of district court clerks' workload. During 1986, the Center continued its development of this system, taking advantage of much that had been developed in the course of creating the New Appellate Information Management System (New AIMS), the appellate analogue of this system. Four pilot courts are currently participating in this project: the Districts of Arizona, the District of Columbia, Northern Georgia, and Western Texas. Estab-

lishing specifications and evaluating progress are a continuing process, in which the pilot courts play a major role.

Early benefits of the project were realized this year when, for example, the District of Columbia stopped relying on older automated systems in favor of the new system, which is more powerful, flexible, and efficient. Considerable cost savings are anticipated as courts are able to discontinue operations on the machines and programs of an earlier generation of computers.

Automation Training. Decentralization of automation requires a new dimension of education. With the computers located in the courts themselves, court staff must be trained to maintain and take full advantage of both hardware and software and, at the least, to ensure appropriate standards of operation and maintenance. The Center has therefore developed a two-week course in basic system administration, which is offered to court personnel at the time a computer is installed. During this fiscal year, the Center offered its system administration class on three occasions; twenty-seven students attended, representing fifteen district courts.

Clerks of court and other senior court managers whose responsibilities include supervision of system administrators evidenced strong interest in acquiring basic system administration skills. The Center therefore developed a one-week system administration course for court managers. The course provides enough technical information for the senior manager to understand the issues of system administration and provides that information in a context appropriate for supervisors. During fiscal 1986, the Center conducted this course on two occasions; nineteen students attended, representing seventeen district courts and two bankruptcy courts.

Training and reference manuals are an important component of automation training. This year the Innovations and Systems Development Division made available several such manuals.

D. Automated Case and Court Management Support for Bankruptcy Courts

The Center continued development of the Bankruptcy Court Automation Project (BANCAP) in fiscal 1986. Because of the Gramm-Rudman-Hollings budgetary restrictions, however, the Center was obliged to defer the development of BANCAP for a six-month period. Instead, all available resources were devoted to the success-

ful completion of New AIMS (described later in this report) and continued support of the district court civil docketing and case management project. Nevertheless, because of the large amount of technical overlap between New AIMS, the civil system, and BANCAP, the impact of the delay in development was minimized substantially. The commonality of parts of these various systems was introduced deliberately and has already paid dividends in development timetables; it will continue to be valuable after the systems have been transferred to the Administrative Office.

A great deal was accomplished in fiscal 1986 in the three BANCAP pilot courts (the Districts of Western New York, Western Texas, and Western Washington): Docketing routines were developed and refined, report- and form-generation packages were developed and tested, and a substantial amount of testing of the entire system occurred. The Center looks forward to completing the system during the coming fiscal year.

E. Management of the District Courts

Programs for Chief District Judges and Their Staffs. Since 1980, the directors of the Center and the Administrative Office have routinely invited all new chief district judges to visit both agencies to become better acquainted with those programs that are relevant to a chief judge. The stimulus for this policy came from the Conference of Metropolitan District Chief Judges, which also endorsed the suggestion that it would be useful for the Center to develop a resource book designed for chief judges of the district courts. In 1984, the Center published the *Desk Book for Chief Judges of United States District Courts*. In January 1986, the Center issued the first set of periodic replacement pages designed to keep the manual current. The *Desk Book*, prepared in close consultation with sitting and former chief district judges and reviewed by the Conference of Metropolitan District Chief Judges, is designed for all chief judges and should be especially helpful to those newly elevated. It describes the agencies of federal judicial administration; reviews chief judges' relationships with other judges, officers, and employees of the court; and details chief judges' relationships to various aspects of district court administration, including case management and related tasks, personnel management, procurement and construction, court security, and media and bar relations. The *Desk Book* refers to official policies and guidelines where they exist and presents

suggested approaches to court management found useful by experienced chief judges.

In fiscal 1986, the Center held another of its "management team" workshops for chief district judges and clerks of court, this time at the request of the chief judge of the Fifth Circuit Court of Appeals. Relying on roundtable group discussions and case studies, the two-day workshop considered the respective roles of the chief judge and the clerk in managing a district court and examined topics such as oversight of bankruptcy courts, effective juror utilization, disposition of case backlogs, and automated case and calendar management. The attending chief judges received a series of detailed reports prepared by the circuit executive's office on the number and status of backlogged cases in their respective districts.

Conference of Metropolitan District Chief Judges. The Conference of Metropolitan District Chief Judges, an integral part of the Center's judicial education program, consists of the chief judges of district courts with six or more authorized judgeships. The conference has been meeting semiannually to consider developments affecting large district courts and to exchange information concerning techniques of leadership and coordination that have proven successful. These meetings have also provided the opportunity for presentation of informational reports on legislative developments and Judicial Conference decisions. Other subjects considered by the conference in fiscal 1986 included punitive damages awards, alternative dispute resolution programs, the effect of managerial judging on the quality of justice, admission requirements for attorneys to practice in federal courts, the impact of Gramm-Rudman-Hollings on court security, and the operation of separate offices for pretrial services programs.

Chief Judge Charles E. Simons, Jr., of the District of South Carolina was appointed chairman of the conference by Chief Justice Burger in June 1986. He succeeds Judge Walter E. Hoffman of the Eastern District of Virginia, who had served as chairman since 1977. The Center's deputy director serves *ex officio* as executive secretary of the conference.

Local Rules. The Center's Information Services maintains an index of district court and appellate court local rules together with a file of the text of each of the rules. The index uses an automated data base that allows for rapid response to inquiries. The collection is kept current as a result of the cooperation of the clerks of courts, and the Center is pleased to express its appreciation to them for

their continued assistance in promptly forwarding newly promulgated rules as well as amendments to existing rules.

Pretrial Orders and Case Assignment. The Center's Research Division continues to issue reports on distinctive procedures followed by federal district courts in their efforts to maintain and improve the quality of court processes. A recent publication in this series is *The Use of Standard Pretrial Procedures: An Assessment of Local Rule 235 of the Northern District of Georgia*. The Georgia procedure was developed in response to several concerns, principally the bar's problems with variation among individual judges' requirements in a growing urban court and the judges' concern about meeting the requirements of federal rules related to pretrial procedure. The report describes the procedure as it operated in its first year and reviews the judges' appraisal of the four basic elements of the rule.

Another paper, *Calendarizing in the Eastern District of North Carolina*, is scheduled for publication in fiscal 1987. It deals with special practices, one criminal and one civil, designed and implemented in that court. This district assigns all criminal cases filed during a specified period to a single judge and magistrate, who retain the cases through final disposition. The procedure was adopted to reduce scheduling conflicts that arise for lawyers and marshals when all judges are simultaneously handling criminal cases. The technique also creates large blocks of time for handling long civil trials during that part of the year when a particular judge is not handling criminal matters.

The Eastern District of North Carolina also assigns each judge an equal share of all civil cases filed in every division. Judges then hold trials in the divisions in which their assigned cases were filed. Though the travel requirements can be burdensome, the practice is intended to make the court more accessible and to avoid a concentration of cases originating in a particular division on the docket of one judge. The report describes the origin and operation of these practices and the impact they have had on the court.

In quite different ways, the North Carolina practice has produced some results similar to those achieved in the Northern District of Georgia: Procedural variations among judges have been reduced, and the management of case flow has been strengthened. The North Carolina court also believes that its practices have enhanced the perception of the court as a single, cohesive judicial institution.

F. Research on the Trial Litigative Process

As the preceding section demonstrates, federal judges and federal courts continue to experiment with innovative procedures, particularly with respect to civil litigation. It is true that some of the stimulus for innovation is rooted in the problems of volume so often referred to in current literature. Many of the programs, however, have been undertaken as a result of the much more basic drive to improve the way courts meet their responsibilities. When a new technique appears to be successful, it is continued, and as word of its success is shared with other judges, it is tried by others. The Center, through its Research Division, describes such programs for the benefit of other courts. Where appropriate, the Center also studies the effects of the innovations and publishes its findings. The primary goal of the Center's activity in this area has been to ensure that the courts have access to sufficiently detailed information to permit informed judgments about the desirability of adopting, adapting, or rejecting a particular innovation.

In some situations, and the discussion of settlement techniques that follows is a good example, what is most useful to other judges is a description of the variations in technique across courts—a focus not on the dramatic innovation, the startling departure from what had been the norm, but rather on shades and nuances, on developments in emphases and attitudes among various courts and judges. To capture and record such variations for the benefit of the federal judiciary generally, the Center has organized conferences of relatively small groups, with discussion focused both on hypothetical cases and on the personal experiences of the participants. The utility of such conferences is reflected in the work of the Research Division on asbestos litigation as well as on settlement, both described below.

Settlement. Lawyers urge greater court involvement in settlement efforts in the belief that, as a result, settlements will come earlier and with less cost. Judges are participating with increasing frequency, in part as a means of managing heavy caseloads. Institutional innovations, including mediation, arbitration, minitrials, and summary jury trials, are currently the focus of attention, but a wide range of less visible but more familiar techniques continue to find favor throughout the judicial system.

Understanding the nature and extent of these individual settlement activities is useful to individual judges as they rethink their

own roles; it is also valuable to courts as they consider institutional innovations. To these ends, the Center's Research Division prepared a paper describing the major settlement approaches used by federal judges. That paper and a group of hypothetical cases formed the basis of discussion in a session attended by twenty judges who have been identified with one or more of the major approaches. A report on the entire undertaking, *Settlement Strategies for Federal District Judges*, was published in fiscal 1986. Perhaps because so many federal judges have found it valuable, the report has also attracted favorable attention among state judges.

Court-Annexed Arbitration. The Center's Research Division continues to work with the ten federal districts currently engaged in programs of court-annexed arbitration. Variations in the programs provide an opportunity to observe and report on differences in primary goals, in procedures, and in selection of cases for referral, including the amount in controversy. The Center is also studying the level of satisfaction among participants, including judges, lawyers, parties, arbitrators, and court personnel. Preliminary reports in this extended evaluation suggest that positive effects are beginning to appear. Lawyers register approval of both the concept and the particular implementations with which they are familiar. Lawyers also report that they are spending less time than in similar cases that go to trial, that costs to clients are less, and that settlement comes earlier. They indicate that they would choose arbitration over decisions by either judges or juries in the kinds of cases now going into the arbitration programs. Very early returns additionally suggest that litigants find the arbitration alternative as satisfying as their lawyers have found it. One very encouraging finding is that the longer a program has been in place, the more likely participants are to endorse it.

Asbestos Litigation. Asbestos cases present a special set of problems. Participants in a small conference convened by the Center in 1984 for exploration of these problems asserted, for the most part, that asbestos cases are fairly conventional products liability cases. They recognized that asbestos cases do create unique problems, but they viewed these as arising primarily from the volume of cases brought and the number of parties typically involved in each case. A 1985 Center report setting out those conclusions drew sharp disagreement from several knowledgeable judges. Current research is addressing several questions that inhere in the assertion that these cases constitute relatively "routine" tort litigation. The study involves field interviews with judges, magistrates, clerks, and lawyers

regarding recently terminated asbestos cases. The primary focus is on identifying complicating factors in such cases, determining whether and how complications have been dealt with successfully, and comparing the burden of asbestos litigation with the burden of other types of tort cases. The findings are expected to shed more light on asbestos litigation and, in addition, to be useful in the understanding of other types of complex products liability cases.

Attorneys' Fees. The growing number of cases in which federal judges are required to award attorneys' fees prompted a request that the Center look into the English experience with taxing masters to learn whether a similar approach, adapted to American needs and institutions, might be useful in providing some measure of relief to federal judges from this additional burden. A Center report scheduled for publication late in fiscal 1986, *Taxation of Attorneys' Fees: Practices in English, Alaskan, and Federal Courts*, describes the traditional English system as well as problems that have led to recent efforts at revision of that system. The report also describes and analyzes the operation of the Alaskan system.

Court-Appointed Experts. Judges continue to report repeated instances of trials in which there is a sharp divergence among the expert witnesses called by the parties. Yet, very few judges take advantage of recourse to rule 706 of the Federal Rules of Evidence, which provides for court-appointed experts. A 1986 Center staff paper marks the beginning of an inquiry into the reasons for the limited use of the rule. The paper, *Court-Appointed Experts*, explores authority to appoint, procedures for appointment, procedures for allocation and payment of costs, and functions of court experts. Additional research is planned that will present judges' views of the situations in which court-appointed experts are most useful. It will also address the desirability of a standard pretrial procedure for appointment of experts under rule 706.

Manual for Complex Litigation, Second. The *Manual for Complex Litigation* was one of the most widely used and most frequently cited of works produced under the auspices of the Center. It went through five editions as well as interim supplements. In fiscal 1986, the *Manual for Complex Litigation, Second* was published, so titled "to signify that it is based upon, but constitutes a major revision of, earlier editions of the Manual." The Board of Editors was chaired by Chief Judge Sam C. Pointer, Jr., of the Northern District of Alabama, who, with his colleagues, must be credited with major contributions to the fair and efficient resolution of complex litigation in federal courts. The manual describes various procedures that have

been successfully implemented by federal trial judges and identifies practices that have caused difficulties. Some sections describe alternative procedures that may be used in particular cases to cope with the same problem. The manual seeks to encourage innovation in the effort "to resolve the litigation in the most just, speedy and inexpensive manner practicable under the circumstances." The Center printed a limited number of copies of the manual in loose-leaf format for the use of federal judicial officers. The work has since been reprinted commercially.

G. Jury Projects

Juror Utilization. This report has already made reference to the desire of the Judicial Conference of the United States to ensure that sufficient jurors are available when needed, but that no more citizens than can reasonably be anticipated to be necessary are called. As a result of its own analyses as well as of a report by the General Accounting Office, the Judicial Conference in the fall of 1981 asked each circuit council to undertake to improve its juror utilization record. The Conference, while encouraging circuit councils to experiment with different methods of achieving this end, specifically suggested education in juror utilization as one way to obtain improved performance. As already noted, in March 1984 the Conference underscored its determination to seek improvement in this area and set specific goals to be achieved by the district courts.

To assist in this effort the Center, in cooperation with the Clerks Division of the Administrative Office, undertook a new series of juror utilization workshops. The participants consist of a court's "jury management team"—the chief judge or judge responsible for jury matters, the clerk of court, and the jury administrator or deputy. These workshops, five of which were held in fiscal 1986, stress techniques of effective juror utilization, emphasizing the need to ease the frustration of citizens needlessly called for jury duty and the need to effect financial savings. Unlike many Center seminars that rely on formal presentations by subject-matter experts, these workshops feature roundtable discussions on various aspects of petit and grand jury administration—for example, juror pooling, staggering of trial starts, and bunching; the implications for panel size and voir dire of notorious and lengthy trials; multiple voir dire; and assessment of juror costs. The juror utilization workshops are also coordinated with the Judicial Conference Committee on the Operation of the Jury System.

The Center is presently preparing a juror utilization manual, based in large part on information shared in the course of some of these workshops. Publication is expected in 1987.

Videotaped Jury Panel Orientation. It is traditional for the chief judges of a district court to welcome the members of a jury panel and to include a detailed orientation in the course of these remarks. To avoid needless repetition, in some courts the entire month's jury panel is brought in on the first of the month, although a substantial number of the jurors will not be called upon to serve until some later date. To achieve optimal efficiency, from the perspective of both the chief judge and the jurors, the Center has produced high-quality videotapes of the orientation presentations of several chief district judges. These are shown to jurors as they are summoned, thus eliminating any need that might have existed for a separate orientation session. In one metropolitan court, the clerk's office estimates that use of the videotaped remarks has produced an annual savings of almost \$116,000 in jury-related costs. Financial savings aside, a videotape ensures that all jurors receive all the necessary orientation information. In addition, of course, there are significant savings in the judges' time as well.

H. Improvement of Advocacy in Federal Trial Courts

Culminating six years of work with thirteen federal district courts, the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, chaired by Chief Judge James Lawrence King of the Southern District of Florida, this year submitted its final report to the Judicial Conference. The report and recommendations of the committee relied on the experience of the thirteen pilot courts as monitored and reported to the committee by the Center. Acting on the report, the Judicial Conference recommended that each district court consider adoption of all or most of the programs, originally recommended by the Devitt committee in 1979, designed to improve the quality of trial advocacy. The King committee report indicated that diligent inquiry had failed to disclose that the programs imposed inordinate burdens on applicants for admission or otherwise resulted in negative side effects.

II. FEDERAL SENTENCING AND PROBATION

In 1984, the Congress created a mechanism for the radical restructuring of sentencing in federal courts. The Comprehensive Crime Control Act passed that year established the U.S. Sentencing Commission and charged it with developing sentencing guidelines that, if left undisturbed by the Congress, would determine federal sentencing policies and procedures. In addition, the Congress itself provided for the ultimate abolition of the Parole Commission and for appellate review of sentencing once the guidelines were in place. The Center has maintained close contact with the Sentencing Commission and has been responsive to research requests made of the Center by that body, as is detailed below.

Understandably, federal judges are keenly interested in what the commission is doing and what it plans. As a result, the work of the Sentencing Commission has already been reflected in Center educational programs. In addition, *The Third Branch* has introduced a regular feature that brings news of the commission's work to the members of the federal judicial system. More significantly, plans are under way for massive educational programs, not only for trial and appellate judges but for probation officers and others as well. Because the changes with respect to sentencing—those already enacted and those in prospect—are so fundamental and so far-reaching, anything less would hardly suffice.

To advise the Center on educational programs dealing with the provisions of the 1984 Crime Control Act, including the work of the Sentencing Commission, the Chief Justice appointed a committee chaired by Judge A. David Mazzone of the District of Massachusetts, a member of the Center's Board, and including Judges Gerald B. Tjoflat and Edward Becker of the Judicial Conference Committee on the Administration of the Probation System and Judges John D. Butzner, Jr., and William H. Orrick, Jr., of the Judicial Conference Committee on the Administration of the Criminal Law. The Sentencing Commission is chaired by Judge William W. Wilkins, Jr., of the U.S. Court of Appeals for the Fourth Circuit.

A. Continuing Education and Training

Sentencing Institutes. Sentencing institutes are convened by the Judicial Conference of the United States at the request of a chief circuit judge, as provided by the Congress in 1958 (28 U.S.C. § 334). Since 1974, the Center has been involved in the planning, administration, and evaluation of these institutes. Working closely with the Judicial Conference Committee on the Administration of the Probation System, the Center coordinates its participation through its Research Division and Division of Special Educational Services.

The Center sponsored one sentencing institute in 1986 for the judges of the Ninth Circuit. It was held in Phoenix, Arizona, and featured a visit to the new federal correctional facility in that city. The program included a tour of the facility, workshops with inmates, and small-group discussions on sentencing options. The discussions focused on a number of hypothetical cases. In addition, there was a report on the work of the U.S. Sentencing Commission by its chairman. The conferees also discussed developments stemming from the 1984 crime control legislation and community service as an alternative to incarceration. At the suggestion of the planning committee, federal defenders from within the Ninth Circuit and representatives of various offices of U.S. attorneys within that circuit participated in the discussions of hypothetical cases.

At the present time there are no plans for additional sentencing institutes. As already noted, any guidelines promulgated by the Sentencing Commission will require an extensive educational effort, and it is doubtful that the traditional sentencing institutes will prove the best vehicle for such education. In any event, educational programs focusing on any recommendations of the Sentencing Commission will be planned in consultation with the Center committee appointed by the Chief Justice and chaired by Judge Mazzone.

Orientation and Continuing Education for United States Probation Officers. The continuing education needs of federal probation and pretrial services officers are many and varied. On the one hand, these officers operate within a framework of national laws and national policies established by the Judicial Conference. The work they do may be used in one part of the country today, in another tomorrow. Each year, for example, officers complete tens of thousands of investigations that assist the courts and agencies such as the Federal Bureau of Prisons and the U.S. Parole Commission

in sentencing, bail, institutional classification, and community programming. In addition, these officers supervise nearly seventy thousand federal probationers, parolees, and pretrial defendants.

On the other hand, environmental, cultural, and offender characteristics vary greatly among districts and regions, and these, in turn, generate legitimate training needs that vary from one district and region to another. The Center has therefore laid great emphasis on providing training that reflects the national character of the probation system but that is balanced by flexibility in addressing unique regional and district needs.

The Center introduces new probation and pretrial services officers to the federal judicial system and to the national probation system through orientation programs. In fiscal 1986, 157 new officers were trained in seven such programs. Because in many districts responsibilities assigned to probation officers differ from those assigned to pretrial services officers, the Center has found it both efficient and effective to schedule separate orientation programs for probation and pretrial services officers, each covering two days, with an additional half-day overlap. Thus, each officer receives two and one-half days of orientation. The half-day session they have in common covers the national character and scope of the federal probation and pretrial system. That session also includes instruction concerning the federal criminal justice agencies with which probation and pretrial services officers frequently work. The instruction at these programs includes both live and videotaped presentations, with some emphasis on discussion. Where feasible, regional or local representatives of the Bureau of Prisons and of the Parole Commission participate.

In-service training for pretrial services and probation officers consists primarily of regional seminars and local or districtwide workshops. (The federal probation system is divided into five regions.) In fiscal 1986, the Center sponsored five regionwide seminars, in which approximately three hundred officers from seventy-four districts in forty-two states participated.

Local, intradistrict programs are designed largely by pretrial services and probation officers who serve as training coordinators. There is no typical model for these training sessions; they vary greatly. Usually, they involve all or a portion of the officers in a single district; occasionally, clerical probation personnel also attend. In developing these programs, training coordinators draw upon resources in their local communities, including colleges, uni-

versities, and law enforcement agencies. They also make use of the Center's extensive media library as well as of probation and pretrial specialists in other districts.

This increased stress on local training, which is far less costly than national seminars, has allowed the Center to increase both the number of programs for probation officers and the total number of officers receiving training. The Center has been able at the same time to provide training that is more timely and more responsive to local needs and conditions.

Probation and pretrial training needs are supported in other ways as well. In fiscal 1986, the Center inaugurated a program, developed in cooperation with the National Institute of Corrections, under which selected federal probation officers are sent to the National Academy of Corrections to develop expertise in particular areas. The purpose of this training is to enable these officers, selected in a systemwide competition, to teach other officers in local training sessions in their own and other districts.

The Center is applying the same principle of training selected officers to training probation and pretrial services officers in the area of personal safety. In fiscal 1986, Center staff, working with a planning committee of officers representing most of the probation regions, developed a pilot officer-safety training package that addresses a range of personal safety issues in both office and community settings. A number of officers, selected with the consent of their chief probation officers, are being trained to work in teams to deliver this two-day program to interested districts.

The enormous growth in the complement of federal probation officers during the course of the past three years, and the increasing complexity of the system, occasioned in part by the recently enacted crime control legislation, have created the need for improved management and supervision within the probation system. In fiscal 1986, the training of supervisors and managers in probation and pretrial services was given high priority. The Center instituted the equivalent of a two-phase, eighty-hour program for new probation and pretrial supervisors. Phase I—which is also available to personnel in clerks' and other court offices—is a forty-hour, self-study correspondence course entitled *Applied Supervision*, administered by the Center through its training coordinators. Since the course was made available early this fiscal year, more than one hundred probation and pretrial services officers have enrolled in it. Phase II, one session of which was conducted in fiscal 1986, consists of one

week of formal classroom training covering supervision and management strategies and tools.

Management training for both newly appointed and experienced chief probation and pretrial officers and their deputies has not been ignored. A program this year for new chiefs and deputies provided an introduction to management techniques, skills, and theories in a five-day workshop including evening sessions. In conjunction with an orientation session on administration for new chief and deputy chief probation officers sponsored by the Administrative Office's Probation Division, the Center designed and conducted a two-day management orientation session for the same participants. In a similar arrangement with the Probation Division, the Center provided a one-day program on information management systems for one region's chief officers. Plans for programs in other regions have been postponed as a result of budget reductions imposed by the Gramm-Rudman-Hollings legislation.

Probation and pretrial officers also benefit from the Center's tuition support program, which enables them to obtain training not otherwise available through the Center. Of special interest is the program that Fordham University offers under which qualifying probation and pretrial services officers earn a master's degree in sociology with a specialization in probation and parole practice. Since 1976 the Center has defrayed a portion of the cost of this program for federal probation officers. The officers do most of the work for the courses in their home cities, but also attend a one-week residential seminar at Fordham each semester. Forty-two of the Fordham program's graduates have been U.S. probation officers. During fiscal 1986, the Center funded the participation of three officers in the first week-long residential session and five in the second. Because of budgetary constraints, the Center will be obliged to substantially reduce its contribution to this program.

B. Probation and Sentencing Research

Drug Aftercare Program Evaluation. This year the Center completed the final report in its two-stage project describing and evaluating the drug aftercare program administered by the Probation Division of the Administrative Office. An earlier report dealt primarily with the procedures for providing treatment and special supervision to drug-dependent probationers and parolees. The final report, *The Impact of the Federal Drug Aftercare Program*, deals

with the correlation between the various procedures and offenders' success or failure in the program.

Sentencing. It is a truism that sentences announced from the bench bear little resemblance to time actually served. Indeed, one purpose of the Congress in creating the U.S. Sentencing Commission was to reduce this difference. Early in its history, the commission asked the Center to develop a comprehensive picture of the punishments actually experienced by federal offenders under current sentencing and parole practices. The Research Division prepared *Punishments Imposed on Federal Offenders*, a 1,300-page documentation of sentences served, broken down into 276 offense and offender categories. A shorter piece, entitled *Punishments for Federal Crimes*, was published to inform the judicial and academic communities about the nature of the information provided to the Sentencing Commission; it includes, by way of illustration, a chapter from the larger work presenting data on immigration and citizenship offenses. The full report is being published commercially.

C. Probation Information Management System

During the past year, the Center completed its work on the Probation Information Management System (PIMS), which it developed in cooperation with the probation office in the Northern District of Ohio. This system presently serves offices in Cleveland, Akron, Youngstown, and Toledo. The ability of PIMS to result in direct personnel cost savings is being measured by the Administrative Office. PIMS is capable of serving both the management needs of a local probation office and, to the extent that it is placed in probation offices generally, national needs for accurate information about probationers, parolees, and criminal sentences.

III. APPELLATE COURTS

A. Continuing Education and Training

Judges' Programs. With the growth in the number of judges of the thirteen U.S. courts of appeals, the number of new appointments has increased to the point that it is feasible to conduct an orientation program for newly appointed federal appellate judges.

In April 1986 the Center sponsored an orientation seminar for nineteen new appellate judges. The seminar was developed in cooperation with the Center's Committee on Appellate Judicial Education, appointed by the Chief Justice and chaired by Judge Arlin M. Adams of the Third Circuit Court of Appeals. The seminar included presentations on the appellate function, standards of review, particular problems in appellate review of agency decisions, judicial ethics, appellate judges' responsibilities under the new bankruptcy code, antitrust law, securities law, litigation under 42 U.S.C. § 1983, appellate collegiality, and opinion writing and editing.

The orientation appropriate for new appellate judges differs substantially from the training useful to newly appointed trial judges: Typically, the appellate judge sits as one of a panel of three, case management responsibilities are radically different, and the circumstances that necessitate immediate rulings from the bench on a variety of subjects are absent. It is, however, exceedingly useful for judges who come to the appellate bench with no judicial experience on a trial court to become acquainted with the work of federal district judges, whose actions they are called upon to review. Accordingly, such appellate judges are invited to attend one of the Center's video orientation programs for newly appointed district judges and to participate in the discussion of sentencing policies during the course of a visit to a federal correctional institution. In addition, the Center's Committee on Appellate Judicial Education has plans to develop materials specifically designed for newly appointed appellate judges, analogous to those that are provided for district judges shortly after their appointment.

Since 1977, the Center has also sponsored continuing education seminars for appellate judges on a three-to-four-year cycle. One such program scheduled for fiscal 1987 is currently being developed in cooperation with the Center Committee on Appellate Judicial Education.

Finally, it should be noted that judges of the courts of appeals are regularly invited to the annual judicial workshops, organized by circuit, that are designed mainly for district judges. These programs have proved of increasing value to appellate judges. During fiscal 1986, the judges of the Second and Third Circuits took occasion during the course of one such joint workshop to devote a segment of the program to a discussion of appellate problems and procedures, allowing for a useful exchange among the judges of the respective circuits.

Appellate Clerks. In November 1985 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 its automated appellate case management system, analyses of the proposed amendments to the Federal Rules of Appellate Procedure, and reports from various divisions of the Center and the Administrative Office. As in past years, clerks, sitting as a committee of the whole, had an opportunity to present to senior Center and Administrative Office staff their perceptions of likely developments in appellate case management and the needs for training as well as other forms of support that are expected to flow from those developments.

The Center also presented a seminar for chief deputy clerks of appellate courts. This seminar and the seminar mentioned above were scheduled so as to provide one day of overlap, making joint programming possible. This helped foster the concept of the clerks and their chief deputies as a management team in exercising administrative and supervisory control.

In November 1985 the Center sponsored a two-day seminar for statistical clerks of the courts of appeals. The seminar provided information on the requirements and guidelines for reporting statistical data, potential uses for that data, and availability of data from the Administrative Office.

Senior Staff Attorneys. In June 1986 the Center sponsored a one-day seminar for senior staff attorneys that featured presentations on habeas corpus litigation and the work of the U.S. Sentencing

Commission. This seminar was scheduled immediately prior to the annual seminar of the American Bar Association Committee on Appellate Staff Attorneys. The ABA seminar covered a variety of topics, including management challenges, automation developments, legal writing, significant developments and trends in civil litigation, screening appeals for jurisdictional errors, current issues in court administration, and recent Supreme Court developments. Pursuant to arrangements made by the Center, the federal senior staff attorneys were also able to attend the ABA seminar.

Appellate Settlement Attorneys. In May 1986 the Center conducted a two-day seminar for appellate conference/settlement attorneys in Washington, D.C. The program included an overview of mediation goals and strategies and, through the presentation of actual case studies, discussion of issues and problems that confront attorneys seeking to encourage settlement at the appellate level.

B. Research and Development on Appellate Court and Case Management

Screening Practices. *Deciding Cases Without Argument: A Description of Procedures in the Courts of Appeals* was published in fiscal 1986. This report, the first segment of a two-stage study of screening in federal appellate courts, describes the standards and procedures adopted by the U.S. courts of appeals for selecting and deciding cases without oral argument. The second stage of the study, now nearing completion, will report on interviews and analysis of case files in the Third, Fifth, Sixth, and Ninth Circuits. The report will examine the operation of the programs and compare the effects of significantly different elements in the programs. Interim reports have been provided to two circuits for use in circuit conferences.

The unpublished opinion remains a subject of concern, and indeed of tension, in the federal court system. *Unpublished Dispositions: Problems of Access and Use in the Courts of Appeals*, which appeared in October 1985, describes major aspects of the circuits' publication practices and discusses implications of those practices.

Preargument Conferences. First introduced by the Court of Appeals for the Second Circuit, preargument conferences continue to attract attention among both state and federal courts. Previous Center studies have documented the beneficial effects of these pro-

cedures, but new variations are being introduced that invite careful examination and appraisal. Currently, Center studies are being conducted at the request of the Sixth and Ninth Circuits, whose programs' goals and methods differ from those studied previously. Reports of the studies' results will not be published until the cases selected for experimental treatment have been terminated.

Judicial Councils. During fiscal 1986, a committee of the Conference of Chief Circuit Judges continued work on a set of illustrative rules for handling complaints against judicial officers under the provisions of 28 U.S.C. § 372. A draft of these rules, together with extensive commentary, was prepared and circulated throughout the legal community. Comments on this draft were summarized by the Center for the use of the drafting committee. A final draft of illustrative rules, to be offered to the circuit councils for their consideration, is expected by the end of fiscal 1986.

C. Automated Appellate Information Management Systems

After three and one-half years of intensive development efforts, in July 1986 the Center and the Administrative Office declared the New Appellate Information Management System (New AIMS) to be operational and transferred responsibility for the system from the Center to the Administrative Office.

New AIMS has been designed as a full support system for appellate case management, including an electronic-docketing capability that has proved an adequate substitute for manually prepared docketing. During the last six months of the development process, the staffs of the pilot courts and the development team followed a schedule designed to ensure that the system would be fully operational before the Administrative Office assumed responsibility for New AIMS maintenance and for introduction of the system into other federal circuit courts.

The Center is already pursuing further development of automation for the appellate courts. The next phase includes automation of such tasks as panel assignments and issue indexing. An important feature of the next phase will be direct electronic access by judges and chambers staff to case management information stored in a central data base.

The transfer of New AIMS represents the achievement of a goal established jointly four years ago by the Center and the clerks of the courts of appeals. New AIMS is the first major full-docketing system in the current generation of automated systems for the courts. It was developed in such a way that major components could be utilized with relative ease in other systems currently under development by the Center. Thus, development of new automated civil and bankruptcy systems is proceeding at an accelerated pace.

IV. CENTER ACTIVITIES WITH SYSTEMWIDE IMPACT

A. Educational Programs and Services

Media Services. This report has been organized, by design, in terms of the constituencies served by the Center, such as trial courts and appellate courts. There are, however, a number of Center services that are available to all federal judicial system personnel. The Media Services Unit is a prime example. The Center has an extensive media library of audiocassettes, videocassettes, and films that cover a wide range of specialized topics and are used throughout the federal judicial system. Most of these are produced in-house and are specifically designed to meet the needs of the federal judicial system. Moreover, an increasing number of these programs do not merely record a presentation given to a live audience, but instead are specially produced to take optimal advantage of the educational potential inherent in audiovisual materials. The media library is housed in the Center's Information Services Office; the media production unit is part of the Division of Special Educational Services. A new *Catalog of Audiovisual Media Programs* was published this year, employing an entirely different format to facilitate use of the collection.

Some judges and others within the system use the audiotapes and videotapes to substitute for attendance at a seminar or workshop. The tapes also afford seminar and workshop attendees the opportunity 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.

This year, the Center developed and produced in-house video lectures for the orientation of new district judges. It also produced a program on the summary jury trial that has been used widely in state and federal courts, an orientation series on the Federal Rules of Civil Procedure for deputy clerks, and a program on the American Inns of Court.

Specially produced audiocassettes offer great potential for use not only in the courthouse but also in automobiles, while commuting. For that reason, this year the Center began experimenting with recording certain frequently requested research reports on audiocassettes.

In-Court Training and Education Programs. For more than a decade, the Center has encouraged each major court office to designate a training coordinator to develop local training services and to serve as the office's training liaison with the Center. That effort has been successful; as of June 1986, 297 federal court employees were serving as training coordinators. Nine serve in the federal courts of appeals, while 288 serve in trial courts. Of the latter, 113 are employed in probation or pretrial services offices and 175 in district and bankruptcy clerks' offices.

Training coordinators are not relieved of their primary responsibilities as employees of the court. A training coordinator may be a probation officer, a chief deputy clerk, a management analyst, or a docketing supervisor. In addition to the obligations imposed by those positions, the coordinators assume responsibilities that include assessing staff training needs, requesting Center funding to bring in an outside instructor, and working with office managers to determine whether training is an appropriate solution for a particular problem. Training coordinators also alert judges and supporting personnel to new Center media programs—those produced by the Special Educational Services Division as well as those purchased from commercial vendors (such as the popular "One-Minute Manager" video series)—and other training resources.

Most newly appointed training coordinators have had little formal instruction or experience in continuing education. To prepare them for their training functions, the Center regularly conducts orientation workshops. These three-day programs cover principles of adult education, assessment of training needs, training delivery methods, program evaluation, and resources available through the Center and other organizations. Three workshops for new training coordinators were held in fiscal 1986.

The Center also conducted three circuitwide workshops for experienced training coordinators. These programs provide advanced instruction on educational methods and training techniques; they also offer coordinators from within a circuit an opportunity to become better acquainted and to set up networks for exchanging training materials and experiences. Funds permitting, the Center

plans to offer such programs to each circuit's training coordinators on a three-to-four-year cycle and to organize circuit training advisory committees to assist in planning the programs.

The Center publishes a newsletter, *What's Happening?*, that contains summaries of successful local training efforts, relevant articles excerpted from leading training and development journals, and descriptions of new materials and programs available through the media library. In addition, the Center has begun work on a training coordinator's manual to provide basic information on training techniques and available resources.

In fiscal 1986, the Center conducted, or was associated with through its training coordinator network, more than seventy in-court workshops on such topics as the Speedy Trial Act, problem solving and decision making, the budget process, writing skills, and handling disruptive groups. Several of these programs were designed specifically for judges. In October 1985, the Center provided funding for a lecturer on intensive probation supervision to travel from Atlanta to Phoenix to address the judges of the District of Arizona. With Center support, Ninth Circuit Court of Appeals judges who met in San Francisco in December 1985 for court week heard a law professor speak on immigration issues. This program was suggested by the circuit's education committee.

In April 1986 Center funds were used to send a professor of management from Michigan State University to speak at a meeting in Phoenix of Ninth Circuit chief district judges—and some of their clerks of court—on court budgeting in light of Gramm-Rudman-Hollings reductions in spending authorization. One innovative local program, developed by the Southern and Eastern Districts of New York, involved pro bono panel attorneys from both districts in a daylong training session on Social Security disability cases. Faculty included a magistrate from the Midwest whose participation was funded by the Center.

To meet a growing need for supervisory and management training in the courts, the Center in fiscal 1986 introduced a new self-study correspondence course, *Applied Supervision*, as the first phase of what eventually will be a management development program for judicial branch personnel. The course is administered locally through training coordinators, who request copies from the Center in sufficient numbers to meet the needs of their individual offices. Completion of the course requires approximately forty hours of individual study and passing several examinations that are scored by

the Center. Since availability of the course was announced early in fiscal 1986, nearly 350 copies of it have been distributed, and more than one hundred certificates of completion have been issued to court personnel.

Center staff are scheduled to meet with a training coordinator advisory group prior to the conclusion of this fiscal year to assess current programs and services for training coordinators and their constituents and to prepare recommendations for future use of Center personnel and resources in this area.

Supplementary Training. To supplement the range of educational programs and services it provides, the Center has a program of limited tuition support for qualified personnel to attend courses in job-related subjects, primarily at local educational institutions. The tuition support program is limited to courses on subject matter not covered in Center seminars or through instructional materials that can be obtained from the Center's media library. Courses may include offerings of one or more days' duration on specific office management skills, specialized topics in corrections and law enforcement, substantive legal issues, or advocacy skills. Evening courses that run for a full semester are also possible. When a course leads to a degree or certificate, the student is expected to assume some of the costs; examples are the Institute for Court Management's Court Executive Development Program and the master's program for probation officers at Fordham University.

Increasingly, a condition of support for more costly programs is a commitment from the employee to share what was learned with other employees, typically in a semiformal local training session. The benefits from such investments can be substantial. In fiscal 1985, for example, two probation officers in a metropolitan court of the Eleventh Circuit attended a course on financial investigation. Subsequently, they arranged a workshop attended by sixty officers in the district, treating such topics as cash generation and fraud schemes, evidence of illicit income, and manipulation of books and records. These two officers then prepared a comprehensive manual entitled *Financial Investigative Techniques for Probation Officers* that has been distributed to districts throughout the country. In fiscal 1986, the officers also conducted a local training program for the Eastern District of Virginia probation office and made a presentation at a regional probation seminar. The Western District of Texas requires all officers who receive tuition support to report on what they learned in semiformal sessions following office staff meetings.

For the 1986 fiscal year, the Center anticipates providing tuition support to approximately 1,500 individuals, at an average expenditure per course of about \$155. The table that follows shows the allocation of these funds by category.

Tuition Support Program—Fiscal 1986

	<i>Percentage of Funds</i>
Circuit and district judges	1.8
Bankruptcy judges and staff	12.2
U.S. magistrates	2.7
Federal public defenders	7.8
Probation offices	26.5
Offices of clerks of court	
(circuit, district, & bankruptcy)	39.0
Offices of circuit executives and staff attorneys	1.5
Secretaries	3.0
Librarians and others	5.5

NOTE: Not included in this list are the funds for assistant federal defenders' attendance at Mercer University's National Criminal Defense College, described in chapter 1 of this report, and probation officers' attendance at the Fordham program, described in chapter 2.

Reductions in the Center's budget resulting from the Gramm-Rudman-Hollings legislation led the Center's Board to reconsider funding levels for the tuition support program at its June 1986 meeting. The Board concluded that in light of other education and training priorities and budgetary reductions, the level of funding for court employees to enroll in outside courses should be reduced. The Board also directed that a cap be imposed on the amount of funding approved for individuals who seek authorization to attend particularly costly courses, including those that lead to receipt of a degree or certificate.

Training in Automation. As discussed in previous chapters, the Center continues its effort to provide automation support to the circuit and district courts. The shift to decentralized systems has created the need for a training effort of substantial proportions, an effort that is being undertaken jointly by the Innovations and Systems Development Division and the Special Educational Services Division. Details of those efforts need not be repeated here. It should be noted, however, that during fiscal 1986 the Center also provided support for courts that have personal-computing equipment for use by chief judges, clerks, and others. This assistance took the form of multimedia instructional packages, including in-

structional software, on popular applications such as Lotus, Symphony, and dBase III.

B. Assessing the System's Needs for New Judgeships

The Judicial Conference of the United States regularly communicates to the Congress its recommendations for the creation of new judgeships. The need for new judges is a reflection of the rise in the caseloads of the district courts and the courts of appeals. Raw filings, however, are an inadequate measure of judicial burden. A suit to recover an outstanding student loan can hardly be equated with a complicated drug conspiracy case. Moreover, because the Judicial Conference makes its recommendations district by district, rather than on a regional basis, it is important to assess the nature of each district's caseload. Accordingly, the Subcommittee on Judicial Statistics of the Judicial Conference Committee on Court Administration has for some years used the research services of the Center to measure the varying burdens associated with different kinds of cases filed in the federal trial courts. These measurements, reflected in "case weights," have been recalculated several times over the history of their use to ensure continued validity under changing conditions. Revalidation of the case weights also presents an opportunity to improve understanding of the litigative process by focusing on the elements that affect the variations in burden of different cases.

The subcommittee has decided that revalidation studies will be needed in two or three years. The subcommittee is also interested in additional information that will assist in refining the weights so that they reflect changing procedures, including increased use of magistrates. The Center's Research Division is presently conducting a feasibility study in five courts to develop a new approach to calculating these case weights. On the basis of the results, the subcommittee will decide early next year whether to request that the Center undertake a national study comparable to those carried out in 1969 and 1979.

Developing an appropriate formula to assess the relative burdens of different courts of appeals has proved more elusive. The subcommittee, however, remains interested in this problem, and the Center's Research Division continues to study it.

C. Information and Liaison Activities

In creating the Center, the Congress specified that, among its many functions, the Center should "stimulate and coordinate . . . [related] research and study on the part of other public and private persons and agencies." In conformity with this statutory directive, the Center maintains continuing contact with other agencies with similar interests.

The director of the Center is, by statute, a member of the Advisory Board of the U.S. Department of Justice's National Institute of Corrections. He also serves as a member of the American Law Institute-American Bar Association Committee on Continuing Professional Education and is a member of the Board of Directors of the American Judicature Society. The Center's deputy director serves as a liaison member to the Administrative Conference of the United States. The director of the Division of Inter-Judicial Affairs and Information Services is president-elect of the Institute of Judicial Administration and is a council member of the American Bar Association's Judicial Administration Division. The director of the Division of Research is a liaison member of the Advisory Corrections Council by request of the council.

Commission on the Bicentennial of the United States Constitution. Federal judges, as well as other members of the federal judicial system, will inevitably play a prominent role in the celebration of the bicentennial of the U.S. Constitution. Constitutional adjudication is part of the regular business of the federal courts; it is only natural that judges be called upon to participate in the "great national seminar" on the meaning of our basic document, a seminar that has already begun. The Center, in keeping with its traditional role, has developed bibliographic materials relevant to that celebration: *The Writing and Ratification of the U.S. Constitution: A Bibliography* and *The Writing and Ratification of the U.S. Constitution: An Abbreviated Bibliography*. At the suggestion of the Chief Justice, the Center's Board approved an expanded role for the Center in providing assistance to the Commission on the Bicentennial. The Center will also maintain close liaison with the Judicial Conference Committee on the Bicentennial.

Library of Congress Liaison. The Center continued during fiscal 1986 to benefit from established ties with the American-British Law Division of the Law Library of the Library of Congress. Experience has shown that although major assistance is afforded the ju-

diciary through regional libraries, there are some areas, such as legislative histories, in which specialized research is not readily available locally; and the Library of Congress is a rich source of assistance in this area. Under existing arrangements, federal judges can obtain timely responses to research questions, including printed supportive material, from the library. Requests, which the Library of Congress staff welcomes, may be made directly to the library or through the Center.

The Third Branch. The Center and the Administrative Office copublish *The Third Branch*, a monthly bulletin for federal judicial system personnel. This publication serves as a forum for information about recent legislation, actions of the Judicial Conference of the United States, judicial appointments, seminars and conferences, and programs held at circuit conferences.

In addition, elected officials, judges, and others in policy-making positions are interviewed on subjects related to the work of the federal courts. In-depth interviews published by *The Third Branch* over the past year include those with U.S. Representative Robert W. Kastenmeier; Deputy Attorney General D. Lowell Jensen; Judge William W. Wilkins, Jr., chairman of the U.S. Sentencing Commission; Chief Judge Pierce Lively of the Sixth Circuit; Chief Judge Patricia M. Wald of the District of Columbia Circuit; Chief Judge Constance Baker Motley of the Southern District of New York; Chief Judge Edward D. Re of the Court of International Trade; and Chief Justice Edward F. Hennessey of the Supreme Judicial Court of Massachusetts.

Information Services Office. A unique clearinghouse of published and unpublished information on the federal judicial system, the Center's Information Services Office (ISO) responds to special requests from federal judges and supporting personnel. The ISO uses a variety of automated data bases and specialized indexes, including material of an interdisciplinary nature relevant to many Center projects. Of particular significance is the Center's Information Services Index System (ISIS). Developed in-house through a computer program designed by the Innovations and Systems Development Division, ISIS enables staff to access items of interest from an extensive collection of "fugitive" material—unpublished works or occasional papers and addresses that may be published but are otherwise inadequately indexed. Subject to limits on Center resources, materials not available elsewhere are made available to the academic community, other researchers, and the general public.

The ISO's participation in the Online Computer Library Center (OCLC) not only expedites the cataloging of new acquisitions but also promotes resource-sharing through a nationwide cooperative interlibrary loan network.

The ISO also serves as a central collection point for the local rules of all federal courts, trial and appellate. A computerized index has proved a valuable tool in locating local rules on specified subjects and in analyzing variations among courts. This reference service is particularly relevant to the work of courts engaged in review and revision of their own local rules.

The ISO has primary responsibility within the Center for disseminating the Center's publications. During fiscal 1986, more than 25,000 copies were distributed in response to requests from judges, government agencies, students, and others interested in federal judicial administration.

Briefings for Visitors from Abroad. Responding to requests from the United States Information Agency, embassies, and other organizations, the Center's Inter-Judicial Affairs and Information Services Division receives visitors from foreign countries who are interested in learning about judicial administration in the United States. Visitors typically include judges, members of legislatures, law school professors, and prosecutors. Briefings are patterned according to individual interests. Representatives from more than thirty countries were received at the Center during the past fiscal year.

V. THE ORGANIZATION OF THE CENTER AND ITS FIVE DIVISIONS

A. The Board of the Center: Formulating Policy Responses

The Federal Judicial Center was established by 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)). That statute also 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.

In the spring of 1986, Judge Jose A. Cabranes of the District of Connecticut was elected to fill the Board vacancy created by the expiration of the term of Judge Warren K. Urbom of the District of Nebraska.

On June 17 Chief Justice Warren E. Burger wrote President Reagan announcing his retirement "effective July 10 or as soon thereafter as my successor is qualified." As developed more fully in the Introduction of this report, the Federal Judicial Center is deeply indebted to the Chief Justice for his leadership, creativity, and dedication to the work of the Center for the past seventeen years. Whatever success the Center has achieved in fulfilling its mission must be credited to his involvement in the work of the Center during his tenure as chairman.

The Board is responsible for the budget of the Center. In fiscal 1986, the Center operated under a budget of \$9,187,000 in accordance with policies fixed by the Board. The Congress had originally appropriated \$9.6 million, but this was reduced to the figure indi-

cated by operation of the Gramm-Rudman-Hollings act or, more accurately, the implementing legislation that followed. The impact of this legislation on the courts generally was serious, leading to a temporary suspension of civil jury trials and, for a relatively brief period, the imposition of certain hardships on jurors, such as not reimbursing them for parking expenses.

The situation in the courts and within the Center was such that the Center's Board felt obliged to undertake a careful reexamination of the desirability of curtailing education and training, for example, in order to provide additional resources for the courts. The strictures imposed by the appropriations process, not to mention the order of magnitude of the entire Center budget, make it clear that such an approach would be totally impractical. More basically, however, the Board found that the resources devoted to education and training, although very modest, provide substantial return. Indeed, judges frequently cite examples that attest to the high probability that these programs pay for themselves financially in increased efficiency and effectiveness, even without an attempt to measure the more subtle benefits of greater satisfaction and professional well-being on the part of the participants. Some verified examples of savings resulting from Center programs are dramatic. It is for this reason that the Board of the Center determined to continue the Center's education and training programs and to continue to give first priority to judges' programs. Seen comparatively, moreover, the judiciary's *total* investment in continuing education and training in all forms, for all judges and all supporting personnel, is very modest. For every one hundred dollars appropriated by the Congress for the federal judicial system, the Center spends less than thirty-three cents for education and training. This sum includes, for example, all probation officer programs—from crisis intervention to drug aftercare—and all programs for newly appointed judges. It also includes all related overhead expenditures, from personnel benefits to the cost of rent and utilities.

It may be of interest that the judges who served on the committee, appointed by Chief Justice Warren, that recommended creation of the Federal Judicial Center stressed the importance of the Center's being a separate entity to avoid the risk of imposing small, short-range savings in programs such as education and research, with consequent, unfortunate long-range effects.

Throughout most of its existence, the Center has carried out its mission through four divisions. During this fiscal year, however, the Board authorized creation of a fifth division, the Division of

Special Educational Services. A brief description of the work of each of the Center's divisions is set forth below; also included is a statement of the mission of the newly created division.

B. Division of Continuing Education and Training

The Division of Continuing Education and Training is designed to meet the educational needs of the more than 16,600 individuals who constitute the federal judicial system. For some, such as law clerks and secretaries, these needs are met primarily through publications and the availability on a loan basis of the Center's audio-visual materials. For individuals in other positions, educational needs are best met through formal seminars and workshops.

The table that follows, which sets forth seminars and workshops by category, provides some insight into the diversity of training needs and personnel served. It also gives dramatic evidence of the extent to which in-court training programs have become an important element of the Center's overall educational effort: More than 25 percent of those participating in Center-sponsored programs do so "in court." The table does not include specialized training of various types that is offered by other educational institutions and that federal judicial personnel attend with Center funding. As detailed in chapter 4, the tuition support program benefited approximately 1,500 individuals during fiscal year 1986, with a total expenditure approaching a quarter of a million dollars.

The Division of Continuing Education and Training uses a four-phase planning cycle that begins with identification of educational needs and continues thereafter with development, implementation, and assessment of its programs. Needs are identified, in part, through the work of planning committees that typically include representatives of the personnel to be served and, of course, of the Administrative Office. In addition, there are inevitably suggestions from the field. Finally, needs are identified through staff review of data that the courts provide regularly to the Administrative Office. In consultation with the planning groups and others, the division then prepares and presents programs to meet the needs identified.

Assessing the utility of an educational program is a difficult business—it is far easier to assess participant satisfaction with a workshop or lecture. But the subjective reaction of the participant at

Seminars and Workshops

<i>No.</i>	<i>Category</i>	<i>Participants</i>	<i>Faculty</i>	<i>Total</i>
24	Circuit/district judges	813	227	1,040
8	Bankruptcy judges	217	38	255
7	Magistrates	239	40	279
7	Clerks of court & clerk's office personnel (circuit, district, & bankruptcy)	257	74	331
22	Probation officers	674	98	772
4	Federal public defenders & community defenders	172	55	227
1	Senior staff attorneys	11	2	13
1	Appellate conference/settlement attorneys	15	2	17
6	Training coordinators	111	36	147
1	Circuit executives	9	10	19
23	Automation seminars & workshops	171	20	191
6	Programs for personnel in several categories	165	32	197
110	TOTALS	2,854	634	3,488

In-Court Training Programs

54	Judges and support staff in virtually all categories	1,242	77	1,319
164	GRAND TOTALS	4,096	711	4,807

the conclusion of a program, important as it may be, is not always a reliable indicator of whether the training has been absorbed, whether the training will in fact be applied in future operations, or whether the lessons learned will long endure. In short, determining whether education and training actually results in a benefit is highly complex and requires substantial and subtle analysis. For this reason, the Center employs a number of methods of evaluation to gauge the success of its various programs. Questionnaires administered during or immediately after a program are standard, and supervisors are contacted to learn whether there have been any observable changes in employees' performance. Follow-up questionnaires are also distributed some months after a program in an effort to measure change in performance or knowledge over time and to gauge the impact of the program. These can be useful. For example, a fiscal 1986 follow-up evaluation of randomly selected participants in the Center's probation and pretrial orientation workshops affirms the value of the programs but also suggests

likely benefits in some modifications, which are currently under staff review.

This year Kenneth C. Crawford, director of the Division of Continuing Education and Training since 1971, announced his retirement. Kenneth Crawford has played a central role in shaping the Center's educational programs. He has had the foresight to anticipate both needs and trends, and the insight to fashion effective responses. No successor has yet been announced, but fortunately Mr. Crawford is still devoting considerable time and effort to the Center, primarily in connection with orientation and continuing education for judges.

C. Division of Special Educational Services

Over the course of the past several years, the Center's educational programs have grown in volume to keep pace with the expanding size of the federal judicial system and the complexity of its workload. This growth is reflected not merely in an increase in the number of traditional seminars or workshops but also in the variety of mechanisms being used to deliver educational services. These include publications (including reference manuals and bibliographies), audiovisual materials, teleconferencing, and sophisticated in-court training. In addition, the Center has created special one-week programs to meet perceived needs of trial judges, such as this year's summer seminar on constitutional adjudication and last year's analogous program on "Statistics and Expert Testimony in the Federal Courts." Computer education involves serving a new clientele and using new techniques. Finally, education related to sentencing has grown apace and promises to be far more demanding in the future as a result of the U.S. Sentencing Commission's obligation to develop sentencing guidelines. Understandably, the Center's Board concluded that fulfilling the educational mission of the Center has become too complex to remain the responsibility of one division.

As its name implies, the new division will develop special programs for special needs, such as the summer programs for judges. In addition, each of the special areas described above will be the responsibility of this new division: educational publications, the production of audiovisual programs, sentencing education, and computer training. The Division of Continuing Education and Training will remain responsible for all other facets of the Center's educational

efforts, including orientation programs, traditional seminars and workshops, probation education, and tuition support programs.

The Division of Special Educational Services became operational on February 2, 1986, and Russell R. Wheeler, who had served the Center in a number of senior management positions since 1977, assumed duties as director of the division. No additional funds or personnel were required to establish the Special Educational Services Division.

D. Division of Innovations and Systems Development

The Center has been recognized as a leader in bringing the benefits of technology to the federal courts. This was true from the beginning of its research in the early 1970s and continues through today with its Integrated Case Management System (ICMS), an approach to electronic docketing and case management that has already begun markedly to reduce the manual paperwork required in the offices of the clerks of court. The first major product completed within the ICMS framework, the New Appellate Information Management System (New AIMS), is described elsewhere in this report.

All of the current projects of the Division of Innovations and Systems Development are based on the decentralization of the information-processing equipment required by the courts for case management. Unlike an earlier generation of data-processing systems in which courts were connected from terminals to computers based in Washington, D.C., today's automated systems rely on computers located in the courts themselves, which have become the responsibility of specially trained members of the courts' staff.

A major consequence of decentralization is an increase in the degree of automation awareness and competence required of court personnel working with the systems. The Center has developed course curricula and training materials for the basic automation training of system administrators and their assistants as well as for clerks of court. These educational efforts are undertaken jointly by the Systems Division and the Division of Special Educational Services. Now under development are more advanced courses, using videotape and computer-based instructional devices, that the Center hopes to make available to court staff on a "lending library" basis. These educational efforts respond to a growing demand by court personnel for opportunities to enhance their automation skills.

There remain for completion a number of development tasks in this generation of federal court automation. Priorities and timetables are set by the *Five-Year Plan for Automation in the United States Courts*, which is reviewed and approved annually by the Center's Board. The plan, which gives guidance to the Administrative Office as well as to the Center, is also presented to the Judicial Conference, after review and approval by the Conference's Subcommittee on Judicial Improvements and its Committee on Court Administration. The five-year plan, particularly as it relates to installation of operational systems in additional courts, will, of course, now be influenced by the stringent budgetary requirements occasioned by the Gramm-Rudman-Hollings legislation.

This year Gordon Bermant, who had served as director of the Innovations and Systems Development Division since 1982, returned to the Research Division where he had worked since 1976. The Center is indebted to Mr. Bermant for his major contributions to the development of decentralized automated systems and is pleased that the federal judicial system will continue to have the benefit of his considerable talents. He has been succeeded by Edwin L. Stoorza, Jr., who served in the Center's Systems Division from 1976 to 1981. During the intervening period, Mr. Stoorza was an important member of the leadership of the Administrative Office, serving in various capacities including assistant director before returning to the Center.

E. Division of Research

The publications listed in the following chapter illustrate the variety of research projects that fall within the purview of the Research Division. During this fiscal year, these have ranged from a study of the impact of the drug aftercare program to a comparative analysis of the taxation of attorneys' fees in English, Alaskan, and federal courts. Some research reports focus on local practices that may be of interest to judges in other districts; others deal with problems that are pervasive in all federal district courts. Compare, for example, *The Use of Standard Pretrial Procedures: An Assessment of Local Rule 235 of the Northern District of Georgia with Settlement Strategies for Federal District Judges*. Results of Center research are also reflected in presentations at training programs and in conference papers by staff members.

Projects are undertaken at the request of committees of the Judicial Conference, individual courts, and the Administrative Office. On occasion, the division will initiate studies as a result of findings discovered in earlier investigations. Research proposals that require a substantial commitment of staff time and resources must be approved by the Center's Board.

The work of the division often concerns subjects of legislative interest. The Congress drew on Center research concerning sentencing disparity in its consideration of the bill that ultimately led to the creation of the U.S. Sentencing Commission. Thereafter, during fiscal 1986, the commission asked the Center to compile data concerning punishments imposed on persons convicted of federal crimes. The resultant report is described in chapter 2.

In short, it is the Research Division that is charged with fulfilling the Center's statutory mandate to "conduct research and study of the operation of the courts of the United States" (28 U.S.C. § 620(b)(1)). The division is authorized sixteen permanent employees, including both professional and secretarial personnel, and in fiscal 1986 had a budgetary allocation of \$828,000.

F. Division of Inter-Judicial Affairs and Information Services

The Inter-Judicial Affairs and Information Services Division has primary responsibility for liaison with other organizations interested in the improvement of judicial administration in the United States. In addition, the division has principal responsibility for briefing representatives of foreign countries concerning the federal judicial system in general and the work of the Center in particular. *The Third Branch*, a bulletin of the federal courts that is prepared jointly with the Administrative Office, is produced and distributed by this division.

The Center's Information Services Office, described more fully in chapter 4, is located within the division. It is a unique clearinghouse of published and unpublished information on the federal judicial system. The Center's media library is also the responsibility of the Information Services Office.

VI. CENTER PUBLICATIONS

The Center's publications are diverse in content and format. The findings and supporting data developed during the course of major research projects are published in reports, while short-term research efforts are described in staff papers. The work of Center staff that appears in professional publications is, when warranted, also made available in staff papers. The Education and Training Series records in written form material prepared in connection with Center seminars and conferences. Manuals and handbooks are produced as reference materials for particular groups within the federal judicial system; they are also made available, where appropriate, to wider audiences. Training manuals and technical documents describe the new automated court information management systems for users in the federal judicial system.

The Center publishes an annual *Catalog of Publications* that briefly describes the publications in the Center's collection. Publications can be obtained by writing to the Information Services Office; inclusion of a self-addressed mailing label, franked where appropriate, is suggested. Although the Center makes virtually all of its publications available to a wide and varied audience, some are produced in limited quantities for specific categories of federal judicial system personnel. For example, distribution of the *Bench Book* is limited as a matter of Board policy.

Publications completed or to be completed in fiscal 1986 are listed below; a few others mentioned in this report will not be available until early in fiscal 1987.

Research Reports and Staff Papers

"Alternative Dispute Resolution in Federal District Courts," by A. Leo Levin and Deirdre Golash (in *37 University of Florida Law Review* 29 (1985))

Assessment of Videotaped Bankruptcy Discharge Hearings in the U.S. Bankruptcy Court for the Western District of Pennsylvania, by John E. Shapard

Attorneys' Views of Local Rules Limiting Interrogatories, by John Shapard and Carroll Seron

Court-Appointed Experts, by Thomas E. Willging

The Impact of the Federal Drug Aftercare Program, by James B. Eaglin

Punishments for Federal Crimes, by Anthony Partridge, Patricia A. Lombard, and Barbara Meierhoefer (abridged version of *Punishments Imposed on Federal Offenders*)

Settlement Strategies for Federal District Judges, by D. Marie Provine

Taxation of Attorneys' Fees: Practices in English, Alaskan, and Federal Courts, by Alan J. Tomkins and Thomas E. Willging

The Use of Standard Pretrial Procedures: An Assessment of Local Rule 235 of the Northern District of Georgia, by Carroll Seron

Education and Training Series

Bench Book for United States District Court Judges (third edition)

The Judicial Conference and Its Committee on Court Administration, by Elmo B. Hunter

The Writing and Ratification of the U.S. Constitution: A Bibliography, by Russell R. Wheeler

The Writing and Ratification of the U.S. Constitution: An Abbreviated Bibliography, by Russell R. Wheeler

Your Honor, by Edward J. Devitt

Manuals

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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.